

**Public Health Regulation 2011:
Consultation with Local
Government
Report**

for

NSW HEALTH

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Note that the full range of data from each workshop is included in a Supplementary Report, provided to the Ministry of Health.

Note: All participant quotes are generally indicated in italics

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Noel Baum; Local Government and Shires Associations
Members of the Health/Local Government Strategic Liaison Group

Host Council staff – each workshop was hosted locally and Local Government staff were integral to the success of the program

Organisation	Staff Member
Local Government and Shires Associations	Noel Baum
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City of Sydney Council	Nicole Stent and Kevin Felton
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Assistance provided for the Water Webinars [2] - Kevin Smith [Lachlan Shire Council] Paul Byleveld [Ministry of Health]	

Participants in all workshops are thanked for their contributions.

The Development of the Report

The Draft Regulation and its Regulatory Impact Statement are comprehensive documents. In particular the Regulation contains a raft of specific regulatory responsibilities and tools in Parts 2 to 5 and Schedules 1 and 3 which directly affect and interest local government.

The task for the T Issues Team was to provide an overview of the issues raised and to propose solutions. In doing this, we have used a number of criteria to guide the selection and priority of what to include in the report. The criteria include:

1. Frequency of mention of an issue – issues mentioned frequently in a number of workshops have been drawn forward into this report.
2. Degree of importance for proactive public health management. Some issues raised were of a higher order of importance in the view of the T Issues Team – these have been drawn forward even if not frequently raised.

3. Proximity of the feedback to the core aspects of the Act and the Regulation e.g. Safe Drinking Water, Skin Penetration etc.

This means that some feedback provided in workshops may not be included in this report. It is also noted that due to the technical nature of the detail contained in the Act, the Draft Regulations and Regulatory Impact Statement, participants were advised to make recommendations on specific wording changes direct to the Ministry of Health in their written submissions.

In drafting our overview of the issues raised, a number of key themes emerged in relation to each Part of the Regulation. Where feasible, and as determined by our selection criteria, like issues have been grouped together in the Findings section of this report.

The Supplementary Report to this document details all of the input from each workshop so it is available for the reader who wishes to drill further into the full breadth and detail of the data provided by Local Government.



Some Key Quotes

The following key quotes from the workshops are provided in lieu of a formal Executive Summary as they both summarise the perspectives and input of the attendees and provide - as would an Executive Summary - context of the report for the Ministry of Health.

The Response to the Draft Regulation is Positive

'The fact the Regulations were released in time to allow comprehensive consultation was very useful.' [Participant Grafton workshop]

'The most useful aspects according to participants were the provision of increased enforcement options including Notices and PINs. Other things considered useful were stronger provisions around swimming pools, a requirement to submit information to Council for cooling towers; clarification re skin penetration; one location for standards which should be met.' [Penrith Workshop Report]

This is an **'improved framework to implement public health directives'** [Participant Grafton workshop]

[sic It is good to see] **PINS expanded to allow greater enforcement and not having to go to court –most small councils don't have the resources to go to court.** [Participant at Wagga Wagga Workshop]

'A number of aspects of the Draft Regulation were felt to be useful by participants. Several felt the changes in enforcement opportunities such as Improvement Notices/Prohibition Orders and PINs were positive. Others commented on the Skin Penetration Guidelines; legionella control; swimming pool schedule and the ability to capture emerging industries such as nail technicians. One respondent commented that "the amendments are clear and precise" in the Regulation. [Newcastle Workshop report].

Changes are Proposed that can make the Regulation even Stronger and a more Rigorous Regulatory Approach

'How much time /lead in will there be to do things differently? [i.e. after the Act is commenced].' [Comment by Dubbo participant particularly related to the Safe Drinking Water aspect of the Regulation –note he/she means 'commenced', not 'assented']

'Make it clear what Councils are expected to do.' [Participant Dubbo Workshop]

'PIN needs to be developed for non-compliance with Improvement Notice. It is currently not an offence to [...not] comply with an Improvement Notice. This is currently an empty threat and needs some tool to allow for enforcement to occur.' [Participant City of Sydney]

'Currently no fees for inspections – this should be included, however some councils are currently doing this under the Local Government Act. Re-inspection fees should also be included.' [Participant City of Sydney Workshop]

'The Regulation needs to mandate training for operators [Skin Penetration and Swimming Pools] and for Owners/Occupiers [Legionella Control].' [Participant Penrith Workshop]

'A more comprehensive range of PINs is required.' [Participant Hunter Workshop]

Councils need Comprehensive Support for Implementation

'Need for 'how to use guidance' about this part of the Regulation: education, warnings, issuing of a PIN etc. '. [Participant at Wagga Wagga Workshop]. 'Next step recommended to be developed for Council officers; Guide Notes, guidelines, templates, training etc. on implementing the Act and Regulation as it is all about interpretation once the Act and Regulation are released.' [City of Sydney Participant]

'No-one will argue against the benefits [sic: of the Public Health Regulation]. However the costs cannot be borne by council. This must pay for itself. Needs to be approached in same way as Food Act has been implemented, then it will be successful.' [Participant at LGSA briefing workshop]

'Capacity building and more training is an essential for EHOs to support the roll-out of the Act and Regulation.' [Participant Grafton Workshop]



Introduction

Local Government has a major role in managing compliance with the Public Health Act 1991. This is continued and broadened with respect to the Public Health Act 2010. The Draft Public Health Regulation 2011 provides the tools, which allow for the implementation of the Act that protects the health of the people of NSW.

The Public Health Act, when considered in conjunction with the Local Government Act 1993, the Protection of the Environment Operations Act 1997, the Food Act 2003 and the Environmental Planning and Assessment Act 1979, frames the major responsibilities of Local Government with respect to the public health, environmental health, environmental planning and environmental management within their communities.

The Guide to Better Regulation identifies seven principles that characterise good Regulation. The principles are:

- i) the need for government action should be established
- ii) the objective of government action should be clear
- iii) the impact of government action should be properly understood by considering the costs and benefits of a range of options, including non-regulatory options
- iv) government action should be effective and proportional
- v) consultation with business and the community should inform regulatory development
- vi) the simplification, repeal, reform or consolidation of existing regulation should be considered
- vii) regulation should be periodically reviewed, and if necessary reformed to ensure its continued efficiency and effectiveness.

This consultation process and the final report is framed within these principles.

This report details the views of local government officers across NSW who attended the workshops about the Draft Public Health Regulation 2011. It mirrors the engagement process undertaken in 2010 that provided input into the draft Public Health Bill 2010, although the order of the consultation process was reversed for this round. In 2010, written comments were sought and then at the very end of the exposure period a series of state-wide workshops were held. This year, consultation on the Draft Regulation commenced with the workshops series, which ended well before the exposure period concluded on November 11, 2011.

This consultation process is part of a broader consultation process that Ministry of Health is undertaking. It is important to note that this consultation with Local Government staff - and some elected officials - focused only on the aspects of the Draft Regulation relevant to Local Government activity, namely:

- o Control of skin penetration procedures
- o Control of air-conditioning and other systems
- o Control of public swimming pools and spa pools
- o Safety measures for public water supplies

That said, the nature and intent of the face-to-face and web based consultation was framed by the Draft Regulation but not totally constrained by it. This consultation process allowed Local Government to both respond to what is proposed and to raise additional matters for inclusion in the Regulation or to assist in its implementation if they wanted to do so. The report that follows indicates that local government participants in the process took the opportunity to provide input into the Draft Regulation and to make recommendations about its implementation.

Formally, Ministry of 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
3. Obtain specific feedback on possible fees to be charged for a range of matters under the Act, such as inspections and improvement notices; centralised registers; and drinking water quality assurance requirements
4. Develop a report identifying major issues and proposed solutions identified during the consultation with stakeholders in local government.

The following report responds in-depth to the client's needs and is structured as follows:

Section C indicates how local government was engaged in the process of consultation, and the extent of this engagement. It also provides brief evaluative feedback about the process.

Section D contains detailed findings that are aggregated from the workshops and discussed. Major themes are identified and data is grouped together within each theme area. Some specific wording changes proposed by the workshop participants are included. Given the precise nature of the Draft Regulation, comment is detailed and it has been challenging at times to aggregate the input provided into themes containing similar findings. The Findings Section of the report raises the issues of concern to Local Government and in part suggests some solutions.

Section E focuses on implementation issues. There was a significant amount of discussion in all workshops about the support that Local Government felt was required for proactive implementation of the Act and its regulation. This consultation was both on the content of the Regulation and its roll-out.

Finally, Section F details a series of recommendations related to possible redrafting of the Regulation and support recommended for implementation. In line with the Consultant's Brief for this project, these are the proposed solutions.

A Supplementary Report has also been produced. This contains all of the individual reports from each of the twelve workshops that were undertaken. This provides a record of what was said at each workshop.

Each of these reports was completed within two weeks of the delivery of the workshop and circulated to participants in each workshop. This allowed each participant time to consider the workshop discussion in the drafting of written submissions about the Draft Regulation. In time, on-line access to every workshop report will be made available by the NSW Ministry of Health to all participants.

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It should be noted that with regard to Part 7 of the Draft Regulation relating to squalor, sleeping rooms, sexually transmitted diseases notifiable diseases, while some participants made comments these were beyond the scope of this consultation. Whilst the sector have opinions about how these matters are managed, they matters are not addressed in this report as they fall outside the scope of the contract. With regard to the Funeral Industry a separate consultation will occur with Local Government once a draft Regulation has been negotiated between the MOH and the industry body.

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 the NSW Ministry of Health.

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Hazel Storey

Julie Ryland*



* Julie Ryland worked on the project until 7 September 2011, when she commenced maternity leave. Happily Jacqueline Julia Ryland was born on October 14 2011 and all is well.

Lee Meredith was also a member of the team and wrote up all workshop outputs.

C. Overview of the Engagement Process

T Issues Consultancy, the Storey Agency and Simmat and Associates [the T Issues Team] were contracted by Ministry of Health to undertake the consultation workshops with Local Government on 25 July 2011 at the beginning of the consultation period. It was important that workshops were rolled out quickly so that these were the spur to encourage Council staff to also provide written input into the Draft Regulation. Early meetings and discussions with Ministry of Health, other stakeholders and a meeting with the Health/Local Government Strategic Liaison Group 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, especially in marketing the consultation, and is acknowledged in bringing about a successful consultation process. Marketing of the full range of workshops commenced on 19 August 2011 and on-line registrations opened on the same day.

Despite the abbreviated time frame for marketing the workshops they were well attended. In all, 241 people attended, which demonstrates the commitment of Local Government to public health issues. Of these attendees: 213 were Council staff; six were councillors; eleven were public health staff employed by the Ministry of Health in Public Health Units; five were from water authorities and six were from other agencies – namely other Government Departments [the Office of Water] and the Local Government and Shires Associations.

In all, 120 Councils were represented by officers attending these workshops. That means that almost 80% of Councils in NSW provided input into the Draft Public Health Regulation 2011 through this process. This is a remarkable level of uptake.

This compares favourably with the involvement in the consultation on the draft Public Health Bill in 2010, where 169 people attended from 87 Councils.

Of importance to the face-to-face consultation model used by the T Issues Team 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. The T Issues Team used their own networks to identify and approach possible hosts, thus shortening the process substantially. Formal letters were sent by Ministry of 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 venue arrangements.

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 and it was easy to print registration lists, provide follow-up and manage the booking system effectively. Ministry of Health again provided very quick turnaround in getting the booking link onto their website.

It should be noted though that for this round of workshops there were more 'no shows' than for the consultation on the draft Bill. On average there were four 'no shows per workshop, although it has to be acknowledged that numbers were boosted at some workshops by the attendance of people who had not registered. In general though, all workshops were well attended as indicated by the table below.

The support from the Local Government and Shires Associations, the Environmental Health Association and the Host Councils 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. On this occasion it was useful to be able to go back to people who attended the 2010 consultation. Approximately 50% of participants who attended the consultation in 2010 also came to these workshops on the Regulation.

In order to maximise access opportunities for far flung Councils, NSW Health offered a generic webinar to rural Councils particularly those in the West and South West of NSW. However very low registration levels meant that this session did not go ahead. On the other hand, the on-line webinar on Safe Drinking Water was oversubscribed with attendance from right across the State including remote councils so two sessions were delivered

It is noted that very few elected officials [6 only at the LGSA workshop] attended the workshops. Their input and the different perspective that elected officials brought to the discussions was valuable.

