South Australian Public Health Act 2011

Principles to be recognised under the Act

Guidelines

Government of South Australia
SA Health

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2. Acronyms and Abbreviations Used

The Act	*South Australian Public Health Act 2011*
CPHO	Chief Public Health Officer
LGA	Local Government Association
Minister	Minister for Health and Ageing
SAPHC	South Australian Public Health Council

3. Introduction

The *South Australian Public Health Act 2011* (the Act) establishes principles or values that guide everyone involved in administering the Act or making decisions under it, which includes orders, the exercise of other powers or general planning or policy decisions. These principles are set out in sections 6-13 and are as follows:

6. Precautionary principle
7. Proportionate regulation principle
8. Sustainability principle
9. Principle of prevention
10. Population focus principle
11. Participation principle
12. Partnership principle
13. Equity principle

The Act also establishes principles that relate specifically to the administration of Parts 10 and 11 – controlled notifiable conditions and significant emergencies, section 14 – these are not discussed in these Guidelines.

3.1 Purpose

Section 5 provides that:

> *In the administration of this Act and in seeking to further the objects of this Act, regard should be given to the principles set out [in sections 6 – 14] (insofar as may be relevant in the circumstances).*

Each of the principles contributes to helping decision makers (that is, persons involved in issuing notices, making policies or undertaking planning under the Act) to align their work with the primary values of the Act. And in certain cases, specific principles will have a particular importance in shaping the way that orders are made (such as applying the precautionary principle where appropriate, or considering whether or not an option is a proportionate response to a problem). Some principles may find their application more relevant for some aspects of the Act's operation than for others. For example, the sustainability principle will in practice have a more obvious application in public health planning and policy development and less so in imposing orders to enforce the general duty, though all principles should be considered for their application.

However, the principles do not require that a decision *must* be decided in a particular way. Rather, the Act requires that 'regard' should be given to them and only 'insofar as may be relevant in the circumstances'. In other words, administrators are entitled to come to a decision which does not necessarily reflect one of the principles, provided they have actively considered them when coming to their decision. In many cases, the principles may not be relevant. For example in cases where there is little or no uncertainty it would not be appropriate to apply the precautionary principle. Nor does any one principle predominate, rather they reinforce each other and any apparent inconsistencies between them can be reconciled in the context of the particular issue under consideration.

Given the specific requirement to have 'regard' to the principles, it is important that the reasons for making decisions, that might be subject to review, appeal or public scrutiny, are clear and able to be demonstrated and in particular, that decision makers are able to show how they had regard to the various principles and when relevant how they were reflected in the decision. The requirement to 'have regard' to the principles can be assisted by the decision maker maintaining documentation, in the form of a 'check list' setting out the principles and demonstrating that each has been considered.

3.2 Application

Section 15 provides that:

1) *The Minister may, from time to time, prepare or adopt guidelines that relate to the application of these principles.*

2) *The Minister should take reasonable steps to consult with SAPHC and the LGA in the preparation of any guidelines, or before adopting any guidelines, under subsection (1).*

3) *SAPHC may, as it thinks fit, request the Minister to develop guidelines with respect to a particular matter or matters.*

4) *A person or body involved in the administration of this Act must have regard to any relevant guidelines under this section.*

These Guidelines have been prepared in accordance with section 15. Draft Guidelines were circulated for consultation with the South Australian Public Health Council, Local Government Association and Environmental Health Officers (authorised officers). Feedback received has been reflected in the final version. It is proposed to collate working examples of the application of the principles for inclusion in future versions of these Guidelines. Persons or bodies involved in the administration of the Act should consult the Guidelines when having regard to the principles.

4. Precautionary principle

4.1 Introduction

The precautionary principle is a well-known concept, extensively written about and considered by the courts, that builds on the common sense idea that if in doubt, it is better to 'err on the side of caution' and to be 'safe rather than sorry', especially in cases where there is a possible risk of material harm to public health. In practice, the precautionary principle will not often be applied since it deals with uncertainty and mostly, levels of harm can be estimated with sufficient certainty to determine the correct response without needing to apply the principle. But where there is uncertainty and it is appropriate to do so, decision makers (authorised officers, Councils etc) should be prepared to formally apply the precautionary principle in a systematic and coherent way that can be defended if challenged. This guideline sets out the circumstances where it might be appropriate to consider and then take precautionary measures and offers a systematic approach for doing so.

