Public Health Bill 2010: Consultation with Local Government Report

for

NSW HEALTH

T Issues Consultancy
Grahame Collier
Email: grahame@tissues.com.au
Web: www.tissues.com.au

The Storey Agency
Hazel Storey
Email: hazel@storeyagency.com.au

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Acknowledgements

Kim Stewart, Gemma Broderick and Jo Alley NSW Health
Members of the Health/Local Government Strategic Liaison Group

Host Council staff as follows.

Organisation	Staff Member
Local Government and Shires Association	Noel Baum and Helen Johnson
Wagga Wagga City Council	Sharomi Daynand and Douglas Kieltyka
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B. Introduction

Local Government has a major role in implementing the Public Health Act 1991. This Act, when considered in conjunction with the Protection of the Environment Operations Act 1997, the Food Act 2003 and the Environmental Planning and Assessment Act 1979 frame the major responsibilities of Local Government with respect to the environmental health, environmental planning and environmental management within their communities. The consultation process detailed by NSW Health in the Consultant's Brief for this project focuses on the Public Health Act, yet an understanding of the context of the broader legislative framework enacted by Local Government personnel is important.

With regard to the consultation process required in this project the review of the Public Health Act in 2005 identified need for change in the following aspects of the legislation with regard to the responsibilities, roles and functions of Local Government.

- Roles and responsibilities of Local Government and NSW Health/Area Health Service personnel
- Tools available to enforce the legislation
- Control of skin penetration procedures
- Control of air-conditioning and other systems
- Control of public swimming pools and spa pools
- Safety measures for public water supplies.

Revisions to the Public Health Act 1991 have been drafted – and a public consultation draft of the Public Health Bill 2010 is available. This project is part of a broader consultation process that NSW Health is undertaking. It is important to note that this consultation with Local Government staff - and some elected officials - focused on the aspects of the draft Bill relevant to Local Government activity. That said, the nature and intent of the face-to-face consultation undertaken in this project was framed by the draft Bill but not totally constrained by it. This consultation allowed Local Government to respond to what is proposed - it was not a 'blue sky' consultation. Equally though if personnel involved in the workshops wanted to raise additional matters, there was opportunity for them to do so.

Within these parameters NSW Health established that the consultation undertaken in this project was intended to:

1. identify issues of concern to stakeholders in Local Government through conducting consultation workshops with these stakeholders;
2. identify proposed solutions to issues of concern raised by stakeholders in Local Government through the consultation workshops; and
3. develop a report identifying major issues and proposed solutions identified during the consultation with stakeholders in Local Government.

The following report documents the findings from the consultation process in three ways:

Firstly, Appendix 2 contains the raw data reports from each of the workshops providing a record of what was said at each workshop. Each of these reports was completed within two to three days of the workshop and circulated to participants in each workshop by NSW Health. It is

agreed that access to all workshops reports will be made available by NSW Health on-line to all participants within a limited time following the conclusion of the workshops series.

Secondly, in Section D below, detailed findings are aggregated from the workshops and discussed. Specific wording changes proposed by the workshop participants are detailed and major issues identified.

One of the major issues emerging from the workshops was the regulatory approach identified within the Exposure draft of the Bill and how this compared with other related legislation. This is discussed in some detail in Section E below and some options for modifying the regulatory approach are canvassed.

Finally, and in line with the Consultant's Brief for this project, a series of recommendations are made in Section F about redrafting the Bill.

This has been an important and comprehensive consultation process and input from Local Government personnel has been extensive. We welcome the opportunity to bring these findings to NSW Health.

Grahame Collier

T Issues Consultancy

Hazel Storey

The Storey Agency

C. Set up of the Consultation – Logistics

T Issues Consultancy and the Storey Agency were contracted by NSW Health to undertake the consultation workshops with Local Government on March 22 2010. All workshops had to be held prior to close of business on May 14 2010 in order to be completed before the end of the consultation period. Once the project commenced, decisions had to be made about workshop locations, duration, marketing and hosting arrangements. Quick turnaround was essential if the consultation process was to be effective. Early meetings and discussions with NSW Health, other stakeholders and a meeting with the Health/Local Government Strategic Liaison Group [March 24, 2010] resulted in quick decisions which were important to the process. Support from the Local Government and Shires Associations and from the Environmental Health Association was important at this stage and is acknowledged in bringing about a successful consultation process. Marketing of the full range of workshops commenced on April 1 2010 and on-line registrations opened on April 8, 2010.

Despite the abbreviated time frame for marketing the workshops they were well attended. In all, 169 people attended, which demonstrates the commitment of Local Government to public health issues. In all 87 Councils sent officers to these workshops. That means that 57% of Councils in NSW provided input into the Public Health Bill through this process. This compares favourably with the 32 individual Councils [21%] who provided written submissions prior to the April 19 cut off date for that part of the consultation process, although it should be noted that some Councils provided written input through submissions from regional networks.

Crucial to the face-to-face consultation model used by T Issues Consultancy and the Storey Agency, was the identification of Host Councils. The work of these Host Councils was instrumental to the success of the program. When approached, hosts agreed to the request very quickly and this allowed optimal lead time for promotion of the workshops. T Issues and the Storey Agency used their own networks to identify and approach possible hosts, thus shortening the process substantially. Formal letters were sent by NSW Health to the General Managers of all potential hosts. This approach worked very well. All Host Councils provided excellent facilities, catering was good and there were no glitches with equipment and venues.
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A commercially available on-line booking system was used to facilitate workshop registration. This also worked very well. It was efficient for participants who wished to book in. It enabled a process where reminders were sent to participants who had registered and it was easy to print registration lists, provide follow up and manage the booking system effectively. NSW Health provided very quick turnaround in getting the booking link onto their website again facilitating easy registration. It is likely that the relatively few ‘no shows’ – see table below - in this project is related to these effective processes used for taking and confirming registrations.

The support from the Local Government and Shires Associations and the Environmental Health Association in promoting the program is appreciated. Promotion was undertaken by some Public Health Units in Area Health Services and Regional Organisations of Councils and this was also very helpful. Host Councils also marketed locally.

In order to maximise access to far flung Councils, NSW Health offered a teleconfence to 13 Councils in the West and South West of NSW In addition, Broken Hill City Council was also offered two air fares to the Dubbo workshop or attendance at the teleconference. The teleconference was rescheduled because there was no uptake from the first round invitation.

The support provided by the Murray Regional Organisation of Councils in promoting the rescheduled teleconference consultation and encouraging Councils to dial in is acknowledged.

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The state-wide workshops attracted managers and officers from Councils. Almost 50% of those attending were managers/team leaders/coordinators. Very few elected officials [9 only including four at the LGSA workshop] attended the workshops. Their input and the different perspective that elected officials brought to the discussions was valuable.

Apart from the issue of the relatively short lead time for marketing the workshops, there was not a single complaint recorded about the administration and logistics of the workshops. As indicated by their verbal feedback, participants also were highly satisfied with the way in which the workshops were structured and their opportunity for input. Time and resource constraints did not allow for formal evaluation of the workshops. This is disappointing because it would have been valuable to be able to review the extent to which the processes used were appropriate and successful in the eyes of the participants.

The table below provides a snapshot of attendees at each of the workshops and some brief comments about composition of the groups.

Workshop	Time	Venue	Number attending	Number of Councils*	Comments
29/04/10	1pm - 4pm	Local Government and Shires Associations	8	4	Four Elected officials – members of Local Government Association and Shires Association Executives
03/05/10 Wagga Wagga	11am – 3pm	Wagga Wagga City Council (Council Chambers), Morrow and Baylis Streets, Wagga Wagga.	17	11	The Mayor of Wagga Wagga City Council opened the workshop. He and two other Councillors attended for some of the time only. A mixture of Managers and EHOs -approximately 50/50
04/05/10 Queanbeyan	12.30 - 4pm	Queanbeyan Community Centre, Jim Snow Room 262 Crawford St, Queanbeyan.	12	7	3 Apologies for this workshop. A mixture of EHOs and Managers One attendee was from National Parks
05/05/10 City of Sydney	9.30am – 1.30pm	Level 11 Town Hall House Sydney	25	13	A mixture of EHOs and Managers.
06/05/10 Penrith	09.30am -1.30pm	Penrith Council, 601 High St, Penrith	25	12	A mixture of EHOs and Managers All Local Government employees
07/05/10 Wollongong	11am – 3pm	Acacia Room, Dapto	10	4 - actually 5 [one double	Division of Local Government also attended

		Ribbonwood Centre, 93 - 109 Princes Highway Dapto		up from another workshop]	Mix of Coordinator Managers and EHOs but more EHOs One apology
10/05/10 Dubbo	11am – 3pm	Dubbo City Council Civic Administration Building Darling Street, Dubbo	20	9 Councils	20 participants including 4 extras who did not register. 2 apologies & 7 no shows. Opened by Mayor Cr Alan Smith. 2 x ROC representatives in attendance (representative of ROC Chair & ROC Executive Officer). One AHS staff member also attended.
11/05/10 Armidale-Durmaresq	11am – 3pm	Town Hall Basement, 135 Rusden Street	11	9 Councils	Included one elected official Mix of Coordinator/ Managers and EHOs but more senior staff
12/05/10 Clarence Valley	10am – 1pm	Council Chambers 2 Prince Street Grafton	14	10 Councils [one double up from another workshop]	Two elected officials, Two representatives from Rous Water. Mix of Coordinator/ Managers and EHOs
13/05/10 Newcastle	12.00 – 4pm	Lord Mayors Reception Room City Hall, 290 King Street, Newcastle	18	9 Councils but three double ups	Seven others registered and did not arrive. Two apologies
14/05/10	10:30 – 12:00	Teleconf NSW Health on line	7	5 [one double up]	Councils, from the West and South West of NSW.
TOTALS		**11 Work-shops**	**169**	**87 Councils**	9 - Elected Officials 6 - Personnel from other agencies, including Regional Organisations of Councils Approximately 50/50 split manager/officer from Councils

Note: The total number of Councils excludes double ups whereby some Councils sent personnel to more than one workshop session.
Note: 87 Councils represents 57% of all Councils in NSW.

D. Key Findings – Issues and Proposed Solutions

This Section of the report provides overall findings from the consultation. It represents the aggregated views expressed by participating Council officers and elected officials. Due to the nature/depth of the issues discussed and the fact that the findings relate specifically to the Bill, quantitative data is not provided. The reports from each of the workshops are included in the Appendix and should be reviewed for the specific detail about all of the issues raised in this Findings section. In general, matters that have been drawn forward into this section of the report have been raised across a number of workshops.

It should be noted that some commentary is given to illuminate and/or explain the findings, where necessary and appropriate.

1. Overall Findings

The input provided was generally well thought through and relevant to the underlying intentions of the legislation. The vast majority of participants in the workshops had engaged thoroughly with the exposure draft of the Bill and were well prepared for the consultation. Because face-to-face consultation attracted many more Councils than those who provided written submissions, it is clear that this process captured new information and more depth insights; it was much more than the same people saying the same things.

The following substantial comments/changes of a general nature were proposed across most consultation workshops. These overall comments are organised into two sections – specific suggestions about the Bill overall and more general feedback about the Bill that is further amplified in the Findings below.

General overarching comments were:

a. Public health has been a part of the activity of Local Government for a long period of time and is framed in legislation. While not specifically identified in the Local Government Charter – Local Government Act 1993, the following aspects of the Charter are relevant to its public health functions

A Council has the following charter:

• provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively

• exercise community leadership

• engage in long-term strategic planning on behalf of the local community.

b. At the Local Government and Shires Associations workshop a fundamental issue was raised about the function of Local Government in relation to public health management. Discussion centred on whether Local Government should have a role in public health at all or should it be the total responsibility of NSW Health/Area Health Services - . *'AHS' should employ all the EHOs'* said one respondent. This view was not raised in any other workshop. In all other workshops participants highlighted the essential role of Local Government as a significant *partner* in public health and wanted that role identified, clarified and strengthened further. In saying this however issues of funding, of cost recovery and of shared responsibility were highlighted**.**

c. If Public Health is to be managed effectively a more comprehensive set of powers, offences and penalties is required for Local Government staff within this Bill. These act

as both a deterrent and a punishment and should be pitched at the same level as those in the Protection of the Environment Operations Act 1997 [POEO] and the Food Act [2003]. There was an expectation among Local Government personnel that the proposed Public Health Act 2010 would facilitate the regulatory management of public health. Feedback on the exposure draft of the Bill indicates that in their view it falls short of this objective in a number of ways that are discussed in detail below. See Finding 3 below for more detail.

d. If Public Health is to be managed more effectively then much clearer role definition and delineation is essential in the Bill. The roles and responsibilities of Local Government and Health personnel need to be clarified. Perhaps an 'appropriate regulatory authority' model needs to be considered and enacted – see Finding 2 below for detail.

e. Partnership between Health and Local Government was also a key theme emerging through all workshops**.** A part of this related to role definition, but it also encompassed training, support, level of Local Government engagement etc, See Findings 2 and 3 for more detail and also Section E.

f. Capacity, capability, dollars and people are key to the effective management of public health. These were a key theme running through all of the workshops – see Findings 3, 4 and 9 below, for detail.

Specific overall feedback includes:

g. At the workshops participants were informed about the level of negative feedback received about the term 'Public Health Inspectors'. They were told that it was most likely that this would be replaced by the term 'authorised officer'. There was no negative feedback about the use of authorised officer.

h. The Act needs a Dictionary which includes all definitions. Currently definitions are spread throughout the Bill and are difficult to find and refer to.

i. The specific parts of the exposure draft [those relating to skin penetration, air conditioning etc] are generally poorly organised. It was noted that Section 3.2 uses a clear, layout and that this should be used as the standard layout within Part 3 of the Act. Further it was noted that more content about scope is required in Sections 3.1 to 3.4. Improved layout would support the end users in using the Act more effectively.

j. In general terms words like 'sufficient', 'adequate' and 'appropriate' should be avoided or if they must be used they should be better defined.

k. There needs to be clarity about who is the regulator of Commonwealth land.

2. Findings Concerning Roles and Responsibilities

The roles and responsibilities of key players under the Bill need to be defined much more clearly. Working in partnership was a key theme emerging from the workshops. When interrogated through discussion, the following Findings emerged.

Roles and the Regulatory Framework

Some of the challenges raised by workshop participants relate to the nature and style of the regulatory framework outlined in the Bill. Because the Bill is largely consistent in its regulatory

approach to that used in the Public Health Act 1991, many participants believe it to be *'outdated, unwieldy and full of inconsistencies'*. Hence they indicated that the role definitions for Local Government staff were outdated and insufficient and that the Bill provided insufficient clarity about the role of the Health service.

Since the Public Health Act 1991 became law other regulatory focused legislation has been enacted which is used everyday by Local Government. For some time Council staff have been using the more contemporary regulatory approaches contained within POEO [1997] and the Food Act [2003]. It should be noted that in many smaller Councils the same officers are regulators under Food, POEO and Public Health legislation. Of course they all also work within the Local Government Act [1993] and many of them also undertake functions related to development under the Environmental Planning and Assessment Act [1979]. In the larger Councils these functions are not necessarily just the responsibility of one officer, but they are often undertaken within the same unit and so officers and managers are aware of the different regulatory approaches used. In comparison with other legislation, the exposure draft of the Public Health Bill is seen as not being contemporary in its regulatory framework. *'This is disappointing'* said one participant. *This was a major concern and options for revising the regulatory framework are outlined in Section E.*

When describing the approach that would be beneficial, the word *partnership* was used a lot in both the written submissions and at the workshops. This related to the desire to frame action within a partnership approach between NSW Health and Local Government. But what does this mean specifically? At a number of workshops participants who raised this concept were asked to drill down to explain what was meant. When taken overall they said that the partnership:

- Would develop MOUs between Health and Councils about specific regulatory responsibilities. This document would lay out who does what (negotiated), who regulates what matters, who raises what fees and charges and what they are used for.
- NSW Health would commit to training, telephone support, hosting regional meetings to keep staff up to date and to facilitate information exchange.
- NSW Health would facilitate the development of Guidelines and ensure they were upgraded onto the Regulations under the Act
- Prosecutions under the Act would be a shared responsibility.
- NSW Health would provide templates for inspections to assist Council staff with knowing what to check on site (e.g. reference cooling towers)
- Would involve a 'category' approach where Councils could choose the level at which they world be the regulator.
- Local Government would carry out inspections and provide reports to NSW Health

For more information review the Individual Workshop Reports – See Appendix 2.

Role Definition – Area Health Service and Local Government

The Exposure Bill is limited in its definition of roles and responsibilities**.**

Specific role definition must be included for local councils, AHS EHOs, the AHS itself and for NSW Health. This would be very beneficial, even if there is no change to the regulatory approach. The possible roles suggested by Local Government personnel for NSW Health staff include:

- Development of a local public health plan by the AHS [or equivalent] in partnership with Local Government personnel within the Area
- Support [on-the job training] for Local Government authorised officers by Health staff.

- Identification of appropriate training options for Local Government EHOs
- Local memorandum of understanding about shared responsibilities
- Local arrangements about who is the appropriate regulatory authority
- Having primary responsibility for certain public health matters
- Maintaining the registers for skin penetration, cooling towers and public pools

The Appropriate Regulatory Authority Model
The concept of a designated Appropriate Regulatory Authority [ARA] was raised from the floor and strongly supported in almost every workshop. In this approach, Health's role and Local Government's role would be best defined under the ARA model [as per POEO]. The current Bill does not define roles at all well for NSW Health personnel and many participants emphasised the view that the description of role for Local Government staff was under-developed. If an ARA type model was to be adopted delegations would need to be identified appropriately.

For further description and analysis of this issue and some options for its inclusion in the Act see Section E, below.

The 'Category' Model.
As indicated above, one model that was strongly supported through many of the workshops was that used by the NSW Food Authority. Under their regulatory framework, the Food Act allows Councils to select their level of activity from a three category set of options. These categories and other summary information are outlined in Appendix 1. Note that this model contains a default position in that Category B is the desirable minimum level – the level below it is only selected in exceptional circumstances.

This approach is taken, because it is clearly recognised that Councils have differing capacity and resources. This model is used to account for diversity, but still engages Local Government in providing significant food management regulation, through a graduated set of offences and penalties.

For further description and analysis of this issue and some options for its inclusion to manage public health matters in the Act see Section E, below.

Integrated Planning and Reporting
It is essential that the Act is consistent with the approach mandated by Government in the changes to the Local Government Act 1993 [see www.dlg.nsw.gov.au], which came into force in late 2009. These particularly relate to the Integrated Planning and Reporting requirements on Local Government. As far as the Public Health Bill is concerned, the Integrated Planning and Reporting Framework outlined in detail in the following document www.dlg.nsw.gov.au/dlg/dlghome/Documents/Information/IPRManualJanuary2010.pdf means that a Council has the potential to commit to a level of management of public health in line with the levels of local interest or concern identified by the community and then identified in the Community Strategic Plan. The Community Strategic Planning process also strongly encourages partnership work to deliver the aspirations of the community. Where significant interest and concern is raised regarding public health issues -and often where Councils have had long-term and visible role in health protection – Councils will be significantly involved. This planning approach has implications for selection of which category to operate within, if the Category model is available [see above and Section E]

Health Protection, Promotion and/or Improvement

There was some discussion at a number of workshops about this issue. Generally feedback provided indicated that if these three components were the responsibility of Local Government alone, then they were its beyond capacity. It was noted that:

- Health protection, promotion and improvement are all important
- The exposure draft of the Bill primarily concerns itself with health protection and perhaps it should just focus on this
- With regard for health promotion and improvement, NSW Health and the Area Health Services should have a responsibility to carry this out and should do so in liaison with the Local Government sector, perhaps through the Health/Local Government Strategic Liaison Group or by some other mechanism.

Roles and Responsibilities - specific wording changes requested

Regional health officers – Cl. 113	(1) Clarification of roles of regional health officers is required (2) If that clarification comes – bring roles into line with the other acts especially Local Government Act
Roles: Cl.113 – reference functions regional heath officers to "Coordinate activities" Why should Local Government be coordinated by regional health officers?	This section isn't clear and needs changing. Again reference roles and responsibilities.
Cl. 113 delegation from regional and DG NSW Health	• Remove / vary Cl.113 (b) • Solve through an MOU

3. Findings Concerning Powers Offences and Penalties

There was a significant amount of input and discussion about the enforcement provisions in the Bill. The overall response was that it was *'insufficient and inconsistent – a disappointment'* [Participant comment]. General comments are made below and then comments about powers in relation to specific sections of the Bill – for example in the skin penetration section are made in Sections 5, 6, 7 and 8 of this report.

Broader and graduated penalties

- Every workshop group said that a broader range of offences and penalties needs to be available under the Act to allow for improved and more rigorous management of risks of transmission of diseases. Most groups argued for a graduated range of penalties for clearly identified offences. There was also agreement that the powers should be available/delegated to Local Government authorised officers [and EHOs in Area Health Services] so that an effective regulatory system could be instituted.

- In general the penalty tools should include;
    - Warning letters,
    - Improvement notices,
    - Prohibition notices,
    - Clearance notices,
    - Penalty infringement notices,

- Clean up notices
- Closure notices
- Seizure notices

The graduated regulatory response model is essential and needs to be mandated in the Act. It must be accompanied by appropriate level delegations.

An appropriate fee structure

- All components of the Act need to include fees and charges that allow Local Government or another ARA to recover the costs required to administer the Act. These include
    - Inspection fees – maximum and minimum charges to be established in the regulations
    - Cost recovery fees
    - Administration fees

Some issues about penalties

Regional Councils are not keen to issue PINS, unless absolutely necessary or they are absolutely certain of infringement, due to the economic challenges facing businesses and their communities. A 'name and shame' process could work for public health issues in a similar way to that used for food operators.

Some issues about prosecutions

NSW Health might consider introducing a tiered system of response to offences/breaches where prosecution is warranted (similar to tier one, two and three offences as per PoEO). Timeframes need to be built in and the tiers should be linked to potential for public harm – at an individual or community scale.

Some issues about inspection

There needs to be clarity about the inspection responsibilities and the establishment of an appropriate fee structure [minimum and maximum fees] identified in the regulations. This would bring the inspection regime into line with that in the Food Act. A six monthly inspection regimen for high risk premises and twelve monthly regimen for lower risk premises are proposed.

Consider including the power to require an inspection when the authorised officer believes there is a likelihood that an incident might occur. Identifying likelihood could refer to "reasonably suspect" as used in the scavenger legislation or include words like: "in the opinion of the authorised officer."

Obtaining information

There is a requirement for an officer to have the power to obtain information. In the Bill there is no enforceable requirement for people to provide details. Nor is it an offence not to. Authorised officers need to be able to request

- name and address of an operator
- information relating to business or the offence.

There then needs to be a penalty when the operator does not to provide these details.

A schedule

A generic list of notices and orders is needed in a template contained in a schedule to the Act. These would cover:

1. Apply provisions in line with S124 Local Government Act which has a table of different orders, the ability to issue notice of intent to issue a notice and to issue emergency orders when an issue is of high priority risk.
2. Setting appropriate PINs for failing to apply with the order (Ref Local Government Act)
3. Give clear delegation of authority to Local Government authorised officers.

Powers and penalties: Specific wording changes to the Bill suggested during workshops.

Changes to what Clause	Proposed Change
C. 92 (2) Wording change required	Cl. 99 (2) "change wording to "search warrant or identification card"
Cl. 95 – notifications regarding registers is confusing as to if Council has to comply or not	NSW health advised that don't have to. Suggest re word to make clear
Cl.99	(1) Need to be able take cctv footage, electronic media (2) Other opinion of attendee that this is actually enabled in Clause 99(g). Some would like the word "thing" clarified in 99(g) (3) Cl. 99 (3) – needs to say "the residential portion" (4) Add 'electronic media' to the list
Cl. 99 (1c)	Powers of authority to add words "in or on any premises"
Cl. 101(1) authorise officers need power to deliver verbal answers at time of inspection – not 'by notice in writing'	Remove words "notice in writing"
Cl. 103 (s2) It should be offence not to supply the information	Remove 'does not'
Cl. 103 and 99 Serving notice to require answer name and address	(1) Need to be able to demand people to provide name and be an offence if do not answer. Suggest reference POEO for process to request identify (2) Needs requirement for people to answer (rather than request to answer) and therefore an offence not to answer – with appropriate penalty.
Cl. 99 (2) certificate of ID	Specify what should be on the ID. Consistent with PoEO requirements of what should for the cards. Would like one card that covers all Acts.
Cl 99 Definition of premises is not clear nor is power of entry. Is it the gate? The garden? The front door? Powers of entry: Cannot enter residential premises so therefore can't enter home businesses. Home businesses are different from shop fronts – but need to be captured. Officers need to be able to enter them	Cl. 99 (3) As you don't know till you get there which parts are solely residential Consider removing the exemption of 'residential part'
Cl. 103 (1) and (2) inconsistent	Make an offence not to comply with part one
Cl 101 and 102 split between corporation	This is unclear. Either separate persons and

and person	corporations right through the Bill or come up with definition that person includes a corporation.
Cl. 109	Needs to be an offence not to comply with Cl 109.