The table below provides a snapshot of the workshops.

Workshop Location and Date	Workshop Venue	Number of participants	Number of Councils	Comments
29/08/11 Wagga Wagga City Council	Wagga Wagga City Council (Council Chambers) Cnr of Morrow and Baylis Streets, Wagga Wagga.	20	9	Three participants were from the Public Health Unit Two from the local Water Authority – Goldfields Water
30/08/11 Queanbeyan City Council	The Queanbeyan Performance Arts Centre. Exhibition Space. 253 Crawford Street, Queanbeyan	18	9	One participant was from the National Parks and Wildlife
31/08/11 Penrith City Council	Penrith Library Theatre. 601 High Street Penrith	27	11	Two participants were from the Public Health Unit
01/09/11 Dubbo City Council	West Conference Room, Dubbo City Council Civic Administration Building, Church Street, Dubbo.	35	16	One participant was from the Public Health Unit Two from the Office of Water Over 30% of participants were Managers/Directors at this workshop
02/09/11 City of Sydney Council	Level 11 Town Hall House (back of Sydney Town Hall).	23	13	Surprisingly only two of the participants were managers EHOs who attended were very experienced.
05/09/11 Kiama Council	Kiama Showground Pavilion, 2 Bong Bong Street,	17	8	One participant from a Water Business Unit

	Kiama			within a Council All others were EHOs in Councils
06/09/11 Armidale- Durmaresq (Armidale City Council)	Town Hall Basement 135 Rusden Street	9	7	One participant was from the Public Health Unit
07/09/11 Grafton (Clarence Valley Council)	Grafton Community & Function Centre 59 Duke Street, Grafton.	20	8	Two staff from the Public Health Unit attended Two participants were from the local water authority – Rous Water
08/09/11 Newcastle City Council	Mulubinba Room, City Hall, 290 King Street, Newcastle	30	15	Two staff from the Public Health Unit attended
6/10/11 Local Government and Shires Associations	Workshop hosted by the LGSA , Participants were on the Executive/s of the Local Government Association and the Shires Association.	8	6 [but 3 were from Councils where staff had attended].	Two LGSA staff attended this workshop and six elected officials
18/10/11 Safe Drinking Water	This workshop was held as a webinar – on- line Presentation were given by Gemma Broderick and Paul Byleveld [Ministry of Health] and Kevin Smith [Lachlan Shire Council]	19	10	One participant was from the Office of Water Most participants were team leaders or managers/directors One LGSA staff member attended
20/10/11 Safe Drinking Water	This workshop was held as a webinar – on- line Presentations were given by Gemma Broderick and Paul Byleveld [Ministry of Health].	15	10	Most attendees were EHOs Gary Mitchell from the Water Directorate attended this session, in person.

Note: The total number of Councils excludes double-ups whereby some Councils sent personnel to more than one workshop session and/or there were a number of Council staff at a workshop.

Workshop Evaluation

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. For this round of face-to-face workshops [the first nine in the table above], an evaluation form was distributed at the conclusion of each workshop. The data below contains a snapshot of the responses received. Data from each workshop is contained in the Workshop Report in the Supplementary Report document.

Demographics

In all, 167 participants [84%] completed the evaluation form at the nine face-to-face workshops [excluding the LGSA workshop]; however, not all participants completed all questions. The following demographics describe participants at all workshops.

Male: 90

Female: 49

Not stated: 28

73% were staff members from Council

18.5% were managers from Council

10% were from organisations other than Councils NB: Several participants reported they were both a manager and a staff member hence the above figures do not add to 100%.

Most useful aspects of the workshops

Participants were asked to comment on what they found most useful within the workshops. The opportunity to network and discuss the regulations in groups was the most commonly identified aspect with participants in all workshops commenting on this. For example for one respondent said: *'The workshop was an open forum in which my awareness of the Draft Regulations significantly increased'*. Several participants commented on the value of having presenters who were able to summarise the key features of the Regulations and provide feedback on previous workshops.

In particular some participants commented on the opportunity to discuss PINs and Notices and the benefits of having representatives of the Ministry of Health in their particular workshop. One participant commented: *'DOH has reached new heights in the areas of public consultation.'*

Other areas found to be useful across one or more workshops included: Skin Penetration discussions, which was felt to be especially useful by those attending the City of Sydney Workshop. When taken overall the issue of Skin Penetration was probably the most commented aspect of the Regulation. Discussion about Legionella Control and Swimming Pools was also considered useful. Although cooling towers were of little relevance in shires and smaller regional Councils. Safe Drinking Water was relevant to the particular to rural Council who attended, especially those west of the Great Dividing Range.

Those attending from outside local government also found aspects of the workshop useful. For example: *'it was "beneficial to meet with representatives of Local Government and hear their issues which may differ from those of Ministry of Health staff.'*

Less useful aspects of the workshops

Fewer participants overall commented on the least useful aspects of the workshops and those who did were more varied in their comments. The most commented upon issue was a lack of time both within the workshops and prior, to enable preparation. Some participants commented that there was a: *'lack of time or a lack of detail regarding the Regulation and its implementation'*; *'insufficient discussion of proposed actions by DOH, templates, guidelines and policy'* and *'it was a bit rushed for time when there was so much important material to work through.'*

While the facilitation was praised in the most useful section of the evaluation, a very limited number of respondents felt that the facilitators had *'a lack of technical knowledge regarding the legislation and practices'* and that *'the presenters lacked the in-depth knowledge of the Regulations'*. One respondent reported that: *'the process of discussion was painful'* and that *'there was too much time spent on group rules etc.'*

Participants in some workshops felt that certain sections were not relevant to them, these included Skin Penetration and Safe Drinking Water. This at times appeared to reflect the type of councils represented within the workshops, for example those workshops comprised of more urban council staff (City of Sydney and Kiama) felt the section on Safe Drinking Water was not felt to be relevant to them as they were not responsible for this within their councils.

Level of assistance required to implement the Regulation

Not all respondents made comments regarding additional assistance, however those who did made several useful suggestions. One of the most commonly made included the need for further guidelines, for enforcement of the Regulation, for example: *'clarification of 'PINable' offences and templates etc to assist, particularly in the implementation of quality assurance programs.'* Others suggested further workshops to discuss specific issues with: *'sufficient time for in depth consultation.'*

Several participants commented on the need for more specific guidance around the implementation of the Regulation and fee structure including templates and a guide to roles and responsibilities. Fleshing this out, one respondent commented: *'if government are going to regulate – then provide the tools to regulate.'* Another person reported needing to hear from the Environmental Health Branch about: *'how Councils keeping registers will protect public health. Regulation sets up an essentially unregulated system.'*

Other participants suggested establishing a point of contact in the Ministry of Health. *'It would be useful to have a point of contact in Ministry of Health to answer questions about its legislation and intent...as the questions or queries arise.'* – *'someone who can give specific policy advice on issues such as levels of responsibility and has technical knowledge to address specific questions.'*

In terms of specific aspects of the legislation, a number of people commented on areas specific to water, such as a whole government approach to water supply schemes, clarification on non-potable water supplies, clarification of the word 'likely' in the statement: *'likely use of water for cleaning and preparing food', and viewing of the Health Departments Sample Water Quality Management Plans to get a better idea of what is involved..*

Some participants also commented on the need for a good communication process with front line staff working in the industries affected, as well as a transition period to aid in improving compliance.

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, elected officials and other participants. The reports from each of the workshops are included in the Supplementary Report and should be reviewed for the specific detail about all of the issues raised in this Findings section. As indicated above, 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.

D1. Overall Findings

This Section details feedback provided by Local Government about the Draft Regulation overall – Parts 2. to 5. and Schedules 1 and 3. Information herein relates to the majority/or all of the Regulation rather than to just one part of it. Specific feedback about the issues raised about the specific parts of the Draft Regulation is provided in the Sections below.

The issue of cost recovery

Cost recovery is a significant issue for Councils. Almost all workshops raised this as an issue and it was a particular focus for Councillors at the LGSA workshop. For example:

'No-one will argue against the benefits [sic: of the Public Health Regulation]. However the costs cannot be borne by council. This must pay for itself. Needs to be approached in same way as Food Act has been implemented, and then it will be successful.'

[Participant at LGSA briefing workshop]

In providing the feedback about this issue it is understood that the MOH is undertaking some modelling work with the LGSA about this and other related matters and this is vitally important.

All of the aggregated feedback about the financial aspects of the Draft Regulation, discussed through the remainder of the report must be seen in the context of the cost recovery mechanisms that are available.

Essentially costs can be recovered in two ways, through penalties and notices and via administration costs for the provision of services by Council. For many Councils, officer time for activity under a piece of legislation is funded by income that can be generated from that source. At least cost neutrality is the key concept for Councils as there is no other source of funding available. Understandably this is a significant issue, especially for smaller Councils who have fewer premises covered under the Public Health Act 2010.

Councillors at the LGSA workshop and officers across most workshops advised the MOH to look at the fee structure used in NSW Food Act as it is the same officers doing inspections, same cost etc.

Penalties and Notice fees

At all workshops and across the whole Regulation, penalties and cost recovery fees need further attention. The following summarises the input from Local Government staff about this issue and needs to be considered:

- Currently there is no penalty for non-compliance with an Improvement Notice. This should attract a Penalty Infringement Notice [PIN]. Issuing an Improvement Notice is an empty threat and most Council staff will not use this enforcement tool under the current

scenario. There is inconsistency between this and non-compliance with a Prohibition Notice, where a PIN can be issued for non-compliance.

- Fees for Improvement Notices and Prohibition Orders should be set at a higher value. The Draft Regulation sets these at \$500 for regulated systems and only \$250 for notices/orders related to skin penetration, legionella control and swimming pools and spa pools. Note by way of comparison: within the Protection of the Environment Operations Act, notices are \$445; in the Food Act they are \$330/350. As one participant said: *'While the need for a higher fee is acknowledged for regulated systems, perhaps a higher fee for each is required – for example \$600 and \$400'*.
- A mechanism for annual increments to the fees and PINS need to be put in place under the Regulation. For example; under the POEO Act Notice fees are reviewed every five years,
- The rates of fines for PINS should be varied upwards in line other similar legislation, see above – Schedule 3 of the Draft Regulation.
- PINS should be able to be put on premises as well as on a person – this is to enable closing of premises as opposed to punishing an offender. There is a need for clarity about this issue.

Administration costs

In administering the Public Health Act 2010 and its Regulation Councils incur costs for providing services. In the main these centre on inspections and follow-up visits, but they also include time to engage with businesses in education programs relevant to public health, issuing of warning letters etc. Comment about this issue in the workshops is summarised by the following:

'Councils are pushed to provide more and more with less and less, so the administration of this legislation needs to pay for itself. Councils will be affected in different ways depending on their ability to cover the costs. [LGSA participant]

'Inspection fee issues remain uncertain in the Regulation – is it mandatory, how are costs recovered?' [Participant Queanbeyan Workshop]

'In the section encouraging councils to take action; background is that we already have a problem getting council to do inspections. The draft regulations appear to have the presumption that because we have the power we will do it; but a more directive approach is needed if they require LG to actually take action [like Food Authority] - especially as it takes around 10 years to normalise the change.' [Participant Kiama Workshop]

'Does council need to do inspections – is that the expectation of Health?' [Participant Queanbeyan Workshop]

When taken over-all, inspections were seen as essential to a proactive approach to the management of health risk. But the other side of the argument, put by a small number of participants especially at the Queanbeyan Workshop, was that there are insufficient cost recovery opportunities due to low numbers of sites/systems that need regulating.

What is clear is that if inspections are an important part of the strategy, they need to be made mandatory under the Regulation otherwise a significant number of Councils may not undertake them and industry will not expect to have to pay for them. Fees for mandatory inspections

should mirror those in the Food Act and its Regulation. It is not suggested that a different fee structure is established for different parts of the Regulation, although there would be some justification in inspection of cooling towers being charged at a higher rate.

It is unlikely that fees can be charged for other administration services, but this issue is canvassed further below.

Development and management of Registers.