4.2 What does the precautionary principle require?

The precautionary principle is commonly to be found in Australia's public health, environment protection and natural resource laws. However, there is not a consistent set of words and therefore there is some variation in approach across jurisdictions. Section 6 of the *South Australian Public Health Act 2011*, sets out the principle as follows:

> *5) If there is a perceived material risk to public health, lack of full scientific certainty should not be used as a reason for postponing measures to prevent, control or abate that risk.*
>
> *6) In the application of this principle, decision-making and action should be proportionate to the degree of public health risk and should be guided by –*
>
> *(a) a careful evaluation of what steps need to be taken to avoid, where practicable, serious harm to public health; and*
>
> *(b) an assessment of the risk-weighted consequences of options; and*
>
> *(c) an aim to ensure minimum disruption to an individual's activities, a community's functioning and commercial activity consistent with providing any necessary protection from identified public health risks.*

When assessing the 'perceived material risk to public health' the following general definitions in section 57(4) and section 3 are important

> *material risk – a material risk to public health occurs if the health of 1 or more persons has been, or might reasonably be expected to be, harmed by an act or omission of another, but does not include a case where the harm, or risk of harm, is trivial or negligible.*

harm includes

- *physical or psychological harm* [for example from odour]*, or*
- *potential harm* (includes risk of harm and future harm)*, to individuals, whether of long term or immediate impact or effect.*

4.3 Applying the precautionary principle

4.3.1 Introduction: some examples

As stated, the precautionary principle requires regulators to be "safe rather than sorry" and in effect reverses the onus of proof, where the burden is now to demonstrate that a product or activity does not present a risk of harm to public health, rather than requiring the regulator to demonstrate that it does. Some examples will help explain how the principle operates.

> Second hand tobacco smoke was thought to present a risk of harm to people exposed to it (since direct exposures were known to present health problems for smokers it was plausible to suggest that non-smokers indirectly exposed could also be harmed). But initially there was uncertainty about the nature and extent of the risk to health that passive exposures presented. Applying the precautionary principle, regulators could justify erring on the side of caution, taking measures that restricted exposures, even though the nature and extent of the risk was not clear.

> Similarly, uncertainty may surround the likelihood and effects of exposures from an industrial process on a nearby community but if there is evidence to substantiate a perception that it may present a material risk to public health, the precautionary principle would authorise proportionate measures to eliminate or minimise that risk, imposed via a notice to comply with the general duty.

> If there is a perceived risk to the community from a suspect source (as in the case of contaminated food) but the link has yet to be fully demonstrated, the precautionary principle could justify a public statement warning of the risk and identifying the suspect source.

Case study – John Snow's 'precautionary prevention'

In a 10-day period from 31 August to 9 September 1854, there were about 500 deaths from cholera in the parish of St. James, which included the Golden Square area of Central London. John Snow, a London physician, investigated the outbreak, having previously written The Mode of Communication of Cholera, a pamphlet of 30 pages which he published at his own expense in 1849. Prior to the Golden Square outbreak, Snow was studying cholera and the water supplies from two different water companies in South London: one 'clean' and the other 'polluted' with sewage. This incomplete study was already producing data that supported his theory that cholera was caused by contaminated water when he went to investigate the Golden Square outbreak. A short investigation revealed that virtually all of the 83 people who had died in the Golden Square area between 31 August and 5 September had drawn water from the popular Broad Street water pump, rather than from the available, and cleaner yet less popular, piped water supplies. On 7 September, Snow recommended the removal of the Broad Street water pump on the grounds that there was 'no... Cholera... except amongst persons, who were in the habit of drinking the water of the (Broad Street) water pump'. The authorities removed the pump handle the next day, thereby helping to speed up the declining cholera outbreak and preventing further infection from that source.

Based on Brody et al., 2000[1]

John Snow's advice to the local Council is a classic case of applying the precautionary principle: clearly, a material risk to public health existed, evidenced by an epidemic that had taken a hundred lives in his part of London alone; there were cogent grounds for implicating the Broad street pump as a potential source of the infection (Snow's map showed that). But was the disease water borne and the pump a source of infection? This was uncertain, yet a lack of certainty did not, and should not, have delayed his advice to take a preventive measure that though an inconvenience to users who had to walk to a more distant pump was both effective and easy to take.

1 European Environment Agency (2001), Late lessons from early warnings: the precautionary principle 1896-2000

4.3.2 A staged approach

The precautionary principle should be applied in a systematic or a 'staged' way. Initially, there are two steps to consider – is there a perceived risk to public health and, if so, what is the degree of uncertainty? This leads on to a third step – namely, the type of regulatory response that is appropriate or proportionate to deal with the perceived risk. The first two steps are discussed immediately below (4.3.3 and 4.3.4). The regulatory response is discussed in 4.4.

4.3.3 Is there a perceived material risk to public health?

The first step in applying the precautionary principle requires regulators to consider whether there is a perceived risk at all, since the claim that there is must be credible and have a basis in scientific fact and logic. Some activities or their exposures may be undesirable or annoying; they may be emblematic of poor planning decisions that allow factories to be built too close to houses and vice versa. But this does not in itself make them a risk to public health. In each case where the precautionary principle is to be applied, there must be a scientifically coherent argument outlining why there might be a material risk to public health. This does not exclude the, often genuine, health concerns of residents, which should be listened to and taken seriously, but a prerequisite for triggering the precautionary principle is that there are objectively justifiable concerns about a material risk to public health. Without this it cannot be applied, a point that has been emphasised by courts in South Australia.

