

**Public Health and Wellbeing Regulations**

**Sunset Review**

**Regulatory Impact Statement Consultation**

**Submission**

**September 2019**

© Copyright Municipal Association of Victoria, 2019.

The Municipal Association of Victoria (MAV) is the owner of the copyright in the publication **– MAV Submission to the** Public Health and Wellbeing Regulations RIS

No part of this publication may be reproduced, stored or transmitted in any form or by any means without the prior permission in writing from the Municipal Association of Victoria.

All requests to reproduce, store or transmit material contained in the publication should be addressed to Rosemary Hancock, email rhancock@mav.asn.au.

*The MAV does not guarantee the accuracy of this document's contents if retrieved from sources other than its official websites or directly from a MAV employee.*

The MAV can provide this publication in an alternative format upon request, including large print, Braille and audio.

This document has been prepared by the MAV following consultation with member councils on the Public Health and Wellbeing Regulations Sunset Review.

The MAV is the statutory peak body for local government in Victoria. While this paper aims to broadly reflect the views of local government in Victoria, it does not purport to reflect the exact views of individual councils.

Table of contents

[1 Executive summary 4](#_Toc20133121)

[2 Introduction 5](#_Toc20133122)

[3 MAV comments and recommendations 6](#_Toc20133123)

[3.1 Vector-borne infectious disease control 7](#_Toc20133124)

[3.2 Registered premises – infection control 12](#_Toc20133125)

[3.3 Aquatic facilities 16](#_Toc20133126)

[3.4 Immunisation and infectious disease prevention 21](#_Toc20133127)

[3.5 Pest control 22](#_Toc20133128)

[4 Further information 22](#_Toc20133129)

# Executive summary

The MAV welcomes the opportunity to provide feedback about the proposed new Public Health and Wellbeing Regulations which will form part of the legal framework that promotes and protects public health and wellbeing in Victoria for the next 10 years.

Overall, we support the thrust of the regulatory changes being proposed. While we note that the Victorian Government is proposing more new regulations businesses will need to comply with than will be removed, the emerging challenges from changing weather patterns, increasing population densities, more people travelling to and from many countries, and new and emerging business models and activities mean there are new risks to public health needing to be responded to than when the current regulations were set in 2009.

The rapid rise of social media in alerting people to new forms of beauty and cosmetic procedures and how these might be accessed cheaply is also posing new challenges for the public health of the community. There is emerging evidence that gaps in market knowledge by consumers does necessitate more regulatory controls being considered, particularly in relation to cosmetic and skin-penetration activities being performed by non-medically qualified practitioners.

Local government has always been an important partner in the regulatory effort alongside the Victorian Department of Health and Human Services (DHHS). This partnership involves significant cooperation and well-established lines of communication when disease investigations need to be undertaken. Councils rely on DHHS’ advice and knowledge from its research and intelligence gathering of disease notifications and trends. DHHS relies on councils to provide insights to issues arising in their local area. Councils’ connections with local businesses and communities are important conduits supporting public health education about the important role they play in preventing spread of illness.

The success of these regulations consequently depends on councils’ capacity to take on additional workloads. Availability of suitably qualified environmental health officers is emerging as a challenge. So too is the reliance on this officer cohort for delivery of new standards by other government departments, including new regulations for caravan parks and onsite domestic wastewater management.

This submission provides comments and recommendations for changes to some of the details relevant to local government. To ensure that councils have the capacity and capability to play their role, we recommend the following proposals be considered to support implementation of the new regulations:

* *Development of template delegations and notices to support consistent implementation of the new regulations, before they commence, to minimise costs to councils which will otherwise need to be procured from legal providers 79 times over*
* *Re-examine the types of aquatic facilities to be regulated ensure the criteria for the high-risk category meets need without unduly adding to costs for small businesses*
* *Alleviate reporting burden for councils by considering registered premises for inclusion in the FoodTrader registration system currently being explored (subject to it being practicable for councils to use)*
* *Consideration of environmental health workforce capacity initiatives.*

# Introduction

The Municipal Association of Victoria is the peak representative and advocacy body for Victoria's 79 councils. The MAV was formed in 1879 and the *Municipal Association Act* 1907 appointed the MAV the official voice of local government in Victoria. Today, the MAV is a driving and influential force behind a strong and strategically positioned local government sector. Our role is to represent and advocate the interests of local government; raise the sector's profile; ensure its long-term security; facilitate effective networks; support councillors; provide policy and strategic advice; capacity building programs; and insurance services to local government.