Registers are required under all components of the Regulation/Act. In general, the need for these is accepted by local government, but there are some issues that were raised:

'Costs associated with development of registers. Is there a possibility of charging an administration fee? Though this will be difficult for smaller councils. If it is not mandated or have cost recovery associated then hard to do the registers' [Participant Queanbeyan Workshop]

'Registration and records management and checking processes – what's the point if there are no teeth and no income?' Participant Grafton Workshop]

It is clear that there are staff costs in establishing and managing the registers but the charging of a fee for this is problematic. There was some discussion about this issue but no clear picture emerged from the about the way forward. Some of the discussion focused on the morality/ethics of keeping a register and giving owners/occupiers a clear understanding of the health risk. No recommendation is made about charging a fee for registration because participant views were disparate and the matter was not discussed often.

The other issue canvassed was: who enforces the registration? The MOH considers that onus is on an operator/owner to register and that Councils are responsible for maintaining the register. In the view of many participants, there are no teeth in the Regulation for failure to register. Some owners/operators will just ignore the request to register. A small, 'failure to comply with a directive to register' fee would assist to manage this and might assist cost recovery.

With regard to information collected by all registers it was considered that this should include:

- The after-hours telephone contact details for the owner/operator [or both].
- The ABN of the business should also be listed in the register.

Roll-out and timing

Some concerns were expressed about the timing of the commencement of the Regulation. Many of these related to the Safe Drinking Water aspect of the Act and these are dealt with in the Section below

The other component is the need for a staged commencement for swimming pool requirements under the regulation and this is dealt with in the relevant Section below.

Roles and responsibilities

In the consultation report related to the Public Health Bill 2010, T Issues identified that clarification of the roles and responsibilities vis a vis Local Government and Public Health Unit staff was a significant challenge. Under the Draft Regulation this remains an issue in the eyes of workshop participants. For example:

'Clear roll-out responsibilities for Health and LG need to be identified – and support materials provided to LG to assist them.' [Workshop Participant Newcastle]

'Concerns that in some areas Council staff lack the depth of experience needed – e.g. inspection cooling towers in regions – in these circumstances Ministry of Health take on the regulatory role.' [Newcastle Workshop participant]

In general, it was considered that each Council should have an arrangement with the Public Health Unit to determine who does what, But as one participant at Newcastle said: *'But who decides? If a council asks PHU to do it – PHU should be required to do so.'*

Councils would appreciate it if the regulation could clarify the relationship and how it might work in future.

Recommendations Overall Changes to the Regulation

It is recommended that:

Overall 1. Modelling of cost recovery scenarios continues to occur in partnership between local government and the MOH in order to determine more completely the level to which fees and charges can be set.

Overall 2. A penalty infringement notice is included for non-compliance with an Improvement Notice. This should attract a PIN at the same level as for non-compliance with a Prohibition Notice.

Overall 3. The level of penalties and fees set in the Draft Regulation should be increased in line with other legislation – PINS should be increased and fees for Improvement Notices and Prohibition Orders increased to \$600 for drinking water improvement and \$400 for notices/orders in relation to other parts of the regulation. Fees and PINS should be reviewed every five years.

Overall 4. The Ministry of Health considers making inspection of premises captured within the Public Health Act 2010 mandatory. In doing so it sets inspection fees under the Regulation that mirror those in the Food legislation.

Overall 5. The Ministry of Health considers including a fee for 'failure to register' in the Regulation. This will assist Councils to follow-up on non-compliance with registration.

Overall 6. Apart from the data already required, all registers should include:

- The after-hours telephone contact details for the owner/operator [or both]
- The ABN of the business should also be listed in the register.

Overall 7. The MOH takes all available opportunities to clarify the roles and responsibilities of Local Government authorised officers and their Public Health Unit colleagues.

D2. Findings Relating to the Legionella Control Part [2] of the Draft Bill

Introduction

The response to the Legionella Control aspect of the Draft Regulation at the workshops varied depending on locations. In Sydney and Penrith there was a significant level of interest and knowledge. This is understandable given the sheer extent of the issue in metropolitan Sydney. Some Councils at these workshops have over 100 systems to regulate. In regional centres the level of engagement varied from Council to Council in a way that mirrored the number of systems. Council staff from large regional centres had much to contribute. Those in small LGAs were interested, but had less to contribute and doubted their own competence in regulating this area. Understandably they sought a close relationship with the Public Health Unit staff about legionella control and saw them as more competent to handle this issue.

This section addresses matters related to fees, PINS and financial issues, competency, certifiers, registers, the relationship between Public Health and Local Government officers and installation, operating and maintenance requirements prior to making recommendation.

Fees, PINS and other financial issues

The RIS indicates that: *'There will be a range of costs to local governments and Ministry of Health public health units associated with administering the proposed legionella provisions of the Draft Regulation. These include the costs associated with administering registers of water-cooling and warm-water systems and the costs associated with receiving a report as to the annual certification of water cooling systems and carrying out inspections of regulated systems.'*

Feedback from the workshops reinforced this statement and indicated that the opportunity for cost recovery was very limited, especially in smaller jurisdictions where there are few regulated systems to regulate. Confusion still existed about expectations of the Ministry of Health in terms of the role of Local Government in Legionella Control, beyond a keeper of a register.

'No reference or reporting requirement to undertake an inspection of system – does council need to do inspections – is that the expectation of Health?'

Further discussion regarding the mandating of inspection by Council staff occurs below, but in line with other feedback in this report. Inspections are a vital part of the regulatory mix and need to be included in the Regulation and attract sufficient fees to enable cost recovery for the time and money [travel costs] spent undertaking them.

An ability to issue PINS for failure to submit certification certificates for cooling towers was also suggested, in particular at the Queanbeyan and Sydney Workshops, along with failing to comply with operating requirements (Part 2 Clause 7). This would allow for streamlining of the process and a graduated approach to compliance.

Competency and its implications

The Draft Regulation indicates that: *'The occupier of a premise on which a water-cooling system is installed must ensure that the system is certified annually by a competent person.'* [Clause 10 (1)]

There was a significant amount of discussion about the issue of competency of certifiers at most workshops. The following points summarise the input and suggestions put by participants with regard to competency and expertise:

'More clarity of skill set of a qualified person. Also including the notion of someone working under the direction of a qualified person. There is an issue in rural/regional NSW of availability of suitably qualified people.' [Workshop Participant Sydney].

'Competent person – should go through similar system to food safety and have some sort of certification and trained to a sufficient level.' [Workshop Participant Queanbeyan]

'Clarification as to what is 'relevant expertise'. Is it: Has both 'qualification' and 'relevant expertise' Suggestion of minimum experience of two years in the field, or membership of professional association.' [Workshop Participant Penrith]

'Definition of Competent person: suggest include 'an environmental scientist.' [Participant Grafton Workshop]

Two key issues emerge here. The first is that the regulation needs to be more precise in its definition of 'competent person' and how a Council staff member determines who is 'competent'. Owners need advice on this issue and they come to Council EHOs to get it. While it was acknowledged that the Draft Regulation Clause 10.3 says that: '**competent person means a person who is a tertiary qualified chemist, chemical engineer, engineer or microbiologist and who has relevant expertise,**' there was general dissatisfaction with the breadth of this definition as exemplified with the quotes provided above. Both the issue of 'competent' and 'relevant' need clarification.

Secondly, while the number of systems is far fewer in regional and rural NSW than it is in large cities, there is a real challenge in getting a qualified person to come to assess the system. There are real cost implications in meeting this part of the Regulation and not only for the local government sector. Perhaps this issue can be addressed by a close working relationship with the Public Health Unit staff who could coordinate regional visits by a 'competent person'. This will require effective partnership between Ministry of Health staff at the area level, local government staff and industry. There is a precedent for this in the Food Act partnership. This issue is addressed in more detail in the section titled Relationship between the Public Health Unit and Local Government officers.

Certifiers, Inspections and Register issues

Feedback generally pointed to the relationship between the issues of certifiers and their role and certificates of inspection vis a vis the role of Council to keep a register and perhaps undertake their own inspections.

Firstly the notion of 'annual' inspections needs rewording. Owners can meet this obligation but two inspections might be twenty-three and a half months apart. Rewording to: '*inspections every twelve months*' was proposed in one workshop, and would solve this problem.

At a few workshops discussion about what happened to certificates of inspection provided by certifiers [Clause 10 [3] occurred. The following comments by Queanbeyan participants describe the thinking about the current wording:

'Why does a copy of the certificate have to be sent to Council? What does Dept of Health want us to do with them? Do we need to keep this in the register as it is not called up in the register? Would Council be held liable if it doesn't do anything with the certificate?'

It is acknowledged that a register must be kept by Local Government [Clause 12] containing information provided by the owner/occupier and a copy of the inspection certificate provided by the private certifier. Beyond that, Local Government does not have a responsibility to inspect or in any way to review the accuracy of the advice. So the system is essentially self regulatory with the onus on the occupier/owner to have the system certified and to inform Council by providing a copy of the certificate.

In essence then, the problem with the current arrangement in the Draft Regulation that is of concern to Local Government, is that the Register is only of value if an outbreak of legionella occurs. It is essentially not preventative in circumstances where the owner of the system is slack about his/her responsibilities and there is no follow-up or inspection regimen by Council.

There was much discussion about this issue and with regard to public health risk a more rigorous approach was called for, which involved Council also inspecting regulated systems:

'There is a clear stipulation needed that Council should be required to do inspections. We require a mechanism for how it should be funded.' (Penrith Workshop Participant)

In addition, a specific PIN offence must be added for failure to provide a copy of the certificate to Local Government in the first place. [Clause 10.2]

As is indicated elsewhere in this report, if inspection by local Government is not mandated it will just not happen – of course cost recovery will always be an issue with this arrangement, especially within jurisdictions with fewer systems.

The issue of quality control, which is at the heart of the comments raised in this section was summarised at the Newcastle workshop:

'Clause 10 states that – occupier must make sure certified by 'competent person' - some confusion raised as to if the regulation is about specifying the method of certification or just that it must be done. The scenario given was if 200 odd systems are signed off on the same date how does Council know if they were competently done? For example: is Council going to be asking if the inspectors have been on site? How therefore can they certify if the legislation is only looking for the activity to be done and not specifying the process to be followed?'

Specific Register Issues

Changes to Clause 12 were proposed at several workshops, particularly with regard to the need for system owner's details as there are frequently multiple units in one building.

'It was proposed that Clause 12 is amended so that LGA is 'to maintain an "up to date" [add these three words] register.' [Sydney Workshop Participant]

'Data required for the register – requires a phone number for premises. Would like to see another sub clause that deals with the owner of the system and business name and ABN as it can clearly identifies a business. After hours contact for maintenance company/name/contact details should be included as a requirement.' Clause 12. [Sydney Workshop Participant]

'The Register should include details of owner occupier (e.g. Westfield own land but many individual towers exist within the site.)' [Kiama Workshop Participant]

Relationship between the Public Health Unit and Local Government officers

For reasons discussed briefly in the Introduction to this Section many Council staff see EHOs employed by Ministry of Health within Public Health Units as having a special role in Legionella Control.

With regard to the draft Regulation, Dubbo participants articulated the challenge for smaller Councils clearly:

'Clearer definitions and distinction of roles are required: What Council is responsible for (and /or expected to do) and what Ministry of Health responsible for. Food Authority Model and definition was excellent for who does what.'

In this Part of the Regulation it might be advisable to mandate a process for Councils and Ministry of Health personnel to work together and for Ministry of Health to have regulatory authority for regulated systems in LGAs where there are only limited numbers of systems. The simplest way to do this would be for the Regulation to indicate that the Ministry of Health is the appropriate regulatory authority under part 2 of the Regulation in Council areas where there are fewer than X regulated systems. Not that consultation would need to occur about the number, but for example it might be in the order of 10.

Exemptions clarification

One Workshop requested a clarification about exemptions as follows:

'Need for clarity about whether LG has regulatory responsibility for hospital warm water systems [and does it have to go on the Council Register] is needed. Approximately half of room think it sounds like LG is responsible, others think not. Regulations not clear – please firm up.' [Armidale Workshop Participant]

Installation, Operating and Maintenance Requirements

The workshop participants did not have sufficient time to work through all of the requirements related to installation, operation and maintenance in detail during the workshop. Given more time and a more homogenous group of participants experienced in working in legionella control, it is presumed that input might have been of more depth. Some issues were raised about various clauses relating to their installation, operation and maintenance and these are raised below through direct quotes from the participants. It is however expected that detailed recommendations should be found about this issue in individual Council submissions – particularly from the larger councils.

