



Commissioner for  
Better Regulation  
Red Tape Commissioner

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5 August 2019

Ms Melissa Skilbeck  
Deputy Secretary, Regulation, Health Protection and Emergency Management  
Department of Health and Human Services  
50 Lonsdale St,  
MELBOURNE VIC 3000

Dear Ms Skilbeck

## **REGULATORY IMPACT STATEMENT FOR PUBLIC HEALTH AND WELLBEING REGULATIONS 2019**

I would like to thank staff at the Department of Health and Human Services (DHHS) for working with our team on the preparation of the Regulatory Impact Statement (RIS) for the Public Health and Wellbeing Regulations 2019 (the proposed Regulations).

As you know, under section 10 of the *Subordinate Legislation Act 1994* (the SLA), the Commissioner for Better Regulation is required to provide independent advice on the adequacy of analysis provided in all RISs in Victoria. A RIS is deemed to be adequate when it contains analysis that is logical, draws on relevant evidence, is transparent about any assumptions made, and is proportionate to the proposal's expected effects. The RIS also needs to be clearly written so that it can be a suitable basis for public consultation.

I am pleased to advise that the final version of the RIS received by us on 2 August 2019 meets the adequacy requirements of the SLA.

### **Background**

The Proposed Regulations are made under the *Public Health and Wellbeing Act 2008* (the Act). The purpose of the Act is to provide a legislative framework that promotes and protects public health and wellbeing in Victoria.

The Act covers a broad range of issues including pest control, aquatic facilities, hairdressers, cooling towers, and notifications that medical professionals must make to DHHS upon detecting infectious diseases. These provisions have been divided into 12 subject chapters, grouped as:

- regulations administered by councils;
- regulations administered by the Secretary to the Department;
- regulations for the management and control of infectious diseases, micro-organisms and medical conditions;
- other Regulations; as well as
- concluding chapters covering infringements, implementation and evaluation.

Regulations relating to prescribed accommodation and to HIV testing have not been evaluated in this RIS. DHHS notes this is because they are currently subject to a cross-departmental review and a Bill being considered by the Victorian Parliament, respectively.

### **Objectives and options**

As set out in the Act, the aim of the regulations is to achieve the highest attainable standard of public health and to prevent disease and illness while minimising costs for regulated industries.

While the Regulations cover a broad range of topics, common to many of these are the objectives to minimise risks to public health from common low risk activities such as swimming in pools and tattooing, and requiring information be provided to local government and DHHS so both can manage risks and respond to health outbreaks

Three broad options are considered for most issues:

1. maintaining the current Regulations;
2. amending the current regulations (through strengthening provisions); and
3. removing or reducing the Regulations

For most chapters, DHHS argues public health and wellbeing is best-served by strengthening the Regulations.

The Department has adopted some streamlining of the analytical processes recommended in the *Victorian Guide to Regulation*. Given the significant scope of this RIS, this approach by the Department is considered fit for purpose in this instance.

### **Proposed Options with significant impacts**

#### *Vector-borne infectious disease control*

These Regulations give powers to local government to direct owners and occupiers of premises to remove conditions conducive to disease vector (such as mosquitos) breeding. Compared with the current regulations, DHHS proposes to broaden the scope beyond just mosquito breeding to include adult mosquito control and any other animal species that may become disease vectors in future, and to give local government powers to control disease vectors when a notice has been issued by the Victorian Chief Health Officer.

DHHS argues that this addresses the spread of vector-borne pathogens and helps to manage emerging threats posed exotic mosquito pathogens. Owners and occupiers of premises will incur additional costs associated with increased vector control activity, though DHHS does not estimate this increase in cost.

#### *Registered premises – infection control*

These Regulations specify standards to be met by registered businesses, relating to the condition of the premises, the condition of skin-penetrating equipment, practitioner or operators' personal hygiene, hand-washing facilities and information management.

DHHS proposes minor changes to the current regulations, including creating a penalty for false advertising in relation to registration, requiring all skin penetration business to keep client records and requiring that all premises have accessible hand-washing facilities. DHHS notes these changes will improve hygiene, but increase costs for businesses that need to collect more customer information or install hand-washing facilities.

