

## PROPOSED PUBLIC HEALTH AND WELLBEING REGULATIONS

### Analysis of Submissions Received and Statement of Reasons for the Direction Taken in Final Regulations

In August 2008 the Victorian Parliament passed the *Public Health and Wellbeing Act 2008* (PHWA). Most provisions of the PHWA are scheduled to come into operation on 1 January 2010. The PHWA is designed to both strengthen traditional public health roles and to deal proactively with contemporary public health concerns and emerging risks.

The PHWA provides for regulations to be made to support the general requirements of the Act as well as to provide more detailed operational requirements. A single set of regulations have been developed and are proposed to replace the ten sets of regulations made under the *Health Act 1958*.

The proposed draft regulations contain provisions that cover:

- Consultative Councils;
- Nuisances;
- Prescribed Accommodation and Registered Premises;
- Aquatic Facilities;
- Cooling Tower Systems and Legionella Risks in Certain Premises;
- Pest Control; and
- Management and Control of Infectious Diseases, Micro-organisms and Medical Conditions.

In accordance with the requirements of the *Subordinate Legislation Act 1994*, a regulatory impact statement (RIS) was prepared on the draft regulations. The purpose of the RIS was to explain the likely impact of the proposed regulations and to facilitate the process of public consultation. The RIS explained the objectives of the proposed regulations, identified feasible alternatives to achieve those regulations and analysed the likely benefits and costs of the proposed regulations and each alternative.

#### Process of consultation and analysis

The RIS and proposed regulations were released for public comment on 16 September 2009. They were advertised in the Victorian Government Gazette Special Number s21 on 16 September 2009 and in the Victorian 'Herald Sun' on 17 and 18 September 2009. A copy of the RIS and proposed regulations were emailed to 268 stakeholders and the Minister for Health wrote to over 450 stakeholders enclosing copies of the RIS and proposed regulations and inviting comment. In addition, the RIS and proposed regulations were posted on the department's Public Health and Wellbeing Act website.

Forty-four submissions were received in response to the Regulatory Impact Statement on the proposed Public Health and Wellbeing Regulations. A number of issues were raised in submissions in regards to different provisions of the proposed regulations.

#### Amendments to the proposed regulations

After considering the submissions, the Minister for Health decided that the regulations should be made with the following amendments:

- Part 3 of the regulations will be renamed "Arbovirus infections".
- The reference to "septic tank system" in draft regulation 21 will be changed to "wastewater treatment system".
- Draft regulation 29 will be amended to include a general requirement for staff in registered premises to be clean.

- The heading of Draft regulation 28(1) (c) will be amended so that it refers to all articles used at registered premises and not just “skin penetrating equipment”.
- Draft regulation 27 will be amended so that it refers to premises being kept in a “clean, sanitary and hygienic condition”.
- Draft regulation 32 will be amended so that it requires proprietors to ensure that the name, address *and phone number* of each client is recorded and stored at the premises.
- A new regulation will impose a condition on the registration of a prescribed accommodation that requires all proprietors who must keep a register under draft regulation 25(1) to take all reasonable steps to protect the information in the register.
- A new regulation will impose a condition on the registration of premises required to be registered under Part 6, Division 3 of the PHWA, upon which tattooing or body piercing are conducted, that a person required to keep records under draft sub regulation 32(1) must take reasonable steps to protect those records from misuse and loss.
- Part 5 of the exposure draft, ‘Aquatic Facilities’ will be amended to insert new regulations as follows -
  - a regulation that is closely based on regulation 41 of the Health (Infectious Diseases) Regulations 2001 (‘ID Regulations’) that requires the responsible person to ensure that when an aquatic facility is open for use the water in the aquatic facility is effectively filtered so that all visible extraneous matter is removed from the water;
  - a regulation that is closely based on regulation 43 of the ID Regulations, that requires the responsible person to ensure that when an aquatic facility is open for use the water in the aquatic facility does not exceed 40 degrees Celsius;
  - a regulation that is closely based on regulation 43(3) of the ID Regulations, that requires the responsible person to ensure that when an aquatic facility is open for use the level of cyanuric acid (if used) in the water in the aquatic facility does not exceed 100mg/L;
  - a regulation that is closely based on regulation 45 of the Health (Infectious Diseases) Regulations, that requires the responsible person to ensure that when an aquatic facility is open for use the total alkalinity level in the water in the aquatic facility is maintained above 60mg/L;
  - a regulation that is closely based on regulation 46 of the ID Regulations that requires the responsible person to ensure that when an aquatic facility is open for use the combined chlorine of the water in the aquatic facility is -
    - (a) at all times less than the free chlorine residual; and
    - (b) measured to be less than 1 mg/L at least one in every 24 hours of operation.
- Each of the above proposed regulations in relation to aquatic facilities will carry a penalty of 20 penalty units for non-compliance.
- Draft regulation 38 will be amended to add in the additional requirements currently in regulations 50(2) and (3) of the ID Regulations. That is, within 24 hours of receiving a report that any sample of water taken from an aquatic facility and delivered to a laboratory for testing has not complied with subregulation (1) the proprietor must ensure that the following steps are taken—
  - (a) the water in the aquatic facility must be shock dosed with chlorine or bromine; and