Councils have multiple roles and interests in the review of the *Public Health and Wellbeing Regulations 2009*, including:

* *As a regulator (registering prescribed premises, implementing the nuisance provisions under the Public Health and Wellbeing Act 2008, and implementing relevant authorising provisions of the Public Health and Wellbeing Regulations 2009, such as vector-borne infectious diseases and issuing immunisation certificates)*
* *Aquatic facility owner and operator*
* *Immunisation provider for pre-schoolers and school-age students*
* *Supporter and partner with DHHS in communicable disease investigations*
* *Pesticide user to control pests on public land*
* *Community advocate.*

The MAV has been pleased to support DHHS in the development of the RIS by hosting two workshops with councils, one in 2017 on prescribed accommodation, and one earlier in 2019 to provide advice about aquatic facilities, mosquito control and prescribed premises for registration.

# MAV comments and recommendations

As a general comment, the MAV supports the direction and many of the changes proposed in the Public Health and Wellbeing Regulation Regulatory Impact Statement (RIS).

We note that there are more new regulations being proposed for new categories of businesses (particularly aquatic facilities) which will generate additional costs to these businesses and to councils. While councils will seek to implement any changes in as cost-effective manner as possible, they are also being asked to undertake new activities, such as providing more data reporting to DHHS. Councils will be incurring greater legal liabilities from the broader scope of the regulations, which will involve extra staff time and administration to manage.

Councils are also accumulating more and more delegated responsibilities from the Victorian Government, particularly in the environmental health area. New responsibilities and more prescriptive models of operation are currently being explored in caravan park regulation, food safety regulation and on-site domestic wastewater management.

The cumulative effect from the range of government departments, including DHHS, Consumer Affairs and the Departments of Environment Land Water and Planning (DELWP) and Jobs Precincts and regions (JPR) - Small Business Victoria, necessitates consideration of workforce capability and capacity models

Regulation of particular businesses is necessary to mitigate market failures impacting the public health and wellbeing of the community, however.

In line with best practice regulatory principles, these are appropriately recovered by the businesses contributing to the costs. Particularly with aquatic facilities, the costs associated with councils’ regulatory role which are appropriately recovered by the relevant businesses will need to be re-considered. For example, the RIS assumes an 89% recovery rate, but omits a number of costs such as sampling, enforcement activities, legal fees and other expenses which will increase the level of fee councils will need to recover.

We acknowledge the difficulty of costing local government administration of the proposed new registration of premises given that registration activities are but one of a number of activities undertaken by council environmental health units, so we would welcome working more closely with DHHS about this through the implementation of the new regulations.

We support the proposed expansion of infringement offences to provide an additional tool to encourage compliance and to address non-compliance.

**Prescribed accommodation:**

We welcome the 12-month extension of the current regulations to enable a more thorough review of the prescribed accommodation regulatory framework. There are many complex issues to consider, as well as a broad diversity of premises and a range of interfaces with various portfolio areas and other regulations across government. These include legislative schemes that oversee rooming houses, itinerant worker labour hire, tourist accommodation which may also be utilised by more permanent tenants, and international student accommodation. Compounding the many agencies and stakeholders involved, new on-line platforms and intermediaries with business proprietors, such as Airbnb, require re-assessment of the traditional models of regulating prescribed accommodation.

Comments and recommendations about the specific areas of interest to local government are set out in the following pages.

## Vector-borne infectious disease control

We support the recommended option to broaden the scope of the powers currently used to control the spread of arboviruses (viruses transmitted by mosquitoes) from just controlling breeding of mosquitoes to also include capacity for adult mosquito control activities to be undertaken. We also support the extension of the regulations to provide state and local government agencies with the authority to require and/or take control actions to prevent the spread of infectious diseases caused by other pathogens such as bacteria, which can be transmitted by rodents and birds, and parasites, which can be transmitted by ticks.