With regard to operating requirements:

- *Is there an error with regulations Clause 7 (4) (a) which ends ...'colony forming units per mil'; and (b) 'the heterotrophic.....as previously it was and/or. .' Does Health need both or is this a typographical error?*

With regard to maintenance requirements:

- *'There is a need to clarify the temperature control of 60°C as this seems to be different to the BCA [Building Code of Australia]. [Participant Queanbeyan Workshop]. Clause 8 (6) of the draft regulation states that: 'Maintenance must be carried out on a hot-water system to ensure that at any time when the system is in operation it delivers water at each outlet each time the outlet is turned on at not less than 60 degrees Celsius.'*
- *'A certificate of decommissioning also needed if a system is removed.'* [Participant Kiama Workshop]

Training of operators

As with skin penetration workshop participants considered the need for a level of training or competency for people who manage air conditioning systems. No conclusive summary or recommendations were made across the board.

Legionella Control Recommendations

With regard to Legionella Control – Part 2. of the Draft Regulation it is recommended that:

LC 1. Amendments are made to Clause 10 to more precisely define a competent person; to ensure that systems are certified on a twelve monthly basis and to provide options for Councils where there are less than four systems within the LGA.

LC 2. More rigor is mandated with regard to the aspects of the Regulation pertaining to keeping of a register - especially Clause 12 [3]. Under the Draft Regulation, all Local Government is doing is keeping a register. It is not validating any of the content of the register. This should be varied so that Local Government officers inspect all premises annually for compliance with the requirements in Clause 10, and provide details of the Register [including inspection reports, to the Ministry of Health annually. As a part of this a PIN should be added for failure to comply with Clause 10 [2].

LC 3. Issues raised in the Section above on Installation, Operation and Maintenance of Regulated Systems and the keeping of the Register [Clauses 7, 8 and 12 especially] are considered and the Regulation amended accordingly. In this regard the Regulation needs to be made consistent with the Building Code of Australia.

LC 4. More clarity is provided in the Regulation about what the certifiers need to look at, not merely that an inspection by a competent person was carried out. Council needs to have oversight of a rigorous private certifier system, rather than merely signing off on the process.

LC 5. Within local government areas where there are fewer than ten regulated systems, the Ministry of Health is the appropriate regulatory authority. It fulfils the role collaboratively with local government personnel.

D3. Findings Relating to the Swimming Pools Part [3] of the Draft Bill

Introduction

Part 3 of the Draft Regulation prompted a significant amount of input from participants in all workshops. The Supplementary report indicates that each workshop considered this issue fully and input was remarkably consistent across NSW. There was little variation in the issues raised in rural/regional areas and metro areas - although it is noted that the number of public pools/spa pools varies from Council to Council.

In this Section, these issues are identified, aggregated and discussed under the headings definitions, operating requirements, council self regulation, offences, penalties and fees, and inspections and record keeping. The section concludes with recommendations for amendments to the Regulation.

Definition Issues

By way of definition the Act [Division 3 Cl. 34.], states that:

'public swimming pool or spa pool' means a swimming pool or spa pool to which the public is admitted, whether free of charge, on payment of a fee or otherwise, including:

- (a) a pool to which the public is admitted as an entitlement of membership of a club, or
- (b) a pool provided at a workplace for the use of employees, or
- (c) a pool provided at a hotel, motel or guest house or at holiday units, or similar facility, for the use of guests, or
- (d) a pool provided at a school or hospital, but not including a pool situated at private residential premises.

spa pool includes any structure (other than a swimming pool) that:

- (a) holds more than 680 litres of water, and
- (b) is used or intended to be used for human bathing, and
- (c) has facilities for injecting jets of water or air into the water.

swimming pool includes any structure that is used or intended to be used for human bathing, swimming or diving, and includes a water slide or other recreational aquatic structure'

Discussion about the definitions of words and phrases and resulting challenges with the current Regulations occurred at every workshop. There was significant feedback across the board that the definition remained a problem for Local Government personnel and not just of 'what is a public pool?' The following quotes provide an indication of the issues and concerns raised regarding their ability to deliver the Regulations when these definitions are not clear:

'Still clarity issues around the definition of a public pool. The Act does make this clearer but at a local level implementation of the Act/Regulation is a challenge [e.g. home pool

used twice a week for commercial purposes and pools in strata units].’ [Participant Wagga Wagga Workshop]

‘Still need for clarity/advice re definition of the public pools / private pools for public use (e.g. swim lessons.’ [Participant Queanbeyan Workshop]

‘Concerns about definition ‘high – low risk pool’ and exceeding ‘average.’ [Participant Grafton Workshop]

‘Discussion about need for clarity regarding pools. Especially pools in a complex. Definitions need firming up and for example: does each pool (in a complex) therefore need to be tested individually or not? Would one pool ‘represent’ all? Is it separate systems for each pool?’ [Participant Dubbo Workshop]

Many questions and scenarios were put to the Ministry of Health representatives and facilitators regarding these definitions. They demonstrate both the concerns of the participants and the lack of clarity in the draft Regulations. The following examples are included along with the answers or comments that were able to be provided by the Department representatives or facilitators. These are included to demonstrate the lack of clarity about definitions and what is or is not captured in the Act and its Regulation.

What is a public pool?

- Regulations cover all pools that are not in residential complexes. Covers schools, hospitals motels etc.

What about retirement villages and hydrotherapy pools?

- Ministry of Health needs to confirm retirement villages.

Ocean/lake pools: Are they included? These may not always flush naturally.

- Natural pools are excluded from Regulations. They need to be on the register only, but not disinfected etc.

What about small pools e.g. motel/B&B etc?

- Look at Schedule 1. risk stratification based on bather load etc.

Building of spas etc. Is this covered in the PHA? In terms of compliance with PHA?

- Not covered within this Act. Perhaps under Environmental Planning and Assessment Act.

Is there currently anything therefore that guides/controls me if I run a swim school at home and a child pees or poots in the pool? Is there anything to help me regarding public health?

- No, not at present.

These issues point to the fact that there remains a lack of clarity about what is captured under the Act and its Regulation and more clarity is needed.

Operating Requirements

Schedule 1 of the Draft Regulation identifies specific operating requirements for Public Swimming pools. These are much more detailed than is currently the case under the *Public*

Health (Swimming Pools and Spa Pools) Regulation 2000 but are based extensively on the current swimming pool guidelines. This Schedule sets out matters relating to:

- the temperature of a public swimming pool or spa pool
- the clarity of a public swimming pool or spa pool
- the requirement on each pool to be fitted with an automated dosing system or continuous metering disinfectant dosing system
- disinfection requirement
- PH levels and alkalinity levels
- testing of pools and record keeping requirements.

There was a reasonable level of discussion at the workshops about the content of this Schedule but it is noted that the breadth of issues to be considered in a relatively short workshop meant that the Schedule was not considered clause by clause. The following feedback was obtained:

'Requirement for 4 hour testing [low risk pools Clause 8.1b] is over regulated and not able to be resourced.' [Participant Armidale Workshop]

'Schedule 1 - 8.2 Clarification required: Is this relevant? If so what is 'average' and when is 'high risk.' [Participant Newcastle Workshop]

'Country pools will find it financially difficult because of the standards for water circulation in the Schedule.' [Feedback from the LGSA Workshop]

'Large scale pools should be able to meet the requirements - the intention is for major pools to meet requirements without upgrades, however Ministry of Health will require feedback if this is not the case. Requirements may be amended in line with this.' [Feedback from Ministry of Health at the LGSA Workshop]

Dosing system issues: *'Is the draft Regulation saying they just need a system? It does not say that the system must be operational.'* [Participant Kiama Workshop]

'What is the trigger for a 'high risk' pool and the changes in dosing requirements? Looking for trigger and clear definition of 'above average' or a stronger.' [Participant Penrith Workshop]

There was some discussion and feedback about the timing of the implementation of the Schedule 1 in the Draft Regulation. In general, it was the view that a lead-in period would be required, although very little feedback was provided about the optimum length of time for this.

Council as the regulatory authority for its own pools

Given that in all jurisdictions Council owns, manages and operates [often via a contractor] swimming pools, the issue of who regulates Council pools was raised in a number of locations. Neither the Act nor the Draft Regulation considers this issue. It is the view of many workshops participants that this issue should be directly addressed. The quotes below summarise the perspectives provided:

'Clarity is needed for Councils' role in maintaining own pools: What is Ministry of Health Role here? Ministry of Health suggested to be the inspector. Or could use independent body...What are the guidelines?' [Participant Kiama Workshop]

'It is suggested that Ministry of Health inspected council pools.' [Participant Sydney Workshop]

'Standing order issues: who is the certifier of the dosing system?' [Participant Kiama Workshop]

'Maintenance issues: certification. Needs accrediting body/system for certifiers.'
[Participant Kiama Workshop]

The LGSA considered this issue in some detail and provided two suggestions having considered the impacts of travel if Ministry of Health staff were to do the inspections of Council properties:

*That in the case of Local Government self regulating their own Municipal swimming pools: LGSA suggest it should be OK as long as rules are clear and nothing is able to be miss-interpreted.
LGSA suggests a more managerial second check for Council owned properties/pools e.g. signed off by GM rather than EHOs to ensure process is robust.*

In addition, the MOH might consider what level of skills and capabilities might be expected of those who undertake pool inspections

Offences, penalties and fees

Feedback about offences, penalties and fees [Part 3] is similar to feedback in every other part of the Draft Regulation. Participants appreciate that the regulatory regime is much more substantial than that in the Public Health Act 1991, but there is a need for more.

The following quotes summarise this view:

'If offences are not a PIN Councils will not go out of their way to take them to court.'
[Penrith Workshop participant]

'PINs should not just be restricted to the clause 3.1 of Schedule 1. It should be broader and related to all of Schedule 1.' [Participant Kiama Workshop]

In line with feedback elsewhere in this report participants across the board said fees were too low. See Section D1 for recommendations regarding this issue. One participant at Kiama said: *'The RIS needs to be reviewed with regard to assumptions made about specific costs for Local Government staff action.'*

Inspections and record keeping

In a similar manner to other Parts of the Draft Regulation, inspections were raised as a major issue:

'Inspection requirement and regime needed (e.g. frequency/minimum number). Partnership between Public Health and Councils like for Food Act could work. This regimen could be implemented flexibly in different jurisdictions.' [Participant Dubbo Workshop]

'There is a lack of resources for inspection and testing of private pools so they currently don't get done and won't get done, [unless they are self funding].' [Armidale]
'Mandating that council inspect all pools. Could allocate resources better. Annual inspections to be undertaken. A risk rating system could be developed similar to food. This may be included as an addition to part 3 Section 17 of the Regulation.' [Participant Sydney Workshop]

'Need for inspection regime, process and fees. Needs to be more than discretionary and cost recovery (other than through PINs) is essential. Different views on how.' [Participant Queanbeyan Workshop]

There was a perspective at some workshops that the issues of inspection and record keeping were related, as illustrated by the following quotes:

'There is a requirement for Council to keep a register but not for testing/inspecting. 17 (2) (c) only requires records of those pools that happen to be inspected (but not to be tested).' [Participant Sydney Workshop]

Recommendation Overall 4. above, carries this issue forward in that it recommends that inspection are made mandatory across the board.

Recommendations Swimming Pools and Spas

With regard to Part 3 [and Schedule 1] of the Regulation it is recommended that:

SW 1. The definition of what is a public swimming pool needs further review. While some of the uncertainty about definition can be clarified during the roll-out, see Section E2. below, there is still work to do on the Regulation.

SW 2. Schedule 1 of the Daft Regulation is reviewed to consider whether there is sufficient rigor and information about the risk assessment process [especially Schedule 1. Clause 8] and the achievability of the dosing regimen within smaller Councils/smaller pools [especially Schedule 1. Clause 3]. In particular concerns were expressed regarding the possibility of a risk stratification process, given that some of the requirements – such as an automatic dosing system – are onerous particularly for small businesses such as motels where the public risk may not be as great as a large municipal pool.

SW 3. The Regulation acknowledges that time will be required to introduce the operating schedule aspects as they apply to swimming pools. A twelve to eighteen month period will be required for implementation.