4. Findings Concerning Meeting Financial Obligations - Cost recovery

From the perspective of Local Government, budget issues are a significant concern. In one workshop, it was proposed that Local Government withdraw from all aspects of public health because public health was essentially unfunded. The concept of 'cost shifting' was raised specifically in three other workshops.

Overall it is fair to report that while Councils want to be a significant partner in the management of public health, they lack the available funds to do so and because of rate pegging they cannot generate additional core funding.

When this issue was discussed a number of options emerged. These are not mutually exclusive.

- Local Government reduce significantly their involvement in public health or withdraw completely [noted in one workshop only].
- Significant cost recovery provisions are built into the Act so that funding can be generated from these and appropriate officers can be employed to do the work from this funding source. Officers may be employed as part-time contractors and/or operate cross regionally. Or they might be substantive employees of a Council – full or part-time. The Act needs to accommodate all models.
- NSW Health develops a grants program to assist Local Government to take on some of the functions under the Act.
- An ARA and categories regulatory framework [see Section E] is developed and implemented. This would set clear parameters for Local Government involvement in public health matters in partnership with NSW Health. Then Councils could act effectively as a regulator as they would have clear duties and capacity - provided they have the resources. Such a framework would give compliance staff the ability to argue for resources paid for from cost recovery sources.

It is essential that in the drafting process consideration of cost recovery is fully canvassed.

5. Findings Relating to the Skin Penetration Part of the Draft Bill

A range of general issues were raised about Section 3.4 of the Bill
Definitions

- There needs to be clarity about the range of skin penetration premises, businesses and temporary events captured under the Act. For example:
- Home businesses are not covered. There needs to be powers to work with home businesses especially since changes to the NSW Environmental Planning and Assessment Act which now means these businesses do not have to apply to council to operate. As a result councils do not know which businesses are operating from home so are unable to monitor or deal with potential public health matters.

- Mobile businesses also need to be captured in a similar way
- The ARA needs to provide council with the power to require cessation of an activity or the process i.e. to stop the person carrying out the activity wherever it is being done in a risky manner. The focus on 'premise' is too narrow.
- Consider adding cuticle cutters into the definition of skin penetration procedures - scarification, waxing should also be considered. Queensland legislation and guidelines for skin penetration were twice suggested as worth referring to for appropriate definitions.

Enforcement Tools and issues

- Offences penalties and notice powers need to be broadened [see 3 above]. There is a need for a Prohibition Notice that can be applied to a whole operation or a piece of equipment for example – an autoclave. Seizure powers and notices need to be available as well, so that regulatory management of the sector can go beyond operational matters.
- Delegation needs to be changed. The General Manager should have powers and the appropriate level of delegation. It is essential to empower authorised officers through delegation via the General Manager.
- Councils need to be able to issue a PIN straight away, not go to court first.
- There is a need also for more clarity about who commences a prosecution. There is certainty once court has given the order but who commences the action is not clear in the Bill.

Access issues

- Access issues are a problem where home businesses are concerned. Authorised officers need access to the relevant area of home business to the same level as for a shop front. While this is covered somewhat in the Bill, more clarity is needed.

Identifying Operators through mandatory Registration

- The anomaly between the EP&A Act 1979 and the draft Public Health Bill 2010 was noted. Under EP&A home based skin penetration premises are exempt, but under the Public Health Act they need to be registered. This is confusing to the operator and makes them difficult for the Authorised officer to locate. It is important to clear up this anomaly so that both Acts are brought into line; or to indicate in the Public Health Act that it takes precedence and that registration is mandatory.

Training of Operators

- Operators need appropriate qualifications. The qualifications need to be developed, and mandated as soon as possible. They must include appropriate level of understanding of include infection control.

Guidelines

- Guidelines are needed to reinforce the code of practice so that there is a reference for practice. Regulations need to call up the Guidelines but code of practice needs to be called up as well because they detail practice.
- In the Bill, training is only mandatory after an operator is found guilty. It should be mandatory for all operators and at least council officers should be able to require training as part of their orders (PINs, clean up order, requirement to have training)
- Record keeping needs to be maintained in line with the Australian Standard for Sterilisation and code of best practice.

Skin penetration - specific wording changes requested

Issue	Proposed Change
Access to home business challenge – powers of entry	If the Act can define the portion of the home as a business premises then access is essential See Cl. 99 (3) – needs to say "the residential portion"
Cl.47.If Local Government is expected to monitor hairdressers and beauticians they should be included in this section.	State which businesses are included and provide definition of that business. For example Nail technicians and their parlours are missing.
Cl. 48 (1) 3 Cl. 48 (3) & (4) Why has only the Director General been delegated powers for such a simple enforcement function?	(1) Should state 'Council may serve orders or direction without proceeding to the local court. (2) Change "Director General" to "Authorised officer" (or the term that is decided upon)
Cl. 48 (1) needs redrafting	(1) Need to have control to cease the activity or the process. i.e. to stop the person carrying out the activity wherever it is being done in a risky manner. The focus on 'premise is too narrow
Cl. 48 Defines local court must first find person guilty of offence. This is not acceptable as an EHO/Authorised Officer is capable of determining that an offence has been committed.	(1) Change 'local court' to 'authorised officer' (2) Provide appropriate powers to Councils and authorised officers. (3) Cl.48 (5) – too broad needs tightening
Cl. 48 – local govt doesn't have enough enforcement power	If operator has no sterilisation equipment for example there is no ability to get an outcome. Provide powers for orders, notices PINS in event of immediate health risk (as per Food Act)
Cl.47 – level of information required in registers is too detailed and should not be all publically available especially the owners' home address. This goes beyond Freedom of Information Act. Register matters:	(1) Basic register is needed that is directly related to the operator of that business only. (2) Don't need owner's details – (comment though that may need the owner's contacts for building maintenance) (3) Onus on operators/owners to register (rather than Council to find them) (4) Registration certificate to be displayed – they could print it themselves from the register – make it a penalty not to display. On line registration available for operators

6. Findings Relating to the Cooling Towers Part of the Draft Bill

There was significant discussion about a range of issues related to control of air conditioning and other systems covered in Section 3.2 of the Bill.

Operators - definitions

- The definitions of what systems are captured under the Act and what are not captured are very unclear and complicated in this section. Just the concept of "Other Systems" in the title does not suggest a tight definition is in place. Suggest a definition that is centred on legionella risk and then deals with the range of systems that fall under the regulations.
- There is a need to provide advice about vector control in the guidelines.

Risk assessment

- Requirement under regulations for person doing risk assessment under AS3666 Part 3 of standards to be registered on the national register of engineers (NPRE) under general building does not appear to reflect what is happening in reality.
- Needs some flexibility as to who is a 'duly qualified' person. 'Competent person' may be a more appropriate term than 'duly qualified'.

Enforcement

- DG giving directions – The Bill stated that an offence needs to be taken to court before issuing an order. This power needs to be delegated to the GM and a graduated system of penalties and notices needs to be included.
- Inspections are not mandated. The only function that is mandated is to maintain the register - not to do the inspections. But what is point of register without an inspection and penalty system? Mandate inspections and include a graduated range of penalties.

Onus of proof

- The Act should make it clear that there is an obligation on operators to supply Councils with certain information from their own records about compliance and to maintain up-to-date information for the register.
- The Act should clarify that it is an obligations that the installer and the owner/occupier must inform the appropriate authority that a regulated system has been installed.
- The onus to comply should be on the owner not on Council to enforce.

Reporting

- The Act needs to make it clear that the occupier must provide appropriate authority (usually the Council) with an annual compliance certificate to say that operation and maintenance has been carried out.

Register

- A single site for on-line access to register is suggested. It would be maintained by state government (see general notes throughout this report and in 10 below regarding on-line registration system).

Training

- Training of operators should be mandatory in a similar way to that outlined for skin penetration operators, above.

Cooling Towers - specific wording changes suggested during the workshops

Issue	**Proposed Change**
Cl. 33 Need to ensure clarification of the types of systems included in the Act and the responsibilities of Council and owners for each type of system. The onus on requirement to comply should be with the owner not the Council	Requirement of installer owner or occupier to inform appropriate authority that a regulated system has been installed. Onus to comply should be on the owner not on Council to enforce.
Cl. 34 & 35 Compliance Certificate	Need to include that the occupier must provide appropriate authority (usually) local Council annual compliance certificate to say that operation and maintenance has been carried out.
Cl. 34 Notification	Amend Cl. 34 to include new subclause to effect of: "if a duly qualified person identifies results of non-compliance of the relevant air conditioning system they are required to notify the appropriate local Council/authority of the breach within 72 hours"
Cl. 36 Warm water systems – location of systems needs definition	Clarify which premises need notification. Suggest "as at places where vulnerable persons reside or occupy" such as nursing homes, child care centres
Cl. 37 (1). 2 implies that Local Government will do inspections as there is a requirement to maintain register	Amend Cl. 37 to include wording to the effect "authorised office is to undertake an inspection of the regulated system and associated maintenance and operational manual on an annual basis"
Cl. 38 (1) Administration Fee	Amend Cl.38(1) to include new subclause 'the local Council/authority is permitted to charge a prescribed administration fee to cover costs in preparing this notice. This also includes the cost of reinspection"
Cl.38 Delegation	(1) Change title to "Director General or local authority may give…." (2) Change to say Installation and maintenance

7. Findings Relating to the Swimming Pools Part of the Draft Bill

There were a range of issues identified through the workshops for improved management of swimming pools – Section 3.3 of the Bill.

Definitions

- Pools in retirement villages, large residential developments, nursing homes, home based swim schools and public pool learn to swim schools need to be included in the definition. The definitions need to be much tighter.
- The separation between private and public pools could be defined by the term 'if a fee is raised'.

- Private pools in residential blocks are the responsibility of strata – they are the operator. Where a risk potential exists they could be required to provide copies of their inspection/servicing reports. This section of the Bill needs clarifying.

Delegations

- Councils need delegation to be able to close pools. This power should not just lie with the Director General.
- A clearance certificate needs to be built into the Act rather than revoking the closure. Then, if it is refused, there is an available appeal provision. This maximises transparency.
- There needs to be a capacity for charging fees to close and reinspect pools as well as to charge administration costs.

Enforcement

- Provide administration fee structure which allows for minimum and maximum fees to be set locally by the individual council similarly to Food Act.
- Provide provision for officers to issue PINs.
- PINs are not totally effective in preventing enforcement of the Act because they prevent re-occurrence. Council relies on notices and orders. Local Government want powers to make orders relating to public pools to enforce requirements of the Act and force the operator to do the works.

Training of Operators

- Training should be mandatory before – rather than after going court.
- The Act/regulations should clarify what training a pool operator should undertake and what can happen if they are found to be not complying.

Guidelines

- Swimming Pool Guidelines need to be called up under the regulations.

Registration

- State-wide on-line registration system is needed.
- There needs to be a penalty for failure to register.
- The Register needs to include a brief description of the pool and its use.

Swimming Pools - specific wording changes suggested during the workshops

Issue	**Proposed Change**
Cl 41 definitions: what is included?	Add to 41 (d) 'university, nursing homes or the like' Add new: 41 (e) "a pool or spa at a strata unit development or community title development" Add new 41 (f) "a private pool used for commercial activity"
Cl 43.2 (2) Need to clarify " person so named" as it is unclear who is meant	Add "Each person referred to in subsection (b) above"
Cl. 44 Disinfection records	Need to include record keeping in compliance with current pool guidelines
Cl 45 only allows Director General to close pools	(1) Should be delegated to Council General Manager or even officer level

	(2) Match closure notice process with PoEO process Time limit to follow up within 48 hours
4. Cl 45 – doesn't list Councils as able to close pools	Council officers need authority to close (Currently DG)

8. Findings Relating to the Water Supplies Part of the Draft Bill

The information below summarises the key input received and major findings. It should be noted that this input came from regional rural/peri-urban Councils and not from Councils covered by Sydney Water/Hunter Water. The metropolitan Councils within the areas covered by these water authorities found no need to comment on this part of the Bill. The flexibility in the design of the consultation enabled them to focus elsewhere and for those Councils who provided their own bulk water within the LGA to provide substantial input.

Definitions

- In addition to public water supplies, private water supplies need to be covered in the Act because they are a source of public health risk. Private suppliers include water carters and caravan parks. Whilst cafes outside reticulated water supplies are dealt with in the Food Act (because they are serving food) they should also be covered in Health Act.
- There is a need to provide appropriate regulatory powers and tools to Councils to manage private suppliers. These should include PINs, emergency orders etc.
- Terminology and definitions are confusing. Public water utilities supply both raw and recycled water to properties which is not to be used for "drinking water." Limited advice is given about that water. Is it considered as "polluted water"? There is a need to amend wording to "allow for use of raw recycled or reused water" and to define "treated water".
- There is a need to include a clear position about the drinking of recycled water – which is potentially a major health issue.
- Separate definition and enforcement provisions are required for the smaller utility. Quality assurance issues need to be considered across the scale of providers. S30 therefore needs to be defined separately for the smaller utilities (as the Australian Water Guidelines are too complex for the small utilities).
- Guideline for water carters could be called up in the regulations (NSW Health) and the regulations could refer to the appropriate Australian Standard/s.

Registration

- For private suppliers there is a need for a register. This should be held by local Council with the onus on suppliers to provide their details to Council – not Councils to find them. Otherwise the register should be held by NSW Health or the AHS.
- Penalties should be able to be imposed if suppliers do not register.
- A clear enforcement process is needed to require compliance with a standard in the Act.

Regulatory Authority

- There is a need to determine the appropriate regulatory authority for water suppliers.
- The Act must acknowledge that many Councils are both the operator of the water supply system [the local water authority] and the regulator. This matter must be clarified in the legislation with appropriate 'separation of powers'.
- Separation is required, for example, between those managing water supplies and those conducting testing / sampling of the water. Reference Clause 30 – quality assurance programs – NSW Health to develop assurance template which may be able to address

the situation of testing ones own water (i.e. for a water supplier testing their own water). For example *"out west it is difficult to get someone else to be able to undertake testing. Councils have to try and have technical services as the provider, and the environment staff doing the testing and sending off the samples."*

Compliance with drinking water guidelines

- Water suppliers should be able to demonstrate compliance with Australian Drinking Water Quality guidelines – especially peri-urban areas – e.g. farm stays (since the Water Industry Competition Act there are more water suppliers). There should be penalties for non-compliance.

Other Issues

- Some public water utilities are supplied bulk water from others such as Sydney Catchment Authority – the testing and management is removed from the utility's control. Division 3 Sec 23 (2.a) Testing of supplies needs to include a "local water utility or its supplier of water in its raw state."
- Requirement to boil water. This is currently a delegation of the Chief Health Officer. This power may need to be delegated to the local authority with regard to small local suppliers.
- Div 3.30 (3) Exemptions to include an accredited risk based system (e.g. HACCP) as required under the NH&MRC drinking water guidelines. There is a need to define 'other appropriate licensing'.

9. Findings Relating to Education and Training Issues of both Authorised Officers and Operators

Training for Authorised officers

The Act must indicate that providing appropriate level of training for public health authorised officers is a priority.

There is potential for competency standards in regulation to be developed and mandated for both NSW Health and Local Government authorised officers. If this was in place then:

(a) the levels of staffing requirements can be identified within individual Councils.
(b) professional development can be rolled out state wide by NSW Health to meet the skill development needs related to the responsibilities of each sector of government
(c) A PoEO model for training can be developed and delivered by a training provider. Note: that Councils unhappy to be charged $1500 for PoEO authorised officers training by DECCW when it is to deliver "their" legislation. Councils would not want a similar model for Public Health.

It is noted that relevant national competencies exist for example O-Ten (a TAFE external training) and that a dual level course exists for building and health. But no government bodies have endorsed these as a requirement for an Authorised Officer. UWS also has a course that is generally accepted (4 year) but it focuses on bacterial microbiological aspects and is at too high a level for many authorised officers.

Further, it is noted that a Certificate 4 course for food inspections has been recently introduced. For reference to developing the training NSW Health could refer to the Food School run by NSW Food.

Some participants argued that the training bar should not be set too high so that recruitment challenges in getting appropriately qualified personnel across the state are acknowledged.

The EHA have a public health authorised officer training program similar to PoEO course. NSW Health could work with EHA to roll this out at cost. It is possible to then specify a minimum number of professional development hours for authorised officers.

For training of authorised officers also reference ordinance 44. Regulations might say "you must hold these types of qualifications / competencies and list examples.

Base Level of Qualifications of EHOs
Within the context of training it is essential to consider the level of qualifications required of an authorised officer. Section 117 [2] states that *'the Local Government authority may appoint any member of staff to be a public health inspector [authorised officer].* Significant concern was raised about this clause because it did not canvass the base level qualifications required to undertake the role. It was proposed that it be deleted entirely, or changed to: "may appoint any suitably qualified person to be an authorised officer". The deeming of 'suitability" is then choice of local Council.

Training for Operators
For operators in the skin penetration, air conditioning and public swimming pool management sectors there is a need to identify minimum standards of skills and knowledge (e.g. basic knowledge of infection control & what problems you can cause) within each sector. Additional content might include: disinfection, operational matters, frequency of testing, record keeping, why register, emergency orders etc

Consideration should be given to identifying/developing a competency based course run by a Registered Training Organisation [RTO] as the base level of training required for each sector. Note it may be that there is a course already available for swimming pool operators. NSW Health has developed and delivered a course for skin penetration operators.

A Certificate 4 Course in public health would be very welcome. There is no clear direction as to courses that should be undertaken. With direction and specification from NSW Health someone could frame a course that meets that direction. Such training could be offered regionally and assessed. Operators would need to display a certificate demonstrating that that they had completed the training.

10. Findings Relating to Registration Issues

The following key findings were identified with regard to registration. These aggregate matters raised in other sections of the findings.

- In general, participants were supportive of registration of operators in the skin penetration, air conditioning and public swimming pool management sectors. It was agreed that registration is essential for management generally and for management of emergency situations.
- Operators in the skin penetration, air conditioning and public swimming pool management sectors must be made responsible under the Act to register and update their registration annually. If registration is to be a part of the regulatory regime then the onus should be on the operator to register and to print and display records.

- Penalties should be available and able to be applied if non-compliance with registration occurs.
- The issue of privacy needs to be paramount in the registration protocol. Only 'need to know' information should be collected and only a part of this needs to be made available in the public domain. Feedback indicated that in some parts of the Bill, too much information was to be collected and made public. This requirement is likely to contravene the GIPA Act (Government Information Public Access) [2009]
- NSW Health should establish three on-line registration systems for skin penetration, pool operators and air conditioner operators. Refer to the Tobacco register for an example. Note that feedback about the state-wide Food Registration system was that it did not operate as well as the Tobacco Register.

11. Findings Relating to a Systemic Approach to Codes and Guidelines

Across almost all workshops there was a substantial feedback about the need for mandating codes and guidelines under the legislation. Local Government personnel are almost universally of the view that is essential that the recommended codes and guidelines must be called up.

This allows for the codes and guidelines to form the basis of the regulatory and educative approaches and provides protection for the officers and their employers in the case of court action. There is significant concern that if guidelines are not part of the regulatory framework, then Councils will get: '*caught short in court'* [participant comment].

A more rigorous approach to developing and updating guidelines is needed. Local Government input into this process would assist, where practicable.

12. Findings related to Reporting

At most workshops the issue of adequate reporting was discussed briefly and participants were positive about the need to report. The following findings can be drawn out:

- With regard to reporting processes Ch 6 clause 113 (c) needs to be amended to suggest agreement between all enforcement agencies about reporting processes to be used [refer to process used for Food Act].
- Generally annual reporting from Councils to NSW Health is supported and should be mandated under the Act.
- To assist Councils and NSW Health a reporting template is required, which enables Council to complete and provide the required data easily. This would then go into Council's Annual Report – as part of the requirements of the Local Government Act [integrated Planning and Reporting] as well as to NSW Health.

13. Other findings

In addition to all the issues raised above, a range of other matters were raised which are not covered in the Bill and which in the eyes of workshop participants have public health relevance. These are:

- Funeral industry regulation – handling of bodies and burials. It was suggested that this was a major feature of previous legislation and now was de-regulated. Participants across most workshops failed to understand why. There was a strong message that body handling should be included in the Act and that it should be managed under a similar regulatory approach to that used for skin penetration and public swimming pools.
- Squalor. This issue was raised at a number of workshops. There are two main concerns for Local Government about this issue. Firstly there are specific challenges for Councils particularly related to periodic and often repeated clean up responsibilities. There is no way [within the Public Health Act] of obtaining cost recovery for this work. Cost recovery notices are needed in the Act.Secondly, because of their proximity Local Government is involved in managing the issue of squalor in the community but has no support to do so. To be involved in this way they need guidelines mandated under the Act/regulations to facilitate the approach. The matter must also be mentioned in the Act so that an appropriate partnership model to deal with the mental health and public health aspects can be developed
- Cleanliness. This issue was raised with particular regard to commercial accommodation premises. Issues such as cleanliness, risk of transmission of air borne bacteria and viruses in these premises are not covered. Participants indicated that they need to use the LG Act to deal with the issues. There was quite a strong view that cleanliness related issues should be dealt with under the Public Health Act.

E. The Regulatory Approach – Further Analysis and Discussion

As can be seen from the Findings above, there is considerable feedback about the regulatory model proposed in the Bill. There was substantial discussion in most workshops about better definition of roles and responsibilities for all levels of government and the need to identify an approach similar to POEO – hereinafter called the Appropriate Regulatory Authority Model [ARA] and the Food Act – hereinafter called the Category Based Approach to Regulation Model [CBAR].

This Section outlines how each model might be applied within the Public Health Act and then discusses how they might be integrated and hence used together. It is acknowledged that this would be a significant change from the framework outlined in the Bill. However, clearly it is warranted if the feedback received in the workshops is to be seriously considered.

The Appropriate Regulatory Authority Model

The ARA model allocates specific regulatory functions/responsibilities to Local Government and different regulatory functions/responsibilities to NSW Health. This is the approach used in PoEO and while its use is not as easily clear cut in Public Health, it can be applied, at least conceptually.

The following provides an example – drawn from the input from workshop participants regarding the separation of responsibilities between the two regulatory authorities.

For Local Government this means that they are the Appropriate Regulatory Authority as follows:

- Management of public health within a specific Local Government area is the responsibility Council under the Act.
- Council is responsible for public health management through appropriate regulation of all skin penetration operation, air conditioning where potential for legionella outbreaks exists and public swimming pools
- Council is also responsible for managing the provision of potable water that meets drinking water guidelines, where another bulk water authority is not operating.
- Council is responsible for regulating private water suppliers within its local government area.
- Council has a range of regulatory and cost recovery powers and penalties available to it to undertake its role in a strategic and consistent manner. This includes the use of inspections, enforcement, closure and seizure functions as appropriate.
- Council is responsible for public health regulation of local funeral industry operators who are not part of a chain of businesses.
- Council will use appropriately qualified officers to carry out these functions – they may be members of Council staff, contractors and/or officers working across a number of Councils.
- Local Government staff will be strongly supported by Public Health personnel in carrying out these functions.

