Public Health (Water Risk Management) Amendment Regulation 2016

Explanatory notes for SL 2016 No. 225

made under the

Public Health Act 2005

General Outline

Short title

Public Health (Water Risk Management) Amendment Regulation 2016

Authorising law

Section 461 of the *Public Health Act 2005*

Policy objectives and the reasons for them

The *Public Health (Water Risk Management) Amendment Regulation 2016* (the amendment regulation) amends the *Public Health Regulation 2005* to prescribe matters necessary to support the implementation of a water risk management framework under the *Public Health (Water Risk Management) Amendment Act 2016* (the Amendment Act).

The Amendment Act amends the *Public Health Act 2005* (the Act) to implement a legislative framework to:

- improve the management and control of health risks associated with the supply and use of water in hospitals and residential aged care facilities, in particular the health risks associated with *Legionella* bacteria; and
- provide greater transparency of water testing activities being undertaken by these facilities to detect *Legionella* bacteria.

When it commences on 1 February 2017, the Act will require prescribed facilities to:

(i) have in place water risk management plans to address the public health risks associated with the supply and use of water;

(ii) comply with a water risk management plan;

(iii) notify the Department of Health within one business day of being notified of a test result confirming the presence of *Legionella* bacteria in water used by the facility; and

(iv) provide the Department of Health with periodic reports regarding the results of tests for *Legionella* bacteria undertaken in accordance with their water risk management plans.

The Act will also enable the chief executive of the Department of Health to publish water testing information provided by prescribed facilities.

The requirements will initially apply to public hospitals that provide inpatient services, private health facilities licensed under the *Private Health Facilities Act 1999*, and aged care facilities at which a residential aged care service is provided by the State under the *Aged Care Act 1997*. The Amendment Act makes provision for other aged care facilities to be prescribed by regulation, which will enable the requirements to be implemented in the private residential aged care sector through a phased approach.

Section 461 of the Act provides for a general regulation-making power. The Amendment Act also enables the following matters, amongst other things, to be prescribed by regulation:

- the meaning of the term *prescribed test*;
- a requirement to be included in a water risk management plan; and
- the meaning of the term *reporting period*.

Achievement of policy objectives

The amendment regulation inserts new part 1B into the *Public Health Regulation 2005* to prescribe what is meant by the terms *prescribed test* and *reporting period*, and also prescribes a requirement for inclusion in a water risk management plan.

Prescribed test

The amendment regulation defines what is mean by the term *prescribed test*. This term is used in new sections 61H and 61I of the Act as follows:

- Section 61H requires a person in charge of a prescribed facility to notify the chief executive of the Department of Health within one business day after being notified of the result of a prescribed test confirming the presence of *Legionella* bacteria in water used by the facility.
- Section 61I requires a person in charge of a prescribed facility to give the chief executive of the Department of Health a report, for each reporting period, about the results of prescribed tests carried out under the facility's water risk management plan. Both the notice and report must be given to the chief executive in the 'approved form' under sections 61H(3)(a) and 61I(2)(a) respectively. Pursuant to these provisions, it is intended that the person in charge of a prescribed facility only need notify the Department of Health when in receipt of a confirmed detection of *Legionella*, as opposed to a presumptive result, and that only confirmed detections of *Legionella* analyses should be reported in the periodic reports.

The public health risks posed by *Legionella* bacteria in water used by hospitals and residential aged care facilities only relate to the live (or 'viable') forms of these bacteria. These bacteria are enumerated through the use of so called 'culture based' analyses, where the bacteria are grown on microbiological media. Therefore, the amendment regulation clarifies that a test for Legionella is a *prescribed test* if it:

- quantifies the number of Legionella colony forming units in the sample tested; and
- is carried out by a laboratory accredited as complying with the international standard ISO/IEC 17025: *General requirements for the competence of calibration and testing authorities*, and is identified in the scope of the laboratory's accreditation.

This definition captures standardised culture-based *Legionella* test methods developed by Standards Australia and the International Organization for Standardization such as AS/NZS 3896 (Waters – Examination for Legionella spp. including *Legionella pneumophila*) and ISO 11731 (Water Quality – Enumeration of Legionella); and also appropriate in-house culture-based test methods for *Legionella* provided that those methods are identified in the laboratory's scope of accreditation.

