

# Risky business

A resource to help local governments  
manage environmental health risks

November 2012

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**enHEALTH**

## **Risky business – a resource to help local governments manage environmental health risks**

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## Executive summary

Risk management in the local government sector is detailed and complex due to the many responsibilities held by this tier of government. *Risky business – a resource to help local governments manage environmental health risks* (this resource) has been developed for local government elected representatives and senior management. The aim of the resource is to raise awareness of how to minimise the financial, health and reputation risks related to the environmental health responsibilities of local governments and thereby protect the best interests of both their communities and their organisation.

Local governments are confronted with the challenge of managing the environment, ensuring public health and meeting their obligation to administer state/territory legislation with finite resources. While state and federal governments also hold responsibility to ensure the health and wellbeing of the population, it is often local government that directly delivers the services that protect the community from issues such as contamination of food, water or land, or inadequate waste disposal.

As the tier of government closest to the community, local government is also often directly scrutinised and held to account. If a local government fails to meet its responsibility to manage environmental health—aside from the cost to the community in loss of health and wellbeing—the organisation risks loss of reputation, trust and authority; and potentially the commencement of legal proceedings. Dealing with media scrutiny and responding to legal proceedings (even where successful) incurs costs, often resulting in a significant increase in the financial burden borne by the local government in the process of working to retain its reputation.

Identifying and managing risk effectively enables local government to protect the health of its communities through:

- establishing a reliable basis for decision-making and planning
- determining the most effective allocation and use of resources for risk mitigation
- improving the identification of opportunities and threats, documenting risk mitigation and incident management, and thereby minimising losses
- achieving compatible risk management practices within local government, the community and other tiers of government
- improving both governance and stakeholder confidence and trust
- complying with legal and regulatory requirements.

Developed through consultation with local governments across Australia, this resource provides an environmental health risk management process that local governments can use to determine and manage their level of environmental health risk. It is based on the principles, framework and processes set out in the Australian Standard, AS/NZS ISO 31000:2009: *Risk management – Principles and guidelines*.

This resource also provides examples of different service delivery options available to local government to carry out its environmental health role. The options are intended to take into account the legal obligations local government has to meet with its limited resources.

As a national document, the focus of this resource is general; it does not provide detail on issues specific to particular communities, such as Aboriginal and Torres Strait Islander communities. However, the processes provided can be easily adapted to suit each local government's individual conditions, priorities, demographics and corporate risk management processes, regardless of organisational size or location. The term 'local government' has been used for consistency rather than council, shire, local authority or territory government that could be applied depending on jurisdiction.

The resource has been prepared for use by elected representatives, chief executives and other senior management, risk managers and environmental health officers. It is formatted to provide ready access to key information and processes through six main sections that correspond to six steps to achieve effective environmental health risk management:

## Six steps for environmental health risk management

### 1. Responsibilities

What environmental health issues are your local government responsible for?

### 2. Roles

How does your local government manage environmental health?

### 3. Risks

What environmental health risks are there in your local area?

### 4. Severity

What are the likelihood and likely consequences of these risks?

### 5. Strategy

How can your local government reduce the risks to a manageable and acceptable level?

### 6. Action

How can your local government achieve these risk management actions?

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# Introduction

Local governments are accountable to ratepayers and residents for the effective management of their local area. This accountability can exist in the form of legal liability, particularly where a local government might be held liable for damages it has caused, either through its actions or as a result of a failure to act. If found to be liable for damages, a local government can suffer significant financial burden in addition to reputational loss.

*Risky Business: A Resource to Help Local Governments Manage Environmental Health Risks* (this resource) has been developed for local government elected representatives and senior management. The aim of the resource is to raise awareness of how to minimise the financial, health and reputation risks related to the environmental health responsibilities of local governments and thereby protect the best interests of both their communities and their organisation.

This resource uses a six-step process as the basis for sound risk assessment and management, and to form the basis of a successful business case for resource allocation (see Figure 1). Responses to the six questions should be consistent with local government priorities and based on defensible evidence, where applicable.

Elected representatives, chief executives and senior management should focus on steps 1 and 2, as well as step 6 in consultation with senior management. Risk managers and environmental health officers will find more detailed technical information in steps 3, 4 and 5, as well as important delivery options in step 6.

Further details on case studies related to the environmental health responsibilities of local government have been included as an appendix. These case studies provide a perspective on how courts perceive local government's roles and responsibilities. The appendix is provided as information only and does not constitute legal advice.

## Overview of environmental health risk assessment

Steps 3–5 in Figure 1 provide a risk assessment framework with tools for local governments to use to determine the risks involved in the protection and promotion of health and the safety of their local community and to determine the level of environmental health risk it is willing to bear. This framework and tools are consistent with the Australian Standard *AS/NZS ISO 31000:2009 Risk management – principles and guidelines* (the Standard). The process is generic, recognising that many local governments have their own processes for risk assessment—but the methods described in this document can be adapted to fit these processes. It is the responsibility of each local government to establish its own risk assessment methodology based on a range of factors, including demographics, key industries, topography and location.

The Standard explains that organisations can achieve effective risk management where their program:

- creates and protects value
- is an integral part of all organisational processes
- forms part of decision-making
- explicitly expresses uncertainty
- is systematic, structured and timely
- is based on the best available information
- is tailored to the organisation
- takes human and cultural factors into account
- is transparent and inclusive
- is dynamic, iterative and responsive to change
- facilitates continual improvement of the organisation.

## Six steps for environmental health risk management

### 1. Responsibilities

What environmental health issues are your local government responsible for?

- Consider the 7 areas of local government environmental health responsibility to determine the main issues for your local government (Section 1).

### 2. Roles

How does your local government manage environmental health?

- Define your local government's environmental health role in terms of its core business activities (planning, regulation, representation and education) (Section 2).

### 3. Risks

What environmental health risks are there in your local area?

- Identify the risk impacts relevant to your local government according to 5 enterprise risk categories. This will provide a snapshot of the risk implications for your local government (Section 3).

### 4. Severity

What are the likelihood and likely consequences of these risks?

- Consider the risk impact and the likelihood of occurrence of the risks identified to determine the severity of the risks (Section 4).

### 5. Strategy

How can your local government reduce the risks to a manageable and acceptable level?

- Prioritise the risks and plan activities to reduce the risks to an acceptable level. Determine the residual risk that your local government is willing to carry after these risk management measures have been implemented (Section 5).

### 6. Action

How can your local government achieve these risk management actions?

- Decide what resources your council has available to reduce the risks. Choose the most appropriate options to deliver your risk management strategy (Section 6).

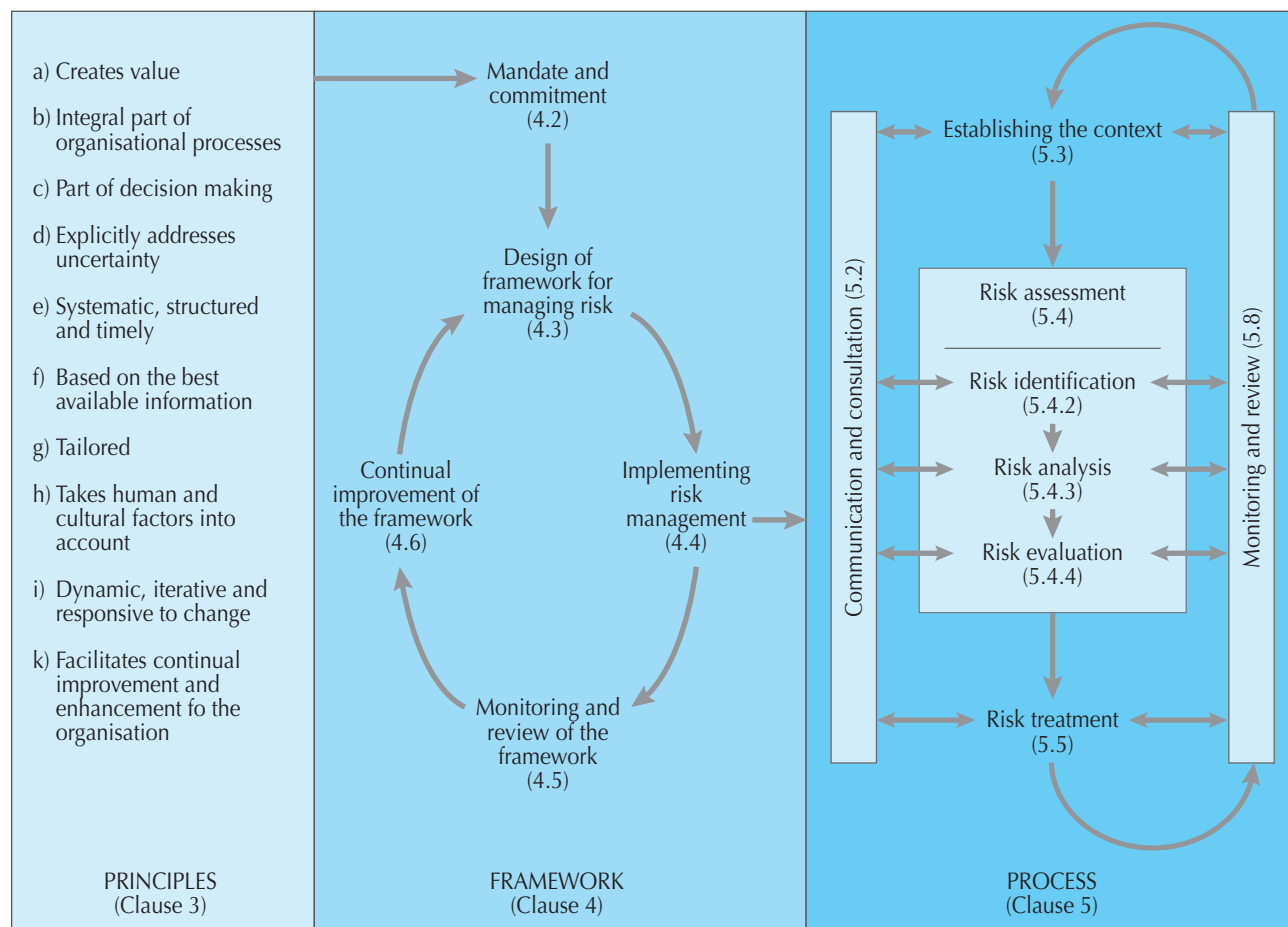
Who is responsible:  Elected members and senior managers  Environmental health officers and risk managers  All

Figure 1 Six steps for environmental health risk management



The risk assessment framework and tools set out in this resource follow the steps identified in the Standard, which provides a structure for the creation of a local government's risk management framework.

Figure 2 provides an overview of the Standard management process and its relationship to risk management principles.



Note: Numbers in brackets refer to sections in the Standard.  
 Source: Standards Australia 2009. AS/NZS ISO 31000:2009 *Risk management – Principles and guidelines*, page vi. The figure is reproduced with the permission of SAI Global under the licence 1105-c095. The full document can be purchased online at [www.saiglobal.com](http://www.saiglobal.com).

**Figure 2 AS/NZS ISO 31000:2009 – Relationship of risk management principles to framework and process**

The Standard proposes that ‘adoption of consistent processes within a comprehensive framework helps ensure that risk is managed effectively, efficiently and coherently’. Table 1 shows how this resource provides tools to apply this process to environmental health risk management.

The tools are designed to be compatible with the current risk management systems operating within local governments, and should be easily adapted to integrate with each local government’s current processes and systems.

**Table 1 Application of the Australian Standard AS/NZS ISO 31000:2009 to the environmental health risk management process**

Risk management process in the Standard	This resource's risk framework and tools	Where to find information and tools
<b>1. Establishing the context</b> Defining the external and internal parameters to be considered, setting the scope and risk criteria	Local government environmental health responsibilities	Sections 1 (page 6) and 2 (page 14)
<b>2. Risk assessment</b> — the overall process of risk identification, risk analysis and risk evaluation		
<b>2.1 Risk identification</b> — finding, recognising and describing risk	<ul style="list-style-type: none"> <li>• Risk categories guide</li> <li>• Risk consequence and impact rating guide</li> </ul>	Section 3.2, Table 3 (page 18) Section 3.3 (page 19), Table 4 (page 20)
<b>2.2 Risk analysis</b> — estimating the likelihood of risk, the magnitude of the consequence and the overall severity of impact of the consequence; generating a risk matrix (consequence x likelihood)	<ul style="list-style-type: none"> <li>• Risk likelihood guide</li> <li>• Risk matrix</li> </ul>	Section 4.1, Table 5 (page 22) Section 4.2, Figure 4 (page 23)
<b>2.3 Risk evaluation</b> — determining risk management priorities by ascertaining what is acceptable risk	<ul style="list-style-type: none"> <li>• Inherent enterprise risk assessment</li> </ul>	Section 5.2 (page 25), Table 6 (page 26)
<b>3. Risk treatment</b> Selecting and implementing appropriate actions for modifying the risks	<ul style="list-style-type: none"> <li>• Workforce options</li> <li>• Risk treatment options and revised risk assessment</li> <li>• Documentation</li> </ul>	Section 6.1 (page 41) Section 5.3 (page 31), Table 7 (page 32) Section 5.4, Table 8 (page 38)
<b>4. Communication and consultation</b> Ensuring that all stakeholders (internal and external) have a shared view of the risks faced by the organisation — part of each step of the risk management process	Process for using this resource, which includes a 'whole-of-local government' approach	Introduction (page 1)
<b>5. Monitoring and review</b> Continually checking, supervising and determining the effectiveness of risk treatment and the implementation management system	Monitoring risk and continuous improvement	Section 5.5 (page 40)

## Whole-of-government approach

Successful implementation of this resource will require a whole-of-government approach. A small working group should be set up with representatives across local government to coordinate within their department and link across departments. This may, for example, include representatives from departments such as environmental health, planning and development, corporate services, community development, communications and quality assurance.

This process will require a coordinator to lead and drive the process within your local government organisation. Ideally, this will be a member of your organisation's management team to ensure that a whole-of-organisation and strategic view is maintained, and that effective communication occurs with all levels of local government (including elected representatives).