### *Aquatic facilities*

These Regulations define aquatic facilities and prescribe operational, maintenance, record keeping and testing requirements for these facilities. Among other changes, DHHS proposes to increase the scope of pools that will be regulated. This would mean pools in hospitals, schools and learn-to-swim facilities would be required to register with local government, and to develop and implement water quality risk management plans, as well as maintaining certain water quality standards and records. Pools in residential apartments, hotels and gyms would face these new these requirements, although they would not have to register with local government.

The Department estimates that each facility has an average testing cost burden of \$94,415 over the 10 years (in 2019 dollars), as well as potential council registration fees.

The RIS notes that the proposed Regulations would require operators to ensure a higher level of water quality management than which may occur in the absence of regulations.

### *Cooling Tower Systems*

These Regulations require cooling tower system operators to maintain and test the systems to manage Legionella risks, and take specific remediation measures if Legionella bacteria are found.

There are proposed amendments to strengthen the regulations including a requirement to notify the Department when there are positive tests for Legionella, a new offence for tampering with or falsifying samples and introducing infringement penalties for certain offences. These changes are expected to lead to a small increase in the regulatory burden for operators.

### *Water Delivery Systems*

These Regulations require the managers of water delivery systems to manage the risk of Legionella within prescribed facilities with vulnerable people (such as aged care facilities, health services as well as commercial vehicle washes). DHHS proposes to clarify a number of definitions, allow more flexible approaches to managing Legionella risk in certain facilities and create a new offence for tampering with or falsifying samples.

### *Pest control*

These Regulations prescribe the qualifications required to use pesticides and records to be kept in relation to the use of pesticides. DHHS proposes to adopt the national framework for minimum training and licensing requirements. This will mean some pest control operators will need to undertake additional training or seek recognition of prior learning and experience, but that it will be easier for operators to work across other jurisdictions.

### *Notifications of infectious diseases, micro-organisms and medical conditions*

These Regulations prescribe conditions that must be notified by medical practitioners and laboratories, and provide legal authority to provide information to the department that might otherwise be considered confidential, so that the department can monitor and respond to disease outbreaks. DHHS proposes to reduce the time allowed for notifying it of micro-organisms, prescribe anti-microbial resistant organisms or tests results to be notified and introduce infringements for failure to notify. It does not note any significant increase in costs from these changes, unless one receives an infringement.

### *Immunisation and exclusions – schools and childcare*

These Regulations give powers for school principals and DHHS to prevent the spread of infectious disease by temporarily excluding children who could infect others and those at risk of infection. Provision for schools to collect immunisation status certificates is also made. The proposed Regulations update the list of prescribed diseases and exclusion periods based on medical evidence, and introduce infringements for failing to exclude a child infected with, or exposed to, a prescribed infectious disease.

### *Escort agencies providing information to sex workers and clients*

DHHS proposes to retain the current Regulations to ensure agency-based sex workers and their clients can easily access written information about sexually transmitted infections in a variety of languages.

### *Infringements*

Council and DHHS regulators currently assist entities to comply with the regulations through:

- education and guidance materials;
- inspections and education visits; and
- assisted compliance activities (such as letters and notices).

DHHS proposes to grant new infringement powers as an additional method for encouraging compliance. For most offences, DHHS propose an infringement of 20 per cent of the maximum court penalty and in line with the *Attorney-General's Guidelines to the Infringement Act 2006*.

### **Implementation and evaluation**

In the RIS, DHHS provides a general framework for its implementation approach. This includes:

- governance and oversight to plan the implementation of high impact regulation changes;
- development of communication materials and channels to inform affected individuals and entities about the changes; and
- support and guidance, as well as compliance monitoring activities to help entities understand how to comply

Aquatic facilities and pest control regulatory arrangements will have a transitional period to give stakeholders sufficient time to comply with the new measures.

Given some of the data constraints which are explained in the RIS, the Department confirms that evaluation will be an important part of ensuring the effectiveness of public health and wellbeing regulation. DHHS has developed an evaluation framework of research questions and performance indicators. DHHS also explains that it will undertake an in-depth mid-term review of the Regulations in five years' time.

Should you wish to discuss any issues raised in this letter, please do not hesitate to contact my office on (03) 9092 5800.

Yours sincerely



Anna Cronin

**Commissioner for Better Regulation**