For NSW Health and Area Health Services this means that a range of specific functions are identified where it is the Appropriate Regulatory Authority [ARA]. At the workshops it was suggested that NSW Health should be the ARA for functions including:

- Management of all emergency situations with powers defined within the Act.
- Council owned and operated public swimming pools and proscribed air conditioning units.
- Certain skin penetration procedures and businesses - E.g. scarification, colonic lavage, body contouring, tongue splitting, sub-dermal implants.
- Provision of public health functions requiring high levels of competence [for example analysis of water quality test results]. This responsibility would need to be clarified with each Council in the jurisdiction.
- Maintaining all registers required under the Act - for skin penetration premises, cooling towers and potentially for public swimming pools – these should be on-line and kept centrally by NSW Health.
- Management [including investigation] of Public Health emergencies
- Provision of technical/operational support and training for Local Government personnel as negotiated locally.
- Convening a regional Public Health working group which includes all Councils in the area
- Ensuring that authorised officers regionally are aware of changes to Guidelines/Regulations etc
- Health promotion about public health issues. This should be responsibility of NSW Health as it's a state-wide or at least regional matter. Councils could be engaged in the planning and roll out through an MOU process.

There are significant benefits in using this model, because while it does not undermine local partnership, it does share the load and ensure that expertise at an appropriate level is available. It also provides clarity for both Health and Local Government personnel and maintains certainty for operators about who their regulatory authority is under 'normal' and emergency circumstances.

The use of this regulatory framework would assist Health and Local Government to provide a more rigorous regulatory system to reduce and manage risk to public health.

The Category Based Approach to Regulation Model

The CBAR* model – or at least the Food Authority's version of it - was strongly supported through many of the workshops. Through the Food Authority model [see Appendix 1] Councils select the appropriate level of regulatory responsibility from a three category set of options. It should be noted that there is a default category option that is built into the options. Councils are strongly encouraged to at least reach Category B, the default position.

It also should be noted that underpinning this model is a willingness within the Food Authority to pick up regulatory functions that are not undertaken if Councils select Category A or Category B.

The workshops clearly identified that Councils have differing capacity and resources to bring to bear on the management of public health. The CBAR model is designed to account for this diversity, but still engage Local Government in providing management of local public health issues.

This model is consistent with the approach mandated by Government in the amended Local Government Act in 2009. As far as the Public Health Act is concerned, the Integrated Planning and Reporting Framework mandated under the Local Government Act means that in a Council where the Community Strategic Plan identifies public health issues these will be included in its functions, in addition to its responsibilities under the new Public Health Act. Where Councils have had long-term and visible role in health protection it would be expected that their community would want this continued. Therefore community aspirations will influence the choice of which category a council will operate within.

The following provides an example of the CBAR approach that could be applied to public health. It draws on input from Local Government personnel at the workshops in suggesting what might be included in the categories.

A three Category model is proposed with Category B identified as the default category.

Category A: this is the minimum public health regulation responsibility category for Local Government.

At this level Council is responsible for inspection and encouraging operators to register only – Skin penetration, Public Swimming Pools and Potable water suppliers only*.

At this level Councils are responsible for reporting any public health concerns in these areas promptly to the Area Health Service and for supporting them to investigate and regulate breaches as appropriate.

Council must have an ongoing and meaningful communication with Health service personnel when operating at this level.

Councils will report annually on activity.

Category B: this is the default category for Local Government undertaking its public health regulation responsibility.

At this level Councils will undertake all responsibilities in Category A. In addition they will:

- Fully regulate skin penetration and public swimming pools
- Inspect, monitor and encourage registration of air conditioning operators and private water suppliers.*
- Ensure that appropriately qualified/ experienced staff are appointed as authorised officers.
- Develop and implement a strategic approach to the management of public health.

Councils will report annually on activity.

Category C: Choosing this category means that Council takes on all of the regulatory responsibilities identified in the Public Health Act allocated to Local Government.

In addition to carrying out all of the functions identified in Categories A and B, Council will be responsible for fully regulating:

- Skin penetration
- Air Conditioning
- Public Swimming Pools
- Potable water supply*

And any other functions established under the Act.

Councils will work in conjunction with Area Health Services in managing emergencies.

Councils will communicate regularly with Area Health authorised officers about their regulatory functions and activities.

Councils will report annually on activity.

* Note MOU process. Although the CBAR process, outlined above, indicates that a definitive category model is proposed, it is likely in reality that Councils will need to select a category and then vary it in some ways by MOU. This additional process is needed because

1. The situation with provision of potable water varies from Council to Council. Where Council is the supplier for example, a varied arrangement will be necessary in order to ensure an operator/regulator split.
2. There may be other circumstances where the generic category needs to be varied in some way. This would also be documented in an MOU. For example a Council at Category C might want to enter into special arrangements about regulation of some types of skin penetration. This would be documented under an MOU, without variation of the category selected.
3. Note: SW Health would still conduct quarterly meetings and facilitate training and on-line registers. Council would be involved in these regardless of category selected.

If this system was to be implemented it is assumed that it would require further work on what is included in each category. In part, this depends on how the roles and responsibilities are clarified in the Act. Further it is assumed that specific MOUs will be developed by Councils to allow for variations in approach and responsibility. These variations will sit alongside the selection of the specific category for many Councils across NSW.

It is essential to note that if this system was to be adopted NSW Health would need to be willing to pick up regulatory action for Councils at A and B category level and that this has implications for staffing levels in Area Health Services.

In summary, this approach would be particularly suitable for regional and rural Councils who often have very few cooling towers, but do need to take a significant level of responsibility for management of potable water. If this model was to be adopted the category system would need to reflect the nature of the community and the level and type of commercial premises in each particular area of focus.

***** *Note:* The term CBAR has been coined specifically for this report.

Integration of the ARA and the CBAR models

It is possible, and maybe desirable that both of the models outlined above are integrated into the new regulatory approach that is adopted by NSW Health, under the new Public Health Act.

Responsibilities could be broadly allocated to both NSW Health and Local Government under an ARA model – see above. This would clarify who is doing what at the broad, state-wide level.

Within Local Government's spectrum of responsibilities as the ARA, the CBAR model would then be applied.

Councils would be requested to select an appropriate CBAR level and they would be allocated to work at this level following approval by NSW Health and the Division of Local Government. MOUs would be developed should minor variations to the level be necessary.

The following conditions might be placed on Councils in the selection of a level.

1. In selecting a category under CBAR, Councils must be mindful of:
    - The needs and expectations of their communities as indicated in the Community Strategic Plan.
    - Their previous level of public health regulatory activity.
    - The extent of public health risk within their lga.
    - Their responsibilities under the Public Health Act.

2. In undertaking activity Councils must include the work required to manage regulation of public health in their Delivery Program and Operational Plan and report on it annually

3. If variations to the work contained in the selected category are necessary, these must be documented within an MOU between Council and NSW Health.

4. In allocating resources for regulation of public health under the selected category, Councils must be mindful of the opportunities to use:
    - Contractors rather than full or part time council staff.
    - Certified inspectors, in some sectors.
    - Shared arrangements and officers with other councils.
    - The full range of cost recovery mechanisms
    - The level of risk of a public health emergency.

Integrating the ARA and the CBAR models is a realistic option.

Recommendations

In the redrafting the Bill it is suggested that consideration is given to the aggregated views of local government – as expressed at workshops. Thus it is recommended that
:

A. NSW Health and other involved agencies work through each of the findings from this consultation and deliberate fully on changes to the exposure Bill. The findings are drawn from a significant consultation process and one which was well supported by Local Government.

B. The Act and associated regulations should clarify the role of NSW Heath personnel [including regional authorised officers] to provide technical and training support and legal/prosecution support for Local Government staff.

C. The Act and associated regulations should clarify the roles of authorised officers in Local Government.

D. In defining more precisely the roles and responsibilities of Local Government and NSW Health/Area Health Service personnel, that an Appropriate Regulatory Authority [ARA] regulatory framework is espoused under the legislation.

E. In defining more precisely the roles and responsibilities of Local Government and NSW Health/Area Health Service personnel, that a Category Based Approach to Regulation Model is developed that allows Local Government to opt in to regulation at a level which matches their capacity and the community's need.

F. In the re-drafting process consideration of cost recovery options for Councils – notice powers, inspection fees etc - is fully canvassed and the appropriate tools included in the Act and regulations.

G. There is a need for a broader and graduated range of enforcement tools to be made available to Councils so that Public Health can be better managed at both the local level and regional level.

H. There is a need for more consistency of approach/terminology/powers and tools with other similar Acts. Often the same personnel in Local Government are authorised to manage food [through the Food Act [2003], environment [through the Protection of the Environment Operations Act [1997]; sometimes they also have responsibilities under the Environmental Planning and Assessment Act [1979], all also have responsibilities under the Local Government Act [1993]. It is not unexpected that they would see the need for consistency in approach and level of enforcement provision.

I. Delegation of responsibilities in the Bill need to be reviewed so that the delegation reflects any amendments to the regulatory framework and that delegation is risk sensitive and enables speedy appropriate regulatory action at a more local level.

J. The Act and associated regulations should support the capacity building needs of those authorised officers empowered to implement it.

K. The Act and associated regulations needs to mandate the training of operators in the skin penetration, air conditioning and public swimming pool management sectors and identify penalties that can be applied when mandatory training benchmarks are not complied with.

L. The Act and associated regulations need to clarify registration issues/processes and identify penalties that can be applied when mandatory registration is not complied with by the skin penetration, air conditioning and public swimming pool management sectors. Further NSW Health should investigate the development of on-line state-wide registers where any registration is required under the Act.

M. In the re-drafting process consideration is given to including the funeral industry [body handling and burial] as another key sector for inclusion.

Following commencement of the Act it is the view of local Government officers in the workshops that:

N. A similar consultation process is undertaken to support the development of the regulations. This might incorporate, or be supported by training for Local Government EHOs about the new legislation and its use.

O. The NSW Health/Local Government Strategic Liaison Group work to clarify key competencies for authorised officers in public health and training options to address these.

P. A public communication program regarding the changes to the Act and their implications is implemented targeted at the general public, and in particular at key operators identified under the Act. Local Government should be a key partner in this program, but it should be managed state-wide by NSW Health.

Q. NSW Health or another state Government regulatory agency convenes a working group to oversee the development of a jointly owned publication designed to inform officers authorised under all or some of the following Acts – PoEO, Food, and Public Health. This publication would provide advice [and real case studies] for authorised officers in Local Government about regulatory management within each Act and the integration between each of them. It would also integrate these approaches and roles with the Local Government Act and the EP&A Act, as appropriate.

Appendix . 1 NSW Food Authority – Key Aspects of the Food Regulation Partnership

Amendments to the *Food Act 2003 (NSW*) and *Food Regulation 2004* enabled the new Food Regulation Partnership from 1 January 2008. Established the following working parameters – called a partnership by workshop participants

The changes:

- clarified the responsibilities of Local Government in relation to food regulation
- improved food safety coordination between Councils and the Authority in several areas, including food inspections
- enabled quicker responses to food emergencies and food recalls
- enabled all Councils to recover the costs of food regulation enforcement
- established a food regulation forum for consultation
- established a reporting process. The Food Authority has published a summary of enforcement activity.

The Food Regulation Partnership model establishes a comprehensive program to support and assist Council roles in food regulation by the NSW Food Authority. The Authority supports Councils by:

- facilitating 16 regional food surveillance network groups across NSW
- convening a Statewide Regulatory Liaison Group
- publishing monthly newsletters on food safety and food-borne illness
- providing technical advice
- establishing an individual contacts database for rapidly disseminating information.

The Food Authority model allows Councils to select an appropriate level of involvement in the regulatory framework. In summary this is defined by Category, described below.

Category A – this is intended to be the minimum food regulation responsibility level for an enforcement agency. It only covers responding to urgent food safety matters, urgent food recall investigations and six-monthly reporting on food regulation activities (s.113).

Category B – this is the intended standard food regulation responsibility level for an enforcement agency. It includes Category A responsibilities, and the following:

a. food recall investigations
b. routine inspection and enforcement of the retail and food service sector
c. medium and low risk food complaint investigations
d. collaboration on single-case food- borne illness investigations

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Category C – this is the higher food regulation responsibility for an enforcement agency. It includes responsibilities for Categories A and B and any other responsibility determined in consultation with the Authority, e.g. inspection of non-licensed manufacturers and wholesalers.

Note: Councils will only be appointed to Category A responsibilities where they have exhausted other options, such as forming alliances with other Councils or engaging contractors/consultants. Refer to ‘Enforcement agency options’ for details.

The Authority will be responsible for carrying out the responsibilities for the Category B role (minus the Category A responsibilities), in situations where a Council carries out Category A responsibilities only.

Appendix 2. Raw Data Reports from all Workshops

This Appendix contains raw data documented from all of the workshops. In the context of this report it provides the underpinning material for the Findings and Recommendations above.

Public Health Act 2010 Consultation
LOCAL GOVERNMENT AND SHIRES ASSOCIATION Workshop

Date: 29 April 2010
Number Present: LGSA Executive Committee Members. 4 x LGSA staff, 4 x elected representatives
Location: LGSA offices, Margaret Street, Sydney
Key Issues Emerging: LGSA started exploring specific issues in the draft Bill then pulled back to the strategic question; does Local Government have a role in public health? LGSA did not have a final agreed position on the legislation at the conclusion of the workshop. Whilst some participants present felt that LGSA may want to consider push back on this legislation the group concluded that other Councils may have a differing position. LGSA will discuss further internally and complete and formally endorse their position in their written submission. In the first two hours of the workshop points had been raised about specific aspects of the bill prior to the workshop's concluding position. These are included in this report. Local Government Association and Shires Association Executive Meetings are scheduled during the week of 3 May and a final position will be communicated after these meetings. Issues and related solutions regarding cooling towers, skin penetration and pools were not discussed in the full group setting. Therefore this report only includes the notes from tables which raise issues but not solutions.

Matters of Concern in Priority Order – within each topic (i.e. the topics themselves are not ordered)	Solutions/Options
Overall Aspects of the Bill	
Fundamental issue is function of Local Government; Discussion centred on the issue of public health not being a Local Government function. It should be AHS. AHS should employ all the EHOs…. Therefore much of items covered in the Act were potentially "tinkering at the edges" without confirming the primary decision about responsibility. But if function / responsibility do not move to AHS, then everything else said today comes into play.	See notes at top of report regarding LGSA formal position.
Roles and responsibilities unclear and contradictory	S4. Set out specific roles and responsibilities. Core business for NSW H, local govt and Area Health Service roles need to be stated

	clearly
Roles and responsibilities unclear and contradictory	If the Bill remains as it is, then the role of Local Government could be removed entirely, regarding who does what. Then Councils who want to do 'it' can and those who don't have to. All the other things are then up to individual Council's choice
Why is Local Government getting involved in work that is Health's responsibility? Why is local govt doing service delivery?	Functionality should be AHS [or new Health] Authority - not Local Government's. Health is responsibility of NSW government agency. Local Government can help (eg health promotion) and facilitate, but not take on role of state government.
Enhance Local Government's role in planning / identifying priority of public health issues	(1) Local Government could have a greater role in State Plan in terms of health, and inputting to State Health Plan (2) Each AHS should have Health Service mandate and have a public health plan. They create it and liaise with local govt but it's the plan of AH service. (3) NSW Health need to help DLG improve the guidance as far as public health planning is concerned in Community Strategic Planning (CSP) guidance [DLG IP& R Manual] so that health is included in CSP process. i.e. reciprocity between the agencies, AHS and Councils
Absence of public health plans	Could confer powers to develop one rather than to require one – and link to DLG Integrated Planning and reporting.
Intent of the bill: If the intent of the bill is health protection LG has a role defined by the advice. If the intent is beyond that - the challenge is the relationship between AHS and local Councils which is not defined. Principles of roles, division of labour.	Opportunity for Local Government to clarify our role. Is this our core business? (often not) LG to do some work about what is LG core business and what they feel is Health Department core business. The changes in health management and funding where the Federal government takes on more responsibility may assist this delineation of responsibilities.
Semantics and confusion that exists about meaning of words – which are not clear in the bill. Bill is prompting Local Government to go further than traditional health role for Local Government (reference "promote, protect, improve" 1.4.1). "Health" in its broad sense actually runs as a thread through much Local Government work: we think about public health planning when we work on	Public health in the narrow sense of the Bill is an Area Health issue other than in specific areas where LG has historically had relations with Public Health. AHS should be looking after the services (and even e.g. should be looking after food).Local govt has

e.g. recreation strategies (discussion about concept of wellbeing ensued)	already taken on some of these issues that should be AHS on...underlying principle is that responsibility should go back to AHS
Where Bill identifies specific responsibility of local Council	Provision Council to be able to recover costs with an express revenue scheme.
Not the one stop shop that many Councils wanted	Statement only. No solution provided
Scale of data collection undertaken by NSW Health is not relative to local areas and doesn't allow for planning at scale of Local Government jurisdiction.	Solution NSW Health to enable samples to be reliable and useful at Local Government level. Preference is individual Council level. At 2/3 Council areas if not at individual Council scale. Regional level is too large.
Concern that area health services were only able to put in one submission each - which has 'disenabled' EHOs within AHS's to work well on their relationships with local Councils	Comment about process only. Not related to LGs issues
Golden opportunity for new age for health in NSW.	Comment about process / timing of changes to Health in Australia
Roles and responsibilities	
Clause 4.1.c why would you need if you have specific functions later.	remove 4.1.c
Issue is inconsistency.4.1 (a) some use strategies as a method - others as plan (protecting promoting and improving). Clause is not consistent with 3 1 (.e) (protecting public health)	solution - make 4.1.(a) and 4.1.(e) consistent
Clause 4.1 (b). What specific function/role would flow from this? It sounds more like an object	Move or change wording
Clause 4 – "appropriate standards " and "measures" have inadequate definition	Solution - make these consistent throughout document. Provide clear and consistent meanings or remove terms.
Roles and responsibilities - delineation of roles: how much expertise do Council staff need to cover the requirements? Act gives words like "sufficient" - but there is no way to measure/ account for the 'sufficient' therefore doesn't work.	NSW does have the expertise – that's why we need to delineation of responsibilities. Clearly define the meanings. Words 'sufficient' and 'adequate' and 'appropriate' need to have more detailed definition. They are words that shouldn't be used in legal documents. Will come down to a judge to make the call.
Clause 4.2 - not achievable may be interpreted as cost shifting Local Government having a quota of staff	Remove all of clause 4.2
Role of Local Government - 2 different in 2 different places. Inconsistent	Make roles consistent
Role of area health services unclear (see notes in section above)	Solution - needs to be clarified in the Bill. Health Authorities (Area Health Services). Note comment made

	throughout is that the Bill will need to use a more general term than 'Area Health Services' given the changes that are occurring.
Skills and expertise - at individual Council level and/versus area health service level. More health officers will be required - where will they come from? Is more education planned? How will they be resourced? Air con registers being proscribed role for Local Government - but no expertise to manage them	Issue is connected to recognition of the profession and standardisation of the profession skills. Work happening at national level. But more needs to be done
Council should not be responsible for interpreting the results of taking a sample from air con/ pool / water supply. Bill needs recognition wording about technicality of the tasks. Councils have problems with interpreting the results and procedures / protocols; for example cryptosporidium samples sent by Councils to labs. In terms of health issues - Local Government don't have the expertise. Issue is linked to competencies nationally about EHO training and standards (ongoing)	(1) Local Government does not have expertise to make the judgement call. Not doctors, not clinicians nor have doctors as colleagues. AHS - do have these colleagues. (2) Need to define the "standards" e.g. like Australian Standards but there isn't a standard for 'sufficient'. Refer back to NSW legal depart so that NSW Health is protected and Local Govt sector is protected. NSW local govt won't stand for what is not their core responsibility.
Regarding "Standards" as a result of the variety and scale of Councils - especially small Councils, many may not be able to deal with / meet the responsibilities related to 'sufficient'.	See note 2 above.
Competencies and safety: Issue regarding security of samples/ control before testing etc. similar to pathology testing….if related to prosecutions for nursing home e.g. Court cases…work back from coroners court….	Not the role of Local Government
Enforcement	
No opportunity to fund the inspections and register preparation.	Provision to raise revenue is required to fund inspections, register maintenance and fund real costs. Needs cost recovery notices in the Act – see POEO
Will penalties be sufficient to ensure compliance? (comment related to planning where a max fine is $600 = no disincentive).	1. Penalties fees and charges must be set at a level that ensures compliance. 2. Practitioners want a tiered process related to the level of risk much like PoEO or Food Act.
Cost recovery generally	Are there any other acts that are done well? Whilst some people like structure and framework of PoEO & Food Act & Companion Animals they *are* still perceived as cost shifting – because local govt cant recover all costs.
More officers required. Where will they come from? More education is required. Acknowledge skills	1. Training program to encourage people to go into the field.

shortage regional and rural areas	2. Train up and get them back into Local Government.
Authorised officers – by whom? To do what? Protections etc	No comments provided
Water supplies	
S 30 quality assurance programs: effectiveness and cost effectiveness of requiring chief health officer approve guidelines.	(1) Develop more adequate guidelines with multi-disciplinary input to their development and reflect/refer to the guidelines set by the NH&MRC and other relevant bodies (2) Consider the cost implications and administration of the guidelines… transitional and capacity issues and how to deal with them (3) Await the outcomes of the Local Water Utility Inquiry and the NSW Government's Response – Given that government has not yet responded to the enquiry this part of the Bill is premature. Significant impact for rural and regional Councils. (ref LGSA written submission) (4) This Act should wait for the enquiry's outcomes
Use of recycled water: draft Bill seems to take a blanket approach.	It should take an approach that reflects the use of the water. Clarity required about the standards which must reflect the use of recycled water. Including consideration of national guidelines - risk based approach takes this into account. Reference Quality Assurance plans
Issues raised – and suggestions to address - though not discussed as a group: Control of Skin Penetration procedures	
Does a DA need to be lodged to enable this type of shop to operate? If not how does Council know they exist to be able to check them?	No solution identified during workshop
Who will be allowed to carry out skin penetration procedures? Eg tattoos, body piercing…	No solution identified during workshop
The register will have many, many, companies registered and could include hairdressers chemists etc.	No solution identified during workshop
Evidence collection that a procedure has been undertaken	No solution identified during workshop
Issues raised – and suggestions to address - though not discussed as a group: Public Swimming Pools	
Who does the inspection? Are Council officers properly qualified to deal with this?	Should public pools have a management or cleaning plan and annual certificate of compliance flied with Council?

Issues raised – and suggestions to address - though not discussed as a group: Air Conditioning	
We do not believe that air conditioning registers should be a prescribed role for Local Government – it has neither expertise nor resources nor money	Remove responsibility of Local Government
Need to split the types and location of air conditioners	No solution identified during workshop
Responsibility for testing (biological) of air conditioners / water towers should be with health who have the expertise (see comments earlier in roles and responsibilities). The physical testing can be done by ; govt for health	No solution identified during workshop
What about homes operating as family day care providers? They don't need a DA so Councils wouldn't know about them to be able to test them.	No solution identified during workshop
Does the Bill indicate "costs of inspections to be borne by the owner?	It should state this
Do Council officers have the expertise or will licensed people be responsible for air conditioning with Council officers then keeping the register?	No solution identified during workshop. See previous comments re expertise

Appendix:

List of Workshop Participants

LGSA Executive Committee Members: Cr Paul Braybrooks (Cootamundra), Cr Julie Hegarty (Pittwater), Cr Janet Hayes (Kempsey) Cr Vince Badallati (Hurstville).
LGSA staff: Policy team; Noel Baum, Sascha Moege, Helen Johnson. Legal representative; Frank Loveridge.