SW 4. The Regulation addresses more directly the issue of who is the appropriate regulatory authority for Council pools. The role of Ministry of Health personnel could be defined more specifically in this process so that a more 'arms length' approach is implemented.

SW 5. An additional PIN is included that makes it an offence not to comply with Schedule 1. of the Regulation. This will mean that Councils have the option of using this PIN or the Notice powers.

SW 6. In line with Recommendation Overall 4. - mandatory inspection of public swimming pools and spas needs to be seriously considered for inclusion in the Regulation and an appropriate fee structure needs to be determined. The level of skill and capability of those who undertake pool inspections would also need to be considered..

D4. Findings Relating to the Skin Penetration Part [4] of the Draft Bill

Introduction

Across all workshops there was a great deal of interest and comment on Part 4. of the Draft Regulation – Control of Skin Penetration Procedures. Participants demonstrated significant knowledge of the issues and the industry, especially in the Sydney and the Penrith workshops, but in every location in NSW. There was a remarkable consistency of response across NSW with respect to the matters raised.

The issues raised below primarily relate to clarification of the Draft Regulation. A vast amount of comment on a wide variety of issues was provided in workshops. It has been synthesised, analysed and collated here under the headings of definitions, clarifications, inspections, infection control, offences and penalties, operator training and record keeping. The section concludes with recommendations.

Issues related to the scope and definition of skin penetration were raised

A number of issues were raised concerning the definitions of skin penetration - procedures included in or excluded from the Act/Regulation, Participants at 90% of workshops raised the problem of definitions regarding skin penetration and that this is a major issue for implementation. Solutions proposed included the use of and calling up of guidelines. Some of the questions included:

- Beauty therapy and hairdressers seem to be excluded from Public Health Regulation and yet they are covered under the Local Government Act.
- Clarification on hairdressers and barbers who use disposable razors. Are they included or not? A workshop participant said that: *'they need to use disposable and replace the blade so that it is only single use which is currently excluded'*. [Participant Sydney Workshop]
- *'Why is laser hair removal specifically excluded and colonic lavage included. There seems to be inconsistency here.'* [Participant Penrith Workshop]
- *'Scarification, branding, threading, suspension etc – can we include something in the regulations for this new type of treatment? This needs to be included in the definition of skin penetration.'* [participant Sydney Workshop] Concern was also raised at the Penrith Workshop about scarification procedures; where they wondered if scarification should rather be deemed a medical procedure.
- Mobile operators need to be taken into account and captured under the definitions. Event managers and skin penetration practices at events also need consideration.
- Tattooing using traditional tapping method or bone, wood or similar is explicitly prohibited.
- Definition of 'the occupier' should be changed to include owner of premises.
- There are: *'Good guidelines on Ministry of Health website as to what is what (skin pen wise) but these have not been called up.'* [Kiama Workshop participant]. Participants at 90% of workshops raised this as an issue. *'Guidelines – retain (and update) current guidelines and / or needs Australian Standard guidelines available – link to the Regulation.'* [Participant at Kiama]

- *'Recommend that a definition of sharps be included in the Act or the Regulations and should specifically exclude needles except single use needles.'* [Participant at Newcastle]
- *'Definition of Skin Penetration to exclude private premises from being used as a premise for conducting skin penetration.'* [Participant at Dubbo]

Clarification issues

The workshop participants considered that the following clauses should be amended:

- Clause 20.3 and 20.4 make it clear that needles cannot be reused unless they are cleaned. Workshop participants noted: *'how would this work with Tattooist where tattooist currently solders this onto a bar?'* It was noted that *'tattooists won't be happy with this proposed regulation. Ministry of Health need to liaise/consult with the industry bodies on this as it will raise a huge issue with implementation'*.
- Quality of the material used for inks – quality of the products need to be certified by the Therapeutic Goods Administration [TGA]. Clause 23 – additional section to be added to cover this issue.
- Re Clause 23. Wax will harden if decanted: *'should operators use the '1 stick/1 dip single use' and disposable equipment.'* Clause 23 needs amendment.
- Clause 19 (2) (d) – warm running water and soap – but does not stipulate that a specific hand washbasin is required. Needs to clarify that a dedicated hand wash basin should be a requirement. Concerns were raised about the use of 'alcohol based cleaner.'
- A better definition of where hand wash basin and single use towels/hand dryers are required and placed in the premise – *'in each treatment room rather than just on the premises to cater for multiple treatment rooms'*.
- Clause 19 (6) what is 'adequate'? Could remove the word altogether.
- Clause 24 (2) – the Local Government area where skin penetration procedures are being conducted should be notified - not just where the occupier resides

Issues related to inspections

While the issue of mandatory inspections is discussed above in Section D1, there was a strong view however that mandatory inspections should be required of skin penetration premises under the Regulation. However, only one perspective was given about how often this should occur; at Queanbeyan one participant said: *'There should be a risk rating of different skin penetration activities and an inspection mechanism should be built around that:*

- *Tattoo – high: 2 inspections/year*
- *Nails – low: only inspected after a complaint*
- *Waxing – medium: 1 inspection per year'* [Queanbeyan Workshop Participant]

Infection control issues

The issue was raised about whether the required infection control procedures are too stringent. Some participants indicated that there should be consistency with those used in Ministry of Health facilities.

A range of issues were raised about autoclaving, including:

- Clause 19 (7) – needs to reflect possible outsourcing of autoclaving. Some companies outsource autoclaving as they do not have available funds to purchase an individual autoclave for their business.
- The Autoclave should be TGA approved and labelled as such.

Other infection control issues raised included:

- Clause 19 (2) (d) Concerns were expressed about the use of “or alcohol based cleaner” and whether it can be used as a stand-alone measure.
- Clause 22 (a) Remove ‘never used before’. The wording needs to specify “sterile gloves.”
- Layout of sterilisation area must comply with AS/W2S 4815-2006 and the regulation should call this up.
- Clause 22: It should be a: *‘Requirement for skin penetration operators to wear glasses.’* [Participant Sydney] Consider adding to Clause 22
- *Clause 24 needs to be revised to require businesses to dispose of sharps bins to registered/licensed disposal facilities* [Participant at Queanbeyan]

Offences and penalties under this Regulation

Workshop participants raised the issue of the limited number of PINs available to them to manage public health as far as skin penetration is concerned. It was noted that the availability of a PIN has a significant deterrent effect, if a warning letter is first issued. Further though, the option that exists under the Draft Regulation is to issue a specifically worded Prohibition Order or Improvement Notice. It was noted though that the fact that the fee must be paid within 60 days is a limiting factor to their effective use.

The following recommendation was made concerning the development of additional PINS. These would become additions to Schedule 3 Clause 2.

The key feedback is that there should be a PIN for every offence that is in the Regulation. Specifically this would mean:

- PINs for offences in Clause 19 (2) to 19 (9) and 19 (11)
- PINS for offences in 20(1) to 20 (4)
- a PIN for offences under Clause 21 (1) to 21 (3)
- a PIN for offences under Clause 22
- a PIN for offences under Clause 23.

One participant at the Queanbeyan Workshop said by way of an alternative model that Ministry of Health might consider:

‘Section 21 Food Act 2003 is a model and has a clause which makes it a PIN offence for failing to comply with the Regulation. It is a very clean Regulation, well proven and avoids conclusion, and it is consistent with the Food Act Authorised Officers skill set.’

With regard to units; the workshop participants considered that 20 penalty units is too low. They indicated that it should be significantly higher for people carrying out skin penetration (\$2,000 max fine) Compared to the Food Act the units are low (1,000 units available in Food Act). *‘Court is not really an option in this area, anyway’* [Participant Sydney Workshop]

Inconsistency in Clause 26: Whilst it is an offence not to display a Prohibition Order there is no obligation to display an Improvement Notice. This seems a strange inconsistency. Perhaps it should be mandatory in both situations and made a 'PINable' offence.

Operator training issues

Accredited training on infection control for skin penetration under the National Training Framework is essential. It must be accessible/low cost and mandatory. It should be noted that a number of participants stated that if the regulation was clear about specifically what training was mandatory, then in terms of risk, many operators would not comply. A long lead in period [2 to 3 years] and specific detail about the training program is essential. Promotion of the new requirement for training should form part of The Ministry of Health media and communications campaign for all sectors. Specifically the Regulation might be changed to address the following:

- Training on autoclaving is required and needs clarification
- Autoclaving – *'what is adequate training – definition is required of what a competent person is – that standardised level of training be achieved. Having a requirement similar to food safety officer under food.'*
- Clause 39 in the Act needs clarification in the Regulation define "adequately trained", how does Local Government assess what is adequate? *'The requirements for skin penetration operators should be to have completed TAFE Course in sterilisation'*.
- It should be a: *'Requirement to have completed and display qualification of relevant grade and qualified in Australia'*
- Ongoing skills and knowledge of operators; *'There needs to be a method for minimum standards to be maintained/checked.'*...There is: *'No trigger for skills and knowledge of skin penetration operators to maintain minimum training level. Look at Food Safety Supervisor requirement under Food Regulation 2010.'* [Grafton workshop participant].

With regard to training, the following extract from the T Issues report on the consultation on the draft Bill [2010 is still relevant and deserves further consideration.

'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.*

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.'

Record Keeping

Keeping records of skin penetration premises is currently a role undertaken by Local Government so it evoked little comment. The following details the only comments received:

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- *'It should be a: requirement to keep record of people who have received skin penetration for 7 years – a PIN and Notice should be available for non-compliance.'*
- *'There is a need for Ministry of Health to specify the format of register to ensure standardisation of information.'*

Skin Penetration Control - Recommendations

With regard to Part 4 of the regulation, it is recommended that:

SKP 1. The Ministry of Health reviews all of the matters related to 'definition' and 'clarification' section of the issues raised above and determines which requires changes to the Regulation. In particular attention should be paid to the practical application of the recommendation that needles not be reused when some tattoo guns have a needle that is soldered on to the tattooist's gun; and mandatory inspection issues and concerns raised about waxing, Clause 23.

SKP 2. Because infection control is at the heart of this part of the Regulation, some changes need to be made to the Regulation with regard to this issue, as follows:

- Infection control procedures should be in line with those recommended for use in public hospitals.
- Clause 19.7 needs to be amended to allow for outsourcing of autoclaving
- If relevant the autoclave must be TGA approved.
- The use of 'alcohol based cleaner' and whether it can be used as a stand-alone measure needs to be clarified.
- Clause. 22 needs to be amended as it refers to gloves and being 'never used before'. The wording needs to specify 'sterile gloves.'
- Layout of sterilization area must comply with AS/W2S 4815-2006 and the regulation should call this up.
- It should be a requirement for skin penetration operators to wear goggles
- Clause 24 is revised to require businesses to dispose of sharps bins to registered/licensed disposal facilities.- an authorised clinical waste service
- Consideration should also be given to either significantly adding to the list of infection control issues addressed in the regulation OR referencing a code of practice which could serve as an infection control manual for skin penetration.

SKP 3. An additional PIN is included that makes it an offence not to comply with Part 4 of the Regulation. This will mean that Councils have the option of using this PIN or the Notice powers.

SKP 4. Clause 26 is amended to make it an offence not to display an Improvement Notice as well. Further failure to display either notice should attract a PIN.

SKP 5. More clarification is built into the Regulation about the level of training that is required so that operators are 'adequately trained in infection control'. The regulation needs to make clear specifically what training is mandatory. A long lead in period [two to three years] to allow operators to complete the training is essential.

SKP 6. In line with Recommendation 0 4. mandatory inspection of skin penetration premises needs to be seriously considered for inclusion in the Regulation and an appropriate fee structure needs to be determined

D5. Findings Relating to the Safe Drinking Water Part [5] of the Draft Regulation

A significant component of this consultation process related to safe drinking water. This was Part 5 of the Draft Regulation and was of high interest to participants at six of the nine face-to-face workshops and at the two webinars designed to look specifically at this issue. There was lower interest in the safe drinking water aspect at the workshops in Sydney, Kiama Penrith, because in the main Councils attending these workshops lie within Sydney Water's jurisdiction and so are not water authorities, and/or staff involved were not responsible for potable water. A somewhat similar situation was noted at the Newcastle Workshop where some Councils fell within the jurisdiction of Hunter Water. It is apparent that for Councils in these areas, not only were they not water providers, they had a relatively small number of water carter/private water supply issues. This was because water generally was not carted, and they had few premises [Bed & Breakfasts] who used water tanks as the source of water for their customers and were therefore private water suppliers.