In assessing the perceived material risk to public health, the following may offer some guidance, namely:

> Is the risk scientifically coherent (for example, does it satisfy the Bradford Hill postulates for causation)?[2] These are listed in Appendix A

> The scale of the risk (e.g. is it confined or potentially covering a wide area).

> It's magnitude of possible impacts.

> The scale of possible impacts, in terms when they might emerge and their duration.

> The reversibility of impacts, over what time and at what cost.

> The complexity and connectivity of their possible impacts.

> The options for management.

> Public concern and how scientifically cogent is the concern.[3]

4.3.4 Uncertainty as to the perceived material risk eventuating

The second step relates to the degree of uncertainty and, in particular, given a perceived risk, is there uncertainty about whether or not it will materialise (i.e. that persons will be harmed or potentially harmed)? Where the material risk is more serious, measured either by its likelihood of occurring or its impacts, or both, even a small degree of uncertainty associated with the possibility of the risk materialising might warrant precautionary action, in cases where a less serious risk would not (i.e. decision makers should be more inclined to err on the side of caution and take precautionary measures where the possible risk is a serious one). Furthermore, uncertainty has 2 contexts:

> The *likelihood of the exposure* may be uncertain. Thus it may be uncertain whether persons will be exposed to the actual or potential harm – e.g. can a 'fail-safe' system be relied upon to operate as promised? Also, it may be uncertain whether or not people will be exposed at all should an incident occur. For example, buffer zones may or may not be adequate to prevent this while prevailing winds may increase or reduce the risk of atmospheric exposures.

> The *impacts of the exposure* if it does occur may not be clear in terms of its potential to create a material risk to public health. For example the epidemiological studies on the impacts of exposure (in terms of its causing an increased relative risk for a disease) may be unclear or there may uncertainty as to its effect on vulnerable persons exposed to it. There may also be uncertainty in terms of the exposure's effects when combined with other emissions or pollutants (its synergistic effect).

2 Hill A (Bradford), "The Environment and Disease: Association or Causation?" (1965) 58 Proceedings of the Royal Society of Medicine 295.

3 List adapted from *Telstra Corporation Limited v Hornsby Shire Council* [2006] NSWLEC 133 para 131

Case Study – Clandestine laboratories

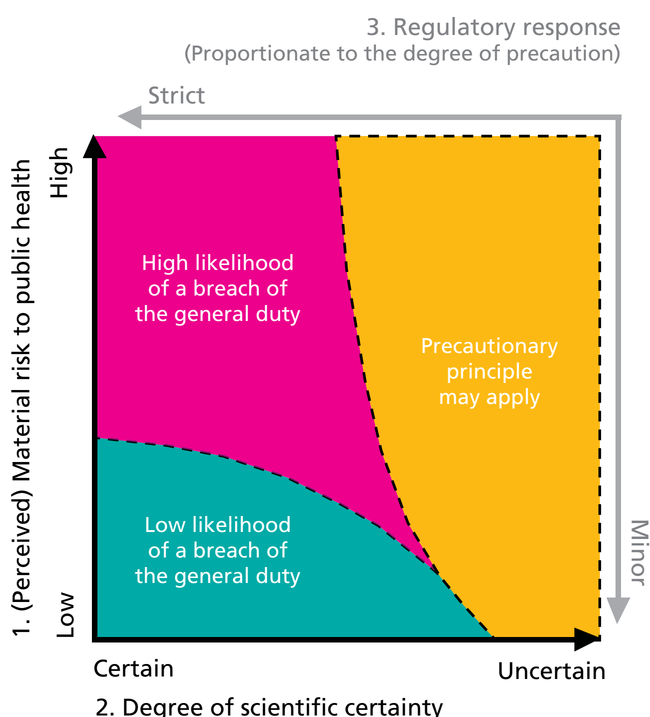
Clandestine laboratories (places where illicit drugs are manufactured) provide an example of multiple uncertainties associated with the management of the risks. Here, the levels of risk they present are uncertain on account of the illicit and unregulated nature of the activity and any lack of documentation regarding the chemicals involved and their quantities. Risks include explosions, toxic chemical residues and fumes. Uncertainties are exacerbated by the possible future use of the premises: later residents may include children or people particularly vulnerable to exposure from chemical residues. Faced with the possibility of a material or potentially serious risk to public health, there are good reasons to take a precautionary approach in these cases and impose a requirement on the owner of the premises to undertake tests to assess the risk and to take the appropriate measures to abate it.

4.4 The regulatory response – measures to be taken

Assuming that there is a perceived risk of material harm to public health and uncertainty as to whether or not it may eventuate, the precautionary principle should be applied, and in doing so authorised officers, Councils etc have a range of options designed to reduce or eliminate the potential risk. These include informal discussions, mediation or warnings following on from a complaint. More seriously, the precautionary principle could be used to justify issuing a notice to comply with the general duty, to prohibit an activity or to impose conditions on an operator or to monitor an activity. Codes or guidelines made under the Act may also contain standards with a 'built in precautionary buffer', illustrating another way in which the principle can be applied. Adaptive management may also be an appropriate response, where the requirements can be altered, particularly if new scientific knowledge relating to the risks becomes available.