- (b) the water treatment program and maintenance program of the aquatic facility must be reviewed; and
- (c) any faults must be corrected and any changes necessary to prevent a re-occurrence of those faults must be implemented; and
- (d) a further sample of the water in the aquatic facility must be taken and delivered to a laboratory for testing for compliance with the microbiological parameters specified in subregulation (1).

In addition, if, after following the procedure in sub regulation (2), the microbiological standard of the water in the aquatic facility fails to meet the microbiological parameters specified in sub regulation (1), the proprietor must ensure that—

- (a) the steps in sub regulation (2) are repeated until 2 consecutive water samples taken approximately one week apart comply with the microbiological parameters specified in sub regulation (1); or
  - (b) the aquatic facility is closed until the problem has been remedied.
- Draft regulation 39 will be amended to include more stringent testing requirements, as follows: The responsible person must ensure that when an aquatic facility is open for use the water in the aquatic facility is tested:
    - at four hourly intervals for:
      - (i) free chlorine and total chlorine (if chlorine used);
      - (ii) free bromine and total bromine (if bromine used);
      - (iii) pH
    - at least once per day for combined chlorine (if chlorine used);
    - at weekly intervals for total alkalinity;
    - at monthly intervals for cyanuric acid (if used).
  - Part 8 of the exposure draft, 'Management and Control of Infectious Diseases, Micro-Organisms and Medical Conditions', will be amended to insert new regulations as follows:
    - a regulation enabling the Department to notify a council of a municipal district that may be affected by a notifiable condition.
    - a regulation enabling the Department to give any written direction to a council authorised officer that may be reasonably necessary for the purpose of limiting the spread of any case of infectious disease notified; and
    - a regulation enabling council authorised officers to give written directions for the purpose of implementing the directions given by the Department.
  - The penalty units applicable to natural person in Schedule 8, reference 13, offence 69 of the exposure draft will be amended from '12' to '4'.

These changes address a number of concerns raised in submissions.

The Department of Health has analysed the comments received in submissions and drafted a response to each of the comments. The Department's response is included in tables in the following section. The tables are presented thematically in accordance with sections in the regulations (see table of contents below for clarification).

While a number of comments in submissions recommended changes to the regulations, there were also a number of comments that sought clarification of the proposed regulations and the Act

as well as some lack of clarity in regards to the operation of some of the regulations and the Act. There are responses in the table that attempt to clarify these issues.

It should also be noted that the Department is in the process of producing a variety of information that will be distributed to stakeholders to further clarify the changed requirements in the Act and the regulations that will commence from 1 January 2010. This information will also be made available on the Public Health and Wellbeing Act website at [www.health.vic.gov.au/phwa](http://www.health.vic.gov.au/phwa)

**Table of contents – Tables containing comments and Department’s response:**

| <b>Comments regarding</b>   | <b>Page</b> |
|---|-------------|
| Nuisances.....  | 5           |
| Prescribed Accommodation.....                                       | 6           |
| Registered Premises.....  | 14          |
| Aquatic Facilities.....   | 18          |
| Cooling Tower Systems and Legionella Risks in Certain Premises..... | 22          |
| Infectious Diseases   |             |
| - Notifications and other general provisions.....                   | 25          |
| - Immunisations.....  | 29          |
| - Information to Sex Workers and Clients.....                       | 31          |