### Case study

#### **False economy costs local government: Brookland Greens landfill – the management of ongoing risks<sup>1</sup>**

During 1992–93, the Victorian Environment Protection Authority (EPA) and a local government approved the construction of a local government-operated landfill, which commenced operation in 1996. One of the conditions of EPA approval was the provision of a leachate collection system. Also recommended was the inclusion of an impervious liner at a cost of \$500,000. Due to financial constraints, the local government determined not to use an impervious liner, nor to implement the leachate collection system.

In 1999, the Brookland Greens housing estate was established near the landfill. In 2005, the landfill ceased operation and, by 2006, the first signs of escaping landfill gas appeared. By August 2008, methane gas was detected in a house in the estate, and emergency management measures were implemented.

The Victorian Ombudsman's report concluded that the local government failed to comply with conditions of approval for the provision of a leachate collection system. Additionally, despite its statutory obligations, the local government was 'consistently motivated by financial considerations, at the expense of the environment', with one such consideration being the cost of the impervious liner.

This case indicates that, while financial implications can never be dismissed, the need to protect the environment should be the priority consideration. The saving of \$500,000 in 1992 led to a cost to the local government of \$13.5 million in 2011. In addition, the local government incurred substantial costs in managing the problem, said to be a further \$21 million during 2008–09.

<sup>1</sup> Refer to the appendix for further details of the Brookland Greens case.

In addition, where a local government has acted negligently or failed to act, significant political and reputational damage may be suffered, including negative local and national media, increased scrutiny and controls from state government, and higher resident departures from the area.

The support of elected representatives and the local government executive, especially the chief executive officer (CEO), is critical to the allocation of resources and the achievement of effective enterprise risk management outcomes.

# 1 Local government's environmental health responsibilities

Target audience:  Elected representatives and CEOs

## 1. Responsibilities

What environmental health issues are your local government responsible for?

Consider the 7 areas of local government environmental health responsibility to determine the main issues for your local government.

This resource adopts the National Environmental Health Strategy 2007–2012<sup>2</sup> definition of environmental health:

*Environmental health addresses all the physical, chemical, and biological factors external to a person, and all the related factors impacting behaviour. It encompasses the assessment and control of those environmental factors that can potentially affect health. It is targeted towards preventing disease and creating health-supportive environments. This definition excludes behaviour not related to environment, as well as behaviour related to the social and cultural environment, and genetics.<sup>3</sup>*

Local government, together with state/territory and federal governments, has a role in protecting and promoting the health and safety of the public. Local government's responsibility also involves health promotion and illness prevention. This takes into account the effects on the health and wellbeing of physical, psychological, social and aesthetic environments such as urban development, land use, recreational development, housing and commercial services.

It is acknowledged that local government has limited resources and must juggle the allocation of these resources across numerous areas of responsibility. This resource has therefore been developed to assist local government to make considered decisions regarding the level of *acceptable* and *manageable* risk of harm to the public, the natural environment, the local economy and local governments. Once local government has made these decisions, it can then determine the level and type of service required to manage its environmental health risks.

## 1.1 Environmental responsibilities

The protection and promotion of the health and safety of the public and the environment is a shared responsibility of federal, state/territory and local government, with the latter having a crucial role. Local government has legal responsibility for environmental health through various legislation, including health, public health, food, planning and environment, and local government acts and associated regulations.

<sup>2</sup> National Environmental Health Strategy 2007–2012. Commonwealth of Australia. [www.health.gov.au/internet/main/publishing.nsf/Content/798726839F2B2FA6CA2572D40008D566/\\$File/enHealth%20NEHS%20final%20for%20web%20Nov%202007.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/798726839F2B2FA6CA2572D40008D566/$File/enHealth%20NEHS%20final%20for%20web%20Nov%202007.pdf)

<sup>3</sup> World Health Organization ([www.who.int/topics/environmental\\_health/en/](http://www.who.int/topics/environmental_health/en/)), as cited in the National Environmental Health Strategy 2007–2012, *ibid.*

The seven areas in which local government has environmental health responsibility relate to:<sup>4</sup>



**1. Governance**, which includes:

- assessing factors that impact on the health and wellbeing of residents and visitors to the local government area
- developing appropriate plans, policies, strategies and projects to protect environmental health, and maintain and improve the sustainability of the environment.



**2. Safety and protection of public health**, which encompasses planning, managing and monitoring numerous illness-, infection- or disease-causing activities carried out in the local government area by business, industry and community organisations. Activities in this area include food safety, vector control, animal management, swimming pool monitoring, personal services and the oversight of immunisation.



**3. Water quality**, which involves monitoring and managing recreational water and water supplies, and transport of water, to reduce the possibility of pollution, contamination, infection or illness.



**4. Environmental management**, which involves minimising pollution and contamination, and the protection and management of environmental health. It includes the development of local plans, policies and programs to promote sustainability and prevent degradation of air, water and land. It also aims to maximise the safety of the natural and built environment, both domestic and industrial, and the health of residents and visitors.



**5. Waste management**, which involves planning, managing and monitoring waste collection and disposal to minimise/avoid adverse impacts on the environment.



**6. Land use planning and development**, which encompasses the development and assessment of plans, policies and programs to ensure the safety of proposals for development of the natural or built environment.



**7. Disaster and emergency management**, which involves planning for and managing potential disasters and emergencies, and developing an appropriate range of responses that minimise negative impacts on public and/or environmental health and safety.

<sup>4</sup> These areas of responsibility vary across jurisdictions.

## Case study

**Lax regulation processes can be fatal: the Garibaldi food poisoning outbreak<sup>5</sup>**

In 1995, a major food poisoning outbreak occurred due to substantial deficiencies in food safety practices at the Garibaldi factory in South Australia. The deficiencies included the lack of a quality assurance program and a production process that had not improved despite earlier problems the company had experienced. The result was contamination of Garibaldi's metwurst by *E. coli* 0111 bacteria, causing the death of one child, and profound and continuing disabilities for many vulnerable consumers. A coronial inquiry formed part of the subsequent investigations.

In his findings, the Coroner expressed surprise at the attitude taken by the local government in giving notice of an intended inspection and justifying it on the grounds that 'customer focus has a high profile'. The coroner stated: 'I have some difficulty with the concept of a regulatory authority describing the occupier of premises to be inspected as a "customer" ... it implies a relationship of service which is inappropriate ... it is not the function of an EHO [Environmental Health Officer] to please those whom he or she is required to inspect'.

<sup>5</sup> Refer to the appendix for further details of the Garibaldi food poisoning outbreak case.

## 1.2 Accountability and legal liability

**This section is provided as information only and does not constitute legal advice.**

Local governments are accountable to ratepayers and residents for the effective management of their local area. Specific accountability can also be imposed by legislation, including reporting and financial probity requirements.

Accountability can also exist in the form of legal liability, either for:

- civil liability, where a local government might be held liable in negligence for damages it has caused through its actions or as a result of a failure to act
- criminal liability for breach of legislation.

This section explores the legal liability of local governments for negligent actions. As the owners of land, and/or the organisation responsible for undertaking works, local governments are generally no different from other businesses or operators, and the principles of law that apply in these situations are reasonably clear. However, the general principles of negligence and their legal liability can be less clear in cases where the alleged carelessness on the part of a local government is based on a failure to exercise its statutory powers (i.e. the claim is grounded not on what the local government has done, but on what it did not do and arguably should have done). The uncertainty in this area is further complicated by legislation that, in some instances, ensures that local governments are, for particular purposes, treated differently to other defendants on account of their special roles and functions.

Four legal cases are used to illustrate the legal liability issues discussed.<sup>6</sup>

<sup>6</sup> *Graham Barclay Oysters Pty Ltd v Ryan* [2002] HCA 54; *Pyrenees Shire Council v Day* [1998]; *Eskimo Amber Pty Ltd v Pyrenees Shire Council* [1998] HCA 3; *Wyong Shire Council v Shirt* [1980] HCA 12.

### 1.2.1 Liability of local governments for negligence: general principles

The general principles of a negligence action require the plaintiff (the person bringing the action) to show that:

- the local government owed the plaintiff a duty of care
- the local government breached its duty by acting in a way that was unreasonable or negligent
- the plaintiff suffered some type of damage or injury as a result of the breach of duty (i.e. that it was caused by negligence).

#### *Duty of care*

The law is reasonably well settled on whether or not a duty of care is owed. For example, a duty of care can exist where:

- a local government employee injures another road user in the course of his or her work (in this instance the local government is generally liable for any resulting injuries where negligence can be shown)
- a person is injured on local government premises or as a result of an activity conducted by the local government
- a local government employee gives faulty advice about an issue, which the plaintiff then acts on, to his or her cost.

#### *The standard of care*

Even if a duty of care can be shown to exist, it does not follow that a local government will be found liable. The plaintiff must further show that the care taken in discharging the duty was substandard or not reasonable; in other words, negligence must be demonstrated. The general test is whether the standard of care exercised by the local government when undertaking the activity was below what a court would find acceptable, taking all the circumstances into account. Key considerations would be:

- the magnitude of the risk, and the likelihood of the risk that caused the damages occurring
- the expense, difficulty and inconvenience of taking alleviating action, and any other conflicting responsibilities that the defendant local government might have.

#### *Causation*

The negligence (i.e. breach of the standard of care) must be a cause of the plaintiff's loss or damage. For example, if a person becomes ill, allegedly because of a failure in a food regulatory scheme, it must be shown that the illness was caused by the failure, and that if the regulatory regime had been operating effectively, the person would not have become ill.

### 1.2.2 Failure to exercise a statutory power and a duty of care

#### *Local governments with statutory responsibilities*

Local governments have additional liability issues as a result of any specific powers and responsibilities. Particular provisions can include both:

- powers that give authorities the discretion to make orders or require specific action to be taken
- responsibilities either in a general sense or, more specifically, for a particular issue.

The liability of local governments for their failure to exercise statutory powers or responsibilities is not settled, as case law does not provide a clear set of rules as to when a court will find a local government negligent in these cases. Many factors come into play in considering whether or not a duty of care is owed to someone injured or suffering a loss as a result of a failure to exercise a power.

However, a number of high-profile cases do allow for the creation of some general principles that can provide guidance to authorities.

### ***The general principle***

Typically, local governments will not be held liable for loss or damages said to be the result of a failure to exercise powers and responsibilities. Courts are aware of local governments' particular position as entities with broad responsibilities and limited resources. Despite this, in some special cases, local governments and other public authorities may be liable, depending on the particular facts of each case.

The key legal question is whether or not a local government owes a duty of care to a person said to have suffered loss as a result of the failure to exercise a power or responsibility. The claim that a duty exists must be specific and apply to the person who claims it. Furthermore, the fact that an adverse outcome might be foreseeable does not, by itself, impose a duty of care on the local government.

The High Court has considered this question for both typical and special cases of liability. In *Graham Barclay Oysters v. Ryan* (the Wallis Lake case), decided in 2002, the High Court found that neither the local government nor the state of New South Wales (NSW) was liable for viral contamination of oyster beds, which resulted in sickness for the people who later consumed the oysters.

The judges took different approaches to reach this conclusion. The issues that appear relevant to their general finding included:

- the limited or partial level of control that each authority had in respect of the fishery overall
- whether the powers that the authorities did have were really imposed in order to protect consumers or for more general purposes (i.e. was it their statutory duty to protect the environment generally or to protect a particular individual or class of individuals?)
- the fact that the oyster producer had the opportunity to take tests and avert the risk to consumers.

There is also a causation issue (relevant in any of these cases): the plaintiff must be able to show that his or her illness was a result of some failing on the part of the local government or other authority (such as the state of NSW in the Wallis Lake case), rather than from another source that these authorities could not reasonably be expected to safeguard against.

### **1.2.3 Liability in special circumstances**

The Wallis Lake case indicates a trend away from earlier cases and, in conjunction with legislative changes (discussed below), suggests that liability will not so easily be found in cases where plaintiffs' arguments are based on a failure to act or discharge a power. However, there will be exceptions to this general principle and cases where local governments will be liable such as in the Pyrennes Shire Council defective chimney case (discussed below).

There is no comprehensive rule that can be used to reconcile these conflicting cases, but some key propositions can be drawn from this High Court decision, namely that:

- the consequences were foreseeable
- the local government was aware of the problem
- the local government had the powers to deal with the situation.



## Case study

### Shelling out the money: *Graham Barclay Oysters v. Ryan* (2002) – the Wallis Lake case<sup>7</sup>

In early 1997 there was a marked increase in hepatitis A cases, particularly in New South Wales (NSW). After investigation, 444 hepatitis A cases were linked to the consumption of contaminated oysters from beds in Wallis Lake on the NSW central coast, part of the Great Lakes Council. The council had the capacity to regulate oyster-growing activities and there was evidence that it knew, and was concerned about, pollution of the lake. The NSW state government also had powers to regulate fisheries (including oyster growing).

Under the Commonwealth *Trade Practices Act 1974*, the consumers who had contracted hepatitis A commenced an action against the growers and suppliers, the state of NSW, and the Great Lakes Council for breach of their statutory obligations, and failure to use their powers to manage the fishery and minimise contamination of the lake.

The case went initially to the Federal Court, where the judge found all parties equally liable. ‘If any one of them had fulfilled its duty to consumers, the epidemic would not have occurred’, the judge said.

The case was appealed twice. Ultimately, the Full Court of the Federal Court overturned the finding against the Great Lakes Council. However, the investment of time and finances into the case was significant for the council, and the negative media surrounding the case was considerable.

<sup>7</sup> Refer to the appendix for further details of the Wallis Lake case.

## Case study

### Where there’s smoke ... : the case of the defective and dangerous chimney

In the case of *Pyrenees Shire Council v. Day* (1998), a defective and dangerous chimney caused a fire that destroyed both the building in which it was located and an adjoining building. The council had been previously alerted to the problem, had undertaken an inspection and had sent a letter to the owner indicating that the fireplace must not be used until it was repaired. A subsequent occupier (unaware of the problem) used the chimney, causing a fire. The local council was subsequently sued for failure to exercise its powers under the Victorian *Local Government Act 1958* (the Act) to formally take action to remedy the danger.

The High Court found that the council owed a duty of care to the occupiers of the two premises on account of the special circumstances in the case, which were that:

- the resulting fire and its consequences were foreseeable
- the council was specifically aware of the problem
- the council had clear and specific powers under the Act to deal with dangers such as this by issuing notices, which could have addressed the risk.