Public Health Act 2010 Consultation
Wagga Wagga Workshop

Date: 3 May 2010
Number Present: 14 staff & 3 Wagga Wagga Councillors (part attendance)
Location: Wagga Wagga
Key Issues Emerging: • Clear delineation of roles, responsibilities and powers is required in the Act (refer Food Act) • Clarity of meaning and intent of specific terms / words is required • Misalignment of Health Act with Environmental Planning and Assessment Act – where properties that will now require compliance under the Health Act do not require compliance under EP&A. As a result Councils would not be able to 'find' such properties • A cost recovery process is required, through a range of mechanisms • NSW Health to develop and manage electronic register for pools, air conditioning systems and skin penetration businesses – much like Food Act and Tobacco register • Suggestion that NSW Health undertake a similar consultation process when the regulations under the Public Health Act 2010 have been drafted

Matters of Concern in Priority Order within each topic (note topics not in priority order)	Solutions/Options
Role of Local Government	
1. S4: What are the appropriate standards to bring national uniformity	(1) Need uniformity across Council, region, state and national scales on regulations i.e. national model code /standard for at least skin penetration. At least a state level standard (reference Building Code of Australia). OR consider minimum service standards in a performance based model
2. Delineation of roles and powers	(1) POEO as model of cost recovery and roles (state, local authority) and rules on how each relates and co-operates (2) Look seriously as Food Act. Clearly defines the roles of each partner. The rules are clear. (3) Define activity for each of the roles: appropriate enforcement agency to deal with the action under the Act. Ensure local authorities have adequate powers to investigate, enter, act, take action, enforce and follow up
3. Mandatory work and/or standards and levels of resources to do that work in different Councils	(1) Minimum expected work requirement (standards) will assist

	Councils in resourcing their roles. (2) Need licensing model for cost recovery for register and resourcing (3) Mandate service levels. No ambiguity about what Council must do
4. Empower improvement notices in each chapter of the act to local authorised officers. Need local accountability	Local accountability to local community means 'local fixability' by Council is also required. Reference model of power to issues clean up notices under PoEO and Food Act.
Penalties and offences	
1. In definitions - define "premises"	Use same terms as Local Government Act
2. Cl 101(1) authorise officers need power to deliver verbal answers at time of inspection – not 'by notice in writing'	Remove words "notice in writing"
3. Cl 99(2) Clarity required on the certificate of authority	Recommend similar to Food Act
4. Cl 99(3) Need to be able to enter residential premises where home occupation businesses are carried out	Additional wording required to allow access to residential premises where e.g. skin penetration may /takes place
5. 103 (s2) It should be offence not to supply the information	Remove 'does not'
6. Cl. 99(1b) Powers need to include inspection of electronic media	Add 'electronic media' to the list
7. Cl. 99 (1c) Powers of authority – wording change	Powers of authority to add words "in or on any premises"
8. Cl. 109 Should be an offence not to comply with an improvement notice or prohibition order	Under the regulations – make it an offence for non-compliance with either improvement notices and or prohibition order
Skin Penetration	
1. Obligation that operators have appropriate skills – (qualifications & knowledge) and have proof of such. This is a maturing industry so such skills and knowledge need to be in place(reference Food Act)	Put new clauses in the Bill or regulations that require at least one person to be accredited
2. Matters pertaining to the register:	(1) Reduce the amount of information required in the register (2) Suggest look at the Food Authority where all premises are registered on line. (3) Amend the Bill so that falls in line with requirements of Food Act which has electronic self registration. (4) Electronic register should be there for skin penetration, pools and air conditioning systems. (5) The one Register to be

	maintained by State Government.
3. Conflict with EPAA Act – where such actions could take place without consent. Councils need access to residential premises where skin penetration procedures may occur. However EPAA requirements mean that Council would not know where they are. Which act has priority? The answer needs to be acknowledged in the bill. Currently there is no way to 'find' the non compliant home premises.	Both state departments need to get together to work out which legislation takes precedence. Don't want it to end up as legal court decision. Call up in the regulations (relevant). Guidelines must be able to stand up in court. Possible process solution: Feeding from EPAA - you may be exempt under EPAA – but you will have responsibility for XYZ activities under NSW Health Act….
4. Relationship between Act and guidelines	The guidelines will need to be regulated – otherwise decisions made resulting from the guidelines will not stand up in court (reference previous Council experiences)
Public Water Supplies	
The improvements required in quality assurance are subject to resources. Most Councils doing water supply do not have resources to do any improvements to systems, which results in business as usual. The 107 NSW water utilities are mostly too small to make any improvements – with possible consequences for public health	Larger water utilities are required. Suggest NSW Health talk with Water Minister as no response to the 2007 water enquiry has been made available to date.
1. Division 5 30 (i) The quality assurance system and guidelines are not defined. Thus Councils cannot tell what level of resources are required – small Councils will struggle	Provide the guidelines. Proscribe quality assurance system that is scalable - Give detail as to who has to follow NHMRC guidelines (risk based) or follow another quality system
2. Div 5.30 (2) Even though these terms were in the existing act – will there be different enforcement requirements now?	What will be the new regulations?
3. Div 3.30 (3) Will exemptions include an accredited risk based system (e.g. HACCP) as required under the NH&MRC Drinking water guidelines?	Define 'other appropriate licensing"
4. Define who is responsible in what way for water supply and what those supplies are. Guidelines don't cover private water supply. In some small villages bore water is reticulated for flushing and other needs. Has consequential public health risks, but as it is not for drinking no-one checks it.	(1) Act doesn't cover private water supply at all (neither potable nor non potable). It needs to! (2) Need to clearly define what guidelines should be followed by whom. Include suppliers of non-potable water.
5. National Guidelines on reuse of stormwater and waste water need to be legislated so that utilities have a better guide to what may be approved.	Capture the guidelines in the Act or another appropriate Act so utilities have an idea what the outcome of submitting a proposal to NSW Health for approval could be. NSW Health need a better framework for reuse project approvals– currently most

	advice / approval appears to be on a case by case basis for reuse projects.
Swimming pools	
Cl 41 definitions: what is included?	Add to 41 (d) 'university, nursing homes or the like' Add new: 41 (e) "a pool or spa at a strata unit development or community title development" Add new 41 (f) "a private pool used for commercial activity"
Cl 43.2 (2) Need to clarify " person so named" as it is unclear who is meant	Add "Each person referred to in subsection (b) above"
C43 (3) Privacy issues: What are the privacy issues are regarding the public register? Concern it may contravene Personal Information and Protection Act 1998 (PIPA)	(1) Cross check against PIPA. (2) Close part of the register for public access. Make it access for authorised officers access only.
Cl.44 & Cl. 45 Lack of provisions for improvement notices	Refer to Food Act and have similar improvement type notice provisions in this bill.
Air conditioners	
1. Cl. 33 Need to ensure clarification of the types of systems included in the Act and the responsibilities of Council and owners for each type of system. The onus on requirement to comply should be with the owner not the Council	Requirement of installer owner or occupier to inform appropriate authority that a regulated system has been installed. Onus to comply should be on the owner not on Council to enforce.
2. Cl. 34 & 35	Need to include that the occupier must provide appropriate authority (usually) local Council annual compliance certificate to say that operation and maintenance has been carried out.
Register	Single site for on-line access to register maintained by state government (see general notes throughout regarding on line register)
Overall aspects of the Bill	
Electronic registration and maintenance by NSW Health	(1) Reduce the amount of information required in the register (2) Suggest look at the Food Authority where all premises are registered on line. (3) Amend the Bill so that falls in line with requirements of Food Act which has electronic self registration. (4) Electronic register should be there for skin penetration, pools and air conditioning systems. (5) The one Register to be maintained by State Government.

Across the specific activities sections [Chapter 3, eg swimming pools] there is difficulty in finding who is responsible for what and which offences and penalties can be applied.	Refer to the Local Government Act. which includes a table listing responsibility, list of offences and applicable penalties.
Cost shifting and resourcing at local level	Need opportunities for cost recovery by Councils by allowing licensing and fees
Deemed authorised officers qualifications - and attracting staff to regions	(1) Endorsing need for qualifications means standards are maintained for surveillance officers. (2) Consistent industry standard for personnel in the profession is needed (3) Note that enforced mandatory qualification can work against recruitment in rural Councils who can't afford to employ a separate health and building surveyors. On the job training will be required (and budgeted) (4) Need more accredited training options for external study that are available for distance study and training (via TAFE). (5) Don't follow the Building Accredited Training scheme

Attendees:

Corowa Shire Council	Mr	Bob	Parr	Director Environmental Services
Wagga Wagga City Council	Mrs	Sharomi	Dayanand	Environmental Health Officer
Wagga Wagga City Council	Mr	Douglas	Kieltyka	Environmental Health Officer
Wagga Wagga City Council	Mr	Mark	Gardiner	Manager Environmental Sustainability and Regulatory Services
Wagga Wagga City Council	Mr	Ray	Goodlass	Councillor, Wagga Wagga
Wagga Wagga City Council	Mr	Kerry	Pascoe	Mayor, Wagga Wagga
Wagga Wagga City Council	Mr	Kevin	Wales	Councillor, Wagga Wagga
Junee Shire Council	Mr	Graham	Ritter	Health & Building Surveyor
Bland Shire Council	Mr	Guy	Marchant	Acting Manager Development Services
Deniliquin Council	Mr	Roger	McGrath	Environmental Health Officer
Riverina Water County Council	Mr	Greg	Finlayson	Director of Engineering
Young Shire Council	Mr	Craig	Filmer	Director Planning Environment & Strategic Services
Young Shire Council	Ms	Sally	Atkinson	Support Officer - Planning & Environment
Wakool Shire Council	Ms	Jacky	Woolhouse	Development Services Approvals Assistant
Albury City Council	Ms	Lindsay	Mack	Trainee Environmental Health Officer
Cootamundra Shire Council	Mr	Chris	Imrie	not provided
Greater Hume Council	Mr	Bradley	Peach	not provided

Public Health Act 2010 Consultation
Queanbeyan Workshop

Date: 4 May 2010

Number Present: 12 attendees. 3 apologies

Location: Queanbeyan City Council

Key Issues Emerging:

- More comprehensive selection of tools is required under the Act. These include cost recovery (similar to prevention notices under PoEO) & improvement notices
- Also need tools to ensure compliance with requirements for registration
- Interest in opportunity for NSW Health to maintain register/s
- Use Act as opportunity to up-skill operators as well as penalise. First point of call is education and training of operators followed by use of enforcement powers where appropriate
- Roles and responsibilities and delineation of powers needs clarification so that powers can be used appropriately by the appropriate authority – need for Health's roles to be clarified
- Councils need a framework that assists them, in conjunction with their Health staff to determine the level at which they are able to take on responsibilities within the Act (reference Food Act)
- Consistency of definition and of level of offences and penalties with other Acts (e.g. PoEO)
- Clarity needed of definition of what is a public swimming pool
- Inspection fees to be added and discretion allowed in the application of inspection fees charged between minimum and maximum prescribed rates.

Matters of Concern in Priority Order within each topic (note topics are not in any priority order)	**Solutions/Options**
Role of Local Government	
(1) The role of state government and Local Government as separate entities needs to be clearer e.g. swimming pools; Local Government is required to keep register but no delineation as to who looks and inspects the pools, whilst the DG of Health is responsible for closing them.	(1) Clause 4 talks broadly about what Local Government is supposed to be doing. Add same for state government under clause 4.
(2) Delegation from Director General (Cl 212) NSW Health to respect the fact that Council officers are able to issue PINS etc in other legislation	(1) Delegation needs be in the Act – not handed down (3) Notional solution: PoEO type regulatory authority for delineation and delegation. Pools may work this way regarding who is regulatory authority. Note PoEO contains the notion of 'appropriate regulatory authority', so should the Public Health Act. (4) Appropriate regulatory model as in PoEO could be applied to NSW Health Act

(3) Who is responsible for inspecting premises? Is expectation that local Councils will do it or not? Where is the line?	(1) One option is to look at Food Act – which has clear responsibilities. Also gives small Councils opportunity to opt out of inspecting. Council might say for whatever reason they don't want to get involved
(4) Councils cannot opt out of inspecting premises if they don't know what their responsibilities are.	Again make clear the responsibilities of local Councils so they can opt in and/or out.
(5) Roles of regional AHO and Health staff need to be clearly identified.	(1) Needs clarification in the Bill. (2) Regional Health could have supporting and training role for Local Government officers. Reference partnership model with Food Authority where there is an expectation of exchange information and support. Also allows for minimising duplication. (3) Provide mandatory role for Council. (4) Consider risk based inspection regime (like PoEO) P1-4. Precipitates inspection regime for each premises. Each Council is allocated a risk category (AB or C) then works in the according manner for that category.
(6) Councils don't want these changes to result in cost shifting.	Make sure revenue raising is included
(7) C 117 (2) "any member of staff" is too vague	Delete or change: "may appoint any suitably qualified person to be an authorised officer". The deeming of 'suitability" is then choice of local Council
(8) Concerns about the professionalism of the environmental health industry	Concerns raised about the recognition of the profession and the training of EHOs in NSW. Recognise skills and training. Word of warning; building surveyors must now be accredited by a body other than Local Government. This is the opposite direction from where workshop participants want to go.
(9) Approach from state regulatory authority to local Council must be clear so that local Council knows what it is meant to do and what is not it's area of responsibility. This will clarify roles and responsibilities for both officers and elected representatives who may be unclear.	(1) Clarify roles and responsibilities. (2) Make sure procedural fairness is enacted. (3) Reference PoEO
Penalties and offences	
(1) Consistency with other legislation is required	Suggest Ch 5 be amended in line with Food and PoEO Acts
(2) Adequacy of tools available to Local Government and their definitions	(1)Want tools that cover range of enforcement options such as seizure, closure, PINS (noting that all Local Government authorised staff would have all these powers) or delegation back to General Manager as per Food Act.

	(2) Admin Notices required to cover a range of matters so that Council officers can require: • Operators/providers to have training. • Structural and other works be undertaken • Service to be provided differently • Officers have power to close premises. (3) Act to include opportunity to require upgrade of skills and knowledge focus of providers (as per Food Act) (4) Cost Recovery Notices are needed. Suggest NSW Health refer PoEO for prevention notices.
(2a) Clause 103 – powers to request name and address	Needs requirement for people to answer (rather than request to answer) and therefore an offence not to answer – with appropriate penalty.
(2b) Cl 109. Does not make it an offence not to comply	Needs to be an offence not to comply with Cl 109.
(3) Powers of officers: In Cl 99 officers are unable to take any electronic evidence. Ability to collect evidence needs to be extended. Discussion ensued regarding powers and their use for collecting evidence and interpreting the legislation.	(1) Need to be able take cctv footage, electronic media (2) Other opinion of attendee that this is actually enabled in Clause 99(g). Some would like the word "thing" clarified in 99(g)
NSW Health issues regarding how PINS are used.	Councils want access to PINS for many different offences in NSW Health Act (as per other legislation) rather than to have to go to court.
Skin Penetration	
Ask for specified inspection regime of premises	Inspection regime should be at discretion of local Council.
Privacy issues: Concerns about the register and access to private information.	(1) Check legal requirements under PIPA. (2) Restrict full access to Department Health, or authorised officers.
Home based skin penetration and ability to find the operators. EHOs can only find these businesses/ operators from compliance team. Need for register	Clarify requirement that all operators / business must be registered. Any person who operates skin penetration of any type, in any place, in any form must put themselves on the register. Make it a penalty offence ($1500 suggested) not to be registered. Operator has the responsibility to register rather than Council. Register could be held by Council / NSW Health. References; NAPSUS (Food register); Business Licensing Information System (BLISS). NSW Fair Trading may be the connection required.
Capturing emerging trends in skin penetration	Make sure recognised emerging trends in skin penetration behaviour are able to be called up under the Act. e.g. currently micro puncturing. What is skin penetration?

	Answer Anything that makes a hole in the skin is skin penetration.
Public Water Supplies	
(1) Stringency: Consistency needed in and between the different pieces of legislation (Local Government Act and Health Act). E.g. Local Government Act contains specific requirements that are more stringent than NSW Health – for manufactured home estates, caravan parks etc e.g. all drinking/domestic purpose water must meet Australian drinking water guidelines at the premises.	Make the NSW Health consistent with Local Government Act and Regulations
(2) Lord Howe Island Board should not be a public water supply authority as covered by the private water supply guidelines	Remove Lord Howe Board from the Bill
(3) Cl 21 (3) Clarification required on definition of polluted water	Provide definition of what is meant regarding both potable water and non potable water
(4) Consistency in terms used between legislation. Eg. “Potable” or “drinking” water	Use the same definition as other Acts for drinking water / potable water.
Drinking water management plans are going to be required: Have to be created by person renting individual plans. Where do you define what is a commercial use of property and water? Therefore who is responsible for the quality e.g. B&B / farm stay is caught up.	Definition of “commercial undertaking” is required.
Swimming pools	
Does the definition include aged facilities, training pools?	Clarify definition and Include pools where you pay an entry fee (public or private)
Cl 45 only allows Director General to close pools	Should be delegated to Council General Manager or even officer level
More tools needed to manage pools	Need PINS for additional matters such as unsatisfactory water quality, failure to maintain a pool closed when under a closure order
Need provision to pick up e.g. poor lighting, broken tiles in pools. Don’t want to be the officer in coroners court if a child drowns two weeks after an inspection.	Look at 2000 Public Health Swimming pools Act– most have delegations. Would be picked up if had access to PINS regarding construction and maintenance. Merit in improvement notice for pools.
Should the Public Health Act pick up the operational provisions of the 200) Pools Act?	No discussion or conclusion
Air conditioners	
(1) Privacy concerns with the register being available to public	Restrict full access to department health, or authorised officers. If people sick need opportunity for access – otherwise restrict
(2) Cooling towers in cold climate regions Discussion: Should be no need for regulation snow making machines during snow season. But at close of season do need to be regulated.	Different opinions raised about this matter (1) At end of season should be inspected or owner shows documentation that have been cleaned and dried (2) Other opinion: because emptied every

If you don't regulate the cooling tower process (clean and dry) at the end of the season….may have increased legionella risk come summer. Can be inspected or operator/owner provides documentation that it has been done. Needs to be in the regulations.	day (but that is an operator decision). Suggest capture difference in towers in the definitions for example towers in snow fields versus factories or offices: Suggest risk management approach.
Overall aspects of the Bill	
Codes and guidelines to be drawn up as part of the Act and Regulations	(1) Should be no such things as codes or guidelines. Matters should be in the Regulations or Act or not at all. (2) OR make national minimum standard (providing a structure of Act, Regulations and Standards)
Definitions are scattered throughout document	Have a glossary at the end of the legislation much like PoEO
Cost shifting issue / problem and resourcing areas for (especially) smaller Councils	(1) Provide for mandatory inspection fees (2) Cost recovery fees which are consistent across the state to be included in the Act and set at level that is sufficient to resource the programs
Cost recovery.	(1) Fees and charges – levels of fines and PINS and prohibition should be set by regulation (2) Cost of inspection regime should be able to be set locally within maximum and minimum parameters
Missing category of other premises for public health issues e.g. Motels, hotels, public toilets, hostels, boarding houses, temporary accommodation, schools	(1) Suggestion for broad brush category to be added to the Act. Category to include: accommodation – e.g. types of short-term accommodation paid for by the public. Officers would be able to respond to complaints, inspect and if the site doesn't then meet standards then a PIN should be able to be issued
Functions are spilt between other Acts. Public Health Bill is relying on other legislation around it to make public health happen. E.g. inspect under Public Health then go to Local Government Act to do the fines.	Officers shouldn't be reverting to have to use other pieces of legislation to do public health where possible.

Attendees:

Bega Valley Shire Council	Mr	Jeff	Tipping	Manager Environmental Health & Building Services
Eurobodalla Shire Council	Mr	Glenn	Downes	Environmental Health Officer
Goulburn Mulwaree Council	Ms	Melinda	Corey	Trainee Environmental Health Officer
Goulburn Mulwaree Council	Mrs	Sonia	Spotswood	Manager Environmental Services
Young Shire Council	Mr	Martin	Slade	Waste Management & Environmental Officer
Young Shire Council	Mrs	Kira Lee	Foster	Trainee Health & Building Officer
Upper Lachlan Shire Council	Mrs	Katrina	Proudman	Senior Environmental Health & Building Surveyor

Queanbeyan	Mrs	Natasha	Abbott	Environmental Health Officer
Queanbeyan	Ms	Bronwyn	Thompson	Environmental Health Officer
Queanbeyan	Mr	Michael	Thompson	Director Environmental Services
NSW National Parks & Wildlife	Mr	Mark	Nolan	Snr Environmental Health Officer
Palerang Council	Ms	Louise	Menday	Director of Planning and Environmental Services

Public Health Act 2010 Consultation
Sydney Workshop

Date: 5 May 2010

Number Present: 25

Location: City of Sydney Council**,** Town Hall House

Key Issues Emerging:

- Strong call to give Councils the powers and the relevant tools to do the job – much like Food Act and PoEO
- Roles and responsibilities: as well as clarity in the legislation related to who is the Appropriate Regulatory Authority. Consider MOU arrangements between NSW Health and Councils regarding specific roles and levels of responsibility. These arrangements would differ between Councils (and may reflect wishes of community in Community Strategic Plan)
- Need for substantial increase in cost recovery tools available. Concerns were expressed as to whether a Council could raise sufficient funds under Health Act to fund sufficient activity even if a relationship /responsibility framework like Food Act was adopted
- Call up the relevant codes of practice through the guidelines and into the regulations – as this is where the practice is laid out clearly for operators
- Privacy issues regarding contents of public register (reference PIPA) were of concern. Collect only the information that is actually required. Require people/businesses to annually update their particulars on the register
- There is no requirement for local Councils to inspect cooling towers – risk based guidelines need to be developed
- Definitions are too broad and dotted through document. Glossary required
- S39. Roles need definition for dealing with legionella outbreaks. Currently not clear if NSW is still the lead agency

Matters of Concern in Priority Order within each topic (note topics are not in any priority order)	Solutions/Options
Role of Local Government	
S4 (1) Too broadly defines the responsibilities of Local Government. It includes the development of public health promotion and strategies. Roles and responsibilities need clarification.	A range of opinions were heard regarding if this is an issue or not, as well as solutions/options. (1) Remove Local Government responsibilities for public health promotion from S4 and replace with NSW Health. (2) Different opinion: Think Councils *do* have a role in Public Health promotion locally. Suggestion that where a local issue, Councils could develop promotions locally & where a state issue, NSW Health has responsibility. This would mean consistent messages across the state. But others said we don't want 152 different health promotion strategies for e.g. cooling towers. Summary: • Clear definition of roles. • Clear requirements on activity to be conducted by which party. E.g. State are responsible for activities such as hospitals and state services.