These are significant increases in regulatory scope from the current provisions, however, which will require detailed support and advice being developed for councils and landowners if the powers need to be utilised and their requisite actions effectively implemented.

If these regulatory powers need to be activated, councils will have additional responsibilities and risks to their current regulatory position. They are unlikely to have the expertise in the broader range of vectors and diseases, which will present a risk where councils issue directions in relation to the CHO’s notice in the absence of detailed advice. It would be desirable for the CHO to be required to provide within the notice detail as to the types of directions that would be appropriate and also for councils to be provided training assistance from DHHS.

These proposed regulations also have considerable potential to increase neighbour and community demands of councils in implementing controls of all sorts of vectors for a raft of reasons of annoyance unrelated to public health, because of the inclusion of “nuisance” in the vector definitions.

Paradoxically, implementing control measures of one public health issue, such as spraying to control mosquitoes, can cause another. The spraying of mosquitoes, either by landowners or councils, could also lead heightened community concerns and anxiety about pesticides being harmful to humans and animals. This poses challenges for government agencies where spraying pesticides is the recommended disease control action.

Although viruses such as Ross River virus, Barmah Forest virus and Murray Valley encephalitis are not new to Victoria, we recognise that warmer temperatures in southern Victoria may generate even greater incidences of mosquito-borne illnesses being transmitted than in the last 10 years. Coupled with increased domestic and international travel influencing the proliferation, spread and geographic distribution of disease-causing pathogens and disease vectors, greater powers to take control actions appears prudent. We also note that mosquitoes have been suggested to be one of the possible vectors for Buruli ulcer, a transmittable disease caused by a bacterium which is of increasing concern in southern Victoria.

If vector control measures prove to be required more often because of warmer temperatures, community education programs will be required to enable the community understand the benefits and risks from no actions being undertaken. As spraying of pesticides to control mosquitoes in particular is difficult to isolate to individual properties, community education activities and information would be useful to share between DHHS and councils.

Recommendations for amendments are supporting actions are detailed in the following table:

**MAV recommendations for vector-borne disease control proposals**

| **Proposed change** | **Comment** | **Recommendation** |
| --- | --- | --- |
| Broadening the scope of infectious disease control measures to include control of defined disease vectors, not just mosquitoes | **Support in principle.** Part 4 of the proposed regulations is authorising in nature, and will really only need to be utilised when there is a real risk of a problem requiring action being taken to protect the health of the community. As such, the increase in regulatory scope would appear to provide a suitable balance of powers enabling controlling actions to be taken when the need arises.  We are concerned that the inclusion of “nuisance” in draft Regulation 13(a), however, detracts from the purpose of the regulations, which is to focus on controlling vector-borne diseases. As drafted, this section is likely to generate considerable time and effort for councils to respond to neighbour complaints seeking action from other landowners. For example bats or native animals may often be the source of community complaints, but resolution of their proliferation can be highly contentious and complicated.  While we acknowledge the statement in the RIS that nuisance mosquitoes need to be managed based on their potential future or unknown risk (RIS, p19), the application of draft Regulation 13(a) to all vectors could unintentionally give rise to complaints and requests from landowners asking councils to require action by other landowners about the removal of pests. There are many vectors which could come into scope, including birds, rodents, native animals which will be complicated to define and manage if they are perceived to cause a nuisance.  If there are particular nuisance aspects to mosquitoes in particular, controls can still be sufficiently authorised by draft Regulation 13(b). There already exist powers for nuisances to be abated in the Public Health and Wellbeing Act. | * Remove “nuisance” from Part 4 of the regulations to retain the focus on public health by deleting Draft Regulation 13(a) |
| Defining ‘disease vector’ so that an animal, including a bird or insect, can be the subject of infectious disease control | **Support.** There is a need for the regulations to include disease vectors other than just mosquitoes. Keeping the regulations unchanged will not protect the community against the emerging threat that mosquitoes and other diseases vectors pose in the context of climate change, exotic incursions from increased domestic and international travel and trade. The increasing numbers of urban environments which require rapid and extensive property access also necessitate broader powers than controls focussed on mosquito breeding. |  |
| Broadening authority to request owners and occupiers to take steps to eradicate adult mosquitoes | **Support in principle.** These authorising provisions provide more tools that will enable better manage mosquito breeding sites and control conditions conducive to mosquito breeding on both public and private land. The specificity of Division 1 simplifies the process for authorised officers to give directions without first needing to establish there is a nuisance.  We note that currently DHHS provides support and funding to councils in particular areas when the potential for disease transmission is identified through the sentinel chicken program and other notifications it receives. Continuing and building this support response will be very important in the event mosquito-borne diseases proliferate. | * Develop and provide guidance materials and mosquito management guidelines to assist councils and landowners effectively manage mosquito breeding sites * DHHS to provide appropriate levels of support where the circumstances warrant costly control activities to be undertaken |
| Giving powers to the Chief Health Officer to issue a disease vector control notice to address an existing material public health risk caused by a disease vector | **Support in principle, but with concerns about the detail.** The powers proposed in Division 2 of the draft regulations appear to be considerably stronger in intent and scope than the advisories and alerts currently issued by the Chief Health Officer (CHO) on public health issues.  Under the draft regulations the CHO can issue a disease vector control notice if they are satisfied that there is a material risk to public health that exists from a disease vector. The notice would amongst other things specify the municipal district or districts to which it relates and specify control measures that may be required to reduce the risk to public health.  It is unclear what the threshold would be for the CHO issuing these notices.  Accordingly, it is difficult to assess the frequency of notices being issued and the potential impact these may have on councils’ workload. Additionally, it is not identified whether further assistance would be provided to councils by DHHS where a notice is issued that impacts their municipality.  We seek clarification whether the CHO’s emergency powers in the Act should be sufficient to cover serious public health risks necessitating very directive control measures. Councils are concerned about the lack of constraints on what could be included in a control notice which they will be tasked with delivering. There are no proposals for the CHO to consult with councils prior to issuing a notice, or consider the practicality of the measures to be specified.  We are also concerned at the lack of clarity about the specified control measures that the CHO must include in a disease vector control notice with no requirement to consider what would be possible and practicable to achieve. This is of particular concern to councils which are often the agency either implementing control measures and/or working with landowners. Both councils and landowners will have varying capacities to respond to the CHO’s notice. | * Provide clearer articulation that specified control measures to be included in notices issued by the CHO need to have regard for their practicality and affordability where these are required to be undertaken by landowners or ratepayers are funding actions needing to be taken by councils. For example, delete draft Regulation 19(d) from draft Regulation 19(2), and amend draft Regulation 19 to allow for the CHO to specify control measures after an assessment of the practicality of the control measures has been undertaken * Consider development of a protocol which would provide clarity about the sort of circumstances in which a notice requiring action by councils would be issued, and the processes which will be utilised to determine resourcing and support to be provided by DHHS. |
| Powers for authorised officers to control disease vectors when a disease vector control notice has been issued. | **Support in principle, but with concerns about the detail**. Under draft Regulation 20 if the CHO issues a disease vector control notice an authorised officer appointed by the council may give a direction to an owner or occupier of premises in the municipal district if they believe on reasonable grounds that any of the control measures specified in the notice are required to reduce the risk to public health identified in the notice. The authorised officer appointed by council can direct the owner or occupier to do a number of things including abatement and/or take steps specified in their direction to eliminate or eradicate the disease vectors on the premises. Whilst it is discretionary whether the authorised officer gives a direction when the CHO issues a notice, due to the use of the word ‘may’ the risk of liability if council did not take action would be significant. It is likely that a council will be considered to owe a common law duty of care when a notice is issued by the CHO. To establish that council has met that duty it must show it has acted reasonably. It is likely that this would involve taking action based on the notice, including issuing directions.  Additionally, the council would need to establish that the measures it has taken are appropriate/reasonable to address the risk to public health identified in the notice. | * Clarify when the CHO may issue these notices and what assistance would be provided to councils by DHHS when notices are issued. For example, will councils be provided with assistance as to what types of directions will be appropriate, including what types of steps to specify in a direction? * Development of community information materials about the use of pesticides to control vector-borne disease transmission would be useful for councils to use. This is particularly relevant where pesticides impacting multiple landowners and public land is required. * DHHS coordinate sharing of information with and between councils about communication messages for use of pesticides to control spread of infectious diseases |
| Implementation issues | We welcome DHHS’ commitment in the RIS (p22) that DHHS will be strengthening the funding of mosquito prevention and control in collaboration with councils in vulnerable areas across the state.  We caution against DHHS assuming that councils are unlikely to incur additional enforcement costs from these regulations because they already employ authorised officers who carry out nuisance investigations and enforcement (RIS, p22).  Legal costs and higher numbers of appeals and potential prosecutions over the next 10 years have not considered, for example. If nuisances are included in the definition of vectors, increase in the scope of vectors has potential to generate considerably higher activity levels for councils to respond and resolve. | * DHHS strengthens is current programs of support to councils in vulnerable areas across the state * DHHS continues to provide funding contributions to councils for treatments when mosquito and vector control notices are issued when there are high-risk vectors being targeted |