*There were no comments received in regards to consultative councils or pest control, as such there are no changes to these provisions of the proposed regulations.*

## Nuisances

Eleven submissions commented on the nuisance provisions in the proposed regulations. As a result of the comments received, one amendment to the proposed regulations will be made (highlighted in bold in the below table). The comments and Department's responses are outlined below.

| Draft reg. | Submission   | Department of Health Response  | subs             |
|------------|--|--|------------------|
| <b>11</b>  | <b>Confusion regarding Mosquito controls in the regulations and relationship with the Act. Suggestion to change the name of this section for clarity.</b>  | <b>Part 3 of the draft regs. will be renamed "Arbovirus infections".</b>   | <b>2</b>         |
| 11         | <p>The provision should cover rats and mice / all pests not just mosquitoes</p> <p>Can this provision be covered by the nuisance provision in the Act?</p> <p>What was the reasoning behind including 'prevention of mosquito breeding' in the Regulations?</p> <p>Was any consideration given to the inclusion of "unsanitary conditions" or is it expected that Councils use a 'prohibition notice' to deal with these cases</p> | <p>Mosquitoes transmit human diseases that can be fatal and due to the high risk they pose have been specifically regulated. Other pests are broadly covered under the nuisance provisions in the Act (sections 58–66)</p> <p>Overall the PHWA broadens the tools available to local government to achieve compliance, including introducing prohibition and improvement notices.</p> <p>The MAV with the support of the Department of Health will be providing training and guidance materials on the application of the Act and Regulations. Training will be delivered throughout Victoria in November and December 2009.</p> <p>These sessions will assist to clarify the appropriate use of the various enforcement tools and attendance by officers authorised under the PHWA is highly recommended.</p> | 6<br>1<br>1<br>3 |
| N/A        | There is no analysis of nuisances in the RIS, why were they excluded?  | <p>The nuisance provisions are primarily set out in the Act. The PHWA is an outcome of an extensive review of the <i>Health Act 1958</i> which included detailed stakeholder consultation including on a Discussion Paper (August 2004) and Draft Policy Paper (December 2005), both of which addressed nuisances.</p> <p>This Regulatory Impact Statement deals solely with the regulations and therefore an examination of nuisance provision was not appropriate.</p>   | 4                |
|            | Ability to use nuisance provisions in the Act is limiting because nuisance must be determined prior to action being taken  | <p>A number of new provisions in the PHWA enable Councils more options for achieving compliance. Improvement and prohibition notices are one such example.</p> <p>The MAV with the support of the Department of Health will be providing training on the application of the Act and Regulations. Training will be delivered throughout Victoria in November and December 2009.</p> <p>These sessions will assist to clarify this distinction and attendance by officers authorised under the PHWA is highly recommended.</p>   | 1                |

## Prescribed Accommodation

16 submissions commented on the prescribed accommodation provisions in the proposed regulations.

As a result of the comments received, 1 amendment to the proposed regulations will be made (highlighted in bold in the below table). The comments and Department's responses are outlined below.

**[Note:** A large proportion of submissions on prescribed accommodation concerned rooming house regulation. This reflects concern about improving regulation, and regulatory compliance, for this type of accommodation.

It is proposed that rooming houses continue to be regulated, as a class of prescribed accommodation, under the proposed regulations. This regulation is for the purpose of protecting public health, and particularly preventing outbreaks of infectious disease and other aspects of rooming house regulation are currently in other legislation including:

- The *Residential Tenancies Act 1997* ('RTA') which defines the rights and duties of rooming house owners and residents as landlords and tenants. Disputes are heard in the Victorian Civil and Administrative Tribunal ('VCAT').
- The *Fair Trading Act 1987* ('FTA') which defines the rights and duties of rooming house owners and residents as traders/suppliers and consumers. Compliance is monitored and enforced by Consumer Affairs Victoria Inspectors.
- The *Building Act 1993* ('BA'), and associated regulations and codes which set out the minimum building standards for rooming houses. Compliance is monitored and enforced by Municipal Building Surveyors and, in relation to fire safety, the Country Fire Authority and Metropolitan Fire Brigade.