	Local Councils responsible for the rest. Reference ARAs in PoEO • Liaison required between the government agency and Local Government
Discussion about the need for more of a partnership model to deliver intent of the Bill	(1) Example partnership model: which participants think could be applied to skin penetration and cooling towers is the Food Authority model: Food Authority (FA) identifies what Council is meant to do (roles and responsibilities), Councils have revenue raising powers. Councils report to FA every 6 months. (2) Framework for delivering public health could be partnership delivery model with clearly defined responsibilities. Who does what needs clear definition of ARA responsibilities and roles between NSW Health and Councils framed by the Act. Cautionary concerns raised on the models: (a) Whether LG could raise sufficient funds for Health Act proposed responsibilities. Solution: need to go to Council and get budget to do these inspections because we have agreed to do them/ or are regulated to do them (b) It was noted that under this model NSW Health needs to provide the same level of support to LG staff that Food Authority provides
Draft Bill doesn't detail role of NSW EHOs in Area Health Service	Define role and responsibilities of NSW Health EHOs and those in Area Health Service/ Public Health Unit
Budgetary and responsibility constraints regarding need to hire 'sufficient' numbers of EHOs to carry out expected roles.	(1) Bill should develop a framework to assist Councils in appointing sufficient officers. (2) Without knowing the role and responsibility of Council they cannot know what is 'sufficient' The use of this word in the Bill is not helpful.
S4.1.(c) needs to be supported with enforcement tools	(1) Review Ch 5. And make the range of tools more comprehensive [see below] (2) Look to PoEO and Food Act. for examples of tools – e.g. Clean-up and Prevention Notices in POEO (3) Concerns again raised regarding level of support from state government to Council to deliver (reference fall off in support for PoEO)
Conflict of interest	For example. Council inspecting and being the ARA for its own pool/s. See pools section for comment
S 124 Liability – covers some of roles and responsibilities of state and others. But doesn't state Local Government is liable	Councils will need to be covered here if they do have specific responsibilities given in the bill. Something for the risk management teams in Council to consider.
Penalties and offences	
(1) Generally an Enforcement Action Framework is	Include notices that are specific to the Health Act

needed in the Act	not Local Government Act. The notice powers in the current Bill are fragmented and not comprehensive enough
(2) Enforcement documentation for pools, towers and skin penetration	Suggest similar to PoEO and Food Act: Warning letters, improvement notices, prohibition notices, clearance notices, penalty infringement notices, orders, disposal, seizure, prevention clean up etc.
(3) Enforcement - delegation of powers. E.g. Closing a pool has to go all the way up the line to the Director General. Councils need the GM having the powers to close. If work is going to be imposed /delegated the sector needs powers to do the work delegated. Links back to clear roles and ability to deliver the responsibilities of the roles.	General Manager / Local Government Enforcement delegation /powers similar to Director General as the ARA. (1) GM has the power to delegate what responsibilities the officers can undertake (like Food Act) (2) Director General could delegate to "relevant enforcement agency" "appropriate authority" Make this change for all references to Director General in the Bill. (2) "The Director General or appropriate regulatory authority" may be better wording to use. (3) Current provisions for delegations don't cover emergency very well. In case of serious public health emergency needs provision for emergency orders etc to be clearly and quickly enacted [e.g. closure of a pool]
(4) Cost recovery:	(1) Requirement to inspect not just to keep registers. (2) Prescribe fees for inspections, notices, orders and administration fees(reference PoEO)
(5) Enforcement of training	(1) Requirement for appropriate qualifications for operators of licensed premises with penalty for non-compliance with training orders [especially for skin penetration
Regulations	Regulations should describe and set the imposts within penalty notices etc that can be used on a day to day basis
Q: Current PIN structure. Will there be regulations attached to the PINS? How long for the regulations?	Answer (Gemma) What offences will become PINS [and the setting of PIN charges] will require discussion with Attorney General.
Q: Are NSW Health considering "name and shame" approach like the Food Act?	Answer (Gemma): It has been raised in some submissions. NSW Health will look at along with other matters
Skin Penetration	
(1) Powers to take enforcement action	(1) Local Government should have the power at local level to issue enforcement - similar Food Act – when the Act has been contravened. PINS, improvement notices, prohibition notices, seizures, clearance certificates and cost recovery & ability to require operator training. (2) S48 (1) 3 should state 'Council may serve orders or direction without proceeding to the local court.
(2) Stronger definitions – especially define skin	Refer: S17,14,15 of Queensland Public Health

penetration	Infection Control for Personal Appearance Services Act (2003). Has great definition of skin penetration.
Not capturing all types of skin penetration operators	Needs to include mobile skin penetration operators, acupuncture – where properties not up to scratch
Exemptions	Only registered health service providers should be exempt – e.g. doctors
General requirements regarding skin penetration	(1) Operators need appropriate qualifications. The qualifications need to be developed, as whilst many beauty courses in market place, few (if any) include infection control. (2) requirement for structure and construction of premises e.g. wash basins, premises clean and tidy and equipment in good working order
Code of practice needs more weight and power through the regulations. The code of practice is currently not called up.	Need guidelines to reinforce the code of practice so have a reference for practice e.g. how to deal with foot spas Regulations need to call up the guidelines but code of practice needs to be called up as they are the practice. Plus to use record keeping as in Australian Standard for Sterilisation and code of best practice.
Cl 48 (1) needs redrafting. It currently focuses on the premise from which the person is operating a skin pen business. This doesn't stop them from going next door and starting up again.	Need to have control to cease the activity or the process. i.e. to stop the person carrying out the activity wherever it is being done in a risky manner. The focus on 'premise is too narrow
Shouldn't have to prosecute someone to be able to serve notice	Councils need to be able to issue a PIN straight away, not go to court first. There is a need also for more clarity about who commences a prosecution. There is certainty once court has given the order but .who commences action is not clear in the Bill. Need to know who can commence the proceedings.
Skin penetration is a good opportunity to define roles of NSW H and Local Government	Could have clear list of who is ARA for specific procedures. E.g. scarification, colonic lavage, body contouring, tongue splitting Sub-dermal implants; it would seem appropriate that these would be NSW Health. Rest may be responsibility of Councils. Again this means that the ARA model needs to be clear
Public Water Supplies [note only relevant to one Council present at this workshop]	
Division 5: Greater clarity is sought on quality assurance program: (1) What are the guidelines? (2) What are the timeframes for implementation?	Solution: (1) Clarification in the regulations: (2) Use Australian drinking water guidelines 'framework' as the Quality Assurance System which is currently legislated as the system for Victoria water utilities
Greater clarity is required as to who is issuing advice to the public about potable water issues: Is it the water utility or the chief health officer?	Change wording in S27: recommend that the advice be provided by the Chief Health Officer to ensure consistency of message and acknowledge CHOs expertise. "Councils are the experts in

	provision of water: Health are the experts In health issues"
Swimming pools	
(1) Overlap in terms of delegations – they are not clear	Councils need delegation to be able to close pools which are not theirs
(2) Notices and orders closure notices	Need ability for charging fees to close pools as well as administration costs
DG has to revoke the closure notice in the current Bill	This could be a responsibility delegated to GM [for pools other than Council pools. Also call it a clearance certificate rather than revoking the closure Then if it is refused there is an appeal provision available. Transparency.
Disinfection – Difficulty in proving operator is not managing the pool to minimise transmission of disease	Want guidelines to be proscribed as a requirement to meet. If they are not followed it's a breach by the operator/owner
Cl 44 (1) Concern over reference to 'others' as not all diseases are of human origin (person to person)	Delete word 'other'
Maintenance of pools and equipment	Require notice/order/ provisions to maintain pool equipment including cost recovery mechanism e.g. PINS improvement notices
Register – concern about level of private information available to public.	(1) Limit what information is publically available. (2) Potential have fee to administer register
Register	Register needs to include brief description of the pool and its use
Conflict of interest	Role of Department of Health to carry out requirements as the ARA for Council operated pools
Pools in large apartment blocks are not included in definition. But could be significant disease risk	Discussion: Could use provisions of the Act if situation required. Brought to Council if there is an issue rather than require the regular inspection regime
Air conditioners	
(1) There is no requirement for Local Government to inspect cooling towers	Risk based guidelines are required and to be developed
(2) Definition of air conditioning is too broad. It doesn't clarify the issue we are addressing and controlling – legionella. Also needs clarity re qualifications	Glossary required with clear definitions of terms e.g. "Duly qualified"
Notice provisions should be able to require compliance with installation and operating requirements	Notice provisions for legionella. Tie into AS3666 and guidelines
Does not address thermostatic mixing in warm water systems	TMV need to be taken out of warm water systems and risk category related to using hair dressers and nursing homes
S39. No clear role of NSW Health or Local Government for the investigation of legionella outbreaks	Role needs to be defined
Register as per other issues – extent of availability of private information	Review draft Bill; Only NSW Health and emergency services only should have full access in event of an outbreak
Registers get out of date..,. hard to find people and	Require annual renewal of certification of operation

particulars have changed	of system for register. Submit annual statement laying out certain particulars. Especially important with cooling towers. Similar to Fire Safety/ Essential Services provisions – Form 15. If not done Council could issue PIN. Allows for liability issues.
Register	(1) Location of the tower is needed rather than just the business. Buildings with multiple occupiers/businesses need to include details of the building agency/property manager on the register (2) Operators required to provide annual report and copies of quarterly disinfection reports
Safe access to inspect towers – OHS issue for Council EHOs	(1) All building owners need to provide safe access to towers for inspectors otherwise it's an offence. (2) As it is an installation requirement (access) this could be broadened in relation to inspection (3).Some Councils have in their safe work method statements that if a ladder is not provided they will not inspect.
Overall aspects of the Bill	
Transparency;	Some Councils would like notices, orders, penalties to be publically available
(1) lack of inclusion of certain industries - Transmission of disease - respiratory; sexual transmitted diseases, meningococcal as notifiable.	Include reference to boarding houses, sex industry, beauty therapists/hairdressers and solariums. Require relevant enforcement tools in Act and Regulations and guidelines. Needs reference for Local Governments ability to provide immunisation clinics
People who hoard and the public health impacts (plus potential crossover with mental health issues)	Councils or enforcement agency to take action (covered by Local Government Act but not specifically risk of illnesses resulting from hoarding)
Qualifications and skill development	(1) Recognise qualifications for EHOs rather than take a blanket 'employ anyone' approach (2) Look at what courses are available to provide resources. Opportunity for great partnership between Local Government and health – to look at workforce planning needs to meet intent of the Bill and address those training needs. (2) Consider wording of Food Act (3) NSW Health already run infection control workshops – expand course and make it accredited
Unclear terms and meanings. Use of terms throughout the act needs clarity and consistency around direction, notices, orders. E.g. sometimes a section, sometimes a clause	(1) Include a separate dictionary / glossary at the end of the Act (2) Use terms consistently (3) Clearly define use of the specific terms 'direction' 'notice' 'orders'
Inspections	Need to be able to take measurements and carry out field tests
S103 and 99 Serving notice to require answer name and address	Need to be able to demand people to provide name and be an offence if do not answer. Suggest reference POEO for process to request identify

Is there a defined role for Local Government with solariums?	Solariums may be in beauty salons – but Local Government are not authorised officers under radiation

Attendees:

Strathfield Municipal Council	Mr	Patrick	Wong	Director Technical Services
Strathfield Municipal Council	Mr	Silvio	Falato	Group Manager Planning & Environment
Leichhardt Council	Mr	Stephen	Blaydon	Team Leader Compliance
City of Ryde	Mr	Craig	Redfern	Team Leader - Environmental Health
City of Ryde		Greg	Lewin	Environmental Health Officer
Ku-ring-gai Council	Mr	David	Mitchell	Snr Environmental Health Surveyor
Ku-ring-gai Council	Ms	Trudi	Coutts	Environmental Health Surveyor
Ku-ring-gai Council	Mr	Tom	Cooper	Team Leader
Ku-ring-gai Council	Mrs	Karen	Boulter	Environmental Health Surveyor
Willoughby City Council	Mr	Angelo	Berios	Environmental Health Co-ordinator
Willoughby City Council	Mr	Mark	Hayward	Team Leader Development and Environmental Compliance Unit
Campbelltown City Council	Mr	Paul	Dicker	Environmental Health Officer
Campbelltown City Council	Ms	Genevieve	Chaston	Environmental Health Officer
Campbelltown City Council	Ms	Carly	Hooker	Environmental Health Officer
Sutherland Shire Council	Mr	Peter	Firth	Supervisor Environment & Health Unit
Waverley Council	Miss	Nerisha	James	Environmental Health Officer
Waverley Council	Miss	Sasha	Kent	Environmental Health Officer
North Sydney Council	Ms	Misha	Klingstrom	Acting Team leader North Sydney Council
North Sydney Council	MS	Amy	Young	Environmental Health Officer
Gosford	Mr	Brett	Koizumi-Smith	Manager Regulatory Services
Gosford	Ms	Elizabeth	Knight	Regulatory Services Officer
Mosman	Mr	Adrian	Finati	Senior Environment Health Officer
Manly Council	Ms	Jody	White	Senior Environmental Health Officer
City of Sydney	Ms	Azmeena	Ahmed	Health Compliance Manager
City of Sydney	Ms	Nicole	Stent	Health Improvement Manager
City of Sydney	Mr	Paul	Buggy	Specialist Environmental Health Officer

Public Health Act 2010 Consultation
Penrith Workshop

Date: 6 May 2010

Number Present: 25

Location: Penrith City Council

Key Issues Emerging:

- Consider different funding models for revenue stream such as direct funding, and/or grants based funding to local Councils as well as extending their capacity to raise funds through inspections & notices
- Clear definitions of roles and responsibilities is required, through both inclusion of a dictionary and rephrasing sections in the Bill. Refer PoEO and Food Act
- Layout of the Bill, Section 3.2 is the most clearly laid out of Chapter 3. Other sections could lay out in same format
- Consider ARA partnership arrangements – with clear regulatory responsibilities such as NSW Health being responsible for issues that cross Council boundaries
- Provide appropriate delegation and powers
- Consistency is required between inspection regimes for different matters (pools, towers etc)
- Need ability to call up the guidelines and codes of practice through the regulations
- Suggest training requirements and standards for skin penetration operators
- Several changes to section covering pools are recommended related to delegation for closure, definitions and maintenance
- Need access to skin penetration home businesses as per shop front access

Matters of Concern in Priority Order within each topic (note topics are not in any priority order)	Solutions/Options
Role of Local Government	
Clear definition roles and responsibilities e.g. clarify local govt role in responding to complaints Note, this also relates to the need for better definition of terminology such as 'take appropriate measures' or 'promote'	(1) Use PoEO and Food Act as examples regarding partnership in regulation (2) Consider PoEO ARA format. NSW Health would have regulatory responsibilities for issues that cross local govt boundaries e.g. leigonella, emergency issues. Then if matter is dealt with by a Council and Council causes the offence NSW Health could be the ARA. Could tease out detail in the schedule. Have protocols for this. Reference Food Act. Mandatory protocols. (3) Consider other options than Council doing the work
Make sure some of powers are delegated properly down the line from DG:	Provide appropriate delegation for appropriate power
Public Health is a fundamental tenant of Local Government.	(1) Should be directly funded by state government to Local Government. Not Councils struggling to raise funds to manage this fundamental matter. E.g. Community service sector – direct grants for youth workers, direct funds ex Commonwealth for health promotion (where Councils submit idea and go

	through approval process) (2)Community expectation that local govt looks after public health.
Better definition of terms and expectations – there is confusion throughout e.g. What is meant by take "appropriate measures" 'promotion"? What is "an order"? The Bill interchanges action, direction and order	Consistency and clarity required. All terms need to be consistently used and clearly explained.
Mandate inspection roles for health / Local Government	Need consistency between inspection regimes across Councils as with food matters.
If local govt must be responsible for health need cost recover / revenue stream.	(1) Provide mechanism for cost recovery – PINs etc. Note of caution that administration of the administration system itself is time we could be out working. Plus Council wont chase fees for <$500 as not cost effective (2)Consider grant system from the state government.
Bill should include minimum qualifications for authorised officers	Two options raised; (1) Authorised officers should be appropriately qualified as per Microbial Control Bill. (2) At S33 & S34 an individual Council makes decision if someone is appropriately qualified or not
Comment from the discussion paper rather than the Bill regarding separate health plan	Integrated Planning and Reporting covers off so shouldn't be in the Health Act
Clause 4 Responsibilities local govt – section needs to be revised in light of not including PH plans	Review and amend clause 4
Identify notices that can / cannot be appealed	Identify which notices can and cannot be repealed (reference clean up notices PoEO cant)
Penalties and offences	
There are no enforcement aspects in the Bill	(1) Make provision notice and orders to reflect enforcement of various matters and non compliance (Act and Regulations). Alternatively use improvement notices and prohibitions for closure of premises. Plus provision admin fee for issuing improvement notices
	(2) could spilt notices as per Food act – prohibitions and closures
	(3) Administration fee for improvement notices (like Food Act)
	(4) PINS to reflect the offences "on the spot" e.g. certain weight for certain PINs – or individuals / companies
Court is only option – what court	(5) When non compliance need ability for ARA to pursue court action (after PIN and prohibition. i.e. 3 stroke approach of prohibition then local and/or higher court. Needs to be defined in the Act
	(6) Provision for local govt to issue emergency orders – to do away with the procedural fairness issue when there is an emergency …
Disconnect between guidelines and Act	Ability to call up guidelines and codes or practice so PINs can be issued for non-compliance.

	Name and shame list – like Food Authority May give weight to what we do. Administered by NSW Health
	Enforcement structure should be like Food and PoEO Acts
Remove Director General as the appropriate authority for issuing PINs	Needs clear definition of roles and responsibilities for authorised officers so can put these both in the notice and the EHOs powers
Inspection costs	Administration, cost recovery, compliance notices & costs all should be enforceable – like PoEO – with maximum amount for inspection fees to allow for cost recovery of attendance, inspection and enforcement,
Training of operators required	Could be provision we can use. i.e. require operators to have training. Especially relevant for skin penetration – because they are doing the works. Training to be provided by NSW Health. Note pools, air con towers are maintained by contractors so different situation for them.
	Need to include procedural fairness – then the emergency order flows from that. (Food Act gives 24 hour min for improvement before can issue a prohibition notice).
Skin Penetration	
(1) Enforcement of skin penetration requirements	In part 3.4 Include specific provisions for notices /orders on how to approach hygiene requirements. PINs for non-compliance. Consider specific notices and system for skin penetration: improvement notice / orders/ etc.
(2) Detailed structural requirements similar to Food Act – so can call up specific standards	(1) Provide this structural framework as per food standards code in Food Act (2) prepare and include specific guidelines for skin penetration (part 3.4)
(3) Training required for skin pen operator	(1) Like Food Act. Health Act should provide for minimum standard of skills and knowledge (e.g. basic knowledge of infection control & what problems you can cause). Consider competency course run by RTO.
Code and guidelines	Other: NSW Health guidelines and codes are bland – need to be fleshed out – call it the guidelines for what it is. Needs a code.
Prohibition notice	Want to be able to put it on equipment for example – a seizure notice rather than just the operation.
Home businesses are not covered – powers to work with home businesses especially since changes to planning act. And mobile businesses	Clarity on range of premises and businesses and temporary events. Requirement they register with public health – like food.
How do we get access if they refuse access – home business	Need access to home business in the same as if it is a shop front
3.2 – better laid out - = 3.4 has consistent format – but pools and skin pen don't. could incorporate scope into that format	Use 3.2 as standard layout and make rest
	Nothing saying pools and skin pen need to comply

Prosecution – general	Needs significant penalty if obstruct entry of authorised officers – across several
Access to home business challenge – powers of entry	If the Act can define the portion of the home as a business premises that we can access it See S 99 (3) – needs to say "the residential portion"
S48 (5) person subject to AND has notice of the direction. Means you've got to prove they have the notice and without reasonable excuse…Gives too many outs.	This needs tightening
Public Water Supplies	
(1) Private water supplies need to be in the Bill because they are not covered in the Bill. and many EHOs cover in caravan parks.	(1) Provide regulatory powers to Councils (2) Determine the ARA arrangements which should include PINS emergency orders etc. Councils could cover water carters and caravan parks. (3) Amendments must be compliant with the water guidelines (4) Whilst cafes outside reticulated water supplies are dealt with in Food Act (because serving food) they should also be covered in Health Act
(2) Define appropriate regulatory authority with water supplies	Similar to Schedule of PoEO
(3) Doesn't include recycled water – which is potential major health issue	Adequate provisions must be included with defined roles and regulatory powers. Not just where potable water is used but more broadly.
(4) Water suppliers should be able to demonstrate compliance with Australian Drinking Water Quality guidelines – especially peri- urban areas – e.g. farm stays (since Water Industry Competition Act there are more suppliers)	(1) Include need for compliance in the Act (2) Add provision for penalties for non-compliance.
(5a) Need for register	(1) Register to be held by local Council. If Council to keep 'another' register onus should be on suppliers to provide their details to Council – not Councils to find them. (2) Penalties should be imposed if do not register.
(5b).Problem with register	(1) In the Bill Councils are meant to have names and addresses of every owner. How would you keep 100s of different personal details regarding owners in a unit block? Impossible to do. (2) Register to contain private names and addresses in the public register. Remove provision as they should not be publically available.
Swimming pools	
(1) There is no provision for closure under delegation to Councils	Amend clause 5 to delegate this ability to General Manager who can then delegate internally
(2) No provision of admin fees for provision of notices	Provide administration fee structure with minimum and maximum fees – similarly to Food Act
(3) No provision for Council officers to issue PINS	Provide provision for officers to issue PINS

(4) Reference to training required under delegation from DG	(1) Training should be before – rather than after court. (2) Delegate to Council. (3) NSW Health should clarify what training a pool operator should undertaken if found not to be complying.
(5) Definition of 'public pool' does not capture community title and large residential developments. Definition needs both expansion & clarity to capture pools with potential for high risk of Guardia and Cryptosporidium	(1) Retirement villages, large residential developments, community title, nursing home, home swim schools and learn to swim schools need to be included in definition. (2) Separation between private and public could be defined by "if a fee is raised". (3) Discussion: Private pools in residential blocks are responsibility of strata. Where risk potential they could be required to provide copies of their inspection/servicing reports. Risk raised: needs thinking about who will check these reports? Where will responsibility lie if Council gets them and not able to check? Liability issues that local Councils don't need. (4) Could use conditioning in the development consent for learn to swim to provide additional controls (5) Provide Swimming pool guidelines
No mandatory inspections of pools	Should be mandatory inspection
Responsibility for pools is not clear	Who is responsible for pools? Is it the owner of the business, the practitioner, the event organiser? Need clarification of ultimate responsibility.
Air conditioners	
(1) Cl 37 (1). 2 implies that Local Government will do inspections as there is a requirement to maintain register	Should be mandated role to do inspections. Amend Cl 37 to include wording to the effect "authorised office is to undertake an inspection of the regulated system and associated maintenance and operational manual on an annual basis"
(2) Contractors should have a duty to notify, within a quick time frame, the relevant Council when unacceptable results are identified	Amend Clause 34 to include new subclause to effect of: "if a duly qualified person identifies results of non-compliance of the relevant air conditioning system they are required to notify the appropriate local Council/authority of the breach within 72 hours
(3) Provision for improvement notices & associated admin fees – notice to direct someone but no cost recovery	Amend clause 38(1) to include new subclause 'the local Council/authority is permitted to charge a prescribed administration fee to cover costs in preparing this notice. This also includes the cost of reinspection"
(4) Requirement under regulations for person doing risk assessment under AS3666 part 3 of standards to be registered on the national register of engineers (NPRE) under general building does not appear to reflect what is happening in reality.	Need some flexibility as to who is a "duly qualified person"
Risk assessment – a person who has given evidence of their work experience – satisfied	Needs to be addressed in the re-drafting of the regulations. "Competent person" may be more

Council but the guy didn't meet that registered. In the regulations currently	appropriate term than 'duly qualified"
S38 – enforcement provisions – DG giving directions subsection (3) need to take to court before issuing an order!	Needs to be delegated to GM
When someone is a tenant – but owner has contract with maintenance company. Documents regarding operation of towers. Legal contract isn't right documents	Powers to be able to obtain information – who has agreement with contractor to carry our the works/ maintenance
Register	Obligation on operators / or control of cooling towers – to supply Councils with certain information to maintain register.
Overall aspects of the Bill	
(1) Functions under the Local Government Act schedule and regulations that apply to health should be transferred to NSW Health to provide a 'stand alone' Act on public health for e.g. 1. Places of shared accommodation 2. Sleeping rooms (current Health Act) 3. Hair salons – transfer 4 Mortuaries – funeral industry 5. Caravan parks movable homes 6. Brothels	(1) Transfer existing public health related provisions from the Local Government Act across to Health Act.
Public health issues should be in Public Health Act for monitoring	Move them to the Public Health Act
Domestic squalor major issue – should also be stand alone Act. Squalor is not just public health issue – but also mental health issue. Conflict between individual rights and impact in public domain (makes a public health issue). Currently have no way of dealing with these matters	(1) In the older public health act had some powerful general orders – v useful to get squalor places cleaned up. (2) Some of the other Acts have ability for Council to come and to do the work – with provisions for cost recovery. But no provision within Health Act to do this. Consider adding provision to Health Act.
S103 sub section 1 and 2 work against each other – so cant be enforced	(1) Needs review regarding name and address issues. (2) rewrite
Definitions	Put all definitions in one place
S95 – notifications regarding registers is confusing as to if Council has to comply or not	NSW health advised that don't have to. Suggest re word to make clear
AHS ask Councils to do trapping, monitoring. There is no provision or resourcing in the Bill to do this	Need to provide resourcing if this is to continue
S107 – issuing of caution before asking a question or issuing PIN etc	Problem in issuing caution when trying to gain information. Unlikely to provide
S125 – concern about phrase "without negligence" as, as an officer if you do something in good faith then are not guilty of an offence. This phrase now means that if something has gone by mistake/ inadvertently you are personally liable to prosecution	Individuals need to look at this clause seriously. Falls short of public service standards. Needs solid revision

Attendees:

Fairfield City Council	Ms	Susan	Gibbeson	Senior Policy Officer (Social, Health & Housing)
Holroyd City Council	Mr	Stuart	Nunn	Senior Environmental Health Officer
Holroyd City Council	Mr	Michael	Middleton	Team Leader Environmental Health
Auburn Council	Mr	Samuel	Barnard	Senior Environmental Health Officer
Auburn Council	Mrs	Lara	Goode	Environmental Health Officer
Auburn Council	Mr	Ryan	Moore	Student Environmental Health Officer
Blue Mountains City Council	Mr	Richard	Elder	Environmental Health Officer
Auburn City Council	Mr	Bruce	Young	Development Control Officer
Blacktown City Council	Miss	Rana	Ghaby	Environmental Health Officer
Blacktown City Council	Mr	Daniel	Woods	Environmental Health Officer
FAIRFIELD CITY COUNCIL	Mr	Denis	SKEGGS	Manager Environment and Health
FAIRFIELD CITY COUNCIL	Ms	Dolores	SCHEMBRI	Coordinator Community Health
Lithgow City Council	Mr	David	Durie	Environmental Health Officer
Hawkesbury City Council	Mr	Emmanuel	Isbester	Senior Environmental Health Officer
Hawkesbury City Council	Ms	Laura	Craddock	Environmental Health Officer
Pittwater Council	MR	Tom	Prsa	EHO
Kogarah City Council	Mr	Habib	Tarabay	Environmental Health Officer
Hornsby Shire Council	Mrs	Susan	Moyes	Sustainable Health Coordinator
Hornsby Shire Council	Mr	Gareth	Munro	Health Officer
Campbelltown City Council	Mr	Paul	Curley	Compliance Coordinator
The Hills Shire Council	Mr	Mark	Colburt	Senior Coordinator - Environmental Health & Sustainability
The Hills Shire Council	Mr	Craig	Bourke	Environmental Health Coordinator
Penrith Council	Ms	Kristy	McCreadie	Team Leader Health
Penrith Council	Mr	Anthony	Price	Environmental Health Coordinator
Camden Council	Mr	Geoff	Green	Manager, Environment & Health Branch

Public Health Act 2010 Consultation
Wollongong Workshop

Date: 7 May 2010

Number Present: 10

Location: Dapto Ribbonwood Centre**.**

As a result of the interests of participants:
(1) Water issues (water supplies and swimming pools) were collated by individual attendees
(2) Solutions to issues relating to roles and responsibilities were identified as a group exercise.
Division of Local Government in attendance

Key Issues Emerging:

- Councils would not conduct activities that are not mandated because of the potential legal liabilities they would be exposed to, so there is a need to make the Public Health guidelines enforceable
- Delegation of powers required with associated administration system, enforcement regime and cost recovery mechanisms
- Several items requiring definition, which should be pulled together as a dictionary / glossary
- Include the funeral industry in Public Health Act with associated inspection regime
- Roles and responsibilities for NSW Health, Area Health and Councils need definition. Annual reporting processes required about activity under the Act.
- Reporting process suggested along the lines of Food Act to allow for partnership approach to Public Health matters once the roles and responsibilities are agreed
- Collaborative approach is required for public health strategies which should not just be just the role of Local Government
- Clear timing required for closure notices [especially for swimming pools] such as 48 hours (like PoEO)
- Need to differentiate between smaller and large water utilities and provide them with separate definitions and enforcement provisions

Matters of Concern in Priority Order within each topic (note topics are not in any priority order)	Solutions/Options
Role of Local Government	
(1) Chapter 6 does not clearly state the role of Local Government. S4 places responsibility to ensure compliance, but there are insufficient powers in the Bill to ensure such compliance S 4 (2) outlines local Councils are required to appoint 'sufficient' authorised officers. Without clear roles and responsibility this cannot be done. Definition of sufficient is required along with identified roles and responsibilities.	Local Government role and responsibilities needs clarification as well as the separate roles and responsibilities of Department of Health (1) Identify and define the 'functions' of Local Government and define 'sufficient' (2) Identify the responsibilities of state government (3) Use reporting process to ensure that Councils are carrying out their functions. Reporting could be done to Area Health Services. Reference Food Authority system – establish Local Government group which sits between state and Councils. Councils report to them annually about activity under the Public Health Act. Each Council enters into a partnership with the Authority. The

	arrangement has mandated roles; Councils have specific functions and report on how they perform that role. That group then comes back to Council if are they are not meeting their roles and responsibilities. (4) Mandate functions of Local Government. (5) Provide enforceable guidelines (6) Look at parallels with Food Act – regional networks deal with consistency and skills management.
(2) Need better enforcement powers. Currently Local Government appears to be viewed a just maintaining a database.	With appropriately delegated powers, Local Government can quantify health issues (number of sites, businesses, matters arising, tools used) as well as identify staffing levels required.
(3) Unclear roles for emergency incidents as it is not clear who coordinates the response and who does what.	(1) Provide clarity and appropriate delegations (2) Need clear chain of command. NSW Health – regional local Public Health Unit– Council. Clear reporting process through each level (3) In Disaster Plan – clarify that 'local' means 'AHS Public Health unit' not local Council. Use consistent terminology
Community expectations of local Councils to look after public health although Councils are not able to meet the expectation unless mandated (due to capacity and resources)	Mandate the responsibility and regulatory powers as unless made mandatory it is not done.
Chapter 1 Section 4	Remove words "Local Government" (i.e. just title it " responsibilities" and clarify roles of other players
DoH has responsibility to ensure Local Government meets responsibilities – but doesn't say how they will do it.	Identify process that Department of Health will use
Partnerships; Reference to Food Act	Food Act provides opportunity for partnerships and access to relevant skills – (inspectors). Relationship is a collaborative process – not a hierarchy – but equal partnerships.
C1 S4. Onerous level of responsibility for Local Government to alone developing and implement the range of health strategies.	Consider adding that strategies should be developed and delivered in collaboration with others including state government
Need to define responsibilities for regulatory functions? Section 7 or 8 of the Local Government Charter says Local Government has responsibility for regulatory functions & fair adequate appropriate in Local Govt Act so does it need to be further defined in PH Bill?	**Comment** There is a need for consistency between the Local Government Act and the Public Health about regulatory roles and functions
Penalties and offences	

(1) In general terms no notices or orders are available to require compliance	Use similar system to EP&A and PoEO Act – with notices, orders and fixed penalties
(2). Guidelines to be made enforceable and called up by the regulations with cost recovery mechanisms attached	Set administration fees similar to those for clean up notices in PoEO
(3). Lack of immediate action that can be taken to mitigate public health risks other than threat of prosecution	Institute on the spot fines PINS etc for non-compliance under the Public Health Act
(4) Delegation of powers from DG required. This is not the same as Food Act and Local Government Act	GM should have powers appropriate level of delegation. Empower authorised officers through delegation via GM. Enforcement agency – some we had to accept from Food. There were some matters we had to apply to have those delegated (i.e. optional extras)
Act to enable Regulations about what constitutes an offence.	In regulations could have a clear regimen of – what constitutes an offence and then notices available to you…
Unable to say non compliance with guidelines is an offence. And How would you get the proof in current draft (relevant pool disinfecting). Inconsistency	Need appropriate enforcement tools
Disparity between penalties in the Act and in the Regs (20 units in the Regs) Funeral industry is not captured in the Act so they only get 20 units. Serious matters in the regulations (reference funeral industry…but should be in the Act)	Regulations need to identify appropriate penalty units for each offence.
Skin Penetration	
S 48 (1) Defines local court must first find person guilty of offence. This is not acceptable as an EHO / Authorised Officer is capable of determining that an offence has been committed. Additionally; local court will be clogged up, expensive &time consuming for Councils so they would not go to court, magistrates knowledge/skills in microbiological matters are uncertain.	(1) Change 'local court' to 'authorised officer' (2) Provide appropriate powers to Councils and authorised officers. (Comment from the floor: There was a concern that Councils would get carried away with issuing PINs for revenue raising when PoEO/Food Act came out. This was proved unnecessary as majority Councils use them to manage the issue quickly and effectively rather than to raise revenue.
(2) S48 (3) & (4) Why has only the Director General been delegated powers for such a simple enforcement function?	Change "Director General" to "Authorised officer" (or the term that is decided upon).
(3) S47.If Local Government is expected to monitor hairdressers and beauticians they should be included in this section. Or if not make them exempt. Definitions required	State which businesses are included and provide definition of that business. For example Nail technicians and their parlours are missing. Could add section private, commercial, home based.
(3) Definitions throughout need to be listed in	Add descriptions to the Act

same style as used in the NSW Health Skin Penetration guidelines	
Code of practice should be called up into the regulations – mandatory with provision for related fines, notices and orders to be able to be issued accordingly. Schedule under Local Government act covers regarding hair dressers – but not called up in Health Act	Add to Section 3.4 and model on the Food Act which calls upon the Food Safety Standards for enforcement.
Operators can only be required to be trained if found guilty of an offence. This is back to front.	(1) Review training requirements. (2) Investigate process for training skin penetration operators: Refer to and emulate food safety supervisor training. (3) Training of new operators could be linked to EPAA approval process – where they do not receive approval unless they have had accredited training.
Public Water Supplies	
(1) 3.1 Terminology and definitions: Public water utilities supply both raw and recycled water to properties which is not to be used for "drinking water" and limited advice is given. Is this water considered as "polluted water"? The bill does not allow for these other types of water supply or source of *treated* water and assumes that treated water is limited to natural sources.	Amend wording to "Allow for use of raw recycled reused water". Define "treated water" Guidelines exist for recycled water for non-potable purposes only. Guidelines need to be made available about recycled water for potable use. The Public Health Act should also call up requirement for guidelines for recycled water.
Public water utilities are supplied bulk water from others such as Sydney Catchment Authority – the testing and management is removed from the utility's control	Division 3 Sec 23 (2.a)Testing of supplies needs to include a "local water utility or its supplier of water in its raw state"
Definition of 'public water utility'. Definition of 'water carter" Separate definitions and enforcement provisions are required for smaller operators such as caravan parks and water carters.	(1) Separate definition and enforcement provisions for the smaller utility. Quality assurance (2) S30 needs to be defined separately for the smaller utilities (Australian Water Guidelines are too complex for the small utilities). Guideline for water carters could be called up in the regulations (NSW Health) Plus refer the Australian Standard.
Reference water quality	Need clear enforcement process to require compliance with a standard in the Act.
Chief Health Officer to issue boil water advice	Delegation of Chief Health Officer of the department to the local authority may be required to issue these notices to small local suppliers
Swimming pools	
(1) Regulations must enable issuing of PINS,	Emphasis on enforcement provisions similar

improvement notices etc for breaches of part 3.3 (pools and spas)	to other legislation (PoEO, Food Act) with appropriate ARA arrangements for Council run pools.
(2) Local Government requires cost recover measures for inspections and maintenance of register	Provide structure for Councils to levy fees and charges. Set maximum and minimum fees – individual Council manages fees charged within those
(3) Reporting process Ch 6 clause 113 (c) Functions of regional health officer to 'coordinate activities of public health inspectors in relation to enforcement of this Act within their area" How does that person comply with this?	Suggest agreement between all enforcement agencies (ARA) refer process used for Food Act. Will allow for better data capture about the profession, #s of officers, what they are addressing in the field to allow for more effective reporting.
Training regarding Legionella at pools	(1) Powers are required to enforce operators to have appropriate skills. Operators include; motels, hotels, learn to swim schools, Council pools; any public pool needs a trained person. (2) Pools need to keep documentation and records. For example even Learn to swim commercial operators need to keep records. (3) Question raised - How to find a learn to swim schools in a private property? (A: They pay a discharge fee to water authority and Council does inspect private learn to swim schools as they are defined as public pools)
Clause 45 – Amend regarding Director General powers	Delegate to GM in Councils
S 44 Disinfection records	Need to include record keeping in compliance with current pool guidelines
S45	Match closure notice process with PoEO process Time limit to follow up within 48 hours
45 - Part 6 'define immediately'	Give a time e.g. 48 hours for clarity.
Air conditioners	
(1) S 33.1, 34 & 35 The practical application of taking legal proceedings under Microbial Control regulations is too much of a legal minefield, and potentially too costly to prove. As this is a complex area which needs application of regulations and pulling up of standards, Local Government is unlikely to undertake inspections unless mandatory.	If Department of Health intend to make this work a mandatory function of Local Government, then a business case also needs to be mandated to allow for sufficient resources to be allocated by Council.
(2) Legal liability Councils will be reluctant to carry out potentially litigious functions (like cooling tower inspections) without a mandatory role	Remove ambiguity as to role of NSW Health officers and roles of authorised officer especially regarding emergency incidents.

(3) S31 Definitions "Duly authorised officer" needs definition "warm water systems" needs definition	Clarify definition. Position requires a qualification (like requirements for a food safety officer). Also suggest identifying minimum water temperature as part of definition for warm water system.
(4) S 36 Warm water systems – location of systems needs definition	Clarify which premises need notification. Suggest "as at places where vulnerable persons reside or occupy" such as nursing homes, child care centres
S38 change title and delegation of this section	Change title to "Director General or local authority may give…."
S38 – needs to add maintenance	Change to say 'Installation and maintenance'
Overall aspects of the Bill	
(1) Mechanisms already exist which define roles in other acts between state and local – this bill doesn't follow them	(1) Role of ARA or enforcement agency should be incorporated in line with PoEO and Food Acts (2) Incorporate appropriate incorporate to Chapter 3
(2) Squalor is public health matter linked to mental health. Currently dealt with under Local Government orders.	(1) Recommend incorporation of squalor into the Public Health Act to recognise and support the needs of Local Government clean up and support for the person undergoing the clean up so that they to get assistance with the mental health aspects. (2) Potential to move issue from Local Government act to Health Act
(3) Funeral industry has been deregulated from Local Government Act and are not in the Public Health Act. There are many cross-over medical health issues	(1) Include funeral industry in the Public Health Act with an inspection regime that addresses the considerable health issues related to handling bodies. Who is the ARA is an issue. (2) Regulation of handling and tagging of bodies regarding infection control needs detail (3) Regulations to include penalties.
(4) S92 (2) Wording change required. Use of word 'certificate' is inconsistent with other Acts where an identity card is required	Section 99 (2) "change wording to "search warrant or identification card"
(5) Transparency matters regarding register provisions	Check matters with GIPA regarding contents of register and transparency
	General disappointing and restricts our powers. At best a data collection body. How can we do that if just collecting data.

Attendees:

Shoalhaven City Council	Mr	Andrew	Gibbes	Senior Environmental Health Officer
Wollongong city Council	Mr	Noel	Weeks	Health Co-ordinator
Wollongong city Council	Mr	Chris	Pike	Health Project Officer
Division of Local Government, Department of Premier and Cabinet	Mr	Wayne	Trudgen	Principal Policy Officer
Shellharbour City Council	Mr	Kevin	Shepstone	Environmental Health & Building Surveyor
Shellharbour City Council	Mr	Greg	Porter	Environmental Health & Building Coordinator
Sutherland Shire Council	Mrs	Simone	Sheppard	Environmental Health Officer
Shoalhaven City Council	Mr	Glendon	Lee	Environmental Health Officer
Shoalhaven Water	Mr	Ben	Stewart	Operations Manager
Kiama Council	Ms	Julie	Mileusk	Environmental Health Officer

Public Health Act 2010 Consultation
Dubbo Workshop

Date: 10 May 2010

Number Present: 20 including 4 extras. 2 apologies & 7 no shows. Opened by Mayor Alan Smith. 2 x ROC representatives in attendance (representative of ROC Chair & ROC Executive Officer)

Location: Dubbo City Council offices

"We only use Public Health Act about 5% of the time (if that) as there are more teeth in the Local Government Act"

Key Issues Emerging:

- Exploration of which issues could be the total responsibility of NSW Health: On the one hand – Local Government is seeking more powers to be able to take on management role of *all* issues; on the other hand some participants proposed that NSW Health could take total management of *higher risk* management aspects such as tattoo parlours and cooling towers
- Councils are have reduced capacity to operate on public health matters as "we don't have staff and we don't have teeth"
- Support for an ARA model which picks up delegated powers and appropriate enforcement mechanisms was expressed as is the category model of the Food Act. Suggest that NSW Health explore how NSW Food Authority 'picks up the slack' when a Council chooses to operate at a lower level of food risk management due to its capabilities (category A, B or C) and how an ARA model can incorporate this 'category of capacity' model for Local Government and health issues?
- The group felt that health promotion should not be the responsibility of Local Government as NSW Health runs state-wide promotion programs to ensure consistent messaging
- Potential for competency standards in the regulations for both NSW Health and Local Government with clear responsibilities laid out for both parties. If this was in place then (a) the levels of staffing requirements can be identified within individual Councils (b) professional development can be rolled out state wide by NSW Health to meet the skill development needs. Or develop PoEO style model for training.
- Proposal for a national register for skin penetration operators. At a minimum NSW Health to maintain on line register for all operators across air conditioning, skin penetration and swimming pools. The onus to register should be on the operator and /or owner to register with appropriate penalty if they do not
- Partnership model with MOUs about responsibilities negotiated with each Council: Document lays out who does what (negotiated), who regulates what matters, who raise what fees and charges and what they are used for. NSW Health would commit to training, telephone support, hosting regional meetings to keep staff up to date and to facilitate information exchange. NSW Health would provide 'cheat sheets' for inspections to assist Council staff with knowing what to check on site (e.g. reference cooling towers)
- A systematic approach to enforcement – as per Food Act - is recommended (notice, warning etc)
- Regional Councils are not keen to issue PINS unless absolutely necessary or they are absolutely certain of infringement due to the economic challenges facing businesses. A 'name and shame' process could work for public health issues as with food.
- Once the Act is assented, NSW Health to provide information to the affected sectors (swimming pools, skin penetration industry) so that they know the changes to the Act have taken / are taking place and how they are affected by them.

• Consider need for operators to display their registration form with penalty if not displayed

Matters of Concern in Priority Order within each topic (note topics are not in any priority order)	Solutions/Options
Role of Local Government	
No clear delineation between Local Government and state health regarding roles	State clearly in the Act where each body has responsibility with an ARA model: For example (a) All cooling towers should be role of NSW Health (b) Health promotion should be responsibility of NSW Health as it's a state-wide matter
Insufficient resources and cost recover basis	1.Improvement notices 2.Mechanisms for fees and charges to be (including max fees)
Promotion of public heath should not be responsibility of Local Government – especially of individual Councils	1. Should be coordinated and resourced by NSW Health 2. Others felt promotion could be done at a regional level – but not locally
No accepted level of skills or qualifications exist under the new Act	Two positions made about this: (1) Cert 4 in public health would be very welcomed. There is no clear direction as to courses that should be undertaken. With direction and specification from NSW Health someone could frame a course that meets that direction. Offer such training regionally. National competencies exist for example O-Ten (a TAFE external training) & a dual level course exists for building and health. But no government bodies have endorsed these as a requirement for an Authorised Officer. UWS has a course that is generally accepted (4 year) but it focuses on bacterial microbiological. Cert 4 for food inspections has been recently introduced. For reference to developing the training NSW Health could refer to the Food School run by NSW Food OR (2) Don't set the bar – but use PoEO model where local Council determines the level / experience they need locally and the local officers are sent on authorised officer training course (4 day purpose built round the legislation) Possible to then specify # of professional

	development hours (but to do this the sector needs to know their legislated responsibilities and duties)
Domestic squalor/ hording is not covered	Include suitable guidelines for domestic squalor
Duties: Director General can call a Local Government officer to do something – but Local Government doesn't know what that role will be – not what they need to do. Local Council will loose control of local management	Specificity of roles and responsibilities needed before any training can be planned.
Partnership model required with key aspects	Food Authority model partnership is old fashioned but works. Food Authority provides the guidance and training to help Councils with resourcing. Key features of the partnership should be: MOU between Health and individual Council to set the scene. MOU to lay out: • Role of Council officers and NSW Health's role (note these are between the Department and individual Councils) • Strategic planning: NSW Health develop the strategies at regional / state wide levels; Councils role is to implement the strategies. The extent of these roles could vary regarding level of involvement in strategic planning as agreed between the parties in the MOU (and note cross reference to Local Government Act and Community Strategic Planning) • Choice of levels /categories of issues that Councils get involved in – e.g. A, B, C (levels of risk as per Food Act partnership) which leads to genuine partnership • Cost recovery process and responsibilities. Who does recovery for what (according to their agreed levels of responsibility) and where the monies go • Definition of the codes, guidelines and any standards
NSW Health to offer same levels of support to the Councils as does NSW Food Authority	Public Health needs to offer the same support as does Food Authority who commit to training, phone support, and enabling regional group meetings for skill and knowledge development. Example of NSW Food Authority partnership support: 16 regions, 3 times a year training is delivered and regional meetings are held with Food Authority EHOs. This brings consistent approach (even including inspection cheat sheet currently under trial) Through such an arrangement Local Government need cheat

	sheets for each aspect of on site inspection– skin penetration, cooling towers & pools.
Database and registers	National database on skin penetration is desired. At least a state-wide register
	Mandate number of inspections a year (as per Food Act) Regulations would set fees and timing requirements
Penalties and offences	
(1) Provisions for staged enforcement & action	1.Ch 5 – Apply provisions in line with Food Act to allow (a) systematic approach of warning letters to improvement notices with reference to specific non compliances of the Act, and (b) time frames for compliance 2. Enable appropriate penalties with improvement notices 3, Councils need ability to issue prohibition notices for premises/facilities 4. Act and Regulations should develop a range of penalties to suit the offence
2. Development generic list of notices or orders	Put these in Chapter 6 – or through a schedule brought up under the Act 1. Apply provisions in line with s124 Local Government Act which has a table of different orders, the ability to issue notice of intent to issue [something] and issue emergency orders when issue is of high priority risk 2. Set appropriate PINS for failing to apply with the order (Ref Local Government Act) 3. 6.2 Give clear delegation of authority to Local Government authorised officers With these clauses at least Councils could act as they would have clear duties and abilities to do these provided they have the resources. The clear duties and responsibilities give them the ability to argue for resources and for cost recovery. So even with the clauses in place, there is still the challenge of resources and staffing
Inspections: In regional areas there is reluctance to use PINS and want to get improvements rather than get finances in	Participants want a food outcome (as PIN could put the shop in financial strife) and prefer to get the food outcome though inspection process and the warning letters etc rather than going straight for PIN. They charge an inspection fee send a warning letter plus charge a reinspection fee. This could work for health. Feel that a name and shame process can

	work for public health matters specifically related to pools, skin penetration and motels.
Skin Penetration	
Clause 48 – local govt doesn't have enough enforcement power	If operator has no sterilisation equipment for example there is no ability to get an outcome. Provide powers for orders, notices PINS in event of immediate health risk (as per Food Act)
Clause 47 – level of information required in registers is too detailed and should not be all publically available especially the owners' home address. This goes beyond Freedom of Information Act. Register matters:	(1) Basic register is needed that is directly related to the operator of that business only. (2) Don't need owner's details – (comment though that may need the owner's contacts for building maintenance) (3) Onus on operators/owners to register (rather than Council to find them) (4) Registration certificate to be displayed – they could print it themselves from the register – make it a penalty not to display. On line registration available for operators
If purpose of register is to act if something has gone wrong Council may need to contact people after hours	Therefore do need personal details on register. Any register needs penalty to ensure that people register (Skin Penetration under Clause 46 requires them to register and get penalty if don't register). However not there for other issues
Guidelines are out of date	Update current guidelines and call up under the regulations. Word "guidelines" needs to be in the dictionary or change the naming of guidelines to a 'code' or 'standard'
Need for pieces of legislation to talk to one another	Needs EPAA and Health Act to talk to each other as skin penetration premises are exempt and complying under EP and A Act – therefore Councils have no way of picking them up.
Operators' skills and abilities. No training for operators is required in the draft bill	This is needed. Should be mandatory. Reference Food Authority Safety supervisor training (2 day course) which then leads to registration of the operator.
Should skin pen really be an area of responsibility for Local Government? Would it be better served by NSW Health – because of the skills, variations in practices around skin penetration	NSW Health could work with the model A B C as noted in the ARA comments regarding roles and responsibilities. Consider making specific categories under skin pen – e.g. hairdressers (Low risk – Council does) tattoo parlours (high risk – NSW Health does) Colonic lauvage and scarification both high risk need to be specialist to conduct inspection = NSW Health