The major findings from these workshops about the draft Regulation are summarised below.

Overall support for the Draft Regulation

It is notable that most participants felt that Part 5 of the Regulation was clear to them and that implementation was the major issue [see Section E below]. The following comment sums up this view: *It's a requirement - just has to be done, so we'll just get in and do it.* There seemed to be a positive feeling about the need for the Regulation across the board.

Participants across these workshops were concerned about practice with regard to compliance with the Regulation, rather than in the Regulation itself. As far as both their regulatory and water provider roles, participants were concerned about practice. For example: *We are interested to make sure we are compliant with [best] practice with regard to water supply to bulk carriers.* A second example: *As the water provider.... we need to keep our community safe.*

They were also concerned about keeping up with the plethora of guidance materials available at a national and state level, and somewhat confused about the roles and responsibilities of the various agencies in the field and how to obtain support from them.

How to develop a Quality Assurance Program [QAP] and how to inform and resource its implementation were the major issues raised, although it is noted that timeframe and sanctions were also considered in some detail.

Time frame for the development of the QAP

Significant concern was expressed about the lack of timeframe around the development of the QAP. One participant said: *There seems to be no time limits for the completion QAP or submission time to the Director General.*

At some workshops, participants were asked to suggest a reasonable timeframe and taken overall, the more realistic of them said between two to five years, although some said a shorter period. This quote summarises discussion: *It will require time to implement however, considering NSW is already behind on this compared to other states it should not be too long*

Three to five years is probably adequate. Another participant said: Timing for QAPs depends of the number of systems – the more system, the longer lead-in time is required.

The question of whether the timeframe should be built into the Regulation was not discussed in any depth at any workshop, but it would seem appropriate, given the tone of the general comments made throughout the broad workshops series about the need to make important aspects mandatory under the Regulation.

It is noted that in the 2009 amendments to the Local Government Act 1993, a staggered role out period was provided for the introduction of Integrated Planning and Reporting by Councils. Essentially a Council could choose from among three options what its commencement date would be. The Ministry of Health might consider this option for the timeframe relating to the QAP development.

Sanction for non-compliance with the development of a QAP

Although not raised frequently in the workshops, the issue of non-compliance was considered by some participants. For example: *‘Once a QAP is developed, what certainty will be in place that the water authority implements it? What sanctions apply [and from/by whom] if it is not implemented?’*

Often the tone of these discussions related to the broader concept raised by a participant in the Sydney workshop: *if you want it done you have to make it mandatory.* The lack of any sanction for non compliance with Clause 27 is a notable omission from the Draft Regulation. Consideration needs to be given to the inclusion of sanctions, if that is possible within the Regulation.

Joint QAPs

The issue of joint QAPs between neighbouring Councils/water authorities was raised. MOH made it clear that this can occur but that the QAP must address the specifics of each local system for both parties. Perhaps the Regulation could be clearer on this point.

Wording clarity

Participants made a number of comments related to wording of the Regulation and some lack of certainty therein. Some examples include:

*What does it mean to **address** the elements of the QAP framework? Does this require completion of all 12 elements of the ADWG Framework?*

*What is an **acceptable** format of QAP documentation?*

*Is there is an expectation that the QAPs will have a requirement to be **certified to HACCP or ISO etc?***

Some participants said there was a need to repeat the definition, although it is in the Act - *Definition of safe drinking water should reference the safe drinking water guidelines.*

Also some participants indicated that there is a need for clarity in the Regulation that a QAP must be produced for each system, not each water authority.

Some relatively minor reworking of the current draft might address these issues.

Future review of the Australian Drinking Water Guidelines [ADWG] and the QAP

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Concern was expressed about what will happen to the Regulation and active QAPs when/if the ADWG were reviewed – for example: *What is expected to occur when the Drinking Water Guidelines are reviewed (in the future) with different requirements? The Regulation needs to give some certainty about this issue.*

Also the question was asked about: *How often, once the QAP is in, will it be required to be reviewed?*

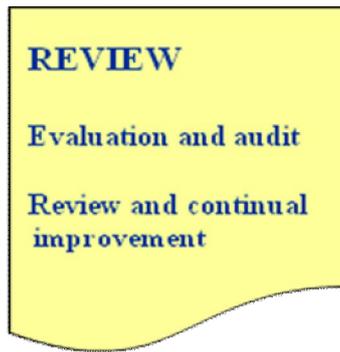
In addition, there was discussion about what the triggers would be, under the existing 27.3, for the Director General to demand a review of a QAP.

The Regulation could clarify these points, particularly as an inclusion under 27.3.

Lack of understanding of the QAP and what it contains

It was clear throughout the process that some of these participants lacked understanding of the QAP. The 12 elements below seemed to be not well understood, despite the Draft Regulation being referenced back to the Australian Drinking Water Guidelines. While it is unusual, the Ministry of Health [MOH] might consider including these 12 elements in section 27.1 of the Draft Regulation.





Public availability of the QAP

Concern was expressed about public availability of the QAP. The Draft Regulation 27.4 says that: the Director General can make a QAP publically available at any time. It was the view of participants in workshops where this issue was discussed that: *The QAP should not be publicly available - The QAP should be confidential for security issues. It could be dangerous in the public arena;* and that the following should occur: *Delete clause 27 (4). Not necessary.* [workshop participant Water Webinar].

In the event that this does not occur in the changes to the Regulation, local government officers would appreciate more clarity in the Regulation about what triggers for making a QAP public.

Issues Relating to Water Carters

There were some issues related to clarity of the current wording in Clause 28. In summary these were:

- Consideration might be given to reordering the clauses of the Regulation so that those related to suppliers of drinking water 28.2 precedes the clauses related to water carters 28.1 and 28.3. This might make the Regulation clearer.
- Concerns were expressed about recording the supply of water to water carters where various water sources are not attended by water authority staff, and how this might be monitored. *Note: here MOH said: 'it's about knowing the premises that the carters delivered to so the intent is that the wording in the Regulation clearly states that council just keeps a register of carters operating in the area and their contact details. Carters then keep register of who they deliver to, when and how much [as in 28.1a, b, c, and d].*
- More detail needs to be given about the type of system that Councils need to have to meet obligations under clauses 28.2 and 28.3. Is an electronic system required? What data exactly does it need to record?
- Generally Clause 28 needs to be made clearer. The Regulation needs to require the carters to provide the suppliers with the required information. The responsibility is on the carter.

Private Water Providers

The issue was raised in some workshops that beyond record keeping, [Clause 28.2] there was no provision for regulation of the activities of private water providers [for example B&Bs who use water tanks]. The current Regulation will be useful for identifying the source of an illness but will

not minimise the risk of outbreaks. Consideration might be given to including a new clause which provides a range of regulatory powers to manage private water suppliers.

Regulation powers

Some participants expressed the view that: *It's unclear what Council's role is in regulating.* The following questions/issues need clarification in the Regulation:

- How does Council regulate itself when it is the water provider? There is a need for clarification about the role of Ministry of Health and the Office of Water. Councils need to be privy to discussions about this matter.
- Do sufficient powers and penalties exist?

Recommendations related to Safe Drinking Water

It is recommended that:

SDW1. The Regulation should make clear the maximum timeframe allowed for the development of a QAP and that joint QAPs are permitted, although they must address the specific issues related to individual systems.

SDW2. Wording clarity issues raised in Finding 6 are addressed in the Draft Regulation, along with what occurs if the *Australian Drinking Water Guidelines [ADWG]* are reviewed.

SDW3. Consideration is given to the insertion of the 12 elements of a QAP into the Regulation.

SDW4. Clause 27 [4] relating to public availability of the QAP is deleted from the Regulation. It was the view of participants that: *The QAP should not be publicly available - The QAP should be confidential for security issues. It could be dangerous in the public arena.*

SDW5. With regard to the aspects of the Draft Regulation relating to water carters, consideration is given to:

- Re-ordering the clauses of the Regulation so that those related to suppliers of drinking water, 28.2 and 28.3, precede the clause related to water carters 28.1. This might make the Regulation clearer.
- Providing more detail about the type of system that Councils need to have to meet obligations under clauses 28.2 and 28.3, and exactly what data does it need to record?
- Clarifying issues related to situations where the water source is not attended by water authority staff, and how this might be monitored.

SDW6. The Regulation needs to make clear who is the regulator when Council is the water provider and what is the Office of Water's role. The quality assurance issue needs to be made clearer, especially for the period prior to the finalisation and implementation of a QAP.

SDW7. If it is possible within the Regulation, consideration should be given to the issue of sanctions for failure to complete the development of a QAP within the designated time period, or to implement the QAP.

SDW8. Consideration is given to including a new clause in Section 5 which provides a range of regulatory powers to manage private water suppliers.

E. Implementation

This Section of the report relates to issues raised in the workshops about the roll-out of the Public Health Act and its regulation, post commencement. It raises a number of important issues identified by Local Government during the consultation process. Rigorous enforcement of the Act requires an informed, supported and committed workforce.

E1.Considerations for the Implementation – Support needed for the Safe Drinking Water Component of the Regulation

As indicated above, the primary intent of this consultation process was to obtain feedback from local government about the Draft Regulation and how it might be amended prior to finalisation. With regard to safe drinking water and the implementation of the QAP, it was not possible or advisable to limit discussion to the wording of the Regulation only - implementation issues are of real importance to those in the field. The following summarises input from the workshop series about implementation. It represents the collated views of the participants at the workshops.

In considering implementation issues, the T Issues Team is mindful of a number of matters of context, within which the following findings must be set. These are:

1. It is clear that there has been substantial activity and planning undertaken through the conduct of four trials with Councils in different parts of NSW. With a view towards implementation and related in part to the conditions outlined in the Australian Drinking Water Guidelines, there is much to learn from these trials. It is important that the information/recommendations obtained through this consultation are seen as complementary to that process.
2. The recent release of the 2011 version of the Australian Drinking Water Guidelines by the National Health and Medical Research Council was noted by many workshop participants. The implementation guidance material needs to draw the clearest links possible between the ADWG and the Regulation.
3. An updated Water Planner has also been recently released by the NH&MRC and this can also cause confusion if not clearly identified in the QAP process and supporting materials. There is indication from the comments of some participants in the workshop that confusion already exists.
4. As indicated above, there is quite strong support for the mandatory QAP, but people are concerned about how it will all happen and what support will be available to develop and implement the QAP.

Budget Issues

a) Cost

The cost of the activity required under the Draft Regulation and in line with the ADWG, especially that required to fund the drafting of the QAP and its implementation, was raised as an issue within all of the workshops. The following quotes from a number of participants summarise the challenge:

- *The major issue is that the formalisation of a QAP, linked to the ADWG will result in the need for major capital upgrade for smaller communities.*

- *What was the cost of developing and implementing the quality assurance program? [this question was asked in terms of the pilot program].*
- *What about/State Government's commitment to the long run capital works upgrade given their performance with the Country Towns Water and Sewerage Scheme?*
- *This is going to depend on the level of support that the State Government can give to Councils. Again this is a question of budget and resources where smaller Councils are being asked to do more without extra resourcing.*
- *Development of the QAP requires hiring [and paying for] expert help and external facilitation.*
- *The cost/ resource/ time requirements for implementing - Still support the need, but recognising the workload.*
- *Government assistance to get the water supply infrastructure capable of meeting the Regulation and the QAP.*
- *Increasing budgets and personnel numbers result in increasing the cost of water to consumer.*

It is apparent that the roll-out phase will need to provide various costing scenarios as a part of the guidance process. Clear information needs to be provided about costs, timeframes and options for the financial obligations/management of the QAP process. The more information that local government has, the more likelihood of timely compliance with the Regulation.