On 15 July 2009 the Premier announced the establishment of a Taskforce to be chaired by Martin Foley MLA, to report back to Government on "a new set of minimum standards and enforcement of standards for rooming houses" ("Rooming House Taskforce"). On 30 October 2009 the Premier announced the Government's support for the 32 recommendations of the Rooming House Taskforce, implementation to be coordinated via the Interdepartmental Committee on Rooming Houses ("Rooming House IDC").

The report of the Rooming House Taskforce can be accessed at:

[http://www.housing.vic.gov.au/community-and-housing-partnerships/housing-agencies-and-cooperatives/registration-and-regulation/rooming-house-regulations/\\$77.2-million-package-to-improve-private-rooming-houses](http://www.housing.vic.gov.au/community-and-housing-partnerships/housing-agencies-and-cooperatives/registration-and-regulation/rooming-house-regulations/$77.2-million-package-to-improve-private-rooming-houses)

The recommendations of the Rooming House taskforce will be incorporated into the workplan of the Rooming House IDC which is attended by the Director, Public Health Branch and senior staff of the Department of Health.

Where submissions on the RIS coincide with recommendations of either the Rooming House Taskforce or the coroner, reference is made, in the responses below, to the ongoing work of the Department of Health and the Rooming House IDC. ]

| Draft reg. | Submission   | Department of Health response  | subs |
|------------|--|--|------|
| N/A        | There should be increased penalties for failure to register prescribed accommodation and failure to comply with prescribed standards for prescribed accommodation.   | <p>Under section 67 of the <i>Public Health and Wellbeing Act 2008</i> ('PHWA') the maximum penalty for failure of an individual to register a rooming house has increased from \$5841.00<sup>#</sup> (50 penalty units) to \$7009.20 (60 PU's) and a new maximum penalty of \$35,046.00 (300 PU's) has been introduced for bodies corporate.</p> <p>Under the PHWA councils will also be newly able to issue prohibition and improvement notices requiring a person to remedy or desist from a contravention of the Act or regulations – including the prescribed standards for prescribed accommodation. Maximum penalties for failure to comply will be \$14,018.40 (120 PU's) for individuals and \$70,092.00 (600 PU's) for bodies corporate.</p>   | 5    |
| 3<br>13    | <p>Clarify distinction between "rooming house" and "residential accommodation".</p> <p>Change definition of rooming house to one based on number of bedrooms.</p> <p>Adopt definition/s of "rooming house" from RIS.</p> <p>Coroner's Rec 5- change RH threshold - more than 1 room or more than 2 residents.</p> <p>Align PA classes with Building Act.</p> | <p>The "rooming house" class of prescribed accommodation was introduced into the Health (Prescribed Accommodation) Regulations 2001 ('HPA') in 2008, in response to concerns about confusion caused by different definitions of "rooming houses" under tenancy and health laws.</p> <p>Prior to the 2008 amendments rooming houses with a minimum capacity of at least 6 residents had been regulated under the HPA as part of the "residential accommodation" class of prescribed accommodation.</p> <p>The 2008 amendments, which took effect from 1 January 2009, created a specific class of prescribed accommodation in the HPA called "rooming houses" and reduced the threshold for that class from a minimum of 6 residents to a minimum of 4, in line with the definition in the <i>Residential Tenancies Act 1997</i>.</p> <p>This approach has been followed in the proposed regulations.</p> <p>Submissions suggesting alignment with other regulation of rooming houses – for example the Building Code – will be referred to the Rooming House IDC for consideration in a whole-of-government context.</p> | 9    |
| 13         | Remove 'redundant' "residential accommodation" class.  | Not accepted. This class includes non-family, non-rooming house accommodation for six or more persons and is expected to become more significant from 1 January 2010 when the definition of prescribed accommodation in s.3 of the PHWA is   | 2    |