### 1.2.4 The special position of local governments

Two further issues have a bearing on the liability of local governments, which tend to reduce the risk of their being sued.

#### *Justiciability (suitability for litigation)*

Many powers and responsibilities given to local governments are expressed generally and are primarily about directing policy. Courts are reluctant to get into these issues, considering them as non-justiciable (i.e. not suitable for litigation) and better left to the political process. In practice, this reluctance would apply in cases where there are arguments over the allocation of resources; for example, how much of a local government's budget should be spent on immunisation (even though this may be one of its statutory functions), or whether a local hospital should close. Furthermore, where an Act gives a local government a significant degree of discretion about how it chooses to exercise its powers, the courts recognise that policy debate and formulation, not litigation, provides the most effective arena in which to question particular decisions. As such, courts may consider the matter non-justiciable, even if the result of the process leads to the local government not exercising a statutory power.

#### *Statutory provisions*

The liability of public authorities, including local governments, may also be limited by statute. In Australia this occurs in two ways:

1. State/territory civil liability legislation passed around 2002 makes particular reference to public authorities (defined to include a local local government, government department or statutory authority). These Acts establish general principles of negligence and the assessment of damages. They also address issues particularly relevant to local governments, including:
  - assessing whether or not a duty of care exists
  - assessing the financial and other resources reasonably available to the authority
  - reinforcing the justiciability questions by providing that the general allocation of those resources by the authority is not open to challenge
  - providing that the functions required to be exercised by the authority are to be determined by reference to the broad range of its activities (and not merely to the matter to which the proceedings relate).

The Acts also provide that, when a public authority decides to exercise a statutory function, it 'does not of itself indicate that the authority is under a duty to exercise it' (part 5 *Civil Liability Act 2002* [NSW]).

In addition, specific statutes can also exclude liability. For example, in South Australia the public health legislation specifies a range of powers and duties of the relevant authorities (including local governments), but specifies that 'a failure by a designated authority to perform a function under this Act, or a breach of a duty imposed on a designated authority under this Act, does not give rise to any civil liability' (s. 103(1) *South Australian Public Health Act 2011* [SA]).

2. Specific exclusions of liability also typically apply to officers acting in good faith (whether or not they are personally negligent). However, in these instances, the public authority or local government may still be liable. Exclusions of liability can also apply for particular statutory officers exercising specified powers, and each state/territory Act can exclude liability of authorities or statutory officers as it considers appropriate. For example, s. 24 *Public Health Act 2010* (NSW) provides that the provision of any information or advice concerning drinking water, made by the Chief Health Officer in good faith for the purpose of executing this Act, does not subject the state, the Minister for Health, NSW Health or any officer 'to any action, liability, claim or demand'.

### 1.2.5 Summary and checklist

In summary, the liability of local governments for negligent actions largely mirrors the general law that applies across the community. However, the position is not as clear where the basis of the negligence is 'inaction'; that is, a failure to exercise a statutory power or function. The important question in cases of inaction will be whether a duty of care exists. It is here that the case law needs to be reconciled against the particular facts of the case. Provided below is a checklist of questions that could be usefully explored to help answer that question.

**Checklist**

**Checklist for exploring questions of local government liability**

- Is the alleged obligation to act (i.e. the 'duty') in relation to a specific obligation, or is it more in relation to a policy issue?
- Does the local government appear to have discretion regarding whether to respond?
- Following on from the above two issues, is the matter justiciable or, for example, does it really involve an argument about the allocation of resources or priorities?
- Are there statutory provisions in general laws such as general civil liability Acts, or specific public health or other Acts, that exclude or limit liability (e.g. relating to questions of limited financial resources, having regard to all the other functions the local government has to discharge)?
- Do the powers appear to be provided by Parliament for the benefit of the community, to protect the environment generally, or for particular individuals in specified circumstances?
- Is it reasonably foreseeable that a failure to act or exercise power will result in loss or damage to a particular person?
- Has the issue been specifically drawn to the local government's notice?
- Did the local government indicate that it would exercise power or undertake responsibility for the problem, but did not follow through?
- Is the person particularly vulnerable, or specifically relying on the local government to take action?

## 2 Local government's environmental health role

Target audience:  CEOs and senior managers

### 2. Roles

How does your local government manage environmental health?

Define your local government's environmental health role in terms of its core business activities (planning, regulation, representation and education).

The National Environmental Health Strategy 2007–2012 defines the practice of environmental health as covering the assessment, correction, control and prevention of environmental factors that can adversely affect health, as well as the enhancement of those aspects of the environment that can improve human health.<sup>8</sup>

The role local government undertakes in managing environmental health forms the basis of a local government's decisions regarding acceptable and manageable environmental health risk.

Although local government is not solely responsible for environmental health, it is legally obliged to carry out a range of key functions and activities in relation to managing the environment and public health.

### 2.1 Environmental health role

A local government's environmental health role can be divided into four areas of core business activity (Figure 3).



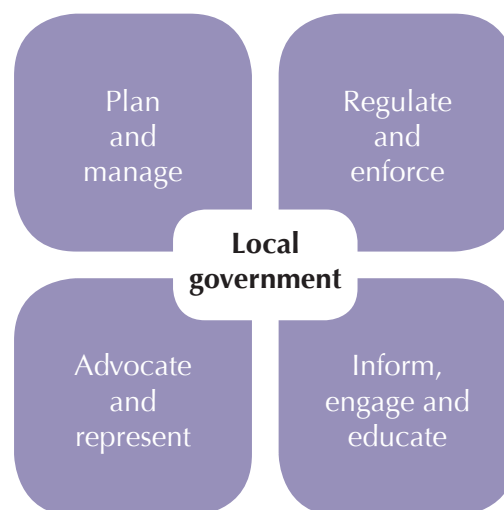
**Plan and manage**, which includes the review, analysis and assessment of the local population and environment to determine the potential environmental health risks and the development of appropriate responses and strategies.



**Regulate and enforce**, which includes the authorisation of appropriately qualified officers, licensing and registration of businesses, inspections, investigations, monitoring and auditing, issuing of directions, instigation of legal proceedings, and determination and enforcement of orders.



**Inform, engage and educate**, which includes the education and promotion of good practice to residents, visitors, businesses and community organisations. It also includes referral and reporting of issues to business, residents and community organisations, and other tiers of government.



**Figure 3** A local government's environmental health role

<sup>8</sup> National Environmental Health Strategy 2007–2012. Commonwealth of Australia. [www.health.gov.au/internet/main/publishing.nsf/Content/798726839F2B2FA6CA2572D40008D566/\\$File/enHealth%20NEHS%20final%20for%20web%20Nov%202007.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/798726839F2B2FA6CA2572D40008D566/$File/enHealth%20NEHS%20final%20for%20web%20Nov%202007.pdf)



**Advocate and represent**, which includes consultation, coordination and facilitation of local government’s participation in government, business and community alliances, working groups, forums and reviews.

An outline of a range of actions available to local government in managing its environmental health roles and reducing risk is summarised in Table 2. Please note that this is not an exhaustive list, but is intended to provide examples of key functions and actions.

**Table 2 Local government’s environmental health role and functions**


Local government role	Functions and actions
 <b>PLAN AND MANAGE</b>	
<b>PLAN</b>  Examples include relevant plans in the following sectors: <ul style="list-style-type: none"> <li>• corporate</li> <li>• community</li> <li>• public health.</li> </ul>	<ul style="list-style-type: none"> <li>• Design and implement studies to analyse municipal public and environmental health data.</li> <li>• Determine potential public health and environmental risks, needs and issues.</li> <li>• Develop local government and community plans, strategies and action responses.</li> <li>• Maintain knowledge, expertise and technology with regard to managing environmental health and sustainability.</li> <li>• Identify risk locations and activities, and develop appropriate plans and strategic responses.</li> <li>• Identify potential environmental health risks associated with built form and infrastructure development, and devise appropriate plans to counter and minimise harm.</li> </ul>
<b>MANAGE</b>  Examples include relevant management plans and strategies in the areas of: <ul style="list-style-type: none"> <li>• disaster management</li> <li>• environmental management</li> <li>• waste management</li> <li>• food safety.</li> </ul>	<ul style="list-style-type: none"> <li>• Develop and implement local government policies, programs and strategies to promote good practice, manage and monitor environmental health, and reduce potential harm.</li> <li>• Monitor and review the effectiveness of local government risk policies, programs and strategies.</li> <li>• Build relationships, and partner with other agencies, departments and professionals to deliver effective environmental health outcomes.</li> <li>• Undertake needs assessment/studies.</li> <li>• Monitor and review compliance with local government policies.</li> <li>• Establish and manage checklists and registers.</li> <li>• Develop and manage self-compliance processes.</li> <li>• Manage statutory obligations.</li> <li>• Develop and manage vendor contracts, e.g. for waste collection and disposal.</li> </ul>
<b>REVIEW</b> <b>ANALYSE</b> <b>ASSESS</b> <b>ADVISE</b> <b>MAINTAIN</b>	<ul style="list-style-type: none"> <li>• Provide expert assessments of the potential environmental health impacts of local government activity and external events.</li> <li>• Assess and advise on planning applications, including advice on fit-out, sanitation, hazards and risks.</li> <li>• Report and analyse complaints and compliance activity to determine trends for environmental sustainability and public health awareness programs.</li> <li>• Maintain public health records and databases.</li> </ul>

Table 2 continued




Local government role	Functions and actions
 <b>REGULATE AND ENFORCE</b>	
<b>AUTHORISE</b>	<ul style="list-style-type: none"> <li>• Approve appropriately qualified officers to act as authorised persons.</li> <li>• Establish and communicate correct procedures and processes.</li> <li>• Establish and maintain appropriate training and professional development of authorised persons.</li> </ul>
<b>LICENSE</b>	<ul style="list-style-type: none"> <li>• Develop processes, systems and assessment criteria for compliance licensing.</li> </ul>
<b>REGISTER</b>	<ul style="list-style-type: none"> <li>• Apply state/territory government compliance processes and systems.</li> <li>• Assess applications for planning, licences and registration.</li> <li>• Grant/refuse licence applications (including provisional licences).</li> <li>• Maintain relevant accreditations.</li> <li>• Maintain registers.</li> </ul>
<b>INSPECT</b>	<ul style="list-style-type: none"> <li>• Develop monitoring and auditing regimes.</li> </ul>
<b>MONITOR</b>	<ul style="list-style-type: none"> <li>• Conduct compliance inspections and auditing, including searching, measuring, sampling and copying, or seizing equipment and/or documents.</li> </ul>
<b>AUDIT</b>	
<b>INVESTIGATE</b>	<ul style="list-style-type: none"> <li>• Develop and implement complaint investigation and compliance processes and systems.</li> <li>• Respond to complaints and customer requests.</li> </ul>
<b>ISSUE DIRECTIONS</b>	<ul style="list-style-type: none"> <li>• Issue warnings, prohibitions and advertising directives.</li> <li>• Impose conditions for sampling analysis.</li> </ul>
<b>MAKE ORDERS</b>	<ul style="list-style-type: none"> <li>• Make orders, including public health, environmental protection and enforcement orders.</li> </ul>
<b>ENFORCE</b>	<ul style="list-style-type: none"> <li>• Issue certificates.</li> <li>• Impose fines.</li> <li>• Maintain an enforcement register.</li> <li>• Instigate legal proceedings, including prosecutions.</li> <li>• Instigate and participate in proceedings at courts and tribunals.</li> <li>• Authorise prevention and control programs.</li> </ul>

Table 2 continued

Local government role	Functions and actions
 <b>INFORM, ENGAGE AND EDUCATE</b>	
<b>EDUCATE</b>	<ul style="list-style-type: none"> <li>• Develop and implement environmental health promotion campaigns for the general population.</li> </ul>
<b>PROMOTE</b>	<ul style="list-style-type: none"> <li>• Participate in state/territory and national environmental health campaigns, and environmental management education programs and projects.</li> <li>• Develop and distribute community information, training and fact sheets to assist with the recognition of potential issues, and advise on how to avoid health or safety risks and/or foster environmental management and sustainability.</li> <li>• Facilitate community engagement and capacity building.</li> <li>• Mentor and support community leaders to promote public and environmental health issues.</li> </ul>
<b>REFER</b>	<ul style="list-style-type: none"> <li>• Refer and report to state/territory and federal government departments and authorities, e.g. the Environment Protection Agency.</li> </ul>
<b>REPORT</b>	<ul style="list-style-type: none"> <li>• Report within and across the local government on performance and activities, including benchmarking against other local governments and the environmental health planning mandated in the corporate plan.</li> <li>• Report to public and business associations and coalitions, community and not-for-profit organisations, and interest groups on issues, programs and outcomes.</li> </ul>
 <b>ADVOCATE AND REPRESENT</b>	
<b>CONSULT</b>	<ul style="list-style-type: none"> <li>• Participate in alliances and strategic planning processes with state/territory governments and authorities; local government regional alliances; and business, community and not-for-profit groups.</li> </ul>
<b>COORDINATE</b>	
<b>FACILITATE</b>	<ul style="list-style-type: none"> <li>• Consult with and participate in working groups with local and state/territory-wide industry and business associations and coalitions; and community and not-for-profit organisations such as community health, aged care facility and environment groups.</li> </ul>
<b>MEDIATE</b>	<ul style="list-style-type: none"> <li>• Represent local government interests at relevant forums such as legislation and policy-making groups; and peak professional, regional and industry groups.</li> <li>• Facilitate the resolution of conflict regarding environmental health issues.</li> </ul>

# 3 Local environmental health risks

Target audience:  Environmental health and enterprise risk managers

## 3. Risks

What environmental health risks are there in your local area?






Identify the risk impacts relevant to your local government according to 5 enterprise risk categories. This will provide a snapshot of the risk implications for your local government.

The first stage of the risk assessment process is to identify the risks relevant for a particular organisation (enterprise). This section presents two tools for identifying risks that are relevant for a particular local government.

### 3.1 Risk categories guide

The key areas of risk that are relevant to environmental health have been summarised into the five risk categories below, encompassing a range of local government responsibilities, not just environmental health.

