PUBLIC HEALTH LAW

Public health is a matter of concern at all levels of government. A number of the articles in this issue deal with matters of national and international significance such as obesity, drugs and AIDS. Yet the effective management of public health starts with local government. It is at this grass roots level that a proactive approach to potential public health issues can benefit many citizens by the application of simple remedies that can have a positive health outcome. For example, the fencing of backyard swimming pools in recent years has no doubt saved young lives. Local government activity may well represent the 'small picture' of public health concerns but a number of those concerns impact directly on large numbers of citizens within the local and larger communities.

In recent times a valued friend and colleague found herself in a situation where she was in need of a motorised wheel chair (commonly referred to as a 'gopher'). Her experience raises a number of issues in regard to public health and legal regulation.

Traditionally public health law has been reactive rather than proactive yet there are many instances where public health concerns can be forecast and the need for regulation of certain activities can be anticipated. Such is the case with gophers. My colleague's observation of spending many long weeks using a gopher indicates the following:

Public foot paths can be very dangerous to move across as surfaces are often rough, may have exposed tree roots on the surface and the gaps that often exist between a driveway and footpath make it extremely difficult to 'drive' a gopher which by design is a heavy framed and slow moving vehicle. This is a potential hazard for people who do not have good motor control due to arthritis or other disabilities which limit hand movements, and consequently less control over the breaking and acceleration mechanisms.

Gopher drivers compete for the same public space with able-bodied pedestrians, people with prams and those using walking frames. The potential for accidents is very obvious while no regulations, policy, or code of practice govern the use of gophers. Gopher drivers have also been given to driving in bicycle lanes on main roads where pathways are either non existent or clearly unsafe.

It is reasonable to assume that an ageing population living longer will have recourse to using aids of various sorts to enable mobility and that mobility in public places will be seen as a right. It can be assumed that gophers will be increasingly used by larger numbers of our ageing population as a means of immediate transport. The opportunity is here for local government to lead the way with a proactive approach to dealing with the inevitable increase of such vehicles before congested pathways lead to accidents. A person on a walking frame for example is unlikely to be able to move out of the way quickly enough when confronted by a gopher moving at any sort of speed. The damage to frail persons in this sort of situation could be significant. It is not unreasonable to assume that there is a potential risk for gopher users now and that the risk will only increase over time.

Does local government have a duty of care to develop adequate regulatory control over the appropriate movement of gophers in public space given the potential harm they might cause is reasonably foreseeable?

It is timely for local government planners and those working in the public health and environmental health arenas to be proactive and undertake a public risk assessment focusing on the increased use of mobility aids such as gophers before serious accidents occur.

Small picture examples of public health concerns such as this reflect on and connect with numerous 'big picture' public health issues such as the World Health Organization concern with road safety and public health. Each year there are significant numbers of deaths of pedestrians of all ages, cyclists and other people using various forms of motorised transport. Gophers are also a form of transport which raise public health concerns.

A proactive approach by local government to public health concerns of citizens in the immediate vicinity can have an impact on some of the concerns reflected by the World Health Organization.

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