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Roles, responsibilities and legal aspects

There are a number of stakeholders who play an important role in the provision of safe drinking-water, these include public health authorities, local authorities and water supply agencies. The roles and responsibilities of each of these stakeholders are examined in turn. The legal aspects of drinking-water supply, and the role that water safety plans may play, are covered in a separate section.

2.1 ROLES AND RESPONSIBILITIES IN THE PROVISION OF SAFE DRINKING-WATER

As many aspects of drinking-water quality management are often outside the direct responsibility of the water supplier, it is essential that a collaborative multi-agency approach be adopted to ensure that agencies with responsibility for specific areas within the water cycle are involved in the management of water quality. One example is where catchments and source waters are beyond the drinking-water supplier's jurisdiction. Consultation with other authorities will generally be necessary for other elements of drinking-water quality management, such as monitoring and reporting requirements, emergency response plans and communication strategies.

Major stakeholders that could affect or be affected by decisions or activities of the drinking-water supplier should be encouraged to coordinate their planning and management activities where appropriate. These could include, for example, health or resource management agencies and consumers, industry and plumbers. Appropriate

mechanisms and documentation should be established for stakeholder commitment and involvement.

Further information on roles and responsibilities in drinking-water safety management is available in WHO Guidelines for Drinking-water Quality, volume 1, 3rd edition, pages 8-18.

Institutional Framework



Table 1.1 Example overview of legal and health liabilities associated with water products (developed from Moore, 2003; Davison and Pryor, 2003; Davison and Deere, 2004 and Davison, Davis and Deere, 1999)

Area	Sub-component	Specifics
Common law liability in tort	Negligence	<p>Negligent liability could be incurred in relation to harm caused to:</p> <ul style="list-style-type: none"> •Human health;•property; or •livestock health as a result of a utility supplying reclaimed water. <p>Each of the elements of common law negligence still has to be proved (on the balance of probabilities). Duty of care is a key aspect of negligence. For instance, a utility may have a duty of care not only to those it supplies reclaimed water to but also a wider group which could include:</p> <ul style="list-style-type: none"> •Neighbouring landowners; and •those who have access to land irrigated with reclaimed water or even those who have gained access to the land without permission. <p>Duty of care will be determined on a case by case basis but for the utility, the standard of that duty is likely to involve a risk-based approach including:</p> <ul style="list-style-type: none"> •Understanding the system it is operating; •Understanding the inherent risks in that system; and •The taking of reasonable steps to manage those risks.
	Nuisance	<p>Nuisance liability may arise where a neighbouring landowner’s land is affected by:</p> <ul style="list-style-type: none"> •Pollution of soil from the application of reclaimed water; and/or •Pollution of water from the application of reclaimed water. <p>In general, liability rests with the person from which the nuisance emanates although liability may also be incurred by a party on land under the occupation and control of another.</p>
	Trespass	<p>Trespass involves the interference with a property owner’s right to exclusive use of their property. A utility may face claims of trespass in relation to sewer overflows, odour issues and other impacts on neighbours (Slaughter and Farlegih, 2003).</p>
	Misfeasance in public office	<p>Utilities are often public bodies. Where public officers intentionally misuse their powers, an action of tortious misfeasance in public office can be brought. Public officers need to ensure the required power to exercise their authority and that they undertake their duties diligently.</p>
Contract liability	Contractual terms	<p>Utilities enter into contracts with customers. Breach of contractual terms relating to the quality and quantity of a water product is likely to constitute an area of liability for the utility. It is important to expressly state what is and is not covered in any contractual agreement with the user of the water subject to fair trading provisions (Telford, 1999).</p>

Area	Sub-component	Specifics
	<p data-bbox="451 268 623 436">False representation of goods or services</p> <p data-bbox="451 447 623 489">Defective goods</p>	<p data-bbox="636 260 1175 590">A utility must be aware that it is an offence under fair trading provisions to falsely represent that goods are of a particular standard, quality or composition¹. It is possible that the user of a water product will ask for a guarantee of quality from the utility as part of its own quality assurance program. In Australia, similar elements apply to “fit for purpose” requirements under the defective goods provision of the TPA which is a form of statutory protection of customer contracts².</p>
Statutory liability	Breach of statutory obligations	<p data-bbox="636 596 1175 905">The utility and user of the water will have to ensure cognisance of and compliance with obligations in relation to health and the environment and their associated regulations and guidelines. Often, statutes provide persons with standing³ that they would not otherwise be entitled to under common law, and hence can widen the circumstances under which a utility may face legal proceedings.</p>
	Statutory incorporation of guidelines	<p data-bbox="636 911 1175 1136">Many of the metropolitan water utilities in Australian, including Sydney, Melbourne and Perth, have licences that tie them to guidelines (NHMRC/ARMCANZ, 1996) that were designed to be of a voluntary non-legal nature (McKay and Moller, 2000). In this case, failure to meet these guidelines may bring with it statutory liabilities.</p>
	Statutory immunity	<p data-bbox="636 1142 1175 1627">Legislation under which water authorities are constituted and their functions defined may also provide for circumstances in which the authority has been granted an exclusion of liability. However, the Australian High Court⁴ has narrowly read these provisions such that they do not extend to the normal commercial functions of the Authority, but only to the exercise of the specific functions or powers authorised by the legislation (Bartley, undated). Government utilities subject to corporatisation and privatisation are increasingly being treated by Australian courts as like private entities, especially where they conduct business activities also conducted by the private sector.</p>

Common law

Common law is derived from precedent established by court judgements. It is traditionally associated with private property rights and has arisen as a result of civil (as opposed to criminal) actions. Justice in these actions is generally sought in the form of damages e.g. a monetary redress. Common law has historically had two main functions:

- To enforce the right to exclude others from the benefit or use of private property; and
- To prevent the use of private property by one owner from having a detrimental impact on the ability of neighbouring private property owners to use their property.

To protect these rights, the courts developed the laws of trespass, nuisance and negligence. Each of these elements forms part of the law of torts (“wrongs”). Through court application, these laws have evolved and been applied to a variety of circumstances including

1 *Trade Practices Act 1974* (Cth) s 75AZC, False or misleading representations, ss (1).

2 *Trade Practices Act 1974* (Cth) PART VA

3 *Trade Practices Act 1974* (Cth), s 80.

4 *Water Administration Act 1986* (NSW), which was recently repealed by the *Water Management Act 2000*

(NSW) and hence a different set of immunity provisions, was the subject of interpretation in *Puntoriero and Anor v The Water Administration Ministerial Corporation* (1999 Australian Torts Reports, 81, 520). Although the particular legislation is not in force, the principles established can generally be applied.

2.2 STRUCTURE OF THE BOOK

The remaining chapters in the book detail the steps required to set up and implement a water safety plan, whatever the size of the system or its location. Small supplies are dealt with in their own chapter (13) and a number of model water safety plans are outlined in the appendix. The material is illustrated using a number of examples and two case studies, which provide examples of each of the key steps.

In most cases water safety plans will be set up and implemented for existing systems, however, there are also chapters covering the upgrading of existing systems and also the development of water safety plans for new supplies.