Participants at the workshops indicated that information is available from both Lachlan Shire and Eurobodalla Councils about their costing scenarios. There will be additional information about the situation in other Councils, much of it gleaned as a result of involvement in the trials. It would be advantageous if this could be amalgamated into information provided to all Councils who are water authorities. A challenge for this process is the diversity of Councils and supply and cartage systems between Councils, and this makes it difficult to develop costing scenarios which are relevant to all.

b) Funding support

It is one thing to know the potential cost to the authority of various costing scenarios generated by the establishment and delivery of a QAP. It is equally, or perhaps even more important for Councils to have a clear view of the funding options that are available to them to meet their obligations to develop and deliver on this important Regulation. All Council officers involved in these workshops indicated that support would be required, both financial and technical, and advice about the options that exist is a particularly important part of the roll-out process. It might include information about funding sources and funding options, as well as advice about where to get technical input/support and/or a facilitator to assist in the development of the QAP. From a Council perspective this is possibly the most important guidance material that can be made available to them in the period leading up to the commencement of the Act and its Regulations.

The QAP trials and the possible guidance materials

Information about the four QAP trials that are currently in progress was really well received in the water webinars and to a lesser extent in the other workshops – where it was given a much lower profile. The trials offer the opportunity to draft important information about the QAP process and content, that will assist other Councils who are to progress through this process

once the Regulation has commenced. A number of issues were raised at many workshops about developing/disseminating information and understandings obtained in the four trials. See quotes below from the workshop participants that describe their needs:

- *My Council would like some guidance on how to comply with requirements of supplier to record each water carter to whom water is supplied. Can this come from the trials?*
- *Perhaps some explanatory notes behind the Regulations so each requirement is easily understood.*
- *Given the Dept of Health, Office of Water and Public Works have supported the four pilot programs, results of these should be published/forwarded to Councils across the State so people do not have to re-invent the wheel in setting up QAP.*
- *Examples of QAPs and case studies of other Councils and their activities would help.*

More generally, the following guidance material was suggested:

- Understanding of the likely scope of the requirements of putting together the quality system.
- More clarity on auditing and review requirements, and the differences between Water utilities and B&B requirements.
- Information about supplying water carters from Council's standpipes. For example if Councils have an automated system, do they need to ensure the disinfection levels meet ADWG each time the carter takes water from the standpipe?
- The extent of the overlap between the QAP and NSW Office of Water best practice requirements. Clarity of information is required about the scope of the guidance and support processes that will be offered.
- The need for a 'roles chart' for water system managers, so they can be clear about 'who is doing what' in the water management sector.
- There remains a need for clarity about who is responsible for keeping which water carting records under the Regulation. Some said that the Regulation appears clear enough, so perhaps this can be clarified by guidance material or in the training.

It was clear from discussion at the workshops that there is a significant role for state government agencies to play in supporting Councils in developing and implementing a QAP. Information/guidance material from the trial programs is required before the commencement date for the Act, so that Councils are commencing the process as soon as possible. Some of this will have been developed through the trial programs. Others will have been developed by individual Councils and can be shared, and some will need to be newly developed.

Expertise and roles

As indicated in brief above, participants at the workshops were clear that there were significant issues related to expertise that would impact on the roll-out of the Regulation. In summary these included:

- Finding suitable consultants - both facilitators and technical experts to service the remote areas

- Gaining state government expertise into the development of the QAP. *This is essential because smaller councils just don't have sufficient expertise in-house*
- Being clear about the roles and responsibilities of the various players who are stakeholders in the safe drinking water mix of agencies. Councils understandably report some confusion in understanding the various roles in the water sector.
- Even the development of an electronic system for water caters is beyond the capacity of smaller Councils. More sharing of materials and resources and more connection with expertise in state government agencies is essential.
- The suggestion above about a roles chart would assist Council staff.

Capacity building for local government water managers

Although not a focus in this workshop series, the capacity building/training needs of local government staff was raised as an issue; especially with regard to their capacity to develop the QAP and to manage its implementation, among a myriad of other responsibilities.

Significant discussion with the staff and the relevant professional associations should occur to determine the options for possible training, etc.

For some Councils, there are so few resources and limited expertise, that MOH and its stakeholder partners might consider an extended roll-out period in these circumstance. A precedent for this exists in the implementation of the Local Government Act amendments in 2009, related to Integrated Planning and Reporting.

Recommendations

With regard to the roll-out of Safe Drinking Water it is recommended that:

SDWI 1. The MOH in conjunction with the Office of Water and other relevant agencies scopes a detailed implementation process for the roll-out of the Safe Drinking Water aspect of the Public Health Act 2010 and its Regulation, as it is informed by Section 4.

The implementation process must initially draw attention to:

- The range of Guidelines material that will be made available to support small local government water authorities and when and how this will be made available.
- Templates and other relevant material identified as part of the Safe Drinking Water Trials that are currently in progress with Local Government.
- Case studies and scenarios for the development and delivery of the QAP.

SDWI 2. Once this implementation process is scoped, local government officers and senior management need to be informed about it and provided with some clarity about what guidance materials, programs and processes will become available and when. For many types of Council, it is understood that the development of the QAP will not occur until all guidance material is made available.

SDW 3. Information about costing scenarios and funding and technical support options are made available as soon as possible and prior to the commencement of the Act.

E2. Considerations for Implementation - support needed for the management of legionella, public swimming pools and skin penetration premises

Introduction

This Section of the report focuses on the time after the Act and its Regulation are commenced and documents the issues raised by local government relating to support for implementation. It covers the support needed for management of legionella, public swimming pools and skin penetration premises. Support for the roll-out of Safe Drinking Water is dealt with separately for a number of reasons:

- In the main, the Draft Regulation requires activity by water managers rather than authorised officers.
- QAP aspects of the Draft Regulation are not required of all Councils – only those who are water authorities have mandated responsibilities. Hence the roll-out process can be more precisely targeted.
- Liaison with a larger number of stakeholders is required in the development of the QAP and this involves Councils in ways that are dissimilar to activity in the other aspects of the Regulation.

Indicated above throughout every section of this report, is feedback from all of the workshops that local government requires support in delivering improved public health outcomes under the new legislation. A clear message is that while having a new Act and Regulation is a significant step forward for NSW, it will achieve little if all 152 Councils in NSW are not proactive in striving for improved public health outcomes within the industry sectors targeted under the legislation. As the Parliamentary Secretary, Dr Andrew MacDonald indicated in his 'Agreement in Principle' speech in the NSW Parliament [24/11/2010]. Local Government have a highly important role in the process.

Local government, with its close community focus and understanding of conditions in its local area is perfectly placed to offer a professional, effective and responsive public health resource. Local government is to take a primary role in the day-to-day regulation of environmental health premises, such as premises containing regulated systems, public swimming pools, and premises conducting skin penetration procedures. I am pleased that the bill expressly recognises the important role of local government, and I extend the Government's thanks to the mayors, councillors, general managers and other local government employees who have given of their time and expertise in the development of this legislation.

With regard to implementation, in order to achieve the optimum uptake of the Act through the Regulation the major issue raised by local government during the face-to-face and on line workshops was the need for a comprehensive and relevant roll-out package for authorised officers to enable the delivery of improved public health outcomes under the new legislation.

The following quotes summarise a vast body of input.

'Need for 'how to use guidance' ... the Regulation: education, warnings, issuing of a PIN etc. '[Participant at Wagga Wagga Workshop]

'Next step recommended to be developed for Council officers; Guide notes, guidelines, templates, training etc. on implementing the Act and Regulation as it is all about interpretation once the Act and Regulations are released.' [City of Sydney participant]

'Capacity building and more training is an essential for EHOs to support the roll-out of the Act and Regulation.' [Participant Grafton Workshop]

What support is required for Local Government?

a. Information about when the Act comes into force

Advice about commencement of the legislation is important. At the workshop it was clear to the facilitators that some participants assumed the Act had already commenced, Most though were well aware of the process, that the Regulation needs to be finalised before commencement in 2012. Councillors at the LGSA workshop indicated that it was important that people (in addition to the Local Government sector) were informed in advance about the commencement date.

They suggested that this might include:

- Directly informing the industry associations who have already been invited to engage in the process of consultation, in advance of the commencement of the Act.
- An alert in the form of a series of advertisements in major and regional papers. The intent of this is to reach small businesses who may not be part of a professional association or for whom there is no relevant association.
- Letters to all Councils sent to both the Mayor and the General Manager

Due notice will need to be given regarding the commencement of the Act so that those affected by and responsible for activities and delivery can be informed of their responsibilities and prepare their relevant local strategies.

b. Guidance material with generic and specific content

Council officers require a range of on-line material to assist them in their public health management tasks. It assists to see this as a package of material with both generic and specific content, that can be provided to Councils to use. In summary, feedback from workshop participants indicates that this could include;

- A summary document outlining 'Using the Public Health Act 2010 for optimal Public Health,' This could be provided to local Government and relevant industry sector operators/owners
- Guide notes/information sheets about each industry sector captured under the Act:
 - About Skin Penetration
 - About Public Swimming Pools
 - About Legionella Control/Cooling Towers.

These would provide an overview of the public health issue, targets and information about the sector. They would precisely explain Councils obligations and summarise the

legislative/regulatory options available to Council and identify the fee/cost recovery fees. It would also outline an optimal inspection regimen.

- Copies of relevant guidelines that are circulating on each topic – information about the current status of each guideline and advice about how to apply the Guidelines in the optimum manner. [National and State Guidelines] The intent here is to remove confusion given the number of ‘guidelines available. In general terms, the sector expressed support for guidelines Particular mention was made of the draft swimming pool guidelines. Any opportunities to retain these, for example by ‘calling up the current guidelines’ into the Regulation would be appreciated by the sector. An option suggested by the sector was having the code of practice able to be called up, as appropriate.
- A series of standard templates for issuing notices/warning letters etc. POEO and the Food Act both have templates which assist all in Local government and Public Health Units to administer the Act. Regulations. These documents should be designed to make administration relatively simple.
- Advice about how to use Prohibition Orders and Improvement Notices. These are new tools and some advice about their use would assist all authorised officers
- Case studies [real and/or hypothetical] demonstrating graduated responses to the administration of the Public Health Act and the Regulation. These will assist Council Authorised Officers and their managers to administer the Act more proactively. They may also support liaison between Authorised Officers employed by Ministry of Health and Local Government
- Guidance material to clarifying regulatory arrangements for the matters that have public health perspectives but are managed differently – for example the funeral industry, sex work/brothels, squalor etc. This should clarify what other legislation and public policy arrangements are in place to manage these issues.

In addition to the generic material identified above, all four components require specific support material related to risk management for comprehensive implementation. It is important that consistent information is provided from the Ministry of Health that answers the following questions: What really is the risk? What are the dollar and health [and perhaps environmental] impacts/risks that require this regulatory activity to be undertaken.

- For Skin Penetration the following is important:
 - Definitions of activity/premises that fall under the Act
 - What are the public health risks?
 - Comprehensive guidance material about infection control policy and procedures for skin penetration
 - Advice about maintaining a register of premises
 - Advice about what to do in case of a public health outbreak – for example Hep C

- For Swimming Pools the following is important:
 - Definition about what constitutes a public pool under the Act.
 - What are the public health risks? Development of a risk regimen for smaller pools
 - Guidance about how to audit Council run pools so that standards are met and conflict of interest is managed
 - Advice about establishing and maintaining a register of public swimming pools.
 - Advice re dosing and testing issues.
 - Advice about what to do in case of a public health outbreak – for example ear infections.

- For Legionella Control the following is required:
 - Need for specific ‘how to use guidance’ about this part of the Regulation: education, warnings, issuing of a PIN etc. A scaled system of penalties is available and officers and Councils need support re what to use when.
 - What are the public health risks from cooling towers?
 - Advice about identification and selection of a ‘competent person’. - also should cover availability issues.
 - Advice about what to do in case of a public health outbreak of legionella

The package that is framed above could be developed internally or let out as an external contract [as a stand-alone or together with the training process described below]. Regardless of the way it is to be developed it would be advisable for the MOH to establish a project working group comprising:

- A Ministry of Health officer [1]
- Membership from the LGSA and the EHA [2 in total]
- Experienced EHOs in Public Health Units [3 people from across NSW]
- Experienced EHOs from local Government [3 people one each from a metro, regional and rural Council]
- Other identified expertise as required [no more than 3 participants].