**Table 3 Risk categories guide**

Category	Description
 <b>Risk to human safety and wellbeing</b>	How is the safety and wellbeing of the community impacted by this situation or incident?
 <b>Legal and economic risk</b>	What is the cost to the community, business and the local government of this situation/incident, and what is the potential legal cost to the local government?
 <b>Risk to the environment</b>	Could this situation or incident cause environmental harm?
 <b>Risk to local government's strategic and governance position or reputation</b>	Could this situation impact on the local government's corporate capacity and/or reputation?
 <b>Risk to local government's capacity to deliver services</b>	What is the impact on the local government's ability to deliver services?



## 3.2 Risk consequence and impact rating guide

There are five levels of risk impact:



1. minor
2. low
3. moderate
4. high
5. extreme.

Table 4 details the factors that can be considered when determining the potential risk impact for each of the five risk categories.

**Table 4** Environmental health risk consequence and impact rating guide

		Increasing impact				
Risk category	Minor (1)	Low (2)	Moderate (3)	High (4)	Extreme(5)	
<p><b>Risk to human safety and wellbeing</b></p>	<ul style="list-style-type: none"> <li>No medical attention is required</li> <li>Any injury or illness is minimal</li> <li>No loss of life</li> </ul>	<ul style="list-style-type: none"> <li>Potential for health impacts and/or medical treatment</li> <li>Medical attention may be required, but no hospitalisation required</li> <li>No loss of life</li> </ul>	<ul style="list-style-type: none"> <li>Medical attention or ongoing medical treatment is required</li> <li>No hospitalisation or long-term effects</li> <li>Potential of temporary disability</li> <li>No loss of life</li> </ul>	<ul style="list-style-type: none"> <li>A single fatality</li> <li>Serious injury or illness leading to hospitalisation</li> <li>Need for ongoing treatment and possibility of permanent disability</li> <li>Multiple serious injuries</li> </ul>	<ul style="list-style-type: none"> <li>Multiple fatalities or potential for multiple fatalities</li> </ul>	
<p><b>Legal and economic risk</b></p>	<ul style="list-style-type: none"> <li>No local law or statutory requirement exists that governs the situation/incident</li> <li>No legal action</li> <li>Insignificant financial impact (e.g. 0.05% of budget), which can be absorbed within existing budget</li> <li>No interruption to local government's ability to meet its statutory obligations</li> </ul>	<ul style="list-style-type: none"> <li>Minimal legal action (e.g. minor penalty incurred)</li> <li>Minor delays to local government's ability to meet its statutory obligations (e.g. up to 1 month)</li> <li>Low financial impact (e.g. 0.2% of budget), which can be absorbed within existing budget</li> </ul>	<ul style="list-style-type: none"> <li>Moderate legal action</li> <li>Moderate delays to local government's ability to meet its statutory obligations (e.g. up to 3 months)</li> <li>Moderate financial impact (e.g. 1% of budget)</li> <li>Some budget revision is required</li> </ul>	<ul style="list-style-type: none"> <li>Major delay to local government's ability to meet its statutory obligations (e.g. up to 12 months).</li> <li>Major financial impact (e.g. 2% of budget)</li> <li>Situation or incident requires major review of operations</li> </ul>	<ul style="list-style-type: none"> <li>Intervention by other authorities (e.g. state/territory government) with potential legal proceedings</li> <li>Local government is unable to meet its statutory requirements for the long term</li> <li>Substantial financial impact (e.g. more than 2%)</li> <li>Major enterprise change is required</li> <li>Significant impact on public and private infrastructure</li> </ul>	
<p><b>Risk to the environment</b></p>	<ul style="list-style-type: none"> <li>No immediate or long-term harm to the environment</li> </ul>	<ul style="list-style-type: none"> <li>Immediate environmental nuisance or minor physical damage (e.g. non-toxic waste disposal)</li> <li>No medium- or long-term impact</li> <li>Impact at an individual level</li> </ul>	<ul style="list-style-type: none"> <li>Discomfort caused to multiple members of the public</li> <li>Impact on the environment for medium term (e.g. up to 3 years).</li> <li>Some investigation and inspection required</li> </ul>	<ul style="list-style-type: none"> <li>Immediate intervention required</li> <li>Medium- to long-term impact on the environment (e.g. more than 3 years).</li> <li>Contamination beyond localised site or point of origin</li> <li>Significant loss or damage to local government infrastructure (e.g. loss of a significant local government building)</li> </ul>	<ul style="list-style-type: none"> <li>Long-term detrimental impact (e.g. more than 5 years).</li> <li>Enterprise change required</li> </ul>	

Table 4 continued

		Increasing impact				
Risk category	Minor (1)	Low (2)	Moderate (3)	High (4)	Extreme(5)	
 <b>Risk to local government's strategic and governance position or reputation</b>	<ul style="list-style-type: none"> <li>Likely to be a single complaint</li> <li>Manageable within normal business</li> <li>May have a negative impact on the particular local government department involved</li> </ul>	<ul style="list-style-type: none"> <li>No need for local government involvement</li> <li>Minor and/or temporary localised damage to local government's reputation</li> <li>Multiple complaints from a single source</li> <li>Isolated adverse media</li> </ul>	<ul style="list-style-type: none"> <li>A local law, regulation or policy is developed or reviewed as a result of the situation or incident</li> <li>Notification is made to relevant government authorities (e.g. Environmental Protection Agency) as appropriate</li> <li>Report or briefing to local government is likely</li> <li>Local government are informed</li> <li>Localised damage to local government's reputation</li> <li>Multiple complaints from multiple sources</li> <li>Widespread media coverage</li> </ul>	<ul style="list-style-type: none"> <li>Report to local government requiring a decision</li> <li>Significant damage to local government's reputation requiring major effort to repair</li> <li>Negative local, regional and state/territory media coverage, requiring local government's immediate response</li> <li>Widespread impact on the community</li> <li>Involvement of high-level local government management required</li> <li>Disciplinary procedures initiated with local government officers responsible for incident</li> </ul>	<ul style="list-style-type: none"> <li>Possible intervention of other authorities (e.g. state/territory government)</li> <li>Formal disciplinary procedures implemented with local government officers responsible/accountable for situation/incident</li> <li>Administrator may be appointed</li> <li>Permanent or long-term damage to local government's reputation</li> <li>Negative national media requiring a significant planned response</li> <li>A recovery plan must be implemented</li> </ul>	
 <b>Risk to local government's capacity to deliver services</b>	<ul style="list-style-type: none"> <li>No impact on service delivery</li> <li>Some temporary inconvenience to the community</li> <li>Critical services not affected (e.g. no impact on local government's ability to perform its statutory obligations)</li> <li>Situation/incident can be managed within normal business</li> </ul>	<ul style="list-style-type: none"> <li>Situation or incident requires temporary additional staff and/or resources to manage</li> <li>Clients/customers need to be informed of interruption to service or business</li> </ul>	<ul style="list-style-type: none"> <li>Significant impact on capacity to regularly deliver the service (e.g. up to 3 months delay).</li> <li>Unable to meet all statutory obligations on time</li> <li>Ongoing need for additional staff and/or resources</li> <li>A review of operational capacity is required</li> </ul>	<ul style="list-style-type: none"> <li>Unable to deliver normal services or environmental health functions for more than 6 months</li> <li>Ongoing inability to meet statutory obligations</li> <li>Ongoing need for additional staff and/or resources</li> </ul>	<ul style="list-style-type: none"> <li>Inability to deliver normal range of environmental health functions into the foreseeable future</li> <li>Failure to meet statutory obligations is ongoing</li> <li>Total loss of capacity to deliver services due to infrastructure or systems loss</li> <li>Ongoing need for additional staff and/or resources</li> </ul>	

3. Risks

# 4 Severity of environmental health risks

Target audience:  Senior managers, environmental health officers and risk managers

## 4. Severity

What are the likelihood and likely consequences of these risks?

Consider the risk impact and the likelihood of occurrence of the risks identified to determine the severity of the risks.

Once the risks and impacts that are relevant for a local government area have been identified, the next stage is to analyse how serious the risk impacts will be for local health and wellbeing. This resource provides two tools to assist local government analyse the severity of risk impacts:

- five-level scale of risk likelihood
- risk matrix

As for step 3, it is the responsibility of each local government to establish its own risk analysis methodology based on a range of factors, including demographics, key industries, topography and location.

### 4.1 Risk likelihood guide

Five levels of risk likelihood have been developed to assess the severity of a risk impact. These are described in Table 5.

**Table 5 Risk likelihood guide**

	Score	Likelihood	Description	Chance of occurring
Increasing likelihood ↑	5	<b>Almost certain</b>	Expected to occur in most circumstances. Complex process with minimal checks and balances. Impacting factors outside control of local government.	Greater than 75%
	4	<b>Likely</b>	Will probably occur in most circumstances. Complex process with some checks and balances. Impacting factors outside control of local government.	50–74%
	3	<b>Possible</b>	Might occur at some time. Previous audits/reports indicate instances of non-compliance. Complex process with extensive checks and balances. Impacting factors outside control of local government.	25–49%
	2	<b>Unlikely</b>	Not likely to occur in normal circumstances. Non-complex process and/or existence of checks and balances.	Less than 25%
	1	<b>Rare</b>	May only occur in exceptional circumstances. Simple process.	No previous occurrence.

Sources: Standard clinical risk management of community health; Logan City Council Alarms and Toolbox Implementation Project Plan 2008<sup>9</sup>

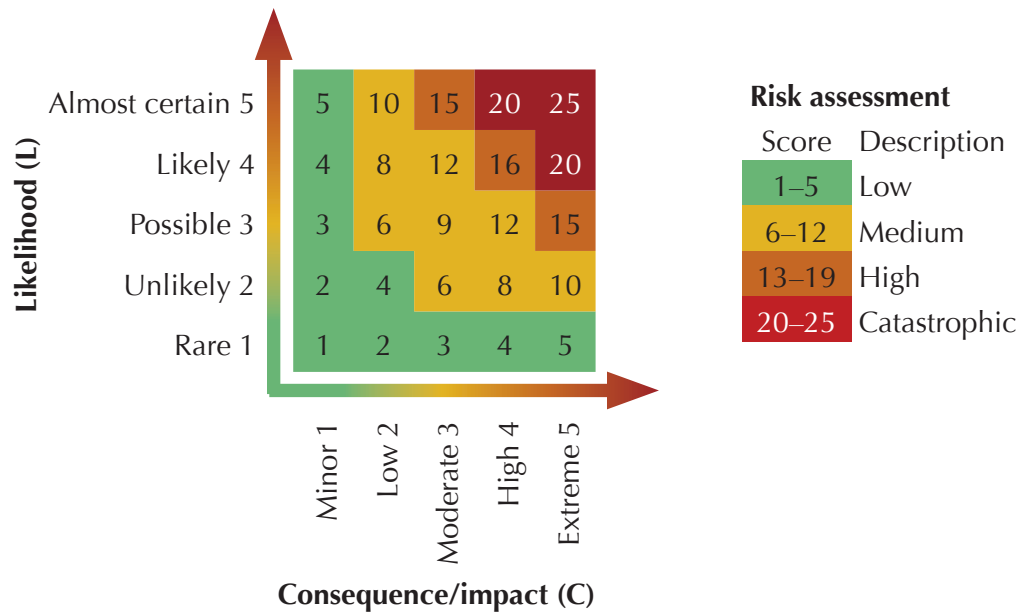
<sup>9</sup> The Logan City Council Alarms and Toolbox Implementation Project Plan 2008 hardcopy was reviewed.

## 4.2 Risk matrix

Risk analysis is an assessment of the likelihood of the risk occurring and the severity of the consequence. This analysis can be expressed as the following equation:

$$\text{Risk} = \text{likelihood} \times \text{consequence} \quad (R = L \times C).$$

The risk matrix and legend (Figure 4) provides a tool to assist local government to perform this analysis.



**Figure 4 Risk matrix**

Local governments will determine and evaluate the activities that will be carried out in their jurisdictions. This determination will be influenced by the resources available to a local government and the outcome of their individual environmental health risk assessment.

# 5 Local government risk evaluation strategy

Target audience:  Senior managers, environmental health officers and risk managers

## 5. Strategy

How can your local government reduce the risks to a manageable and acceptable level?

Prioritise the risks and plan activities to reduce the risks to an acceptable level. Determine the residual risk that your local government is willing to carry after these risk management measures have been implemented.

In the current business world, it is impossible for organisations to operate within a completely risk-free environment — every organisation manages a certain level of risk. For each organisation, working with that risk can include any or all of the following options:

- **Avoidance**, which can involve:
  - taking steps to remove a hazard
  - engaging in alternative activity
  - otherwise ending a specific exposure.
- **Mitigation**, which is the systematic reduction of the extent of exposure to a risk and/or the likelihood of its occurrence.
- **Acceptance**, which is a decision to accept or live with a certain level of risk exposure.

## 5.1 Risk evaluation process

In order to determine which of the above approaches to use, a risk evaluation process should be performed for each risk. Potential treatment options need to be developed and considered, and any actions taken must be documented. Figure 5 outlines the three key stages in this process.

### Stage 1: Determine an inherent risk rating assessment

Make an objective assessment of the consequences and likelihood of each risk if nothing is done to mitigate it. Using the risk matrix (Figure 4), determine the inherent risk rating.

### Stage 2: Determine risk treatment options

Determine treatment options, if required and, using the risk matrix, make an objective assessment of the consequences and likelihood of the risk after treatment.

### Stage 3: Document treatments

Document treatments undertaken and make an objective assessment of the risk once treatment actions have been completed.

Figure 5 Risk evaluation process

This section provides two generic environmental health models that can be used to complete stages 1 and 2 in Figure 5:

- **Assessment of inherent risk**

This stage provides a summary of inherent risk, which is the intrinsic harm that could be caused to the public, businesses, the natural environment and local governments if no environmental health activities are performed to avoid or mitigate the risks identified in Sections 3 and 4. This process applies the same risk assessment tools outlined in Sections 3 and 4.

- **Determination of risk treatment options and revised risk impact assessment**

This stage is a summary of the major actions and measures that local government can undertake to treat and reduce the inherent risk. A revised risk assessment is provided assuming that the specified actions are taken. This results in an assessment of the residual risk; that is, the risk still remaining after treatment action has been taken.

These two models are based on the following seven areas of local government responsibility for environmental and public health:



governance



waste management



safety and protection of public health



land use planning and management



water quality and supply



disaster and emergency management.



environmental management

Following these two models, a sample risk documentation form (Table 7) is provided.