The cost of compliance with the requirement to reduce or eliminate the risk (whether economic or social) should be considered when setting precautionary measures, though this must be subject to the overall obligation to protect public health. And as a general point, when precautionary measures are applied they should be appropriate and proportionate to the level of the perceived risk (and this is consistent with section 7, the 'proportionate regulation' principle). Thus, if the perceived risk to public health is substantial, the precautionary measures should be more stringent than would be the case where there was a lower level of perceived risk. Namely, decision makers should be at their most cautious and most risk averse when the potential harm to public health is most serious. This is illustrated by figure 1 (below).

Figure 1 Precautionary Principle



4.5 Conclusion

The precautionary principle is a well-established and well thought through element of public health and environmental practice. On occasions it has even been criticised, though usually by people who do not understand its necessary elements. The precautionary principle is not a shorthand or convenient way of saying ‘no’ to a proposal. Rather it can only be applied when certain pre-conditions exist and in practice will rarely be used since authorised officers, Councils etc usually have sufficient information to make an informed decision based on known facts. But when there is uncertainty and the other requirements are met, the principle should be applied in the systematic way outlined in this guideline that ensures consistency with similar situations. A decision to apply it must be defensible, and it could be subject to review or appeal.

5. Proportionate regulation principle

Section 7 of the *South Australian Public Health Act 2011* establishes the 'proportionate regulation principle' which provides that:

> *Regulatory measures should take into account and, to the extent that is appropriate, minimise adverse impacts on business and members of the community while ensuring consistency with requirements to protect the community and to promote public health.*

A proportionate approach to regulation is one that takes a balanced view, where the response is neither excessive nor inadequate but is tailored to addressing the nature and size of the risk to public health. In adopting a proportionate approach the regulator must therefore consider and take into account both the benefits of a proposed notice or decision, in terms of reducing the risk, and the burdens or costs of compliance with it (for example the regulator should not 'use a hammer to crack a nut'). At its simplest this process involves notionally 'weighing' the compliance costs and the public health benefits in order to ensure that they are greater than the costs. Thus, the requirements of a notice or the compliance standards imposed by a Policy must be effective and calculated to achieve a good outcome in terms of protecting public health and do so in an appropriate way that does not place disproportionate burdens on the person bound by it.

This principle reinforces the general approach taken by the Act and most significantly the general duty (section 56) which is to take reasonable steps to prevent or minimise any harm to public health. And when issuing a notice to comply with the general duty, section 92(2) requires a consideration both of the significance of the potential harm and the steps that can be taken to deal with it. Proportionate regulation is also consistent with the Council of Australian Government's Principles of Best Practice Regulation which includes the requirement that the benefits of the [order] to the community as a whole outweigh the costs of compliance on the person subject to the order.

In practice, the proportionate regulation principle requires decision makers firstly to have regard to the extent to which an order or requirement will deal with an identified public health problem or risk, taking into account the size and significance of the problem (assessed by considering: its actual or potential impacts; its likelihood of occurring; and the numbers of people exposed to it) and secondly the cost, reasonableness and likely effectiveness – in terms of its capacity to address the problem or risk – of the compliance requirement. This is never a precise process and one where there will be much room for debate and disagreement. The effectiveness of a proposed requirement (and therefore the need for it) may be unclear, the benefits it brings may be short term and if put in place to prevent a problem from occurring may be invisible and therefore criticised as unnecessary. Other factors beyond the power of regulators may also influence the benefits. For example, costs of compliance may be unclear, perhaps highly inflated as a way of objecting to the proposal, while new technologies may reduce costs over time. The subjective element in 'weighing' costs and benefits will also be influenced by external factors such as community views but they should not be allowed to erode the systematic assessment of costs and benefits implicit in a proportionate approach.

The principle of proportionate regulation can operate harmoniously with the other principles, such as the precautionary principle, which requires that the regulation or order made in response to the uncertainty must be proportionate to the potential level of harm; or the principle of prevention, where measures taken should be proportionate to the size and significance of the particular issue sought to be prevented. It also reflects good practice across all fields of regulation.

6. Sustainability principle

Section 8 of the *South Australian Public Health Act 2011* establishes the 'sustainability principle' which specifies that:

> *Public health, social, economic and environmental factors should be considered in decision-making with the objective of maintaining and improving community well-being and taking into account the interests of future generations.*

Questions of sustainability are at the heart of public health policy and practice and the creation of healthy environments. Typically, decisions that promote sustainability are ones that also promote public health and so there will be opportunities to reflect the principle in the administration of the Act. But sustainability can also be an elusive and overused term with a range of meanings and contexts. The World Health Organisation, when considering 'sustainable development', emphasised that humans should be at the centre of the concept which it defined as: 'the use of resources, direction of investments, the orientation of technological development, and institutional development in ways which ensure that the current development and use of resources do not compromise the health and well-being of future generations.'[4]

While there are many definitions of the term 'sustainability' and many approaches to achieving it, two key ideas are reflected in section 8, which are now discussed.