## Registered premises – infection control

We welcome the changes proposed for controlling infection transmission within registered premises, particularly those which aim to assist consumers better understand the scope of what is covered by the registration, and what is not being certified. While the liabilities of councils from registering these businesses will continue to exist, the proposed changes will go some way to managing the problem of registration for infection control at the premises appearing to be a quasi-practitioner certification system.

The increasing diversity of cosmetic and other beauty enhancing products and services being provided by staff who are not registered health practitioners is of considerable concern to local government. Councils advise they are aware of cosmetic procedures involving blood products or restricted substances, use of lasers, subdermal implants and extreme body modification being practised by non-medical practitioners. Additionally, the use of non-invasive treatments, such as lasers, radio frequency fat freezing, skin tightening and vaginal tightening highlights the wide-ranging services that are being offered which may have other potential health risks that do not relate to the transmission of infectious diseases. As these procedures have the potential to cause serious harm for consumers if they are administered incorrectly, we strongly recommend consideration be given for additional regulatory change to manage this rapidly emerging problem. This is particularly important given there is no certification system and ability for the competency of practitioners to enable consumers assess and determine their competency when they fall outside recognised accreditation processes such as the Australian Health Practitioner Regulation Agency (AHPRA).

Implementation of the new regulations will benefit from retaining and building the connections between DHHS, the CHO, the Health Complaints Commissioner, Consumer Affairs Victoria and councils. The emergence of new cosmetic procedures, the pace and the propensity of social media to encourage their quick take-up, means that these connections are going to be even more important for regulators to respond effectively. Councils are well placed to provide public health information to the many small businesses where ownership changes frequently and which provide many lowly paid employment opportunities through the annual registration process.

Integral to implementation will also be better data and intelligence sharing between DHHS and councils. We encourage DHHS to consider including premises registered through the Public Health and Wellbeing Regulations be included in plans for the central registration system for food premises currently being explored. This suggestion is contingent, of course, depend on that system being cost-effective and workable for councils.

Dedicated and expert staffing support within DHHS will be an important component in enabling the collective regulatory effort to respond to new developments in the cosmetic sector, and the collaborative work undertaken across state and local government agencies being maintained.