When applying the risk assessment tools and generic models, each local government should consider the following questions:

- What does the inherent risk mean for our organisation?
- What level of residual risk is the local government prepared to carry after risk mitigation measures have been applied?

## 5.2 Stage 1: Inherent enterprise risk assessment

The inherent enterprise risk assessment model in Table 6 details the risks from highest (i.e. catastrophic) to lowest for the seven areas of local government environmental health responsibility.

Please note that this is an example of how to make the assessment. Every local government will need to make its own assessment through consideration of its own circumstances and responsibilities, based on the relevant state/territory legislation.

**Table 6** Inherent enterprise risk evaluation example

Local government responsibility area	 Public health & safety	 Legal & economic	 Environmental	 Political & reputation	 Service delivery	 Risk assessment
<b>1. GOVERNANCE</b>						
<b>Corporate and community planning and public health risk mitigation,</b> including facilities development and management planning	Medical treatment due to access and mobility issues for groups with special physical requirements, e.g. prams, wheelchairs or mobility aids. Risk of injury from increased use of outdoor spaces and from uncontrolled crowds.	Potential for legal action and increased insurance costs due to lack of consideration of environmental and public health impacts.	Environmental damage due to lack of planning. Flow-on effects of public events such as inappropriate waste dispersal.	Damage to local government's reputation, including public denunciation by environmental groups due to lack of environmental and health consideration. Negative media. Complaints from multiple sources. Reporting to relevant state/territory department or authority required.	Potential for disjointed and ineffective service delivery.	
<b>Community planning,</b> including demographic and physical characteristics	Medical attention, treatment, hospitalisation and/or disability due to lack of planning for adequate service delivery for particular population groups, e.g. the elderly. Planning includes the provision of language-appropriate information about services, and the location and accessibility of services.	Potential legal action related to specific incidents.	Increased energy consumption and emissions from extra transport required to reach poorly located services.	Damage to local government's reputation due to lack of engagement and understanding of issues affecting communities.	Potential for disjointed and ineffective service delivery. Suboptimal performance of poorly located services.	



Table 6 continued







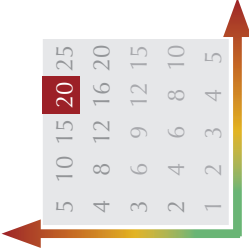
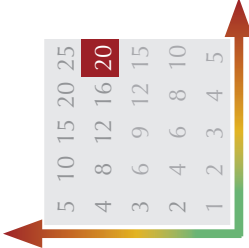
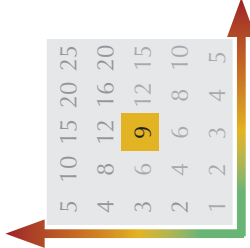
Local government responsibility area	 Public health & safety	 Legal & economic	 Environmental	 Political & reputation	 Service delivery	 Risk assessment
<b>2. SAFETY AND PROTECTION OF PUBLIC HEALTH</b>						
<b>Food safety</b>	Food poisoning or contamination that may lead to fatalities for vulnerable groups, e.g. children or the elderly.	Potential for legal action.	No immediate or long-term harm.	Negative state/territory-wide media and damage to local government's reputation.	Review of organisational capacity, inspection regime and allocation of resources.	
<b>Control of mosquitoes, pests, vectors, disease and infection; oversight of flammable and combustible liquids; and animal management</b>	Infection, disease or injury that could lead to hospitalisation and/or permanent disability.	Potential for legal action.	Medium-term impact on the environment affecting multiple members of the public, and requiring immediate action.	Negative state/territory-wide media and damage to local government's reputation.	Possible review of enterprise capacity, inspection regime and allocation of resources.	
<b>Oversight of immunisation, commercial accommodation, personal services, smoking and cemeteries</b>	Infestation or infection outbreak that may lead to medical treatment.	Minimal legal action.	Immediate environmental impact, nuisance or minor physical damage such as non-toxic waste disposal.	Localised damage to local government's reputation. Some local negative media.	Limited impact on service delivery, with possible review of operational capacity and allocation of resources.	

Table 6 continued

Local government responsibility area	Public health & safety	Legal & economic	Environmental	Political & reputation	Service delivery	Risk assessment
<b>3. WATER QUALITY AND SUPPLY</b>						
<b>Control of water supply, quality and distribution; management of recreational water and pollution control</b>	Water contamination leading to hospitalisation of more than one person. Potential for fatalities in vulnerable population groups, e.g. children and the elderly.	Legal action could be high (e.g. more than \$250,000). Major review of sampling, inspection and monitoring regimes.	Immediate intervention required by local government. Discomfort caused to multiple members of the public from incidents such as toxic contamination. Medium-term impact on the environment.	Negative state/territory-wide media, damage to local government's reputation. Need for implementation of a recovery plan. Report to local government required.	Significant impact on capacity to deliver resources. Community members to be informed of some disruption to services. Review of operational capacity and resources.	
<b>4. ENVIRONMENTAL MANAGEMENT</b>						
<b>Climate change adaptation</b>	Increased fatalities, hospitalisation, injury and/or medical treatment due to reduced food and water safety, and extreme climate events, e.g. heatwaves, fires, storms, floods and drought.	Delay in meeting statutory obligations due to redirection of resources into incident management. Loss of tourism trade. Increased cost of insurance.	Long-term impact on degraded areas of land and water, and increased breeding areas for vectors such as mosquitoes.	State/territory-wide damage to local government's reputation and tourism appeal, due to local government's lack of planning and incident management.	Increased need for inspections and responses to incidents, requiring resource redirection.	
<b>Natural resource management (NRM)</b>	Increased injuries and/or medical treatments due to flora, fauna and water degradation.	Increased cost to local government of rectification of degraded environment. Potential for legal action.	Long-term impact on degraded areas of land and water.	State/territory-wide damage to local government's reputation and tourism appeal, due to local government's lack of planning.	Increased need for inspections and responses to incidents, requiring resource redirection.	

**Table 6 continued**









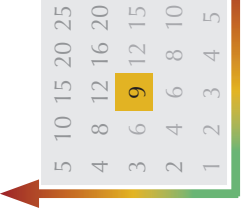









 <b>Local government responsibility area</b>	 <b>Public health &amp; safety</b>	 <b>Legal &amp; economic</b>	 <b>Environmental</b>	 <b>Political &amp; reputation</b>	 <b>Service delivery</b>	 <b>Risk assessment</b>
<p><b>Pollution and nuisance control, including air pollution</b></p>	<p>Injury, infection or contamination requiring hospitalisation or ongoing medical treatment, especially for vulnerable groups, e.g. asthma sufferers. Potential for fatalities linked to respiratory diseases. Risk to safety of improperly trained staff responding to complaints (especially regarding asbestos).</p>	<p>Possibility of legal action. Occupational health and safety issues and industrial action by staff.</p>	<p>Contamination of the environment in the medium term (3 years), with the possibility that the contamination could extend beyond the site of origin. Discomfort caused to multiple members of the public. Immediate intervention required.</p>	<p>Significant damage to local government's reputation with multiple complaints. Possible notification of state/territory authorities.</p>	<p>Immediate intervention, inspection and investigation required. Temporary redirection or additional staff resources. Public and business notifications required.</p>	
<p><b>Environmental management, including stock route and pest management)</b></p>	<p>Injury requiring ongoing medical attention from traversing degraded or contaminated land. Temporary disability to members of the public.</p>	<p>Low financial impact and limited legal action.</p>	<p>Medium- to long-term impact of degradation or contamination of a particular site or area. Investigation and inspection may be required.</p>	<p>Localised damage to local government's reputation, and possibility of multiple complaints. Briefing to local government required, with possible requirement to notify state/territory authorities.</p>	<p>Temporary redirection or addition of staff/resources. Notification of the public and/or businesses.</p>	

Table 6 continued

Local government responsibility area	 Public health & safety	 Legal & economic	 Environmental	 Political & reputation	 Service delivery	 Risk assessment
<b>5. WASTE MANAGEMENT</b>						
<b>Public and domestic waste management</b>	Infectious disease or injury associated with inappropriate transport, disposal or storage of waste. Ongoing medical treatment may be required, with potential for permanent disability from the toxicity of the waste.	Major financial impact (greater than \$250,000) to local government. Situation/incident requires a major review of local government's operations.	Long-term land and water contamination from hazardous toxic waste disposal or poorly operated waste management facilities, especially landfills. Contamination may extend beyond the site of origin.	State/territory-wide damage to local government's reputation. Negative media. Multiple complaints to local government.	Ongoing need for additional resources. Review of operational capacity. Specific polices required for handling hazardous materials, e.g. sharps.	
<b>6. LAND USE PLANNING AND MANAGEMENT</b>						
<b>Town planning and the built environment</b>	Potential infection and contamination from demolition and construction waste or inadequate sewerage management, which may require medical attention and/or hospitalisation.	Major delay to local government's ability to deal with planning determinations. Moderate risk of legal action due to delays to development.	Potential for medium-term soil and water contamination. Investigation and inspection required.	Localised damage to local government's reputation. Report to local government required.	May delay capacity to meet statutory roles in planning and building.	
<b>7. DISASTER AND EMERGENCY MANAGEMENT</b>						
<b>Disaster and emergency management</b>	Floods, fires, storms, other natural disasters, toxic spills and pandemics have potential for multiple fatalities, permanent disability, hospitalisation and ongoing public medical treatment.	Damage to local and regional economy, including loss of tourism, agriculture and food production.	Immediate intervention required. Medium-term (up to 10 years) impact on the environment, with potential damage that may lead to injury across more than one localised area.	Long-term damage to local government's reputation, with negative national media coverage. Possible intervention by state/territory authorities.	Inability to deliver normal range of functions for a significant period, possibly up to 1 year.	

## 5.3 Stage 2: Risk treatment options and revised risk assessment

The risk treatment options are presented in Table 7 to indicate the possible impact of reducing risk by a local government taking action. The residual risk is the risk to the organisation still remaining after treatment action has been taken.

Please note that, like the inherent risk evaluation, the treatment options are generic. Each local government will need to consider its particular capacity to carry out these or other activities to reduce enterprise risk.

**Table 7 Risk treatment options and revised risk impact assessment example**

Local government responsibility area	 Plan and manage	 Regulate and enforce	 Inform and educate	 Advocate and represent	 Risk assessment
<b>1. GOVERNANCE</b>					
<b>Corporate and community planning, and public health risk mitigation,</b> including facilities development and management planning	Analyse health and environmental impacts of local area's demographic characteristics. Use this analysis to inform corporate planning priorities, facilities development and management planning. Develop public health incident prevention, and management programs and strategies in partnership with relevant agencies.	Audit and monitor event management. Investigate complaints. Monitor and enforce local laws.	Disseminate information regarding event management, and health and environmental issues in formats accessible to all demographics within the local area.	Work with different agencies, population group representative organisations and community organisations. Create alliances with regional networks, and state/territory and federal governments.	 <p>5 10 15 20 25 4 8 12 16 20 3 6 <b>9</b> 12 15 2 4 6 8 10 1 2 3 4 5</p>
<b>Community planning,</b> including demographic and physical characteristics	Develop municipal health plans, policies and programs. Prioritise population groups and strategic responses, e.g. housing for older people, transient populations. Develop public health management protocols and integrated environment management plans.	Investigate complaints. Review adoption of priority population policies.	Disseminate health information to target groups, e.g. young women who smoke, Indigenous communities. Promote environmental management and education to agribusinesses.	Collaborate with community organisations, and create alliances with regional agencies, networks, and state/territory and federal governments.	 <p>5 10 15 20 25 4 8 12 16 20 3 6 9 12 15 2 <b>4</b> 6 8 10 1 2 3 4 5</p>

Table 7 continued






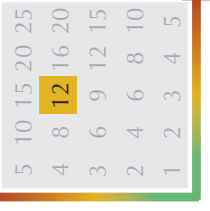

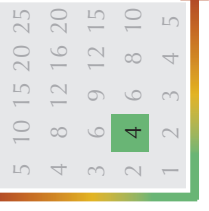








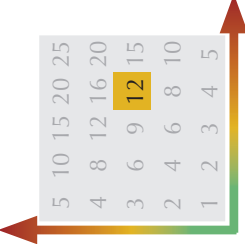
Local government responsibility area	 Plan and manage	 Regulate and enforce	 Inform and educate	 Advocate and represent	 Risk assessment
<b>2. SAFETY AND PROTECTION OF PUBLIC HEALTH</b>					
<b>Food safety</b>	Regularly review and assess food industry and food safety programs, e.g. particular businesses such as mobile food vans, and community facilities such as child and aged care.	Accredit/license businesses. Perform inspections of food-handling premises, mobile food vans, events, stalls, transport, manufacturing equipment. Monitor and investigate complaints, instigate orders and food recalls, impose fines.	Provide food-handling information fact sheets and updates. Participate in food safety training, providing businesses with self-assessment checklists. Ensure that information is in appropriate languages.	Work with business and community organisations, and participate in industry alliances.	
<b>Control of mosquitoes, pests, vectors, disease and infection; oversight of flammable and combustible liquids; and animal management</b>	Develop pest management plans, regulations, local laws, continuity plans and emergency management plans (prevention, preparedness, response and recovery).	Perform licensing, storage inspections, and inspections of air and water storage and licensed premises. Investigate and collect data regarding outbreaks and complaints. Order licence conditions and eliminate sources of risk.	Provide community and business awareness programs regarding identification and management of hazardous species, and materials and handling.	Liaise with state/territory governments, and work with industry and occupation groups.	
<b>Oversight of immunisation, commercial accommodation, personal services, smoking and cemeteries</b>	Develop drug handling and management plans and facilities plans. Develop smoking management plans for local government premises/property.	Perform registration licensing, inspections, investigations, and issuing of infringement notices and certificates of fitness.	Provide information to business operators.	Liaise with organisations providing vaccination programs. Participate in policy development with state/territory and industry bodies, and work with local industry to reduce risks and enhance operations.	