6.1 Sustainability involves a 'broad' or holistic approach

The first of these ideas is that a 'sustainable approach' is an holistic or inclusive approach which recognises the links between public health and other areas of policy and regulation more specifically directed to achieving social and the economic ends. In some cases the links between public health practice and these other areas of public concern can be obvious and have been well described in the literature. For example, healthy and attractive places, where the local environment is not polluted and biodiversity is maintained promote the physical and wellbeing of those who live in them. In other cases, the impacts of proposals on the health and wellbeing of communities is not so obvious, but should be explored and understood wherever possible so that the full range of impacts associated with them, including those on public health, can be taken into account in the decision making process.

The sustainability principle, when seen as a 'broad or holistic' approach is supported and reinforced in the Act in a number of ways. Thus, it is consistent with the Partnership Principle (section 12) which recognises that public health practice requires 'collaboration and often joint action across various sectors and levels of government and the community'. The Act also provides opportunities, through both the public health planning process and the specified functions of authorities, to make public health a relevant consideration in areas where it would not necessarily be taken into account. A key opportunity in this regard is contained in the function of local Councils, set out in section 37(2)(g), to assess activities and proposed developments in order to determine and respond to their actual or potential public health impacts. This establishes the basis for promoting good public health outcomes within planning decisions. Opportunities for the integration of public health concerns with social or economic issues are further strengthened at a State level by the Minister's role as 'the primary source of advice to the Government about health preservation, protection and promotion' (section 17(1)(e)). The Minister's role and position as the 'public health adviser' in the wider governmental process, is a role that the Environmental Health Officer can also adopt at the local Council level.

4 WHO Health Promotion Glossary (WHO, Geneva, 1998) p21

6.2 Sustainability involves a ‘deep’ or intergenerational approach

The second key idea of sustainability reflected in section 8 is its long term approach, implicit in having regard to the interests of future generations. Decisions made today may have substantial long term impacts. Climate change offers an obvious example; impacts on future generations will depend on the decisions that communities make today. Recognition of the need to take long term impacts into account can also support and strengthen initiatives that are taken to secure more immediate benefits. For example, local strategies to create safer local neighbourhoods (by improving lighting, footpaths, cycle-ways and traffic calming) will encourage people to become more active, while also reducing their dependence on motor vehicle use, potentially making a local contribution to greenhouse gas reduction. Overall, many decisions made to protect and advance public health have significance for future generations and the sustainability principle supports these long term impacts being identified and taken account of in the Act’s administration.

6.3 Sustainability: balancing issues

When public health, social, economic and environmental issues are intertwined, they will often support each other: a compliance notice that seeks a public health benefit will often achieve environmental or social benefits, strengthening the case for action, while a healthy economy is preconditioned on a healthy population. However, in some cases a balancing or reconciliation of conflicting interests may be required, particularly where a decision to protect public health carries economic costs. In these cases, the public health needs should weigh most significantly on the minds of decision makers, though the other interests should never be dismissed or automatically be made subservient, and the need to weigh the public health benefits with the costs of compliance (the approach envisaged by the Proportionality principle) should always be kept in mind. But, in assessing and identifying these public health benefits, the sustainability principle anticipates that decision makers will think both broadly across a number areas of regulation, to identify potential public health impacts, both those that are immediate and those that are over the long term.

7. Principle of prevention

Section 9 of the *South Australian Public Health Act 2011* establishes the 'Principle of Prevention' as follows:

> *Administrative decisions and actions should be taken after considering (insofar as is relevant) the means by which public health risks can be prevented and avoided.*

This principle encapsulates an essential and universal theme in public health practice – that prevention is better than cure. The Act provides many opportunities for a preventive approach, allowing proactive interventions and requirements designed to stop harm to public health occurring, and persons administering the Act should always be alert to the importance of prevention and the opportunities that exist to make it a feature of their work.

In the context of the Act, prevention constitutes the strategies and initiatives that eliminate or minimise potential sources of harm to public health. This will be achieved in many ways; for example, public health planning and the specific role of Councils in relation to development (as set out in section 37(2)(g)) both offer opportunities to shape environments in a way that prevents the occurrence of public health harm. Development (or land use) decisions that are made with public health goals and interests in mind also support the Principle by preventing undesirable elements of a development that otherwise would go on to be the source of ongoing health problems for those exposed to them.

Immunisation is another example of prevention that is explicitly referred to in the Act: section 38 of the Act provides that Councils 'must provide, or support the provision of, immunisation programs for the protection of public health' within their areas and that the Department of Health must support these services.