Note: Some of the specific content can be drawn from the recommendations arising from the consultation process. Other content requires decisions to be made by the Ministry. Other content will require practitioner input to ensure their relevance on the ground. It is further likely that much of the material required for this package can be adapted from existing materials that are available in Councils and/or Public Health Units. One of the tasks of the working group would be to identify existing material and adapt it as necessary.

c. Training for Authorised Officers on the Act and Regulation

The on-line package of material developed above will not be sufficient to ensure optimal implementation of the Act. Advice from participants at the workshop indicates that it should be

the centre piece of a one day training workshop offered around NSW for Authorised Officers. This should be:

- A free training program offered to all Local Government and Public Health Unit authorised officers to enhance their understanding of the Act and the Regulation and their regulatory function.
- Developed and rolled out in conjunction/partnership with the Environmental Health Association and the LGSA.
- Delivered in at least six locations in NSW using the Council Hosts model that has proved so successful for the consultation workshops.
- Interactive in nature and professionally facilitated. Each workshop should be able to accommodate up to 50 participants in each location.

Recommendations

With regard to implementation issues, it is recommended that:

11. The MOH in conjunction with its partners, develops a launch strategy that provides early information to all key stakeholders, Local Government and the NSW community about the commencement date of the Public Health Act 2010.

12. The MOH develops and distributes a comprehensive on-line package to support the implementation of the Act and its Regulation. As a first step the intended objectives of this package need to be clarified and then a review of the list of desirable material proposed during the workshops should be undertaken, then a comprehensive outline about what is to be developed for inclusion can be prepared.

13. The MOH considers how to manage this project, whether it should be let out to a consultancy or handled in house. It is recommended that outsourcing the project will result in a product which is developed quickly and time will be an issue bearing in mind the time available prior to the adoption of the Regulation. The MOH will maintain project ownership by reserving the right to approve all material prior to publication [on-line, so low cost]. .

14. The proposed reference group process and membership, described in the body of the report is implemented for the development of the on-line package.

15. Training for authorised officers occurs as soon as practicable after the commencement date of the Act, in line with the proposal outlined in Section C. above. The on-line package should be the centre piece of that training. Training should be rolled out in partnership with the EHA and the LGSA.

Recommendations

This Section contains all recommendations made as a result of the findings from the consultation process.

A. Redrafting the Regulation:

The following recommendations are made to progress the redrafting of the Regulation 2011

Recommendations - Overall Changes to the Regulation

Across the whole regulation, it is recommended that:

Overall 1. Modelling of cost recovery scenarios continues to occur in partnership between local government and the MOH in order to determine more completely the level to which fees and charges can be set.

Overall 2. A penalty infringement notice is included for non-compliance with an Improvement Notice. This should attract a PIN at the same level as for non-compliance with a Prohibition Notice.

Overall 3. The level of penalties and fees set in the Draft Regulation should be increased in line with other legislation – PINS should be increased and fees for Improvement Notices and Prohibition Orders increased to \$600 for drinking water improvement and \$400 for notices/orders in relation to other parts of the regulation. Fees and PINS should be reviewed every five years.

Overall 4. The Ministry of Health considers making inspection of premises captured within the Public Health Act 2010 mandatory. In doing so it sets inspection fees under the Regulation that mirror those in the Food legislation.

Overall 5. The Ministry of Health considers including a fee for 'failure to register' in the Regulation. This will assist Councils to follow-up on non-compliance with registration.

Overall 6. Apart from the data already required, all registers should include:

- The after-hours telephone contact details for the owner/operator [or both]
- The ABN of the business should also be listed in the register.

Overall 7. The MOH takes all available opportunities to clarify the roles and responsibilities of Local Government authorised officers and their Public Health Unit colleagues.

Recommendations - Legionella Control

With regard to Legionella Control, Part 2. of the Draft Regulation it is recommended that:

LC 1. Amendments are made to Clause 10 to more precisely define a competent person; to ensure that systems are certified on a twelve monthly basis and to provide options for Councils where there are less than four systems within the LGA.

LC 2. More rigor is mandated with regard to the aspects of the Regulation pertaining to keeping of a register - especially Clause 12 [3]. Under the Draft Regulation, all Local Government is doing is keeping a register. It is not validating any of the content of the register. This should be varied so that Local Government officers inspect all premises annually for compliance with the requirements in Clause 10, and provide details of the Register [including inspection reports, to the Ministry of Health annually. As a part of this a PIN should be added for failure to comply with Clause 10 [2].

LC 3. Issues raised in the Section above on Installation, Operation and Maintenance of Regulated Systems and the keeping of the Register [Clauses 7, 8 and 12 especially] are considered and the Regulation amended accordingly. In this regard the Regulation needs to be made consistent with the Building Code of Australia.

LC 4. More clarity is provided in the Regulation about what the certifiers need to look at, not merely that an inspection by a competent person was carried out. Council needs to have oversight of a rigorous private certifier system, rather than merely signing off on the process.

LC 5. Within local government areas where there are fewer than ten regulated systems, the Ministry of Health is the appropriate regulatory authority. It fulfils the role collaboratively with local government personnel.

Recommendations - Swimming Pools and Spas

With regard to Swimming Pools and Spas, Part 3 [and Schedule 1] of the Regulation it is recommended that:

SW 1. The definition of what is a public swimming pool needs further review. While some of the uncertainty about definition can be clarified during the roll-out, see Section E2. below, there is still work to do on the Regulation.

SW 2. Schedule 1 of the Draft Regulation is reviewed to consider whether there is sufficient rigor and information about the risk assessment process [especially Schedule 1. Clause 8] and the achievability of the dosing regimen within smaller Councils/smaller pools [especially Schedule 1. Clause 3]. In particular concerns were expressed regarding the possibility of a risk stratification process, given that some of the requirements – such as an automatic dosing system – are onerous particularly for small businesses such as motels where the public risk may not be as great as a large municipal pool.

SW 3. The Regulation acknowledges that time will be required to introduce the operating schedule aspects as they apply to swimming pools. A twelve to eighteen month period will be required for implementation.

SW 4. The Regulation addresses more directly the issue of who is the appropriate regulatory authority for Council pools. The role of Ministry of Health personnel could be defined more specifically in this process so that a more 'arms length' approach is implemented.

SW 5. An additional PIN is included that makes it an offence not to comply with Schedule 1. of the Regulation. This will mean that Councils have the option of using this PIN or the Notice powers.

SW 6. In line with Recommendation Overall 4. - mandatory inspection of public swimming pools and spas needs to be seriously considered for inclusion in the Regulation and an appropriate fee structure needs to be determined. The level of skill and capability of those who undertake pool inspections would also need to be considered..

Recommendations -Skin Penetration Control

With regard to Skin Penetration Control, Part 4 of the regulation, it is recommended that:

SKP 1. The Ministry of Health reviews all of the matters related to 'definition' and 'clarification' section of the issues raised above and determines which requires changes to the Regulation. In particular attention should be paid to the practical application of the recommendation that needles not be reused when some tattoo guns have a needle that is soldered on to the tattooist's gun; and mandatory inspection issues and concerns raised about waxing, Clause 23.

SKP 2. Because infection control is at the heart of this part of the Regulation, some changes need to be made to the Regulation with regard to this issue, as follows:

- Infection control procedures should be in line with those recommended for use in public hospitals.
- Clause 19.7 needs to be amended to allow for outsourcing of autoclaving
- If relevant the autoclave must be TGA approved.
- The use of 'alcohol based cleaner' and whether it can be used as a stand-alone measure needs to be clarified.
- Clause. 22 needs to be amended as it refers to gloves and being 'never used before'. The wording needs to specify 'sterile gloves.'
- Layout of sterilization area must comply with AS/W2S 4815-2006 and the regulation should call this up.
- It should be a requirement for skin penetration operators to wear goggles
- Clause 24 is revised to require businesses to dispose of sharps bins to registered/licensed disposal facilities.- an authorised clinical waste service
- Consideration should also be given to either significantly adding to the list of infection control issues addressed in the regulation OR referencing a code of practice which could serve as an infection control manual for skin penetration.

SKP 3. An additional PIN is included that makes it an offence not to comply with Part 4 of the Regulation. This will mean that Councils have the option of using this PIN or the Notice powers.

SKP 4. Clause 26 is amended to make it an offence not to display an Improvement Notice as well. Further failure to display either notice should attract a PIN.

SKP 5. More clarification is built into the Regulation about the level of training that is required so that operators are 'adequately trained in infection control'. The regulation needs to make clear specifically what training is mandatory. A long lead in period [two to three years] to allow operators to complete the training is essential.

SKP 6. In line with Recommendation 0 4. mandatory inspection of skin penetration premises needs to be seriously considered for inclusion in the Regulation and an appropriate fee structure needs to be determined

Recommendations - Safe Drinking Water

With regard to Part 5 of the Regulation – Safe Drinking Water, it is recommended that:

SDW1. The Regulation should make clear the maximum timeframe allowed for the development of a QAP and that joint QAPs are permitted, although they must address the specific issues related to individual systems.

SDW2. Wording clarity issues raised in Finding 6 are addressed in the Draft Regulation, along with what occurs if the *Australian Drinking Water Guidelines [ADWG]* are reviewed.

SDW3. Consideration is given to the insertion of the 12 elements of a QAP into the Regulation.

SDW4. Clause 27 [4] relating to public availability of the QAP is deleted from the Regulation. It was the view of participants that: *The QAP should not be publicly available - The QAP should be confidential for security issues. It could be dangerous in the public arena.*

SDW5. With regard to the aspects of the Draft Regulation relating to water carters, consideration is given to:

- Re-ordering the clauses of the Regulation so that those related to suppliers of drinking water, 28.2 and 28.3, precede the clause related to water carters 28.1. This might make the Regulation clearer.
- Providing more detail about the type of system that Councils need to have to meet obligations under clauses 28.2 and 28.3, and exactly what data does it need to record?
- Clarifying issues related to situations where the water source is not attended by water authority staff, and how this might be monitored.

SDW6. The Regulation needs to make clear who is the regulator when Council is the water provider and what is the Office of Water's role. The quality assurance issue needs to be made clearer, especially for the period prior to the finalisation and implementation of a QAP.

SDW7. If it is possible within the Regulation, consideration should be given to the issue of sanctions for failure to complete the development of a QAP within the designated time period, or to implement the QAP.

SDW8. Consideration is given to including a new clause in Section 5 which provides a range of regulatory powers to manage private water suppliers.

B. Support for the Implementation

Recommendations Related to Implementation – Safe Drinking Water

With regard to the roll-out of Safe Drinking Water it is recommended that:

SDWI 1. The MOH in conjunction with the Office of Water and other relevant agencies scopes a detailed implementation process for the roll-out of the Safe Drinking Water

aspect of the Public Health Act 2010 and its Regulation, as it is informed by Section 4. The implementation process must initially draw attention to:

- The range of Guidelines material that will be made available to support small local government water authorities and when and how this will be made available.
- Templates and other relevant material identified as part of the Safe Drinking Water Trials that are currently in progress with Local Government.
- Case studies and scenarios for the development and delivery of the QAP.

SDWI 2. Once this implementation process is scoped, local government officers and senior management need to be informed about it and provided with some clarity about what guidance materials, programs and processes will become available and when. For many types of Council, it is understood that the development of the QAP will not occur until all guidance material is made available.

SDW 3. Information about costing scenarios and funding and technical support options are made available as soon as possible and prior to the commencement of the Act.

Recommendations Related to Implementation – Legionella Control, Public Swimming Pools and Skin Penetration

With regard to implementation issues, it is recommended that:

- I1. The MOH in conjunction with its partners, develops a launch strategy that provides early information to all key stakeholders, Local Government and the NSW community about the commencement date of the Public Health Act 2010.
- I2. The MOH develops and distributes a comprehensive on-line package to support the implementation of the Act and its Regulation. As a first step the intended objectives of this package need to be clarified and then a review of the list of desirable material proposed during the workshops should be undertaken, then a comprehensive outline about what is to be developed for inclusion can be prepared.
- I3. The MOH considers how to manage this project, whether it should be let out to a consultancy or handled in house. It is recommended that outsourcing the project will result in a product which is developed quickly and time will be an issue bearing in mind the time available prior to the adoption of the Regulation. The MOH will maintain project ownership by reserving the right to approve all material prior to publication [on-line, so low cost]. .
- I4. The proposed reference group process and membership, described in the body of the report is implemented for the development of the on-line package.
- I5. Training for authorised officers occurs as soon as practicable after the commencement date of the Act, in line with the proposal outlined in Section C. above. The on-line package should be the centre piece of that training. Training should be rolled out in partnership with the EHA and the LGSA.