	Refer Food Act who licence and are accountable for the high risk sites and low risk sites are the responsibility of Councils NSW Health inspectors are able to work in pairs. Council officers often have to work alone which is a potential risk for them for some premises. OHS issues related to working alone.
Public Water Supplies	
1. Needs greater clarification between the public private water suppliers	Clear definitions of 'public' and 'private' in particular with reference to isolated tourist facilities with their own supply
	Develop guidelines for tourist facilities and education program for operators
2. Enforcement action necessary for non compliance with drinking water guidelines	Councils need notices and pins
3. Some separation for management of water suppliers and those conducting testing / sampling	Reference Clause 30 – quality assurance programs – NSW Health to develop assurance template which may be able to address the situation of testing ones own water (i.e. for a water supplier testing their own water). For example "out west it is difficult to get someone else to be able to test. Councils have to try and have e.g. technical services as the provider, environment staff doing the testing and sending off the samples"
4. National guidelines on reuse of grey and stormwater	Covered in other legislation and Local Government regulations
Swimming pools	
1. Lack of resources funding and training for staff to perform inspections effectively	(1) Resourcing - funding and training required Could work more closely with public health units who could provide assistance (2) Cost recovery through notices (3) Look at Food Authority and Local Government partnership
2. Lack of officers / #s on ground to allow for inspection of public pools	More proactive approach from professional bodies, environmental health association to ensure ongoing flow of trainees and staff to address staff shortages
3. Training from NSW Health to ensure Local Government is kept up to date	Standardise courses to allow for national accreditation. Competencies nationally – not necessarily NSW only
4. Clause 45 – doesn't list Councils as able to close pools	Council officers need authority to close (Currently DG)
5. NSW Health should take responsibility for monitoring and inspection of pools	We recognise this is unrealistic to take this responsibility in the current climate and should be addressed through staff training – perhaps assistance from NSW Health

	through help line, info and advice
	Register issues as per skin pen
" Public Pool" needs a definition	What is a public pool group? For example on a housing complex, schools, clubs, nursing homes…universities
Operator training required	Cover disinfection, operational matters, frequency of testing, record keeping, why register, emergency orders
Improvement notices and cost recovery	Needed for pools
Air conditioners	
1. AO training and inspection techniques	• Appropriately qualified staff • Specific accreditation for officers • Produce some approved courses for the officers
2. Resourcing of Local Government sector	• Mandate an inspection fee • Staff sharing between Local Government areas – e.g. parts of region shared • Provide funding to undertake inspections and update registers
3. Consistency between Local Government areas	• Timeframes for inspections e.g. Every 18 months • Offer education and training to owners • Offer checklists for inspections
4. NSW Health to take over air conditioning	Remove Councils requirement to maintain registers so nil cost to Local Government. OR could have like skin pen – responsibility according to risk/scale of the operations (ARA model)
7. Assume regulations will detail what a "regulated system" is.	Make sure detail on what a "regulated system" is, is covered in the regulations or in the Act
Overall aspects of the Bill	
Register	Onus to be on operators and providers to register & print and display records Registration certificate to be displayed – they could print it themselves from the register – Make it a penalty not to display On line registration available for operators Refer tobacco register which is responsibility of operators to register themselves Make ability for state wide on line self registration
1. Resourcing and required amount of skills required to do enforcement. Informed and challenged by availability of staff with adequate time; skills shortage, costs and management commitment	(1) Allow cost recovery through services provided to community or govt funding and set max fees. (2) Specify professional development hours and courses. (3) Guidelines to provide management planning
2. Cemeteries and disposal of bodies	Develop Regulations under the Act Make definition of what is a "private burial"

3. Cleanliness motels and hotels “anywhere you pay for accommodation”	Develop relative regulations under the Act for general health issues and the ability to issue orders and notices Pull up as “anywhere you pay for accommodation”
4. Disjointed format of the document	Format to allow greater clarity of the responsibility for what issue in each section. Develop regulations
5. How will the Public Health Act deal with potential /anticipated impacts of climate change – heat stroke etc.… ?	Consider how the Act will address health issues related to climate change – increased frequency heat stroke for example. A good Public Health Act will allow potential health matters relating to climate change to be addressed
State Government needs to inform people who will have to abide by the new Act so they know it is coming and what they will have to do	Government to take on communication and education of the public about the changes that are coming in – via newspapers, rates notices for example. State government role to do this.
Sector wants feedback as to the effect of the consultation – being told what and how their advice is being used or not	Not just seeing the Bill – but feedback ‘this was taken on / or not’ and why the decisions made by NSW Health. Feedback direct to Council and especially those who made submission.
Providing training when Act is completed	Re-hold workshops / information sessions on how to enforce the new Act with the regulations
	Legislation needs to be specific about inspection duties for all issues

Attendees:

Warren Shire Council	Mrs	Maryanne	Stephens	Manager Health and Development Services
Warren Shire Council	Mr	James	Cleasby	Trainee Environmental Health Officer
Bathurst Regional Council	Ms	Anna	Stapleton	Manager Environment
Bathurst Regional Council	Mr	Jeff	Byrom	Environmental Health Officer
Orange City Council	Mrs	Donna	Sims	Environmental Health and Building Surveyor
Orange City Council	Mr	Martin	Hebold	Environmental Health and Building Surveyor Team Leader
Walgett Shire Council	Mr	Len	Smyth	Senior Health & Building Surveyor
Orana Regional Organisation of Councils	Ms	Belinda	Barlow	Executive Officer
Parkes Shire Council	Mr	Steven	Campbell	Director Planning & Environment
Parkes Shire Council	Mr	Alan	Lindsay	Health & Building Surveyor

Narromine Shire Council	Mr	Chris	Brook	Manager Health & Building
Narromine Shire Council	Mr	Mark	Robertson	Senior Environmental Health & Building Surveyor
Gilgandra Shire Council	Mr	Daniel	Osborne	Student Environmental Health Officer
Dubbo City Council	Mrs	Prue	Galvin	Senior Environment and Health Officer
Dubbo City Council	Mr	Ray	Doyle	Supervisor of Environment and Health
Dubbo City Council	Mr	Michael	Ferguson	Manager Environmental Control
Wellington Council	Ms	Vicky	Dutfield	Technical Officer
Wellington Council	Mr	Wes	Bailley	Senior Health & Building Surveyor
OROC & Gilgandra Council	Mr	Doug	Batten	Mayor
GWAHS	Mr.	Gerard	van Yzendoorn	Senior Environmental Health Officer

Public Health Act 2010 Consultation
Armidale Workshop

Date: 11 May 2010

Number Present: 11. Mix of positions from trainee to Mayor

Location: Armidale-Dumaresq City Council

Key Issues Emerging:

- Roles and responsibilities. Consideration for NSW Health to take full responsibility for some issues, including Health Promotion. Want clear roles and responsibilities for both state and Local Government
- With responsibilities clarified Councils will also need appropriate powers and resources to meet their responsibilities including cost recovery
- Possibility for standard MOU templates according to size and capability of Council (ABC as per Food Act). Would require clauses for amendment depending if have potable water management / not
- Consider graduated system of response to offences/breaches (similar to Tier one, two and three offences as per PoEO) along with relevant powers and recovery mechanisms. Timeframes need to be built in and should be linked to potential for public harm – at individual or community scale
- Air conditioning section would be improved if re-written with focus on the control of legionella rather than focus on the type of system. Specific suggestions regarding word changes to deal with temperature management are provided
- Guidelines need to be enforceable and so drawn up under the regulations
- Concern about premises that are not covered; motels, brothels,
- Note that duty of care is covered for "state or authority of state" in explanatory notes, but needs to be clearer for Local Government once roles and responsibilities are clarified
- Definitions required in a dictionary
- Register update and listing should be duty of operator with penalty for non registration
- Provision required for burials and private funerals
- Consider adding environmental issues on human health such as mining dust impacts to Chapter 3

Matters of Concern in Priority Order within each topic (note topics are not in any priority order)	Solutions/Options
Role of Local Government	
Who does what and how	Overarching need is partnership and MOUs between Local Government and state with well defined roles are responsibilities for both
(1) Regional health officers – s113	(1) Clarification of roles of regional health officers is required (2) If that clarification comes – bring roles into line with the other acts especially Local Government Act
(2) Doesn't cover brothels funeral or accommodations. Why are they not in the Bill? One suggestion that these issues are more important for public health than skin penetration	(1) Act should cover these issues with an explicit and brief mention so that regulations can be developed to address them. Not appropriate for major role in managing them but Local Government does have to deal with these matters.

Public health issues relating to brothels. Public Health unit has right of access. Councils don't. Concern about sterilisation activities on site. Sterilisation of sex toys/ communicable diseases. Perceived risks; issues is that the sex toys are property not of the brother owner but the sex worker – and the bill doesn't enable access to do the education work with them about public health.	If do have right of access to brothels want to be able to invite public health officers along to provide on site education role. Or PHU to provide such advice. Discussion that S99 perhaps does have this power of entry though unclear .
(3) If community raises public health as an issue? Where is Council placed to deal with it?	Local roles and responsibility need clarification so we can deal with e.g. avian flu – what do we do? When? For example some members of regional community (northern tablelands) sees itself as 'cancer ridden'– because of elevation seems to be endemic. Slip slap slop promotions are fine and work OK but we do need to know what are our responsibilities exp regarding emergencies so that when something emerges we know how to respond.
Poor sanitation. Nothing to control hotels/motels or holiday accommodation (was in old act) but nothing to cover public health matters.	These properties and sanitation matters need to be covered
Domestic squalor	Allow for regulation to pick up the issue with scope for action on the future. For example through framework like PoEO orders/ notices. Situation example: Council had to use emergency orders under LGA. Despite request neither Health or DOCs provided assistance, though it is a mental health issue
Bills expects Local Government to support and promote public health – but with what? Especially if the other state departments don't back up Local Government	Need resources, clear roles and responsibilities so that all parties (Local Government and state agencies) know what other departments are doing/not Need to see the commitment from the state as per PoEO where issues are acknowledged as state responsibility and ARA model
Roles: S113 – reference functions regional heath officers to "Coordinate activities" Why should Local Government be coordinated by regional health officers?	This section isn't clear and needs changing. Again reference roles and responsibilities.
Need mandated responsibilities for the health staff.	Example MOU Food Authority partnerships; Food Authority offer quarterly meetings and support.
Vector control is still not there	Vector control should be in the Act.
S126: Regulations. Concern that may be a hit and miss that the Minister picks up items for the regulations	Want to see in the Act more clearly where the regulations 'hook to' in the Act.

Water chapter doesn't allow Local Government to recover costs	Needs full process to recover costs – reference PoEO and Food Act
S4: Responsibility of Local Government: to promote, protect and improve public health Concern about extent Local Government is expected to do promotion: Finding state taking $ out of regulation/inspection bucket and putting it in the education budget. Councils then expected to do more promotion (get a package) but what is responsibility of state government to promote?	General feeling that health promotion is the responsibility of State government
Penalties and offences	
(1) Cost recovery	No enforcement tools and Councils wouldn't want to have to go straight to court. Courts also need consistency. And it's not easy to "bluff the controllers of the skin penetration industry".
(2) Enforcement powers are not delegated to authorised officer which puts delay	Either delegate to officer OR NSW Health takes full responsibility for enforcement
(3) Bill is confusing to follow	Redraft in line with recent acts PoEO and Food Act, in terms of cost recovery, tiered actions
(4) Lack of graduated response to offences.	Graduated system required covering Tier One Two and Three offences plus PINs, close down orders, etc as per PoEO. Court should be the last stop – not the current first stop as the Bill states
No timeframes for actions. No process natural justice, timeframes for certain actions to occur	Process / and specific timeframes are needed e.g. 2 weeks / 21 days. Timeframes should be linked to potential for public harm – at individual or community scale
Damage (health0 that can be done whilst waiting to go through court. The public health risk/exposure continues whilst waiting	Again need the delegation to make this work
Duty of care of authorised officers and acting in good faith is not covered	Want to see that 'acting in good faith' that used to be in the Act back in * There is a clause (x) in explanatory notes covering duty of care. Once roles and responsibilities are identified explanatory note (x) will need amendment
Definition of premises is not clear nor is power of entry. Is it the gate? The garden? The front door? Powers of entry: Cannot enter residential premises so therefore can't enter home businesses. Home businesses are different from shop fronts – but need to be captured. Officers need to be able to enter them	Clause 99 (3) As you don't know till you get there which parts are solely residential consider removing the exemption of 'residential part'
Provisions for seizure – what are they? Council's need these powers	Food Act has good provision for seizure
Skin Penetration	
(1) New clause 48 Director General powers	Power should be transferred to GM and then delegated onto authorised officers

(2) Role of regional health officers to help with education	Improve and legislate partnership like Food Authority
(3) Reference guidelines and update definition of skin penetration	Guidelines should be in regulations and called up. Update the definition of skin penetration to deal with new techniques and procedures such as implants
(4) Help with register and consequences for not registering	Set a fee for premises to register
Appears Department of Health has dropped the ball. These issues (health matters) used to be delegated to regions and promoted to local Councils as knowledge changes, updates in approaches came from NSW Health – but they are not any more	Recognise that regionally the partnership is dependent on the individuals and how keen they are on working across sectors. However, needs MOU on the partnership to clarify the relationships, roles and responsibilities / accountabilities over time
Training needs to be done by NSW Health	Training is needed: For example: what are the skin penetration guidelines about? Council staff want to be kept up to date with what is/ not latest in skin pen. Regional Health team used to do afternoon sessions for Local Government and evening for the operators which was good, but this doesn't happen any more.
Public Water Supplies	
(1) Mixed level of responsibility and Bill is unclear For example who is responsible for ensuring public water utility complies with the act regarding testing, record keeping etc	Responsibility must be Included in the Act. If matters are the responsibility of Local Government they need to be able to recover costs.
(2) No requirement to manage registers of those who are supplying public water. Especially there is no way to be able to register operators taking bore water that is then used for drinking water	Tell us how want registers to be kept
(3) Director General has got power to direct Council as the water authority, to test and keep records on bulk water. However such power is not qualified. Also there is nothing to say who has to direct the water operator	DG power needs to be conditional and only to water authority responsible for that specific water supply.
Page 4 Public Water utility 'definition' Ch 1 S5 definitions	Doesn't cover the following: • A supplier that services the public e.g. caravan park. /food processor that operates as a water supply. • Water source for ice • Private supplies that serve public.
How appropriate is boiled water advice these days? Possibly a too narrow definition	Is it the only solution in terms of water quality? Needs further/broader options and technical solutions
With reintroduction of rainwater tanks possibility of emerging issues regarding public health that are not captured	Want to see improved guidelines on rainwater tanks that cover water used for human consumption
Guidelines	• Want to see vector control in the guidelines. • Want to see guidelines recognised in the

	Act as an enforceable tool. • Rainwater used for human consumption
Swimming pools	
(1) cost recovery provisions, register	Want to see a penalty for failure to register
(2) definition of public pools	Unclear: for example holiday homes etc If someone runs swim school / business or holiday letting…Possibly use words ”if more than one household uses” “if leasing strata unit out” Strata Authority should cover use of strata pools.
(3) No requirement for automatic dosing for public pools	There should be a requirement for automatic dosing for disinfection
Air conditioners	
(1) Wording misleading ‘ air conditioning in the title is misleading	Aim should be legionella control. Suggest changing title of this section of the Act.
(2) Air handling systems – v broad range. Nearly impossible to capture the range of different systems e.g. mentions “warm water system” But another system that is warm that comes out at 55 degrees is not covered (a tempering device). If had register of tempering would have 22,000 system types.	Do definitions need to be in there? Challenging and specialist area which is beyond many Councils. Upgrade appropriate reference materials into the regulations. There are Australian Standards for different systems – but tricky to cover all. Way round it is to make sure related to legionalla control rather than ‘systems’. Suggest wording change “are included in this part…then add “excluded in this part are…..” Suggest that minimum and maximum temperature control would help One Council has worked to a regional legionalla management plan instead
Overall aspects of the Bill	
(1) No definitions of specific tasks of Local Government nor means to recover costs	Not Act’s place to do that. Solution is MOU between NSW Health and Local Government OR agreement and structure similar to that of the Food Authority Needs means to recover cost as per Local Government Act
(2) No requirement to inspect – makes the job unclear.	Legislation allows flexibility to inspect and recover costs. Local approvals policy. If a standard or act doesn’t allow for it, Council can make a policy – so they could make an inspection policy for a specific Local Government area
(3) No burials	Provisions in the Act required for burials and funerals. Including private burials

(4) Environmental impacts on human health not covered, mining dust is health issue in Hunter and western NSW, smoke (e.g. mould in houses where issue is between the home owners and rental managers. People come to Council with their concerns).	Consider how these could be managed. Consider adding these issues under chapter 3 with section on Environmental Health. Or pick up under PoEO as nuisance pollution
(5) Roles of regional EHOs is not clear respecting assisting Local Government. What are their commitments?	Commitment needs to be clear in the Act that certain level of support /service either through MOU or other arrangements such as partnership are available / provided. Disappointed that 12 months ago was survey on levels of support being provided by regions and results never seen
(6) As with all Acts – devil is in detail regulations etc	Would like consultation in good time before the regulations are put together
Concern and suspicion about pushing responsibility down to Local Government without resources. Cost shifting concerns.	

Attendees:

Armidale Dumaresq Council	Mr	Euan	Belson	Manager Public Health and Environment
Armidale Dumaresq Council	Mr	Mick	Warner	Envirionmental Health Officer
Guyra Shire Council	Mr	Geoff	Dowden	Trainee Health and Building Surveyor
Nambucca Shire Council	Mr	Phillip	Gall	Manager Health & Building Services
Inverell Shire Council	Mr	Terry	Cum	Environment & Health
Tamworth Regional Council	Mr	Ross	Briggs	Senior Environmental Health Officer
Tamworth Regional Council	Ms	Nicole	Hutchings	Environmental Health Officer
Gwydir Shire Council	Mr	Glen	Pereira	Environmental Services Manager
Liverpool Plains Shire Council	Mr	Ron	Van Katwyk	Director Environmental Services
Walcha Council	Mr	Steve	McCoy	Director - Engineering Services
Walcha Council	Clr	Bill	Heazlett	Mayor

Public Health Act 2010 Consultation
Grafton Workshop

Date: 12 May 2010

Number Present: 15 including 2 x Mayors and bulk water authority representatives (Rous Water). 1 apology

Location: Grafton chambers of Clarence Valley Council

Key Issues Emerging:

- Consider ARA model with responsibilities allocated according to risk and regional priorities
- Under ARA model NSW Health might take on pandemic planning, overarching education, promotion, policy and guideline development. Emergency management. Hospitals, nursing homes & cross-shires matters such as sharps management.
- NSW Health to provide model notices etc for Councils to use for the issues they would manage to ensure consistency
- Need cost recovery mechanisms and appropriate powers
- Individuals and companies need to be either dealt with separately right through the Act or have a definition whereby a 'person' includes a corporation.
- Delegation to the General Manager with GM required to delegate to the 'appropriate' person (reference Food Act)
- Guidelines must be enforceable. Upgrade them into the regulations
- Register management should be regional health responsibility. Challenges for local Councils in tracking of mobile operators working across regions/ state. Suggestions of premises that should be on cooling tower register are hospitals, nursing homes, correctional centres, child care which need temperatures specified by regulations.
- Need clear definition of public pool. Some suggestions are provided
- Powers needed to close unhealthy spas
- Possibility for private certifiers to certify pools and cooling towers was raised. Also NSW health regional officers to certify cooling towers. Sites and responsibilities could be identified through an ARA model
- Build in a review of the Act every 5 years to assess its efficacy of addressing public health matters
- Matters relating to funeral industry need to be addressed

Matters of Concern in Priority Order within each topic (note topics are not in any priority order)	Solutions/Options
Role of Local Government	
(1) Delineation roles and responsibilities: Local Government and Health Services Needs mandated regulatory framework model with negotiated options.	Possibly through risk rating of PH matters. Identify what are Local Government to resource? Then mandate it. Refer PoEo & Food Act. Revise framework and provide cost recovery/ revenue raising Similar to Food Act. MOUs required. So no doubling up or falling through the cracks: Examples from Food Act: LG cover commercial premises. NSW Food Authority cover licensed or wholesale premises. MOU

	mandated role – with 3 categories. Councils select their category according to the resources they can commit. One option was to do nothing. Food Authority in theory pick up the slack…but in practice NSW Food Authority negotiated and they did pick up some matters. Need to be able to work with regional PH unit as to local/regional priorities. AHS units are under resourced and stretched so Area Health EHOs ask Local Government to address concerns. If local govt to take the slack they need the resources to be provided. ARA model of responsibilities with content detail ABC model based on Community Strategic Planning matters of concern for the community. Then the gaps could be negotiated with regional health. Problem is that key issues across the state do need to be dealt with consistently – so they could be essentials in the MOUs. Dept Planning have contracted Local Government to assess certain issues – with payments/fees charged to dept of planning. Same happening with Food Act. All state departments are under funded and stretched. Question to group: Under ARA model what would NSW Health take on? Answer: Pandemic planning, overarching education, promotion, policy and guideline development. Emergency management. Hospitals, nursing homes & cross-shires matters such as sharps management.
(2) Additional resourcing once priorities are mandated and framework in place	Also assists the industry in knowing what each does consistently
Make guidelines regulatory instruments	Improve guidelines and call up into the regulations
Clause 113 delegation from regional and DG NSW Health	• Remove / vary clause 113 (b) • Solve through an MOU
Penalties and offences	
(1) Across the Bill no escalating enforcement options or consistency even across chapter C3 about what enforcement options are available. Options are only PINS / court. Pin is a slap on wrist. Court is expensive.	Range of enforcement options consistent across the act and its chapters –warning letters, orders, emergency orders etc (refer PoEO) NSW Health to provide the model notices for Councils to use

(2) Lack of cost recovery for admin fees for notices, monitoring	Apply in the Act admin fees and cost recovery options, inspection fees etc. Whilst can go to LGA need them here when inspecting particular premises covered in NSW H Act.
(3) Clear delineation roles and responsibility Who ARA for what and enforcing what	MOU with clarity for ARA in the Act
Part 103 (1) and (2) inconsistent	Make an offence not to comply with part one
S99 (2) certificate of ID	Specify what should be on the ID. Consistent with PoEO requirements of what should for the cards. Would like one card that covers all Acts.
5.2 Powers to demand information. In Bill have to go and write a letter	Need to be able to demand on the spot with appropriate penalty
5.2 (101) (102) split between corporation and person	Advise - Split persons and corporations right through the Bill or come up with definition that person includes a corporation.
Delegation from DG	Delegation to GM – GM decides who is the appropriate person in Council. Food Act specifically that Council must delegate appropriately. Delegation – Councillors must be aware. Food states that Council has responsibility to delegate to appropriate (and inference that they are appropriately trained). NSW Health refer to Food Act to address this.
Cl 48 (skin pen) only issue order after court process. Too late – then pools it's the DG of Health…	Need mechanisms notice and orders to direct before going to court
Skin Penetration	
(1) No standard. Only guidelines – it is a "toothless tiger"	Want a standard tied in to enforcement
(2) Inconsistency: Exempt businesses – health practitioners acupuncture detailed in other Acts – then the definition includes operators/ businesses that they do need to check	Want definitions changed to include them – want to be able to inspect 'these people' currently doesn't include health practitioners, acupuncturists & include massage parlours. And ability to charge the appropriate fees.
(3) Need to register mobile practitioners	Like a regional health NSW inspectors to retain and manage the register.
(4) Need to get court order. But need something quicker to prevent health risks spreading (Cl 48)	Need to be able to start putting orders – esp mobile tattooists who travel the state. Goes back to graduated responses.
Skin penetration	Definitions – scarification, etc need to be covered – but how? Also nail technicians need to be inlcuded
Qualifications of operators	Like to see minimum qualifications and standards for operators – infection control – skills needed for these clinical procedures. Food supervisor course as model – Skin Penetration operators need similar