Table 7 continued

Local government responsibility area	 Plan and manage	 Regulate and enforce	 Inform and educate	 Advocate and represent	 Risk assessment
<b>3. WATER QUALITY AND SUPPLY</b>					
 <b>Control of water supply, quality and distribution; management of recreational water; and pollution control</b>	Develop catchment plans, water sampling plans, water safety, reliability monitoring plans, fluoride management plans and facility design guidelines.	Register water service providers and potable water carriers. Perform water quality and supply monitoring and testing. Sample water handling systems. Perform investigations and inspections, and audit public water supplies and quality. Investigate contamination complaints and issue orders and fines.	Provide information regarding recognition of pollution.  Develop guides and facts for business to reduce pollution.	Report drinking water analysis results to state/territory governments.	
<b>4. ENVIRONMENTAL MANAGEMENT</b>					
 <b>Climate change adaptation</b>	Develop sustainability policies, plans and responses; climate change mapping on the built and natural environment; inspection programs; and adaptation and response plans. Disseminate information across local government for incorporation into strategies, including land use and infrastructure planning.	Monitor and enforce development policies.	Educate industry, business and the community to encourage behavioural change that will reduce impact and cope with change.	Develop regional climate change alliances with other local governments. Work with state/territory and federal governments on climate change adaptation, advocate for increased resources to implement strategic responses.	



**Table 7 continued**






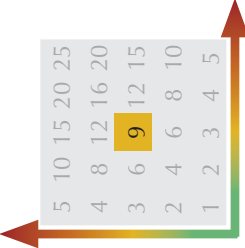
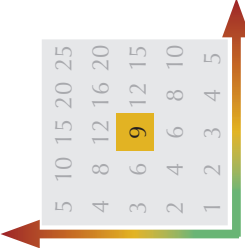
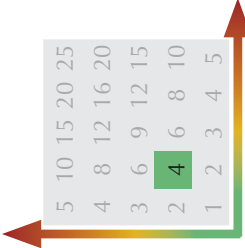
	 <b>Plan and manage</b>	 <b>Regulate and enforce</b>	 <b>Inform and educate</b>	 <b>Advocate and represent</b>	 <b>Risk assessment</b>
<b>Local government responsibility area</b>					
<b>Natural resource management (NRM)</b>	<p>Include expert input in NRM plans, and include NRM plans in corporate and operational planning.</p>	<p>Develop and implement inspection programs for both public and private land and water. Regularly sample land and water. Investigate complaints.</p>	<p>Inform the community and business about resource management and rehabilitation programs. Provide training in water monitoring.</p>	<p>Work with regional NRM alliances, catchment and land care groups, and landowners. Collaborate with state/territory governments.</p>	
<b>Pollution and nuisance control, including air pollution</b>	<p>Maintain a public health event register. Develop a risk approach to licensing and neighbourhood dispute resolution processes.</p>	<p>Sample pesticides and test noise emissions and levels. Investigate complaints. Issue fines and environmental protection orders.</p>	<p>Develop business self-assessment checklists and guides.</p>	<p>Work with industry associations and state/territory government authorities.</p>	
<b>Environmental management, including stock route and pest management</b>	<p>Maintain a register of degraded land and dangerous sites. Develop management plans for public protection of dangerous sites, land rehabilitation plans, environmental management plans; and revegetation, weed management and feral animal management strategies.</p>	<p>Design inspection programs for monitoring stock routes, dangerous sites, activities and industries for weed and feral animal management/control. Investigate complaints; and issue inspection letters, fines and environmental protection orders.</p>	<p>Collect information on declared pests, and flora and fauna identification and control.</p>	<p>Work with industry associations and state/territory government authorities.</p>	

Table 7 continued







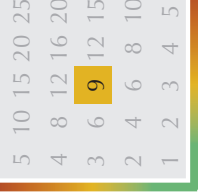

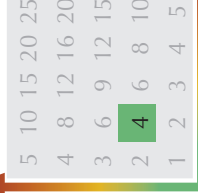





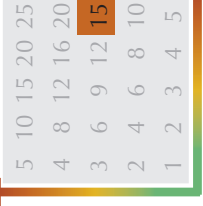
Local government responsibility area	 Plan and manage	 Regulate and enforce	 Inform and educate	 Advocate and represent	 Risk assessment
<b>5. WASTE MANAGEMENT</b>					
 <b>Public and domestic waste management</b>	Undertake planning and development for landfill and local government waste management facilities. Develop waste management strategies, recycling policies and management programs. Perform waste transport.	Provide licensing for waste collection and transport services. Monitor waste management collection and transport operations. Monitor recycling and waste disposal systems and sites. Issue directions for waste storage, transport and treatment.	Provide information and promote recycling and waste minimisation. Issue recycling calendars.	Lobby to influence law and policy setting at state/territory level. Liaise with local resident associations and community organisations.	 <p>5 10 15 20 25 4 8 12 16 20 3 6 9 12 15 2 4 6 8 10 1 2 3 4 5</p>
<b>6. LAND USE PLANNING AND MANAGEMENT</b>					
 <b>Town planning and the built environment</b>	Develop site waste, water and environmental management plans (e.g. noise, light, water, air). Provide input into commercial building and infrastructure development. Develop an environmental impact assessment/statement framework. Contribute to environmental management within local government's planning scheme.	Contribute to development approvals. Issue registration certificates for industry. Conduct site inspections and investigate complaints. Issue directions for remedial action, site evacuation or restriction of site access.	Participate in the planning approval process regarding plumbing and drainage requirements and impacts on the environment. Provide information regarding management of waste on demolition and construction sites.	Liaise with state/territory government authorities and develop partnerships with industry bodies.	 <p>5 10 15 20 25 4 8 12 16 20 3 6 9 12 15 2 4 6 8 10 1 2 3 4 5</p>


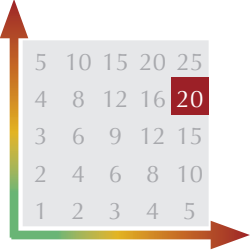
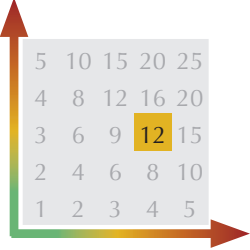
Table 7 continued

Local government responsibility area	 Plan and manage	 Regulate and enforce	 Inform and educate	 Advocate and represent	 Risk assessment
 <b>7. DISASTER AND EMERGENCY MANAGEMENT</b>					
<b>Disaster and emergency management</b>	Develop counter-disaster plans and disaster management plans, including food safety. Develop disease transmission and control risk assessments and management strategies.	Monitor and inspect designated shelters and sites for crisis and emergency management. Seasonally inspect vulnerable infrastructure and built and natural environment sites (e.g. for flood and fire risk). Investigate refuse disposal, food handling, poisons; and chemical, animal and livestock control and disposal. Issue directions regarding water supply and ablutions, and emergency food handling.	Provide community information regarding seasonal preparation, disaster mitigation, and early warning signs and systems.	Liaise with state/territory governments on early warning and monitoring systems, and management of disaster and relief in emergencies.	


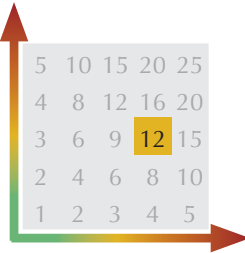
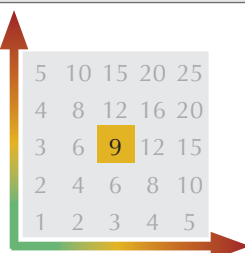
## 5.4 Stage 3: Document treatments

It is important to document the treatments that have been undertaken, make an objective assessment of the risk following mitigation actions, and set out who is responsible and a review period. Table 8 provides an example of a method for documentation of the risk as well as action taken to mitigate or control the risk.

**Table 8 Risk management documentation example**

Inherent risk: Effective control of communicable diseases		Initial risk assessment
	Inability to effectively control communicable diseases due to failure of early detection systems or inadequate resources, resulting in a potential increase in incidence and associated deaths, additional requirements for health resources, adverse publicity to the local government and legal action.	Catastrophic
<b>Persons responsible</b>	Van Huang and Mary Brown	
<b>Impacts</b>	Public health and safety, service delivery, economic/legal, political/reputation	
<b>Cause</b>	Dengue fever virus caused by mosquitoes Hepatitis C caused by skin penetration from tattoos	
Mitigation 1: Implementation of control systems		Residual risk assessment
Systems implemented for the notification, monitoring and analysis of communicable diseases		Moderate
<b>Persons responsible</b>	Van Huang	
<b>Action assessment</b>	Effective	
<b>Notes</b>		
<b>Status report</b>	Action commenced: 2/03/2011	<b>Notes</b>
	Original completion date: 30/09/2011	
	Revised completion date:	
	Next review date: 2/03/12	
	Closed	No

**Table 8 continued**

<b>Inherent risk: Effective control of communicable diseases</b>		<b>Initial risk assessment</b>
	Inability to effectively control communicable diseases due to failure of early detection systems or inadequate resources, resulting in a potential increase in incidence and associated deaths, additional requirements for health resources, adverse publicity to the local government and legal action.	Catastrophic
<b>Mitigation 2: Implementation of processes and protocols</b>		<b>Residual risk assessment</b>
Processes and protocols implemented to investigate and respond to communicable diseases (including inspections of businesses and homes, vaccines, post-exposure prophylaxis, isolation and quarantine)		Moderate
<b>Persons responsible</b>	Van Huang	
<b>Action assessment</b>	Effective	
<b>Notes</b>		
<b>Status report</b>	Action commenced: 30/04/2011 Original completion date: 30/09/2011 Revised completion date: Next review date: 30/03/12 Closed: No	
<b>Mitigation 3: Inspections of tattoo business</b>		<b>Residual risk assessment</b>
Performance of regular inspections by local government to lower the incidence of poor hygiene		Moderate
<b>Persons responsible</b>	Mary Brown	
<b>Action assessment</b>	Effective	
<b>Notes</b>		
<b>Status report</b>	Action commenced: 10/03/2011 Original completion date: Ongoing, every 6 months Revised completion date: Next review date: 10/09/2011 Closed: No	

Source: Adapted from the SA Health Risk Management Policy and Framework.

## 5.5 Monitoring risk and continuous improvement

As with any other risk management process, regular and continuous monitoring and review is vital, as the risks themselves may alter over time. As circumstances change, some risks may take on greater significance than before, while the importance of others may lessen. When monitoring and reviewing risk management processes, it is necessary to consider:

- the risks themselves
- risk management strategies
- factors affecting the likelihood and consequences of the risks
- the cost-effectiveness of the control or mitigation plans
- the effectiveness of the control or mitigation actions
- the systems and processes behind the mitigation activities.

# 6 Delivery options

Target audience:  Elected representatives, CEOs, senior managers, environmental health officers and risk managers

## 6. Action

How can your local government achieve these risk management actions?

Decide what resources your council has available to reduce the risks. Choose the most appropriate options to deliver your risk management strategy.

To perform environmental health functions effectively, local governments need to access personnel with appropriate qualifications and skills. Environmental health is a broad, multi-level discipline spanning a variety of occupations from environmental health officers (EHOs) and technicians to support workers and scientists.<sup>10</sup>

## 6.1 Workforce

### 6.1.1 The importance of a skilled workforce

Local government is required by legislation to authorise appropriately qualified people to undertake environmental health activities. This legislation establishes the powers of officers to monitor and enforce compliance. Traditionally, legislation specifically referred to EHOs, although now it more frequently describes a role for ‘authorised officers’, who must have appropriate skills and knowledge as a precondition of authorisation.<sup>11</sup> They require suitable qualifications, technical skills and scientific capabilities to be able to accurately assess the potential for harm to the public or the environment, and to determine the appropriate response.

Several jurisdictions nominate particular environmental health qualifications as a requirement for appointment, although approaches vary.<sup>12</sup> As jurisdictions revise their environmental health legislation, new arrangements are being introduced, allowing scope for recognition of a range of qualifications and experience. Furthermore, the authority to determine appropriate qualifications and experience may be delegated to local government CEOs.<sup>13</sup>

Qualification requirements are one means of obtaining assurance that the officer involved has demonstrated the skills and knowledge to undertake such a role. In the case of the exercise of statutory powers, this extends to undertaking reasoned and proportionate action in relation to breaches, thereby assisting with compliance, procedural fairness and ‘natural justice’, and ensuring that actions taken are defensible, both morally and legally.

Where environmental health responsibilities are not undertaken by appropriately qualified and experienced officers, the results can be disastrous.

10 Environmental Health Standing Committee (enHealth) 2009. enHealth Environmental Health Officer Skills and Knowledge Matrix. Australian Government Department of Health and Ageing, Canberra.

11 *ibid.*

12 *ibid.*

13 *ibid.*

## Case study

### Death in Brunswick: rooming house fire<sup>14</sup>

#### Coronial investigation into the death of Leigh Sarah Sinclair and the importance of integrating inspectorial skills and duties

In 2006 a Melbourne rooming house fire resulted in the death of two occupants.

The coronial inquest found significant failures in compliance with regulations and standards (doors were locked, smoke detectors were not hard wired and were poorly placed and poorly maintained). In addition, the rooming house operators had deceived the local government regarding the number of residents in the premises. As a result, the rooming house was not properly registered under the Health (Prescribed Accommodation) Regulations 2001.

The inquest into the death of one occupant, Leigh Sarah Sinclair, also uncovered a number of issues that are significant for the administration of environmental health, including:

- The local government EHO who inspected the property had no specific training in fire regulations and was working unsupervised (the EHO's principal experience was with food safety).
- The local government relied on assurances provided by the operators.
- The local government did not properly identify the actual operator of the premises when dealing with staff on site.
- There appeared to be a compartmentalisation of roles and responsibilities of local government officers, which led to unsatisfactory communication between different local government departments. The environmental health department focused on sanitation, while fire risks were seen as the responsibilities of others, such as the local government building surveyor.

The Coroner's findings suggested high levels of culpability on the part of the operators, and inadequacies on the part of regulators. The local government accepted that its investigations could have been more complete.

<sup>14</sup> Refer to the appendix for further details of the case of Leigh Sarah Sinclair.

### 6.1.2 Workforce shortages

The Australian environmental health industry is currently experiencing a shortage of qualified and experienced EHOs. This is due to a combination of factors, including a workforce nearing retirement, lack of attraction into the profession, and an increase in environmental health issues that require management and monitoring.<sup>15</sup> At the same time, the local government environmental health workforce is faced with declining job satisfaction due to a number of issues, including increasing work demands and lack of recognition.<sup>16</sup> Additionally, as the workforce ages, the characteristics of the new environmental health workforce are changing from being predominately male to increasingly young and female.<sup>17</sup> This change has implications for the manner in which local government

<sup>15</sup> Windsor K. 2009. enHealth Workforce Project – Working paper 1: EHO roles and responsibilities. Prepared for enHealth.