**MAV recommendations for registered premises – infection control**

| **Proposed change** | **Comment** | **Recommendation** |
| --- | --- | --- |
| Creating a penalty for false advertising in relation to registration | **Support.** | * Take the regulations further and consider banning certain cosmetic procedures involving blood products and restricted substances from being provided by someone who is not a medical practitioner |
| Requiring a notice about the scope of registration be displayed (registration applies to infection control standards) | **Support.**  This will assist in providing clarity to consumers that registration relates to the infection requirements of the premise. The wording in the notice needs to clearly state that the registration certificate does not certify the safety of the procedures provided by the business and its staff.  We query the introduction of the terminology “business class” in Draft Regulations 37 and 38 in reference to registered premises.  There is also a need to define business classes based on the activities/therapies being undertaken and their risk in spreading infectious disease. | * Strengthen the notices to explicitly state that the registration applies to the premise, and that it does not cover the safety of the procedures provided by the proprietor. Clarity is also required to be included about the details of standards * DHHS to develop template notices which enable consumers to clearly see what is not covered by the registration certificate * Clarify reference to ‘business class’ (as distinct from ‘business activity’) in Draft Regulations 37 and 38 |
| Simplifying the requirements relating to access to hand-washing facilities and clarifying that best practice infection control for personal service hygiene requires the use of drinking water | **Support in principle**. The ‘accessible hand washing facilities’ defined in draft Regulation 34 is vague and open to different interpretations.   Councils have suggested it would be preferable for the Regulation to refer to hand-washing facilities being in the same room or within a certain specified area. For example, a premises located in a shopping centre may consider that having hand washing facilities in the centre outside its shop would meet the “accessible” criteria. However if these facilities were not close to the premises, they may not be used and would not provide the utility required to control infection transmission. | In consultation with councils, develop clear advice about what is not implied in the definition of “accessible hand washing facilities”  Query why ‘drinking water’ is referred to instead of potable water in Draft Regulation 33(c) |
| Amending time and temperature specifications for dry heat sterilisation | **Support in principle.** Agree with the alignment with national standards and providing more flexibility for businesses using dry heat sterilisation  Clarification is needed between management implements that are intended for skin penetration, and those which are not to enable better controls to prevent accidental contamination  Need to better define skin penetration – for example excess skin being removed by cuticle cutters being defined as skin penetration and therefore requiring sterilisation would have significant ramifications for the industry and regulators. |  |
| Requiring records of skin penetration (expansion from only tattooing and body piercing) | **Support in principle.** Councils may have specific changes to recommend. |  |
| Amending the requirement to provide information to clients about the risks and safeguards associated with the process so that it is in a form approved by the Secretary. (tattooing, ear piercing, body piercing or other skin penetration process) | **Support.** Centralised development of information to be provided to clients will aid this information to be accurate and consistent. |  |
| Introducing infringement penalties for certain offences | **Support.** Councils may have specific comments about specific infringements and the appropriate level of penalty |  |
| Introducing exemption to registration for mobile cosmetic application services other than the principal place of business. | **Support in concept that there be r**educed regulatory burden for low-risk registered premises be targeted to where it is most needed. Some councils query the introduction of this exemption if mobile cosmetic applications present the same risks as the same service being offered at fixed premises. If some levels of regulation were considered necessary, we suggest that a “notification” would be a better option than the higher-order “registration” process. | Ensure the regulations specify that higher-risk cosmetic services need to be registered regardless of whether they are mobile or not. |

## Aquatic facilities

We are relying on DHHS’ assessment that registration of aquatic facilities is required to manage emerging risks posed by the increasing numbers of premises and locations where pools and water features present risks for spread of illness. We note that the current regulations are authorising in nature, with regulatory oversight not currently being prescriptive, resulting in different levels of controls operating around the state.

Councils’ risk profile will be raised as a result of this proposal, because registering a premises brings with it a duty of care to check compliance, at least to some extent. While it is unlikely there will be considered to be a statutory duty of care owed, because there is no private right of action in the Act, there may be a common law duty of care where the public may be considered vulnerable to council exercising its powers under the Act and regulations. Where facilities are registered with council, the courts will likely require that councils can demonstrate they have acted reasonably to be satisfied operators are complying with standards. What will be considered reasonable action is not clear. This may be limited to council taking action where it is notified of non-compliance under the regulations by an operator. However, it could extend to undertaking some proactive steps also, such as undertaking proactive inspections/samples.

Some clarity around the expectation of councils in this registration process would assist in clarifying their role and reducing their risk of liability. There is also a risk for council as the operator of aquatic facilities such as interactive water play areas – the requirement to test every four hours could well mean that some interactive water-play areas will not be practicable to provide, with the effect of there being less diversity of offering for recreational public spaces.

We have a number of technical questions about some of the specific regulations being proposed. The definition of category 1 aquatic facilities may potentially cover a number of types of aquatic facilities which are identified in the RIS as low or medium risk. For example, the proposed regulations appear to cover pools and spas at gyms, even though gym pools are listed in the RIS as low-risk. Regardless, it is important that there is evidence to support the inclusion of facilities in the high-risk category 1 group to focus resources on the highest risk facilities. Water features in child-care centres are not mentioned, but perhaps they should be?