Training can only be required after the prosecution	Needs to fit into the system
Guidelines and code of practice – neither are mandated	This is where how often autoclaves should be serviced need to go. Skills and knowledge would also go into the guidelines and /or code of practice And calling up of guidelines into regulations
47.2 register. How will we trace them if there is an issue?	47.2 should include registration details of a vehicle if relevant
47. 4 register available to public. Extent of details. Contravenes GIPA	Take out residential addresses and phone numbers of operators. Or public accessible part complies with GIPA
Public Water Supplies	
(1) comments about water supplies public water utilities that have a definition in the act	
Cl 5 Definition of public water utility	Does not encapsulate 'private water suppliers" as per the NSW Health guidelines. A person may receive water from a public water utility and store and distribute on a site for his occupants. This is a risk that requires treatment. The definition needs to include this type of activity
Definitions: Bill has definition of public water utility, but section on safety measures for public water supplies talks about public water utilities. Is it public water supplies operated by water utilities or others as well?	Needs clarity of role of Local Government in any monitoring of private water supplies used for public consumption
Public water supplies and operations that are managed by Council	Provide ARA definitions to ensure conflict of interest and appropriate oversight is managed
Cl 30 obligations public water utilities for quality assurance program – implications and expectations are unclear	Remove Cl 30 and leave in realm of Office of Water as they are regulators for public water utilities in NSW OR: Mandate public water utilities to manage water suppliers within the framework of Australian water guidelines. Including mandatory reporting and auditing to bring NSW in line with other states. Important that it is a risk based framework not a reactionary framework.
Definition seems to capture caravan parks, public schools in private water supply. If this is so…	If this is so, the private water guidelines should be referenced and common terms used to avoid confusion.
Should there be a provision for recycled water provided by a public water supplier?	Water supply delivered must meet requirements therefore the source is irrelevant
Do same things apply to caravan parks and regional B&B on tank / bore water? What about commercial operators other than those on bottled water	Risk standards need consistency. There is a need to place direct responsibility on the provider of private water supplies for public purpose to ensure that it is fit for

	consumption. It should specify what treatment and monitoring is required. Comment: NSW Health has guidelines for those operators. So shouldn't be duplicated. If NSW Health *are* intending to capture B&Bs and caravan parks – Councils do cover them – but will need powers to inspect and / or test. We are not trying to target private people with private water supply.
Swimming pools	
(1) definitions – needs broadening Cl 41 in terms of risk	Amend C41 As doesn't give clarity what is a public swimming pool. For example – units and apartment where shared, rural health retreats, learn to swim in private back yards. Spas e.g. Spas in brothels If "used by shared group" we call it a public pool. Community title in rural areas are shared.
Powers for closure unhealthy spas	Amend all related clause as opportunity for field staff to direct clean up / cease practice. Upgrade guidelines and pull up to regulations (reference Pools Law) Delegation at the right level
Regulation and standards for operators	Need to be in the regulations. At least minimum standard for at risk pools eg. Heated with small children. Needs provision for private certification. Of learn to swim private operators.
Registration	Needs to be rationalised. Not everyone's details. Need just body corporate or building manager
Mobile sector	Flows in with vendors can there be ARA approval and notification notice when they work across multiple sites/ Councils. Downside is if there is an incident in another LGA who is going to respond?
Private certifier and who does the certification? Who keeps the list of certifiers? Where are they in the first place to get on the list?	Raises issue of who manages the register? No firm answer
Air conditioners	
(1) Need for Councils to maintain register	Clarification of which need to be listed and registered. What is in / out? What needs to

	be registered? Suggestions are hospitals, nursing homes, correctional centres, child care which need temperatures specified by regulations.
Inspections what is the regime?	Regulations need to give powers to charge fees. If have powers to inspect have powers to charge.
Delegation powers	Power needed by Local Government not DG
Expertise levels needed for inspections. Question if Council has the expertise – and doubt if core function of Council? If take legionella risk management and level of risk…that would inform who does it.	(1) Qualifications could be in regulations: (2) Or could be private certifiers. Mechanism for private certification should be strongly considered. (3) NSW Health officers could do regionally (4) Could be maintenance by the owner with register that is checked – and if not up to scratch Councils need the powers to direct them to go to people with the expertise to maintain to deal with the risk (5) comes up in the MOU option between local and regional ARA negotiations (6) Highest risk sites are operated by NSW Health. ARA would need to work out who regulates the NSW Health sites.
Overall aspects of the Bill	
(1) Bill hasn't been modernised, nor taken up newer issues like brothels, minimum hygiene standards for accommodations, or dealing with semi-skin penetration processes	Refer PoEO and Food partnership Use ARA terms – Food Authority to develop levels of service by agreement Refer to existing guidelines and update each of them. Pull guidelines nto regulations Deal with the inconsistencies under part 3.
Include a review period for the Act	e.g. 5 years
Public health planning at regional scale in lieu of lack of public health planning	Scope for regional planning to occur needs to be in the Act (e.g. for legionella) Regions of Councils with public health unit
Provisions on funeral industry are unclear	Info needs to be provided as to intention of inclusion in the future
Nail technicians that don't do skin pen are at high risk of nail fungus transmission	Should be minimum standards for nail technicians. Councils need to be able to regulate them
Definitions placement in the Act and consistency	Put all together and use consistent language
Tag affordable housing	What standards need to be considered for Public health when designing these? Not covered in Building Code. Min standards for sleeping etc are required. Even provide laundry and cooking facilities need to be included. And take through to the property manager
	Sex industry not covered appropriately
	Health matters pertaining to professions in

	the LGA (barbers and hairdressers) health should be moved under Health Act
Cl 101 – person required to attend an interview. Bill allows them to decide where and when	Place time of interview should be determined by the authorised officer not the person.

Attendees:

Ballina Shire Council	Mrs	Rachael	Jenner	Environmental Health Officer
Lismore City Council	Mr	Matt	Kelly	Coordinator Compliance
Tweed Shire Council	Ms	Doreen	Harwood	Co-ordinator Environmental Health
Lismore City Council	Mrs	Jenny	Dowell	Mayor
Coffs Harbour City Council	Mr	Chris	Foley	Manager Health
Clarence Valley Council	Mr	Ken	Wilson	Coordinator Sustainable Services
Clarence Valley Council	Ms	Laurie	Day	Environmental Health Officer
Clarence Valley Council	Mr	Peter	Birch	Manager Environment and Open Spaces
Clarence Valley Council	Ms	Nicole	Power	Environmental Health Officer
Richmond valley Council	Mr	Andy	Edwards	Environmental health officer
Richmond valley Council	Ms	Carla	Dzendolet	Environmental health officer
Byron Shire Council	Mr	Jon	Rushforth	Acting Manager Governance
Rous Water	Mr	Wayne	Franklin	Technical Services Director
Rous Water	Ms	Belinda	Fayle	Dams and Treatment Operations Manager
Kempsey Council	Mr	John	Bowell	Mayor

Public Health Act 2010 Consultation
Newcastle Workshop

Date: 13 May 2010

Number Present: 18. Seven others registered and did not arrive. Two Apologies

Location: Newcastle City Council. Note whilst comments were made on water suppliers, no group worked on solutions. Conducted as quick group exercise

Key Issues Emerging:

- Want mandated framework like Food Act and PoEO with clear delineation of roles, responsibilities and powers for both Health and Local Government – and reporting requirements of local Councils to NSW Health. Model must allow for smaller and under resourced Councils to do minimum levels of inspections
- Requirement for clearly prescriptive codes and improved guidelines which can be called up in the regulations. All guidelines need to be reviewed and updated where necessary
- Need delegated powers; powers of entry, ability to raise fees, issue orders (clean up, closure, seizure). Recognise that PINs alone are insufficient
- Recognise challenges in allocating responsibilities and technical knowledge required, particularly regarding inspecting cooling towers
- Cost recovery, administration fees and cost compliance (when work needs several visits over months) required for all areas of responsibility and register maintenance
- Skin penetration operators to be required to have training of some sort
- Administration fees required for maintenance of pool register
- Definitions required for cooling towers and systems.
- Act needs to flag requirements for Crown lands – RAAF sites, hospitals. For example what happens when legionella outbreak?
- Opportunities available for authorised officer training about Public Health delivered as partnership between NSW Health and EHA

Matters of Concern in Priority Order within each topic (note topics are not in any priority order)	Solutions/Options
Role of Local Government	
(1) Understanding what are legislative requirements of Council and position. Ch 1 S 4 Insufficient substance so unable to put in place a framework	Find appropriate framework. Reference Food regulation for partnership model. Needs definitions, responsibility and targets, resourcing and ability to recover costs. Must enabling Council to know what is expected. Minimum level of service is required
(2) Clear delineation of roles NSW Health and Councils are required and important for community so they know what to expect	MOU between state and Local Government. Empowerment of people who have to do the work with appropriate powers Refer to Food Act and PoEO for roles as they are clearly defined in those pieces of legislation and the models already work.

	Roles might be: NSW Health: notification multiple cases, notifiable and infectious diseases, hospitals. areas where Local Government environmental health officers wouldn't have expertise – e.g. legionella outbreak, identifying risks associated with a specific disease outbreak, (Health would take lead role, Councils then take subordinate role). Area Health have coordination and resourcing role. Expertise, training, and dealing with emerging issues. With a mandated partnership arrangement like that in Food Act Local Government would report back to NSW Health. This group would like mandated reporting. Numbers of premises to inspect might allow for a graded system (A, B C like Food Act) Council notification of single cases. Areas that are deemed to be public health issues but outside of the Public Health legislation: eg. gyms and tinea, capture as Local Government responsibility Challenges: cooling towers. Council run businesses – "poacher and gamekeeper" challenges of self regulation need to be worked out.
(3). Enable Councils to Act decisively to solve issues raised. Want Council to be a one stop shop and able to put in action whatever it takes to respond to the public health issues	Need delegation of authority, powers to direct, notices, penalties etc. Reference PoEO
(4) To get confidence and competence around the Act it needs to provide a consistent framework	Reference PoEO regulated responsibilities. Plus graded responsibility as per Food Act within that. Reflect both SW Health role and Local Government role.
Resourcing of Council especially small Councils – where can't even get legionella register together. Act sayes Council is responsible to ensure sufficient inspectors. This is unrealistic as neither money nor staff numbers are available for this to happen.	Model under Food Act – where Councils sign to category A, B, C regarding levels of resources possibly # of premises, tattooists rather than # people doing acupuncture. Perhaps categories are related to the risk in the business. Annual report on problems, worst case scenario.

	Example for level C could be responding only to emergency.
Register maintenance Finding operators. If someone opens a business and doesn't register – Council can't find them as don't have resources to find them and force them to register.	On line registration state wide – NSW Health. Similar to Food – state wide register held by NSW Health Not so keen on state wide: Councils are best to maintain register because of their GIS – if state register still need to pull back in to Council to manage and maintain
Penalties and offences	
(1) Don't want legislation that restricts us. Don't want to be directed from NSW Health DG	Delegation passed to appropriate level that doesn't hinder enforcement. Delegated to GM and down to enforcement/ – appropriate powers so not restricted in enforcement. Legislation needs to be clear and concise with achievable actions and outcomes. Simplify process to remove bureaucratic hurdles e.g provide delegation.
(2) Administration fees to issue notice and orders are required as per PoEO and Food Act	Write into the Act and regulations
(3) Need clear prescriptive guidelines and regulations. Guidelines need to be called up into regulations	Ability to carry out enforcement based on something prescriptive. Need prescriptive regulations. E.g. specific disinfection levels, enforceable standards across the board. Include provision for verbal warning followed up by written notice.
Certificate of authority is required.	Food Act experienced some teething problems at start. Sorted now. NSW Health could learn from Food Act experience. Spell out the authority with a template
Power of officer to obtain information. There is no enforceable requirement for people to provide details. Nor is it an offence not to.	Need to be able to request • their name and address • information relating to business or the offence and • be a penalty not to provide the details.
Delegations: GM may appoint anyone as "health inspector" Needs guidelines on training/ levels / qualifications of the person who will be the "authorised officer / health inspector "	Use Food Act model where GM / Council must demonstrate that officer is "appropriately qualified or experienced" need this authority to be able to confidently take problems through to court if required.
Power of entry required to private residence.	Public Health legislation should override

Home based hairdressers are missed because under EP&A Act are exempt and complying	EP&A Act so incumbent on the operator to register with Council. Allow entry to private residence when home operator
Skin Penetration	
(1) Local Government should be able to serve orders on skin penetration premises	Delegations as per Food Act
Mobile vendors and home operators – says they need to inform Council of existence	Need definition of "mobile vendor" and "temporary structure"
Ability to charge fees for orders and register	Set provisions in the Act – change so can be served without offence being proved. S48 " where there is a risk of disease transmission", but the offence has not occurred but is deemed likely to occur
Mandatory training	Mandatory training should be declared as part of registration. If operators are not trained they represent higher risk – could serve notice requiring training
Skin penetration on site inspection challenges	Strengthen protection for authorised officer who could be confronting dangerous situation in some tattoo parlours
Descriptions of procedures	Cuticle cutters to be included in definition of skin penetration procedures, scarification, waxing. Queensland legislation for skin penetration might be worth referring to for definitions
Marry up code and guidelines.	Have prescriptive guidelines in the regulations
Provision for seizure	Needs to be there
Privacy of activities. It is hard to find and observe practitioners for public health risks when the activities are private	Consider requiring inspection when believe likelihood that incident might occur… in the opinion of the EHO but cant substantiate. Reference "Reasonably suspect" is scavenger legislation " or "in the opinion of the authorised officer"
Public Water Supplies	
Requirement for businesses other than water authority who are providing water to public to meet water quality standards on an ongoing basis	Need 'mandateable' guidelines Australian Standards potable water – or set parameters in the regulations. Pull requirement from the Australian Standards
Swimming pools	
(1) Pool operator training required.	Inclusion provisions for formal qualification of operators
(2) No provisons for fee for keeping registers	Allow annual administration fee like Food Act
(3) Lack need to require automatic disinfection unit	Require it to be continuous dosing
(4) No enforceable standards	Regulations to prescribe limits of flow rates,

	disinfection etc. Not the guidelines
(5) Include definition of private pools that hold swimming lessons. Needs to clearly define pools in the definitions	"not for fee or reward" Definition should include instance where "persons other than the residents are attending and are charged a fee"
(5) Pins not effective in preventing enforcement of the Act – doesn't prevent re-occurrence.	Council relies on notices and orders. Want powers to make orders relating to pubic pools to enforce requirements of the Act and force operator to do the works.
Delegations to Local Government to close are required	Delegations of authority required. Same as skin penetration want consistency.
Air conditioners	
(1) Need clarification on new technologies in what water industry	Want definitions to remove ambiguity and details exemptions
(2) More clarification on what a warm water system is …each outlet or entire premises	More specific in definitions. Need up to date guidelines
(3) Concerns with enforcement and delegations	Want delegations and enforcement to officer level to make achievable and effective
Access to cooling towers	Need powers for assisted entry.
Inspections are not mandated. Only function mandated is to maintain the register - not to do the inspections. But what is point of register?	People would like mandated inspections. Discussion on annual inspections at specific time of year: Would be difficult to pull people off other work at a specific time. Expectation if people are meant to register then the inspections will be done. But need people. Cost recovery fees could be mandated
Director General delegations	Need to go down to appropriate level
Overall aspects of the Bill	
(1) Ability to recover costs	Without being able to do total cost recover cant afford the people to do it
(2) DG powers	Delegated to Local Government and ability for officer to use
(3) Requirement for clearly prescriptive codes and guidelines.	Guides codes, nothing can hang hat on. Clear prescriptive enforcement prescriptive, operational or structural for each key area and make them the same
(4) No requirement training	Accredited skills to specified level
(5) Ability to issue enforcement notices	Needed
(6) Partnership approach used to happen NSW Health	Relationship needs to be picked up and framed under the legislation with clear roles and responsibilities. Council officers are already aware of Food framework.
Is the Bill binding on the Crown? e.g. Legionella at RAF site NSW Health / Councils couldn't deal with it. Schools – cooling towers in hospitals, power stations	Needs to be flagged in the Bill.
Legionella testing	Is it a legal requirement or not. Needs clarification

Cost recovery. S 67a 67b,	Need cost compliance notice – not just a one off fee as may take several days to do a job. Reinspection fees,
Training of authorised officers	People with the expertise NSW H in conjunction with regional committees should run it. Consistency across the state. That training delivered at no cost to Local Government. Councils unhappy to be charged $1500 for PoEO authorised officers training by DECC when it is to deliver "their" legislation. EHA have authorised officer training program similar to PoEO course – NSW Health could work with EHA to roll out at cost. For training of authorised officers reference also ordinance 44. Regulations might say "you must hold these *type of qualifications / competencies.* Problem is so many changes may need a board to assess the courses that go on the list.

Attendees:

Port Macquarie Hastings Council	Ms	Michelle	McLennan	Environmental Health Officer
Wyong Shire Council	Mr	Stephen	BERRY	Senior Environmental Health Officer
Wyong Shire Council	Mr	Jason	THORNE	Environmental Health Officer
Port Stephens Council	Mr	James	Sullivan	Team Leader Environmental Health
Great Lakes Council	Mr	Malcolm	Hunter	Environmental Health Coordinator
Cessnock City Council	Mr	John	Peebles	Environmental Health Officer
Cessnock City Council	Mr	Tristan	Sams	Trainee Environmental Health Officer
Lake Macquarie City Council	Mr	Andrew	Ireland	Environmental Health Officer
Lake Macquarie City Council	Mr	Derek	Marler	Environmental Health Officer
Hornsby Shire Council	Ms	Amanda	Dickens	Health Officer
Newcastle City Council	Ms	Jenny	MacDonald	Senior Environmental Health Officer
Newcastle City Council	Mr	Paul	McMurray	Environmental Health Services Co-ordinator
Newcastle City Council	Mr	John	Metten	Environmental Health Officer

Wyong Shire Council	Mr	Robert	van Hese	Manager, Regulation & Compliance
Gosford City Council	Mr	Shannon	McKiernan	Coordinator Environmental Health and Protection
Gosford City Council	Mr	John	Parkes	Manager Education and Compliance
Singleton Council	Mr	Andrew	Henry	Building Surveyor
Newcastle City Council	Ms	Sarie	Wheatland	Food Inspector

Public Health Act 2010 Consultation
Teleconference with Isolated Councils

Date: 14 May 2010
Number Present: 7 from 5 Councils. One Council registered but did not attend Another Council registered and attended the first part of the meeting but had already sent officers to a workshop and did not realise that the teleconference was covering the same ground.
Location: Teleconference
Key Issues Emerging: • Overall the intent of the Bill is supported, but there are some inconsistencies and poorly worded aspects. • In all instances the onus should be on the operator to comply. • The partnership model under the Food Act is strongly supported and should be replicated under the Public Health Bill. • The wording [Cl 4] 'sufficient' authorised officers is problematic, although the concept is generally supported. Determining what is sufficient is a challenge and Councils are exposed in a court action if this term is used. • With regard to public water utilities, the Act must acknowledge that many Councils are both the water utility – they supply water and manage the system - and the regulator. This matter must be addressed and clarity provided about the appropriate regulatory authority in these circumstances. See agreement with Fair Trading and ensure that this is drawn up into the Act/Regulations. • Address anomaly between Public Health Act and Environmental Planning and Assessment Act so that home businesses can be registered & regulated

Matters of Concern in Priority Order within each topic (note topics are not in any priority order)	**Solutions/Options**
Role of Local Government	
Roles for Local Government are defined but there were concerns about some matters: • The word 'sufficient' in 4.2 is problematic and would risk sensitive in a court action.	Remove or closely define the word 'sufficient' in 4.2.
The roles and responsibilities of Area Health personnel need to be better defined.	Better definition of AHS Authorised Officer roles. Need to not define so tightly that partnerships and sharing of responsibilities is not possible. Need to flag the training and technical support roles of the Health personnel within the Act.
There needs to be clarity about the Inspection responsibilities and a fee structure [minimum and maximum] identified in the regulations.	Bring the inspection regime into line with that in the Food Act. 6 monthly for high risk premises and 12 monthly for lower risk premises.

Penalties and offences	
There are insufficient penalties and offences and notice powers in the Act.	The Act needs to include a graduated system of penalties including: • Warning letters • Improvement Notices • Penalty improvement notices • Clean up notices • Cost recovery mechanisms
The Act or more probably the regulations need to outline possible offences and penalties in order [a graduated table]. Some Councils use a three 'strikes' system.	Indicate graduated level in the Act for all offences and within each specific area in Chapter 3 Within the regulations provide guidance to authorised officers about when and how to use the penalties.
The Act must place the responsibility on the operator to comply and the authorised officer to monitor compliance and penalise non-compliance.	Operators need to be informed about their responsibilities and educated about complying.
Skin Penetration	
There must be an obligation on operators to attend mandatory training.	Identify training benchmarks and providers Accredited training is important. Infection control aspects are essential.
There is a need for clear guidelines for skin penetration to be called up into the regulations.	Ensure that Guidelines are clear and called up under the regulations.
The anomaly between the EP&A Act 1979 and the draft Public Health Bill 2010 was noted. Under EP&A home based skin penetration premises are exempt, but under the Public Health Act they need to be registered. This is confusing to the operator and makes them difficult for the Authorised officer to locate them.	Clear up this anomaly so that both Acts are brought into line. Or. Indicate in the Public Health Act that it takes precedence and registration is mandatory
Definitions need some clarification	Clarify mobile and home-based premises/individual operators – commercial operations?
Public Water Supplies	
The Australian Standards must be used as the baseline for the monitoring of water supplies.	Call up the Australian Standards under the regulations. See Section 68 of the Local Government Act for general issues regarding calling guidelines up.
Training of operators.	The Act should ensure that the operators are skilled and qualified appropriately to manage the system to minimise risk. Some base level qualifications must be identified.
Demonstrating compliance. The onus should be on the operators of air conditioning systems that	Water suppliers should be able to demonstrate compliance with Australian

are defined in the Act to prove compliance.	Drinking Water Quality guidelines – Note since Water Industry Competition Act there are more suppliers. There should be penalties for non-compliance.
Operator/regulator split.	The Act must acknowledge that many Councils are both the operator of the water supply system [the local water authority] and the regulator. This matter must be clarified in the Act in line with the mandated agreement with established between Health Local Government and Fair Trading, eight years ago.
Testing of water quality.	NSW Health has a responsibility to provide technical support in the establishment and monitoring of protocols for water quality testing in line with the Australian Standards.
Definition of providers	Private water suppliers in commercial premises need to be captured in the Act.
Swimming pools	
No comments on this section.	
Air conditioners	
The Act needs to be clear that the onus must be on the operator of the air conditioning system [as defined in the Act] to comply and to prove that they comply.	Amend the wording to make it clear that the operator has to demonstrate compliance.
The definitions of what systems are to be included and not included need to be clearer.	Make the definitions of systems clearer.
Overall aspects of the Bill	
The wording - 'sufficient' authorised officers is problematic, although the concept is generally supported. Determining what is sufficient is a challenge and Councils are exposed in a court action if this term is used.	Define this term closely or remove.
Management of the Register under skin penetration, air conditioner and/ swimming pools aspects of the Bill.	The onus should be on the operator to register. The register should be state wide and held by NSW Health. PINs should be able to be issued for failure to register. A challenge for Local Government is finding those operators that are not registering, especially when they have limited staff resources to follow up and to identify commercial operations – especially home based or mobile skin penetration businesses.
The term Authorised Officer was generally supported but, the concept Authorised Officer –	Use the term authorised officer in the Act and clarify the need for people with suitable

Public Health needs to be mandated in the Act. This role can't just be filled by anyone.	qualifications to be appointed to these positions.
The Bill does shift responsibilities to Local Government. This has a staffing resources and financial impact.	Councils need capacity to cost recover at appropriate levels. They need technical support and training. They need clear reporting processes.
The Food Act was cited as an example of a preferred regulatory approach	Use the same approach as the Food Act. • Electronic on line registers, managed by NSW Health • Network meetings held regularly • Councils to choose to be the regulator at the level that they can manage, with Food Authority taking up the remaining functions. • Training of food authorised officers held and update information regularly provided.
Operator training is essential	Training is essential for skin penetration, public swimming pool and air conditioning operators and should be mandated in the Act. The base levels of training required needs to be clearly identified.

Attendees:

Anthony Davis	Wentworth Shire Council
Jacky Woolhouse c/o Chris Chapman	Wakool Shire Council
Susan Appleyard	Jerilderie Council
Abby Smith	Griffith Shire Council
Renee McCanna c/o	Griffith Shire Council
Cathy Vatucci c/o	Griffith Shire Council
John Mulvey	Albury City Council