Prevention is also a key reason for exercising specific powers under the Act. Section 56, the general duty, specifies that 'a person must take all reasonable steps to prevent or minimise any harm to public health caused by, *or likely* to be caused by, anything done or omitted to be done by the person,' where harm includes potential harm (which in turn includes 'risk of harm and future harm') and the terms of the notice issued to enforce the general duty will most often be to prevent harm from eventuating or where it has occurred, to prevent it from continuing.

8. The ‘Population focus’ principle

Section 10 of the *South Australian Public Health Act 2011* establishes the ‘Population Focus’ principle as follows:

> *Administrative decisions and actions should focus on the health of populations and the actions necessary to protect and improve the health of the community and, in so doing, the protection and promotion of the health of individuals should be considered.*

This principle is fundamental to the way the Act should always be used: namely, with the health of the wider community as its prime concern. The population focus is also reflected in the objects of the Act, which makes the link between the health of the populations or communities and the health of the individuals within those communities, for example: ‘to promote health and well being of individuals and communities’; ‘to protect individuals and communities from risks to public health’ (section 4(1)(a) & (b)). More particularly, a population focus sustains public health planning and community wide strategies that are designed to improve the health of individuals (such as by the creation of safer local environments that encourage their residents to be more active, or the more responsible marketing of potentially unhealthy products).

The populations that might be the target of a public health initiative are also diverse. At its broadest the whole of the South Australian population is the focus of public health initiatives, but within this there are many smaller populations comprising local communities or vulnerable groups that will benefit from public health interventions. The objects of the Act specifically envisage this, a specific object being:

> *to provide for or support policies, strategies, programs and campaigns designed to improve the public health of communities and special or vulnerable groups (especially Aboriginal people and Torres Strait Islanders) within communities*
>
> *Section 4(f)*

When public health interventions (such as orders etc) protect individuals who may be exposed to risks to their health (e.g. a person who may be placed at risk by the activities of a neighbour) it does so because the person at risk is a part of his or her wider community. This approach is expressed in the definition of ‘public health’ in the Act namely that

> *public health means the health of individuals in the context of the wider health of the community*

which reinforces the idea that individuals (which could include family members as well as neighbours and strangers) are protected as representative of the wider community.

However, the definition of ‘public health’ does place limits on the circumstances under which the Act can be used. To give two examples: a deliberate assault on an intended victim is more a matter for criminal law rather than it is for public health; the personal choices of individuals, such as not to follow the advice of their doctors (for example to exercise more or stop smoking) generally have no public health impacts and therefore are not within the scope of the Act.

9. Participation principle

Section 11 of the *South Australian Public Health Act 2011* establishes the 'Participation' principle as follows:

> *Individuals and communities should be encouraged to take responsibility for their own health and, to that end, to participate in decisions about how to protect and promote their own health and the health of their communities.*

This principle recognises that public health is a shared responsibility between individuals and their communities. In that sense it echoes the basic concepts underpinning the general duty in section 56 of the Act which states that persons should take all reasonable steps not to harm public health. It is a principle which is also congruent with the Act's definition of public health as "the health of individuals in the wider context of the health of the community…". This principle recognises that whilst individuals have a responsibility for their own health, this cannot be seen in isolation from their community and the social, physical and economic environment in which they live. Decisions which are made by individuals affect their health as do decisions which are made by others (be they other members of the community, levels of government or commercial or other organisations), all aspects of a community can impact on health. In a state like South Australia this is supported by basic democratic principles which provide the bedrock of what we take as the normal and proper way of conducting ourselves. That is where possible we expect to be involved or be given the opportunity to be involved in some way in decisions which impinge upon us.

The Act has several specific provisions requiring consultation, for example over the development of guidelines, plans, codes of practice, development of regulations, which gives clear expression of the Participation Principle. Similarly in terms of the exercise of powers under Part 10 of the Act (Controlled Notifiable Conditions) person subject to orders or directions are expressly encouraged (where reasonably possible) to be informed about and participate in decisions which affect them (see section 14(5)(c)).

The Participation Principle can even be seen to have implications for actions concerning a breach of a section 56 General Duty. For example; where possible, relevant and where not in a situation requiring urgent action it could be expected that an authorised officer would seek to engage with members of the public who may be or potentially be impacted by the suspected breach to gauge their views as well as test out possible remedies. Similarly, and again where possible, relevant and where not in a situation requiring urgent action, engaging with the person who may have breached their general duty in a search for practical remedies to the problem would not only be an expression of this principle but potentially would aid in the implementation of a sustainable remedy which is more likely to be supported by the individual concerned. It must be stressed however that this may not be possible or desirable in all circumstances. The planning provisions in sections 50-51 provide the basis for several participation opportunities particularly at the Local Government level.

The planning provisions are one of several sections of the Act which recognises that people are to be encouraged to take responsibility for their own and their community's health. It is therefore necessary that they be given opportunities to participate and help shape decisions and plans which are aimed at protecting and promoting public health. As Councils develop their public health plans they will be able to utilise their existing community consultation and participation processes to ensure that members of the public have an opportunity to contribute to the development of the plan. This is congruent with their requirements under the Local Government Act (1999).