| Draft reg.       | Submission   | Department of Health response   | subs     |
|------------------|--|---|----------|
|                  |  | expanded to include employee accommodation such as 'bunkhouses' for seasonal workers.   |          |
| 13               | Reverse the onus of proving that accommodation fits one or more of the exemptions in proposed reg. 13 so that suspected proprietors of rooming houses, for example, are required to provide evidence that a house is "under the exclusive occupation of the occupier" ie exempt under draft reg. 13(a).  | Reversal of the onus of proof requires an Act of Parliament and would therefore require amendment of the PHWA. Similar suggestions have been made in relation to other aspects of rooming house regulation (see below). These will be considered in future reviews of public health legislation.  | <b>3</b> |
| 4<br>12<br>16(3) | <p>Proposed regulation 16(3) (prescribing overcrowding standards for accommodation in which persons are accommodated for more than 31 days) does not take into account seasonal accommodation requirements for staff working in ski resorts where typically staff would be accommodated for up to 90 - 100 days. The proposed standard is too onerous and is not able to be achieved in the ski resorts.</p> <p>It would be appropriate to include a new standard to cover prescribed accommodation used by seasonal workers.<br/>New definition of Seasonal Worker : a person engaged to work in a seasonal industry for up to 100 days</p> | <p>Section 3 of the PHWA now includes in the definition of "prescribed accommodation": "accommodation provided to an employee in accordance with a term of an award governing the employment of the employee or a term of the employee's contract of service, for use by the employee during that employment or service".</p> <p>However, the proposed regulations apply only to the <i>classes</i> of prescribed accommodation listed in proposed regulation 12 and defined in proposed regulation 4. These classes are substantially the same as those currently regulated under the existing Health (Prescribed Accommodation) Regulations 2001 (except for some unrelated and technical changes to the rooming house definition).</p> <p>In order to fit the definition of "residential accommodation" in proposed regulation 4, <b>consideration</b> must be payable to the person providing the accommodation.</p> <p>In order to fit the definition of "rooming house", <b>rent</b> must be payable.</p> <p>Consideration will be given in future regulatory reviews to the inclusion of a specific class, or classes, of prescribed accommodation provided for seasonal and/or other employees under awards or contracts of employment - ie for which no consideration or rent is payable by the employee.</p> <p>Such regulatory review will include consultation with employers, employees and their representatives in the agricultural, horticultural, tourism and other relevant industries sectors, in relation to existing employee accommodation facilities and potential compliance costs that may be associated with further regulatory reform.</p> | <b>1</b> |

| Draft reg. | Submission   | Department of Health response   | subs |
|------------|--|---|------|
| 3          | Insert a definition of "motel"   | A definition of "motel" is not considered necessary as no information has been provided to indicate that the word is difficult to interpret or requires clarification.  | 1    |
| N/A        | <p>Support registration/licensing of proprietors of rooming houses.</p> <p>Support/oppose introduction of a "fit and proper person test" for proprietors of rooming houses.</p>  | <p>In response to the recommendations of the Rooming House Taskforce the Victorian Government has committed to immediately begin work to develop a registration system through the Business Licensing Authority for all rooming house operators.</p> <p>In designing the system the Government will consider appropriate criteria to be a rooming house operator.</p> <p>This system will operate separately, but in parallel, with the registration of rooming house premises under the PHWA and regulations.</p> <p>As a result, to operate a rooming house legally in Victoria premises will continue to be required to be registered with local government and operators will be required to be registered with State Government.</p> | 5    |
| 3          | Reverse onus of proof in relation to "payment of rent" in definition of "rooming house" in draft reg 3 so that suspected proprietors of rooming house premises are required to rebut a presumption that rent is paid by the residents of the premises. | Reversal of the onus of proof requires an Act of Parliament and would therefore require amendment of the PHWA. Similar suggestions have been made in relation to other aspects of rooming house regulation. These will be considered in future reviews of public health legislation.  | 3    |
|            | Define "family" in 13(i) "Exempt prescribed accommodation".  | <p>It was not considered that provision of a necessarily complex definition of "family" in the regulations (see for example the definition of "family member" in s3A of the <i>Magistrates Court Act 1989</i>) would assist regulators to enforce compliance in the current legislative framework.</p> <p>This issue may need to be revisited in the context of a review of the evidentiary provisions of the PHWA in relation to proving premises to be prescribed accommodation requiring registration.</p>   | 1    |
| 13         | Reverse onus of proof in relation to "family" in draft reg.13(i) "Exempt prescribed accommodation" so that suspected proprietors of prescribed accommodation are required to rebut a legal presumption that residents are not family members.          | Reversal of the onus of proof requires an Act of Parliament and would therefore require amendment of the PHWA. Similar suggestions have been made in relation to other aspects of prescribed accommodation regulation. These will be considered in future reviews of public health legislation.   | 1    |
| 3          | Clarify meaning of "temporary crisis accommodation"  | The definition of "temporary crisis accommodation" in draft reg. 3 (ie "accommodation provided on a non-profit  | 1    |