<sup>16</sup> Local Government Association of Queensland 2008. Environmental health practitioners: attraction and retention survey results, Queensland. Local Government Career Taskforce.

<sup>17</sup> *ibid.*



delivers its environmental health functions, as younger women are more likely to seek flexible work arrangements and mid-career breaks to enable them to carry out family care responsibilities.

Furthermore, it is acknowledged that geographic location has a significant impact on both the environmental health functions undertaken and the resources required and available.

## 6.2 Delivery options

To assist local government to determine appropriate management responses and the level and type of resources to allocate, a range of service delivery options are presented below. Consideration of the most suitable options should be based on a completed risk assessment, and on subsequent budget and personnel reviews. As environmental health functions and legislative obligations vary nationally, a range of different approaches are provided for consideration.

Please note that the list of options provided is not intended to be exhaustive, but is designed as a guide only.

### 6.2.1 Working collaboratively

Local governments may work collaboratively in the following key ways:

- sharing an EHO/manager
- utilising standard forms, processes and information
- establishing joint arrangements with specialist agencies
- sharing the development of policies and procedures
- subcontracting works to another local government.

#### *Local governments sharing an EHO/manager*

A number of local governments could collaborate to share an experienced, qualified EHO/manager who is delegated to act as the authorised officer. For example, s. 168(3) of the *Queensland Food Act 2006* explicitly allows flexibility for local governments to share authorised officer positions.<sup>18</sup>

Sharing qualified experienced EHOs/managers is particularly relevant to regional and rural local governments, and those local governments with limited resources. Sharing can occur within a regional group of local governments, or across two or three local governments with common geography, economy and population characteristics. Sharing can be a permanent arrangement or as required. For example, during the 2009 Victorian bushfires, EHOs from several local governments in the north-western Victorian region were temporarily 'borrowed' by the City of Whittlesea.

There is some concern that collaboration across local governments and sharing of staff could diminish the level of direct control a local government has over its own environmental health functions. However, the experience of collaboration and sharing at Eastern Health Authority in South Australia (detailed later in this section) is that transparency, good communication and accountability can allay this concern.

#### *Standard forms, processes and information*

Standard forms, processes and information regarding environmental health can be used by multiple local governments. Standard proformas can be adapted by individual local governments to meet particular circumstances while saving local government both time and money in development of the forms, processes and information. Use of common forms and processes also promotes consistency

<sup>18</sup> The Act states that 'The chief executive officers of two or more local governments may appoint an employee of, or another person under contract to, one of the local governments to be an authorised person for the local governments' areas'.

between local governments. This practice is already occurring among South East Queensland local governments, where standardised information and requirements relating to environmental health permits, licences and registrations are provided by 'Toolbox', a local government knowledge network.<sup>19</sup>

Each local government's toolbox is accessible on the internet and provides extensive information, including:

- information and checklists regarding self-compliance
- guidelines
- relevant legislation
- training information
- examples of responses to problems through pictures and plans
- fact sheets.

### ***Establishing relationships with specialist agencies***

An emerging delivery option is for local governments to work in partnership with a range of specialist agencies, utilising the skills of the agencies to respond to the growing range of skill requirements faced by environmental health workers. For example, a partnership could be built between local government and a community health agency, where local government undertakes the planning and regulating roles, and the community health agency undertakes the role of informing and educating the public.

### ***Sharing the expertise of external consultants***

Another emerging delivery option is for a group of local governments to subcontract a specialist such as a legal expert to develop standard policies and procedures for the group, dividing the costs across all participants. For example, one group of local governments in Victoria pooled their resources to hire a lawyer for the development of public health and wellbeing processes and procedures. The lawyer presented overarching principles to the whole group, and also met with each local government and provided tailored advice and procedures based on their specific circumstances.

Additionally, the sharing of a qualified external environmental health consultant can occur, to undertake regular tasks such as supervision, investigation and review of policy, procedures and practice following legislative change.

### ***Subcontracting works to another local government***

Where local governments have experienced limited available resources in an area of need, some have opted to subcontract resources from neighbouring local governments to complete necessary works. Where a local government subcontracts the services of a qualified EHO from another local government, the arrangement should be underpinned by a clear agreement between the local governments. The contracted EHO should be given delegated authority to act in accordance with relevant legislation; for example, s. 30(1) of Western Australia's *Health Act 1911* allows the local governments of two or more districts to appoint an EHO.

## **6.2.2 Outsourcing and contracting expert advice and/or support**

Given the breadth of issues now covered under environmental health legislation, local governments' limited resources, and the competing demands facing them, it is difficult for many local governments to recruit sufficient environmental health workers with the required skills and experience. The outsourcing of expert specialist advice for activities such as risk assessment, policy and practice

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<sup>19</sup> Information is available at [www.lgtoolbox.qld.gov.au](http://www.lgtoolbox.qld.gov.au).

review following legislative and regulation change, climate change adaptation, professional development, and training and mentoring is one option for dealing with this workforce shortage. Specific-purpose consultancies can include contracts for tasks such as developing and/or managing disaster response systems; establishing complaint management systems; and professional development or training in a range of areas, including new sampling and investigation techniques, enterprise capacity building and the development of public information campaigns.

### 6.2.3 Using a separate organisation to perform works

As stated, many small- to medium-sized local governments have difficulty recruiting experienced and fully competent staff across all areas. In South Australia a group of five local governments utilise the services of a health authority to provide the environmental health expertise they cannot provide in-house.

#### Case study

##### **Eastern Health Authority (EHA), South Australia**

The EHA commenced in 1899 (as the East Torrens County Board). It is covered under s. 43 of the *Local Government Act 1999*, which enables two or more local governments to establish a subsidiary to provide specified services of the local government or to perform a function of the local governments.

EHA provides joint environmental health service delivery for the metropolitan local governments of Burnside, Campbelltown, Norwood Payneham and St Peters, Prospect and Walkerville. Services include immunisation, hygiene and sanitation control, licensing and monitoring of supported residential facilities, and surveillance of food premises. It discharges the environmental health responsibilities of the five constituent local governments in accordance with the:

- *Public and Environmental Health Act 1987*
- *Food Act 2001*
- *Supported Residential Facilities Act 1992*
- *Environment Protection Act 1993*.

A number of other local governments also use the services of the EHA on a contract basis. For example, EHA provides immunisation services for Adelaide City Council and licensing of supported residential facilities on behalf of Unley City Council.

EHA has transparent and accountable operations and cost structures. Each of the five member local governments nominates two elected representative delegates to the EHA Board of Management. Meetings are open to the public. Board members have ownership of the organisation and report back to their local governments following each board meeting. In addition to formal meetings and reports, statistical reports are provided to constituent local governments each month on combined EHA activities and on activities in individual local governments.

As EHA is solely focused on environmental health, it is able to:

- offer a specialist service to its constituent local governments
- attract and retain fully skilled specialist staff across the diversity of the profession
- respond quickly to new legislative requirements.

## 6.2.4 Employing environmental health technicians

The work required to carry out local government's environmental health functions could be supported by the deployment of technically qualified environmental health technicians (EHTs). However, as the scope for a technician role can be limited and requires significant support, it is essential that this is carefully considered against other delivery options. A decision to engage an EHT needs to be based on workplace need, a comprehensive risk assessment, and any legislative or industrial requirements that specify minimum qualifications. It is up to local governments to assess these issues.<sup>20</sup>

An EHT could be a person with the skills, experience and qualifications deemed necessary by the local government, operating within the jurisdiction's legislative framework, to carry out:

- a variety of low-risk and technical activities independently<sup>21</sup>
- higher risk activities supported by protocols or standard operating procedures and supervised by a suitably qualified officer.<sup>22</sup>

For example, vector control technicians have existed for years in many jurisdictions, although their management differs between jurisdictions and locations.<sup>23</sup>

Employment of technicians should be supported by a rigorous process that combines an assessment of skills, knowledge and experience, as there is no guarantee that time served equates to skills and knowledge gained. As environmental health work involves applied science, practical activities need to be underpinned by sound theoretical knowledge.<sup>24</sup>

To manage the risks associated with employing EHTs, local governments should ensure that technicians are:

- trained and competent in the area to which they are assigned
- appropriately authorised under the relevant legislation, in line with their demonstrated competencies
- supervised or directed by an EHO
- only assigned to undertake activities that have been assessed as appropriate for them to perform.<sup>25</sup>

Depending on the role and the individual, local government may choose to use an EHT position to develop staff and retain key talent, skills and local knowledge through encouraging technicians to:

- advance their environmental health qualifications with local government support, as proposed in the workforce retention strategies outlined below
- use the position as the basis of a job share or part-time work, which may attract applicants from a currently underutilised workforce; for example, people returning to work, transitioning to retirement or those with family responsibilities.

## 6.2.5 Maximising local government's in-house capacity

Local government can maximise the value of existing in-house resources and skills by improving their deployment.

20 Environmental Health Standing Committee (enHealth) 2009. enHealth Environmental Health Officer Skills and Knowledge Matrix. Australian Government Department of Health and Ageing, Canberra.

21 For example, in keeping with the Queensland Local Government Association Diploma of Local Government (Environmental Health).

22 Suitability qualified is defined as officers with suitable qualifications, technical skills, scientific capabilities and health expertise. This is compatible with Windsor's proposal that technicians meet national minimum skill standards and work under supervision of a qualified professional (Windsor K. 2009. enHealth Environmental Health Officer Skills and Knowledge Matrix: matrix implementation discussion, paper 2).

23 *ibid.*

24 *ibid.*

25 Wall B. 2006. Examination of the role and training of environmental health paraprofessionals. Cited in 'Windsor K. 2009. *ibid.*

For example, the vector control function can be shared between medical entomologists who oversee program development and implementation, EHOs, vector control technicians and, in some instances, other local government employees who are responsible for much of the hands-on work.<sup>26</sup>

Environmental health administrative officers, and community development and quality assurance officers could also use their expertise to assist with fulfilment of the local government's environmental health responsibilities. These support staff could work under the supervision of a qualified, experienced environmental health manager, which would allow local government to make better use of the trained EHOs or a contracted environmental health consultant.

## 6.3 Improving workforce attraction and retention

Local governments could adopt a range of workforce attraction and retention strategies for building their environmental health workforce.

**Workforce attraction strategies** include:

- offering bursaries, scholarships and cadetships to encourage people to study at university while working within the local government
- providing paid study leave
- paying university fees for environmental health qualifications.

Advantages of these supported study arrangements include:

- the opportunity to use the skills of the student in day-to-day operations
- staff retention
- attraction of young people to working in the local government, particularly in regional areas.

**Workforce retention strategies** include allowing flexible work arrangements, such as part-time or flexible working hours, to enable staff to undertake personal and family responsibilities and transition to retirement. Supporting transition-to-retirement programs enables a local government to retain experienced, expert staff to provide supervision, mentoring and support, as well as pass on corporate memory.

A requirement to continue working with the local government for a specified period following the completion of local government-sponsored study can also assist with:

- retaining talented workers
- retaining environmental health knowledge and skills
- securing the local government's investment in educational fees.

<sup>26</sup> Environmental Health Standing Committee (enHealth) 2009. enHealth Environmental Health Officer Skills and Knowledge Matrix. Australian Government Department of Health and Ageing, Canberra.

# Resources and references

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- Toolbox Council Knowledge Network. Councils of South East Queensland and AusIndustry. [www.lgtoolbox.qld.gov.au](http://www.lgtoolbox.qld.gov.au)
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- Victorian Government Health Information. Municipal Public Health Planning Framework – Environments for health. [www.health.vic.gov.au/localgov/mpnpfr/index.htm](http://www.health.vic.gov.au/localgov/mpnpfr/index.htm)

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# Glossary

**Air pollution**—the presence in the outdoor atmosphere of one or more contaminants (e.g. dust, fumes, gas, mist, odour, smoke or vapour) in quantities, characteristics and duration that could be injurious to human, plant or animal life, or to property, or that may interfere unreasonably with the comfortable enjoyment of life and property

**Commercial accommodation**—accommodation provided on a commercial basis, including boarding/rooming houses, hotels, motels, motor inns, backpacker hostels, bed and breakfast premises, guesthouses, caravan parks and camping grounds

**Council**—a particular local-government governing body, elected representatives and workforce, acting together in the best interests of residents, industries, business and visitors in the municipality

**Disaster**—an emergency situation posing significant danger to life, the natural environment or property that results from a natural cause (e.g. flood, fire, storm), violent change to the environment caused by human activity (e.g. toxic spill), or outbreak of infectious disease (e.g. epidemic)

**Enterprise risk**—the possibility that an event or circumstance will have a negative impact on the organisation as a whole

**Environmental health**—those aspects of human health determined by physical, chemical, biological and social factors in the environment

**Environmental management**—the attempt to control human impact on and interaction with the environment in order to preserve natural resources; includes management of degraded land and dangerous sites, land rehabilitation, and management of weeds and feral animals.

**Epidemic**—disease or contamination temporarily affecting a large number of individuals within a local population, community or region at the same time, where such disease or contamination is not permanently prevalent

**Inherent risk**—the risk to the local government, public health and/or the environment if no mitigation strategies or treatments are implemented to reduce the risk

**Local government**—the third tier of government in Australia after federal and state governments; coming under the jurisdiction of the relevant state government legislation; in this document the term local government has been used for consistency rather than council, shire, local authority or territory government that could be applied depending on jurisdiction.