Person in charge

The amendment regulation provides that a water risk management plan for a prescribed facility must identify the person, by position title, who is responsible for complying with new sections 61H and 61I of the Act for the facility. That is, the person in charge of the prescribed facility. This responds to concerns raised by the Transportation and Utilities Parliamentary Committee, during its consideration of the Public Health (Water Risk Management) Amendment Bill 2016, that the proposed legislation lacked clarity regarding the meaning of 'person in charge'. In this context, it is intended that 'person in charge' means the person who has the supervisory responsibility for the day to day operation and control of the prescribed facility.

Reporting period

The amendment regulation defines the term *reporting period* as it applies to periodic reports provided by prescribed facilities pursuant to new section 61I of the Act. The term reporting period means the period 1 February 2017 to 31 March 2017, and thereafter either:

- each quarter (defined as a three month period ending on 31 March, 30 June, 30 September or 31 December); or
- if the chief executive has given the prescribed facility notice stating reporting periods shorter than a quarter apply to the facility – the periods stated in the notice.

This approach has been taken to enable the Government to respond in a timely manner if it is determined a shorter reporting period is warranted in the public interest. For example, if there have been repeated or increased *Legionella* bacteria detections, or cases of facility-acquired *Legionellosis*, at one or more prescribed facilities.

Consistency with policy objectives of authorising law

The amendment regulation is consistent with the policy objectives of the Act.

Inconsistency with policy objectives of other legislation

No inconsistencies with the policy objectives of other legislation have been identified.

Alternative ways of achieving policy objectives

The amendment regulation is the only effective means of achieving the policy objectives.

Benefits and costs of implementation

As outlined in the explanatory notes to the Public Health (Water Risk Management) Amendment Bill 2016, the costs associated with implementation of the Amendment Act will be met from within existing Queensland Health resources.

Consistency with fundamental legislative principles

New section 2ZA (clause 4 of the amendment regulation), which defines the term *reporting period* for the purpose of new section 61I of the Act, enables the chief executive to prescribe a shorter reporting period by notice. This amendment may be in breach of the fundamental legislative principle outlined in section 4(5)(e) of the *Legislative Standards Act 1992*, that the sub-delegation of a power delegated by an Act should only be allowed in appropriate cases, to appropriate persons, and if authorised by an Act.

While it is intended that prescribed facilities will report on a quarterly basis, operational flexibility is required to enable the chief executive to apply shorter reporting periods to prescribed facilities should more frequent periodic reporting be warranted in the public interest. For example, in cases where there have been repeated or increased *Legionella* bacteria detections, or cases of facility-acquired *Legionellosis*, at one or more prescribed facilities.

The sub-delegation strikes an acceptable balance between the need for the legislation to have sufficient operational flexibility to address public health risks associated with *Legionella* bacteria in hospitals and residential aged care facilities and the need to give regard to the institution of Parliament.

Consultation

The Office of Best Practice Regulation was consulted on the amendment regulation and has advised that a Regulatory Impact Statement is not required. Consultation with external stakeholders (Hospital and Health Services and private health facilities) regarding the amendment regulation was not undertaken as it prescribes policy neutral technical and administrative matters to support the implementation of the Amendment Act.

Notes on provisions

Short title

Clause 1 provides the short title of the amendment regulation.

Commencement

Clause 2 provides that the amendment regulation commences on 1 February 2017.

Regulation amended

Clause 3 provides that the amendment regulation amends the *Public Health Regulation 2005*.

Insertion of new pt 1B

Clause 4 inserts a new part 1B comprising new sections 2Y, 2Z and 2ZA.

New section 2Y defines the term *prescribed test* to mean a test for *Legionella* that:

- quantifies the number of *Legionella* colony forming units in the sample tested; and
- is carried out by a laboratory accredited as complying with the international standard ISO/IEC 17025: *General requirements for the competence of calibration and testing authorities*, and is identified in the scope of the laboratory's accreditation.

New section 2Z provides that a water risk management plan for a prescribed facility must identify the person, by position title, who is responsible for complying with sections 61H and 61I of the Act (the 'person in charge' of the prescribed facility). For example, if the person in charge of the prescribed facility holds the position of 'Executive Director', then the facility's water risk management plan must identify the position of 'Executive Director' as the person in charge.

New section 2ZA defines the term *reporting period* for the purpose of section 61I as the period 1 February 2017 to 31 March 2017, and thereafter either:

- each quarter (defined as a three month period ending on 31 March, 30 June, 30 September or 31 December); or
- if the chief executive has given the prescribed facility notice stating reporting periods shorter than a quarter apply to the facility – the periods stated in the notice.