| Draft reg.    | Submission   | Department of Health response   | subs     |
|---------------|--|---|----------|
|               |  | basis by an agency which receives homelessness support funding from the Government of Victoria”) is quite specific and cannot be further clarified.   |          |
| Part 4        | <p>Better define “proprietor” of prescribed accommodation.</p> <p>License rooming house proprietors – so that they can be more easily identified</p>   | <p>“Proprietor”, in relation to prescribed accommodation, is defined in s. 3 of the PHWA as “the person providing the prescribed accommodation”.</p> <p>A change to this definition would require amendment of the Act.</p> <p>However, as referred to above, the Victorian Government has committed to immediately begin work to develop a registration system through the Business Licensing Authority for all rooming house operators, in response to the recommendations of the Rooming House Taskforce.</p> <p>In designing the system the Government will consider appropriate criteria to be a rooming house operator.</p> <p>This system will operate separately, but in parallel, with the registration of rooming house premises under the PHWA and regulations.</p> <p>As a result, to operate a rooming house legally in Victoria premises will continue to be required to be registered with local government and operators will be required to be registered with State Government.</p> | <b>5</b> |
| Part 4        | Require “proprietors” of prescribed accommodation to provide proof of identification and of their current residential address.   | <p>Draft reg 15(a) requires all applicants for registration of prescribed accommodation to provide the name and address of the proprietor.</p> <p>Sections 71 and 73 of the PHWA empower councils to require additional information from the applicant, which could include specified evidence of identity and current residential address.</p>   | <b>2</b> |
| 13(a)         | Define “occupier” in 13(a) - Exempt prescribed accommodation.  | Section 3 of the PHWA defines “occupier”, in relation to premises, as “a person who appears to be of or over 16 years of age and who is, or appears to be, in control of the premises”.   | <b>1</b> |
| Part 4, Div 2 | <p>Add more prescriptive standards for prescribed accommodation, especially rooming houses, in relation to:</p> <ul style="list-style-type: none"> <li>the provision and type of locks...</li> </ul> | The proposed standards in the draft regulations are for the protection of public health and are not intended to cover the building and fire safety issues addressed in the Building Code of Australia or the duties of a rooming house owner set out in Part 3  | <b>1</b> |

| Draft reg. | Submission  | Department of Health response   | subs     |
|------------|---|---|----------|
|            | <ul style="list-style-type: none"> <li>• the separation of at least one internal toilet facility from other bathroom facilities...</li> <li>• the provision of at least one shower in a dwelling...</li> <li>• the provision for an internal common area (of a minimum size)...</li> <li>• additional bathroom and toilet facilities in situations where children may be present...</li> <li>• linking minimum bedroom floor areas to functionality...</li> <li>• accessibility and contactability by occupiers and emergency services to the rooming house operator...</li> <li>• the provision of power via circuit breakers which are separate to each bedroom ...</li> <li>• the rooming house proprietor to be responsible for behaviours of occupiers and their adverse impact on other occupiers and neighbouring properties...</li> <li>• the owner of a rooming house to be responsible for the maintenance and repair of the building...</li> </ul> | <p>of the <i>Residential Tenancies Act 1997</i>.</p> <p>However, recommendations 1 and 2 of the Rooming House Taskforce make specific recommendations for additional standards to apply to rooming houses.</p> <p>The Government has committed to introducing amendments to the <i>Residential Tenancies Act 1997</i> or other appropriate legislation to implement the standards in <b>recommendation 1</b>, ie:</p> <ul style="list-style-type: none"> <li>• locks on toilet and bathroom doors</li> <li>• fire-safe locks on bedroom doors</li> <li>• provision of working double power outlets in each bedroom</li> <li>• window coverings in each bedroom</li> <li>• fire evacuation plan</li> <li>• power overload protection</li> </ul> <p>The Government has also agreed to phase in the introduction of other additional standards, with consideration given to including as minimum standards:</p> <ul style="list-style-type: none"> <li>• periodic gas and electrical safety checks</li> <li>• appliance upgrades to higher levels of water and energy efficiency</li> <li>• installation of hard wired smoke detectors in each habitable room</li> <li>• minimum common areas – living area and kitchen/meals area</li> </ul> <p>A project will be initiated to identify other potential standards and consider the likely impact on rooming house rental affordability and supply, before phasing in any further standards.</p> |          |
| 17<br>18   | There should be a requirement for weekly cleaning of bathrooms  | The requirement that bathrooms be cleaned between occupants in draft reg. 18 is additional to the more general requirement in draft reg. 17(b) that a proprietor of prescribed accommodation must maintain bathrooms in a “clean, sanitary and hygienic condition”. It was not considered appropriate to be more prescriptive as different considerations will apply for different classes, sizes and types of accommodation.   | <b>1</b> |
| N/A        | Require communal rooms not be used as bedrooms  | The proposed standards in the draft regulations are for the protection of public health and are not intended to cover the   | <b>1</b> |