**Natural resource management (NRM)**—the sustainable management of natural resources, land, water, and marine and biological systems

**Pollution and nuisance**—harmful changes in the natural environment caused by human activities, both commercial and domestic, that endanger human health, or harm living resources and ecosystems (e.g. pesticides, herbicides, lead, dust, noise, litter and animal excrement)

**Public recreational water**—includes lakes, beaches, coastlines and all public swimming pools, including pools at private schools, gyms and health centres, social clubs and commercial accommodation

**Residual risk**—the remaining risk to the local government, public health and/or the environment after one or more risk mitigation strategies or treatments is introduced to reduce the risk

**Risk**—the negative consequences that flow from an event or circumstance, measured through a combination of the consequences or impacts of an event and their likelihoods



**Risk analysis**—identification of the likelihood of risk, the magnitude of the consequence and the severity of the impact of the consequence

**Risk assessment**—the process of identifying risks and their consequences, characterised in terms of their likelihood and severity of impact

**Risk identification**—the process of determining where, when, why and how a negative event could occur

**Risk management and treatment**—the process of evaluating alternative actions, selecting options and implementing treatment in response to risk assessments; the decision-making will incorporate scientific, technological, social, economic and political information, and the process requires value judgements (e.g. on the tolerability and reasonableness of costs)

**Vector control**—control of organisms that are carriers of bacteria, parasites, viruses or other microorganisms that cause disease or are hazardous to human health (e.g. rats, mice, mosquitoes)

**Waste**—includes domestic household waste (e.g. septic tanks, dumping and littering, sharps and syringe control), large public waste (e.g. landfills) and local government waste facilities and programs

## Consultation participants

The development of this resource has been assisted by advice and input from a range of people from local and state governments in Victoria, South Australia and Queensland. The Queensland consultations took place in 2009.

Participant	Organisation	State
Kerry Graham	Environmental Health Consultant	Queensland
Ewan Filmer	Risk Management Consultant	Queensland
Denis Carr	Banana Shire Council	Queensland
Toni Johnston	Cairns Regional Council	Queensland
Andy Gaze	Fraser Coast Regional Council	Queensland
Brooke Barnes	Gladstone Regional Council	Queensland
Stuart Patrick	Gold Coast City Council	Queensland
Geoff Doyle	Ipswich City Council	Queensland
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Andrew McKenzie	Longreach Regional Council	Queensland
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Paul Samios	Toowoomba Regional Council	Queensland
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Fleur Cousins	Knox City Council	Victoria
Bruce Boxer	Mitchell Shire	Victoria
Stephen Meloury	Nillumbik Shire	Victoria
Alex Serrurier	Pyrenees Shire	Victoria
Gary Smith	Victorian Department of Health	Victoria
Graeme Gillespie	Victorian Department of Health	Victoria
Noel Cleaves	Victorian Department of Health	Victoria
Rodney Dedman	Victorian Department of Health	Victoria
Rodney Moran	Victorian Department of Health	Victoria
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Neville Kurth	Whittlesea City Council	Victoria
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## Appendix: Case studies

### False economy costs local government: Brookland Greens landfill<sup>27</sup>

During 1992–93 the Victorian Environment Protection Authority (EPA) and a local government (originally the Shire of Cranbourne, now the City of Casey) issued the necessary approvals for the construction of a local government-operated landfill. It commenced operation in 1996. In 1999 work began on the Brookland Greens housing estate near the landfill, but with a stipulated buffer zone of 200 metres. The buffer zone was reduced in 2004 with further development of the estate. In 2005 the landfill ceased operation, and by 2006 the first signs of escaping landfill gas appeared. In 2007 the EPA issued a post-closure Pollution Abatement Notice on the local government. By August 2008 methane gas was detected in a house in the estate, and emergency management measures were put in place.

Gas from the landfill was found in stormwater pipes and electrical conduits, and had migrated into nearby houses. In all, approximately 70 premises were contaminated. An Ombudsman Victoria inquiry found both the EPA and the local government responsible for the problem. A class action instigated by residents settled out of court with a payment of \$23.5 million. The local government's share of the settlement was \$13.5 million.

The Ombudsman's report provided a detailed analysis of serious shortfalls in the regulatory arrangements. Most significant was a failure of the EPA to adhere to its policy on the siting and management of landfills, and in permitting construction of the landfill without an impervious liner, allowing gas produced from putrescible waste to escape. The report stated that the EPA's assessment of the application for approval was inadequate, particularly since construction of the landfill was slow and done in stages, giving the EPA opportunities to rethink and refine its requirements. It did not do this.

The Ombudsman's report concluded that the local government failed to comply with conditions of approval in respect of the provision of a leachate collection system. Additionally, despite its statutory obligations, the local government was 'consistently motivated by financial considerations, at the expense of the environment', one being the cost of an impervious liner (\$500,000 in 1992).

#### *Analysis and implications*

This is a supreme example of a false economy. This case indicates that, while financial implications can never be dismissed, the need to protect the environment should be the priority consideration. A saving of \$500,000 in 1992 led to a cost to the local government of \$13.5 million in 2011. In addition, the local government incurred substantial costs in managing the problem (said to be a further \$21 million during 2008–09).

The Ombudsman was concerned with conflicts of interest in the regulatory arrangements: the EPA officers were both advisors and assessors of the landfill; the local government was 'both applicant and responsible authority for the landfill planning permit'; and 'the assessing officer for the EPA was transitioning to project officer for the landfill manager'. Staff involved in advising licensees should not investigate a breach with a view to prosecution.

<sup>27</sup> Ombudsman Victoria. Brookland Greens Estate – Investigation into methane gas leaks. October 2009 (session 2006–2009 p. 237) *Cranbourne Leader*. 'Cranbourne methane estate residents to share \$17.5m', 25 March 2011.

Requirements and conditions need to be used in an active and dynamic way. The staged construction of the landfill over some years provided the EPA with an opportunity to modify requirements in the light of changes to landfill design.

All the enforcement tools available to authorities should be used to actively enforce requirements. Responses should be as prompt as possible.

## Lax regulation processes can be fatal: the Garibaldi food poisoning outbreak<sup>28</sup>

This case is the most prominent example of a failure of food safety in Australia. It offers important lessons for regulators (where multiple authorities are involved) when considering:

- lines of responsibility
- conduct of the relationship between the regulator and those it regulates.

### *Outline of the case and key issues*

In 1995 the Garibaldi food poisoning outbreak resulted in the death of one child and the serious and permanent injury of many people.

The Garibaldi outbreak occurred because of substantial deficiencies in food safety practices at the factory. The deficiencies included the lack of a quality assurance program and a production process that had not improved despite earlier problems the company had experienced. The result was contamination of Garibaldi's metwurst by *E. coli* 0111 bacteria, causing haemolytic uraemic syndrome (HUS). A coronial inquiry formed part of the subsequent investigations.

### *Analysis and implications*

There is a need for clear lines of authority; that is, who is responsible for what aspect of regulation. This is particularly important where the problem occurs in the primary or early stages of production (as in a dairy, abattoir or meat-processing plant). In Australia (with the exception of New South Wales and Western Australia), this stage is regulated by specialist primary production agencies. The later stages in the chain (transport through to retail) are the responsibilities of state/territory health authorities and local governments.

It is essential that lines of responsibility are clearly set out. The authorities must clarify who is responsible legislatively for each aspect of the food chain in terms of the day-to-day inspection designed to prevent problems. In the case of Garibaldi, evidence before the Coroner suggested that these lines of responsibility had not been clearly established. This case highlights the importance of precise understandings of the various responsibilities, which should be expressed in a formal way such as through a memorandum of understanding.

The manner in which the regulator deals with and relates to the people it regulates must be considered. The people regulated are neither customers nor clients. Rather, they are persons who are subject to legislative requirements and whose conduct must be effectively supervised by the regulator. The Coroner expressed some surprise at the attitude taken by the local government in giving notice of an intended inspection and justifying it on the grounds that 'customer focus has a high profile'. The Coroner stated:

*I must say that I have some difficulty with the concept of a regulatory authority describing the occupier of premises to be inspected as a 'customer'. I realise that the expression has a certain currency in management jargon at the moment, but it implies a relationship of service which is inappropriate. It is not the function of an EHO [Environmental Health Officer] to please those whom he or she is required to inspect, although I do not suggest that unnecessary rudeness and officiousness should be resorted to. However, there will be times when the 'customer' will be displeased by an EHO's actions, and, in my view, the public has a right to expect that an EHO will not be daunted by that.*

The Coroner also stated that the regulator should display 'firmness, objectivity and professionalism', particularly in cases where the public's health is at stake.

<sup>28</sup> South Australian Coroner's Court. Finding into the death of Nikki Robinson. 28 September 1995. [www.courts.sa.gov.au/courts/coroner/findings/findings\\_other/robinson.nikki.finding.htm](http://www.courts.sa.gov.au/courts/coroner/findings/findings_other/robinson.nikki.finding.htm)

## Shelling out the money: *Graham Barclay Oysters v. Ryan* (2002)—the Wallis Lake case<sup>29</sup>

In early 1997 there was a marked increase in hepatitis A cases, particularly in New South Wales (NSW). After investigation, 444 hepatitis A cases were linked to the consumption of contaminated oysters from beds in Wallis Lake on the NSW central coast, which is part of the Great Lakes Council. Wallis Lakes is a large oyster growing region. The contamination potentially came from a number of sources, including septic tank effluent seeping into the lake; pollution from a caravan park; and sewage or other discharge from houseboats and vessels. The local government had the capacity to regulate these activities and the local environment generally through provisions of the NSW *Local Government Act 1989*. Local government officers were also empowered under the *Clean Waters Act 1991* to direct persons to cease activities causing water pollution. There was evidence that the local government knew and was concerned about pollution of the lake. The NSW state government also had powers to regulate fisheries (including oyster growing).

Under the Commonwealth *Trade Practices Act 1974*, the consumers who had contracted hepatitis A commenced an action against the growers and suppliers, the state of NSW, and the local government for breach of their statutory obligations and a failure to use their powers to manage the fishery and to minimise contamination of the lake. The case went initially to the Federal Court, where the judge found all parties liable. The state was held liable on the grounds that its power in relation to management of the fishery ‘was so extensive and significant as to warrant the conclusion that it gave rise to a duty of care to oyster consumers’. The local government was found liable on the basis that it ‘knew, or should have known, that oyster consumers were likely to be adversely affected by any failure by it to take reasonable steps to minimise human faecal contamination of the lake’.

The case was appealed twice. The Full Court of the Federal Court overturned the finding against the local government, and the High Court overturned the finding against the state.

### *Analysis and implications*

All three judgements, particularly the High Court decision, focus on the vexed question of when a public authority should be liable for failure to discharge its statutory powers. The cases provide good examples of how judges approach the same issue in different ways. This was particularly the case in the High Court, where varied approaches were taken by the judges in finding that neither the state nor the local government could be held liable.

The High Court judges offered a number of reasons for coming to the conclusion that public authorities will not be liable for losses resulting from a failure to exercise statutory powers and responsibilities. In particular, public authorities may end up as defendants by default because more culpable parties cannot be sued, or because the authorities have the ‘deepest pockets’, in effect making them insurers of losses in their regions (this issue was raised by the High Court, notably by Chief Justice Gleeson).

The general principle is that public authorities will not be liable for losses resulting from a failure to exercise statutory powers and responsibilities. However, as discussed, there may be situations where public authorities will be liable.

When considering the matter of public authority liability, it is important to keep the authority’s public accountability separate from its private accountability. Public authorities may be liable to ratepayers and voters when they are not effectively exercising powers given to them under statute. But this does not necessarily imply liability to a particular individual. Chief Justice Gleeson made the point that

<sup>29</sup> *Ryan v Great Lakes Council* [1999] FCA 177 – original case heard in the Federal Court  
*Graham Barclay Oysters Pty Ltd v Ryan* [2000] FCA 1099 – appeal from 1999 decision  
*Graham Barclay Oysters Pty Ltd v Ryan* [2002] HCA 54 – final appeal to the High Court

a public authority's failure to exercise a power was effectively making a declaration on the way that local government or state government funds ought to be allocated and prioritised. In effect, the local authority is making a decision on the competing claims of policy and resource allocation. Demands that funds are spent in one way means that there is less that can be spent in other ways. Only in specific cases, where there is specific reliance on an authority to address a particular problem, should authorities be liable for the failure to exercise a power.



## Deaths in Brunswick: coronial investigation into the death of Leigh Sarah Sinclair and the importance of integrating inspectorial skills<sup>30</sup>

A 2006 Melbourne rooming house fire resulted in the death of two occupants. The coronial inquest found significant failures in compliance with regulations and standards (doors were locked; and smoke detectors were not hard wired, were poorly placed and were poorly maintained). The rooming house operators had deceived the local government regarding the number of residents in the premises. As a result, the rooming house was not properly registered under the Health (Prescribed Accommodation) Regulations. The Coroner's findings suggested high levels of culpability on the part of the operators and inadequacies on the part of regulators. The local government accepted that its investigations could have been more complete.

The coronial inquest into the death of Leigh Sarah Sinclair uncovered a number of issues that are significant for the administration of environmental health, including:

- the local government's EHO who inspected the property had no specific training in fire regulations and was working unsupervised (the EHO's principal experience was with food safety).
- the local government relied on assurances provided by the operators.
- the local government did not properly identify the actual operator of the premises when dealing with staff on site.
- there appeared to be a 'compartmentalisation' of roles and responsibilities of local government officers, which led to unsatisfactory communication between different local government departments. The environmental health department focused on sanitation, while fire risks were seen as the responsibilities of others, such as the local government building surveyor.

### *Analysis and implications*

EHOs have a central role in the provision of public health and safety within a municipality and, as authorised officers, have wide statutory powers to enter premises and inspect. However, given the complexity and disparate nature of the potential threats to human health and safety, EHOs need to communicate and work with other local government departments such as building services and planning. This can be achieved through greater horizontal integration between the various local government departments, leading to improved information exchange.

The *South Australian Public Health Act 2011* reinforces the need for integration between environmental health and other local government departments. Section 6 of the Act states that:

The protection and promotion of public health requires collaboration and, in many cases, joint action across various sectors and levels of government and the community.

People acting in the administration of this Act should seek ways to develop and strengthen partnerships aimed at achieving identified public health goals consistent with the objects of this Act.

Where deficiencies need to be remedied by a business, it is important that discussions occur with the responsible operator, especially where there is a complex structure of ownership and responsibility (e.g. the owner may not be the 'on-site' operator/manager of the business). Simple assurances that compliance has occurred cannot be relied on—compliance must be verified by inspection.

<sup>30</sup> Victorian Coroner. Investigation into the death of Leigh Sarah Sinclair (Case 3727/06).  
Draper M. *Sydney Morning Herald* (online). 'Boarding house flouted safety rules'. 29 September 2009.  
*Moreland Leader* (online). 'Fire fear before Brunswick deaths'. 3 November 2008.