The testing requirements for all aquatic facilities is the same. This presents specific issues for some facilities which the 4-hour rule set out in the standards is just not possible to achieve. For example, interactive water features are often available in parks which are open to the public 24/7 hours – it is not practicable for testing to occur to this level of requirement. We would suggest that the risk management approach would be for the operator (often a council) to undertake regular testing, and if problems arise, then to undertake a more intensive testing regime for that particular facility.

Testing to ensure microbiological standards are being met prior to operation is not practical to achieve. Suggest that testing needs to be linked to the water sampling program outlined in the facilities’ risk management plan.

The level of costs councils incur in registering aquatic facilities is going to drive the fees charged to businesses. The RIS omits a number of costs which will need to be factored in, such as administrative costs (database upgrades, development of standard notifications and form, processing registrations, their payments and maintenance of records), communication activities (education activities for aquatic facility operators), additional compliance activities (following-up non-compliant unregistered aquatic facilities, sampling audits, etc) and reporting to DHHS.

Receipt and follow-up of failed microbiological samples will also impact council resourcing. Samples can cost up to $60 per sample, depending on the volume of samples taken (compared with $2.75 used as a basis for costing in the RIS). Notifications may occur across weekends which will require additional staff resourcing and overtime costs which will need to be recouped. All these costs will involve more than the one hour per premise a year factored into the cost assessment allowed for travel, administration, responding to complaints and public education and capacity building.

Fees associated with council’s role in food safety regulation would provide a better comparison point than the fees used for prescribed premises, which are often more in the vicinity of $500 plus per premise per year (compared with the $200 fee per year assumed in the RIS).

While councils will also incur costs as owners and operators of aquatic facilities, having clarity about expected standards to be achieved will assist them provide safe services to the public.

Noting that the commencement of the new regulations relating to aquatic facilities will not occur for 12 months, we welcome the commitment from DHHS to form an industry/local government group to work through the issues to aid smooth implementation.