10. Partnership principle

Section 12 of the *South Australian Public Health Act 2011* establishes the 'Partnership' principle as follows:

> *1) 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.*
>
> *2) 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.*

This principle recognises that the determinants of the public's health are spread throughout the community and that there are often multiple layers of causes involving several areas of responsibility, policy mandates or authority. What is true in terms of the causes of public health are also often mirrored in the solutions or remedies to identified public health issues and problems. Therefore very often the most effective remedies and actions are based on partnership and collaboration and the focussing of efforts from a diverse range of persons and agencies.

This does not only apply to large scale issues of concern but can also have application to matters regularly confronting authorised officers when dealing with specific localised public health risks. For example when dealing with an insanitary condition arising out of a case of severe domestic squalor (assessed as a breach of the general duty). In this circumstance whilst the authorised officer has sufficient powers to order a remediation, the practical and sustainable remedy may require the coordinated engagement of a range of others, particularly where the person who is identified as causing the breach is in some way incapacitated or not able (or not immediately willing) to undertake remediation by themselves. In these circumstances coordinated efforts could include staff from other parts of Council (e.g. waste management, general inspectorate, community services), fire or emergency services, police, mental health services, general practitioners or other care providers, family or friends as well as voluntary community service and support organisations. Skills at developing partnerships and coordination are therefore an important part of the professional toolbox for authorised officers. Similarly policy and governance mechanisms associated with the Act need to reflect, build upon and set the context which encourages partnerships at all levels and circumstances where it is relevant to addressing public health issues.

The Act contains several specific references to partnership and collaboration. For example in section 37 "Functions of Councils". Similarly section 22 provides the Chief Public Health Officer with a mandate to call together a range of "public authorities" to help find solutions where there is an identified increased risk of morbidity or mortality.

A clear expression of the Partnership Principle is contained in the public health planning provisions. The State Public Health Plan is articulated with planning undertaken by Councils in that it is to incorporate information and issues contained within Councils Plans. Similarly Public Health Plans developed by Councils are to be consistent with and have regard to the State Public health Plan. Councils are also encouraged to plan jointly where relevant. Specific provisions in Section 51 provide for the establishment of Public Health Partner Authorities, these can be state government agencies or departments or non-government organisations. These Public Health Partner Authorities are formally designated by regulation and declaration by the Minister. By agreeing to be a Public Health Partner Authority these organisations are formally agreeing to participate in public health planning processes and where agreed take responsibility for undertaking a strategy (which relates to their core business or interest) for attaining a priority or goal under the plan. A Public Health Partner Authority must when performing a function that is relevant to the State Public Health Plan or a plan developed by a Council(s), insofar as is relevant and reasonable, have regard to the plans (section 51 (22)).

What this means in terms of partnership in planning is that the Act provides a clear and accountable structure which will support the development and sustainability of partnerships. That is it is expected that Councils as the public health authorities for their areas will plan for their own actions and strategies based on an assessment of the identified public health issues and priorities in their communities. However this does not mean that they are wholly responsible for responding to these issues or priorities, particularly where these issues intersect with the mandate or responsibilities or interests of other Public Health Partner Authorities. The Act envisages that Public Health Partner Authorities will be participating in both the identification of issues as well as taking responsibility (where agreed) for those aspects of a plan which is relevant to them. Councils role in addition to taking responsibility for those aspects of a plan that relate to its functions and mandates under the Act or other related Acts, will be to lead the planning process and local coordination of partner engagement. The Department of Health and Ageing is providing overall state-wide assistance in the development, engagement and coordination of Public Health Partner Authorities.

11. Equity principle

Section 13 of the *South Australian Public Health Act 2011* establishes the 'Equity' principle as follows:

> *Decisions and actions should not, as far as is reasonably practicable, unduly or unfairly disadvantage individuals or communities and, as relevant, consideration should be given to health disparities between population groups and to strategies that can minimise or alleviate such disparities.*

The Equity Principle guides those who are working under the Act to think about the impact of their decisions and actions and work towards ensuring that they do not unduly or unnecessarily or unfairly disadvantage individuals or communities. There are examples in history (particularly in the 19th and 20th centuries) where some public health actions were founded on a more simplistic application of utilitarian theory – "the greatest good for the greatest number" leading to what in contemporary terms would be seen as an unacceptable infringement or denial of human rights. Even more extreme (and now long discredited) was the use of public health policies in aid of the eugenics movement and its accompanying "social hygiene programs". Contemporary practice recognises that the mandate for public health actions arises out of a social compact with the public (as expressed through the decisions of Parliament) which permits the exercise of strong legislative and regulatory power on the basis that it is balanced with a regard for human rights all the while remaining vigilant to the need to ensure that the protection of the public's health remains the primary concern. This principle therefore requires those operating under the Act to always be mindful of the need to balance the need for action with the impact of those actions, within the primary goal of protecting the health of the public generally. The principle remains a guard against the arbitrary exercise of powers and as a spur to always consider the fairness and impact of actions and decisions.

This principle also has further and explicit meaning in the exercise of review provisions within the Act (in terms of Part 10 Controlled Notifiable Conditions see section 76 and 78, in terms of orders under section 92 Notices see section 95 and 96, in terms of Part 11 Management of Significant Emergencies see section 90(5)-(20)). Also Section 14 principles, as they relate to actions under Part 10 and 11, provide further and explicit guidance concerning the protection of specific rights of individuals who are subject to directions and orders which (where relevant and practicable and where they do not clash with the overriding principle that members of the public have a right to be protected, as stated in section 14(2)).

The Equity Principle as stated in the Act goes beyond the consideration of individual human rights issues as described above. It also concerns itself with health disparities and guides those who are working under the Act to develop strategies to minimise or alleviate them. It is well known that even in a community like South Australia where there is generally a good level of health, not everyone has the same opportunity to enjoy good health as others. A person's health is often largely determined by factors which are over and above the exercise of any individual choice or behaviour. Good health is based on a prerequisite set of life circumstances determined by the physical, social and economic context in which people find themselves. It is now very well understood that good health is based on access to; natural environments, good urban planning, good housing, good transport, good education, good access to community services and social supports, access to good safe food, safe workplaces, homes and streets, opportunities to participate in the economic and civil life of our communities and opportunities for physical activity, recreation and cultural activities.

In terms of the Act this aspect of the Equity Principle can have its clearest expression in public health planning which is undertaken under the provisions of sections 50-51 at both the State and Local Government levels. The public health planning system described in these sections allow for planning across all relevant functions within State Government and Councils as well as setting up partnership arrangements between policy sectors and spheres of Government that are relevant to taking joint action on the determinants of health.

A further expression of this principle is seen in the objects of the Act where it states in section 4(1)(f) that a specific object is to provide for or support policies, strategies, programs and campaigns designed to improve the public health of communities and special or vulnerable groups (especially Aboriginal people and Torres Strait Islanders). This means that both plans and actions undertaken should, as a matter of course, give consideration to equity issues and the particular circumstances of those groups in communities whose health faces specific challenges which may be amenable to public health approaches.

Additionally section 22 (Risk of Avoidable Mortality and Morbidity) empowers the Chief Public Health Officer with the capacity to request any public authority to participate in processes designed to find solutions to identified circumstances where communities or groups of individuals may be in a situation of potential or increased risk of avoidable mortality or morbidity. This provision is clearly linked to the exercise of the Equity principle in that it provides a mechanism to focus attention and joint action on issues and communities where there are identified health disparities.

Appendix A – Bradford Hill Postulates/ Criteria for Causation

Sir Austin Bradford Hill (1897-1991) a British statistician and epidemiologist who in 1965 articulated a set of tests for the 'coherence' of causal relationships that complement and can support statistical findings.

1. *Strength of association*. This quality has two aspects: the frequency with which the factor is found in the disease, and the frequency with which it occurs in the absence of the disease. Since most diseases have more than one determinant, we cannot expect complete correspondence between the factor and the disease. The larger the relative risk, however, the more the hypothesis is strengthened.
2. *Consistency*. Confirmation of the association by different investigators, in different populations, using different methods.
3. *Dose-response relationship*. Finding a quantitative relationship between the factor and the frequency of the disease. The intensity or duration of exposure may be measured.
4. *Chronological relationship*. Obviously, exposure to the factor must occur before onset of the disease. In addition, if it is possible to show a temporal relationship, as between exposure to the factor in the population and frequency of the disease, the hypothesis is somewhat strengthened.
5. *Specificity*. If the determinant being studied can be isolated from others and shown to produce changes in the incidence of the disease, for example, if bladder cancer can be shown to have a higher incidence specifically associated with a particular industrial chemical, rather than with work in an industry (or other exposure such as tobacco), this is convincing evidence of causation.
6. *Biological plausibility*. Sometimes, the statistically significant association fits well with previously existing knowledge, for example, when various aniline dyes were found to be associated with increased incidence of bladder cancer. This criterion should be used with caution, however – it could impede development of new knowledge that does not fit existing ideas.
7. *Coherence*. The evidence must fit the facts that are thought to be related, for example, the rising incidence and mortality rates from lung cancer and the rising consumption of tobacco in the form of manufactured cigarettes are coherent

Hill A (Bradford), "The Environment and Disease: Association or Causation?" (1965) 58 *Proceedings of the Royal Society of Medicine* 295, as cited and adapted in Reynolds C *Public and Environmental Health Law* (The Federation Press, Sydney, 2011) 100-101

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If you do not speak English, request an interpreter from SA Health and the department will make every effort to provide you with an interpreter in your language.

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