**MAV recommendations for aquatic facilities**

| **Proposed change** | **Comment** | **Recommendation** |
| --- | --- | --- |
| Broadening the definition of an aquatic facility to accommodate new and emerging trends – such as increased risk of cryptosporidium outbreaks | **Support in principle.** We note that the definition for Category 1 aquatic facilities is very broad and likely to require the registration of a large number of facilities. While the RIS estimates there will be 82 school and university pools and 184 Learn to Swim schools that will be new premises to be registered, the definition in Regulation 4 would appear to capture pools and spas at gyms, resorts and holiday parks, which would not appear to be the intention of residential apartments, hotels, motels and hostels to be listed as Category 2.  Councils also advise that a number of child-care centres provide interactive water play features which would also need to be included. Public interactive water play features will need to be included as well.  The definition of interactive water features may result in some types of recirculated water systems being captured that are not intended to fall within Category 1 facilities. | * Clarify whether provision of interactive water features should be exempt under certain conditions relating to water waste and renewal sources, such as water features provided by some child-care centres |
| Introducing registration requirements (including paying fees to council) and infringement penalties | **Support in principle**. Registration of aquatic facilities by councils is an appropriate response if additional regulatory oversight is required to limit infectious disease transmission and for the facilities to contribute to the costs of this regulation.  There is a risk that when Category 1 facilities are required to register with council that there may be an expectation that councils check their compliance with the standards, when in fact this is the obligation of the facility owner. This ambiguity arises because the operator of the facility is required to notify the council where there is non-compliance with microbiological parameters and closure of the facility under draft Regulation 50. This raises a risk of liability for councils, rather than the responsibility solely being that of the operator of the registered premises. Some clarity around the expectation of councils in their registration responsibility would assist clarify their role and their liabilities.  There is also a risk for council as the operator. As noted above some of the requirements under the draft Regs may not be achievable. For example, applying the same testing requirements to interactive play areas in public locations as public pools used more intensively by more people.  This presents a risk for councils of being unable to comply with the Regs.  We note that councils will now be formally registering their own aquatic facilities, which are estimated to be about 300 in number across the state. Councils will need to consider their internal notification processes to enable delivery of this new regulatory requirement and any potential conflicts of interest from their role as a public aquatic facility owner and manager, and as a regulator.  Councils will also have to consider how they regulate interactive water play areas in public areas they own and operate. | * Clarify what types of aquatic facilities will fall within Category 1 and those which are explicitly exempt, including the implications for the number of businesses to fall in-scope of the registration requirements such as child-care centres * Provide clarity in guidance about the expectations of councils in this registration process as being purely administrative would assist in clarifying the role of councils and reducing their risk of liability. * Clarify in guidance that councils do not have a role in approving or assessing the adequacy of Aquatic Risk Management Plans * Have regard for council budgetary cycles when considering implementation timetables for new initiatives. While forewarning of the new requirements will occur when they are gazetted, any unexpected or additional activities requiring significant staff and funding resources will need to be included in councils’ 2020-21 budget, which are starting to be developed by officers now. |
| Updating standards and requirements to improve risk management to reflect best practice water quality management | As owners and operators of some 300 public aquatic facilities, and an increasing number of interactive water features in public places, councils will need to budget for increased costs of compliance with the new standards, alongside all other aquatic facilities privately owned.  We note that the costs of increased microbiological sampling will increase costs to operators. | * DHHS provide training and support for aquatic facility operators to review their Water Quality Risk Management Plans to check they are adequate to meet the requirements of the new regulations * DHHS convene an industry/local government working group to monitor and evaluate the introduction of the new standards |
| Duty to manage risks in accordance with Water Quality Guidelines | **Clarification sought**. Under draft Regulation 44 it is prescribed condition of registration of Category 1 aquatic facilities that the registration holder ensures that the standards and requirements are complied with.  The general duties of aquatic facilities operators apply to both category 1 and 2 aquatic facilities. These include that chemical testing be undertaken at 4 hourly intervals for some chemicals and for others at weekly and monthly intervals. Whilst these timeframes may be appropriate for public pools where there are staff at the premises at all times whilst they are open, it is highly unlikely they could be met for other facilities such as interactive water play areas in parks, as it would require someone to visit the site and undertake testing every 4 hours.  Another requirement is for operators to ensure that microbiological quality of aquatic facility water be maintained with specific parameters before and during operation. It is uncertain how this can be achieved. The tests for microbiological parameters are tested in a laboratory. Therefore, the results are not immediately known.  The draft Regulations require that within 48 hours of a notification by an initial lab report that a sample does not comply with microbiological parameters that the operator must ensure that a further sample of water is taken and provided to a lab to assess compliance.   Some rural councils have identified that this timeframe may not be able to be complied with due to distance. There other timeframes within the Regulations that may also not be able to be met | * DHHs to provide guidance about requirements for micro samples to be taken in situations where it is not possible to arrange for sampling due to remote locations from laboratories * DHHS to consider amending the standards to provide a realistic response period for facilities for which 4-hourly testing is not possible or practical to achieve |
| Risk-based characterisation of aquatic facilities (based on user-profile and number of bathers). | **Support in principle**. See comments above concerning the types of aquatic facilities included in Categories 1, 2 or exempt. | DHHS to consult with councils about opportunities for Category 1 aquatic facilities to have reduced regulatory requirements |

## Immunisation and infectious disease prevention

We support in principle the proposed changes. Councils are committed to the public benefits of immunisation, and they play an active role in encouraging families to immunise their children. While education and assistance will be the primary means of achieving compliance, adding in the capacity for infringements provides an alternative means of addressing non-compliance where prosecution may not be feasible**.**

| **Proposed change** | **Comment** | **Recommendation** |
| --- | --- | --- |
| Introduce infringement penalty for those in charge of a primary school or children’s services centre who fail to exclude a child infected with, or exposed to, a specified infections disease in accordance with Schedule 7. | **Support in principle.** | Clarify that infringement penalties for the regulations in Division 5 are administered by DHHS only. |

## Pest control

We support in principle the proposal to make amendments to incorporate the national framework for minimum training and licensing requirements for pest control operators.

We note that use of pesticides as a means of controlling pests is leading to increasing community concerns about safety where spraying is used in public places and where it cannot be contained to an individual property. We encourage DHHS to develop community education materials to assist communities to understand the rationale for pesticide use at appropriate times – note our comments in relation to mosquito control activities above.

# Further information

Rosemary Hancock

Manager Water and Public Health

MAV

T: 9667 5520

E: rhancock@mav.asn.au