| Draft reg. | Submission   | Department of Health response  | subs     |
|------------|--|--|----------|
|            |  | <p>building and fire safety issues addressed in the Building Code of Australia or the duties of a rooming house owner imposed in Part 3 of the <i>Residential Tenancies Act 1997</i>.</p> <p>However, recommendation 2 of the Rooming House Taskforce makes specific recommendations for additional standards to apply to rooming houses.</p> <p>The Government has agreed to phase in the introduction of additional standards, with consideration given to including as minimum standard:</p> <ul style="list-style-type: none"> <li>· minimum common areas – living area and kitchen/meals area</li> </ul> <p>A project will be initiated to identify other potential standards and consider the likely impact on rooming house rental affordability and supply, before phasing in any further standards.</p> |          |
|            | The Department should issue guidelines or codes of practice for the prescribed standards.  | This proposal is under consideration.  | <b>2</b> |
| <b>21</b>  | <b>Discharge of Sewerage and waste water in prescribed accommodation Reg 21(b) - Septic tank systems should be changed to wastewater treatment systems in line with the EPA's Code of practice for onsite Wastewater Management, which has superseded the Septic Tank Code of Practice.</b>                  | <b>Agreed. The reference to "septic tank system" in draft reg. 21 will be changed to "wastewater treatment system".</b>  | <b>1</b> |
| 16         | Insert in regulation 16 a requirement that a proprietor of prescribed accommodation shall not allow or permit nor suffer a larger number of beds in any bedroom at any time than is sufficient for the accommodation of the number of persons allowable for that particular bedroom under these regulations. | <p>The purpose of regulation 16 is to establish the maximum number of <b>persons</b> permitted to be accommodated in each bedroom in prescribed accommodation. It was considered impractical to insert additional detail in relation to the numbers, types and sizes of beds that could be provided or permitted.</p> <p>The evidentiary problems encountered by councils when attempting to establish and prove the number of people who are accommodated in certain prescribed accommodation are recognised, however it was considered that the additional regulation suggested would not assist due to definitional issues and the portability of beds and bedding.</p>   | <b>1</b> |
| N/A        | Require proprietors to demonstrate that buildings are appropriate for use as a prescribed accommodation by submitting an Occupancy Permit issued by a Building Surveyor at the time of registration  | These proposals are similar in intent to recommendation 5 of the Rooming House Taskforce, which has been accepted by Government.   | <b>4</b> |

| Draft reg. | Submission  | Department of Health response   | subs     |
|------------|---|---|----------|
|            | <p>application.</p> <hr/> <p>Require an application for registration to be accompanied by a certificate newly issued by a building surveyor which certifies compliance with Building Code and free of fire hazard.</p> <hr/> <p>The regulations should make reference to other pieces of legislation i.e building, fire etc. to enable Local Government to issue conditional registrations.</p> | <p>There are a number of legal and practical issues that must be addressed before these proposals can be implemented.</p> <p>Government will investigate how compliance certificates can be developed to demonstrate compliance with the <i>PHWA</i> and relevant regulations as part of the registration process.</p> <p>Other measures will also be investigated to achieve the intent of this objective.</p> |          |
| 25         | <p>Give authorised officers specific power to access Prescribed Accommodation Registers kept under draft reg. 25.</p>   | <p>The powers of authorised officers to compel access to documents required to be kept under the Act or regulations are set out in the <i>PHWA</i> – for example powers to request information (s.167) and to direct persons to produce documents (s.176) and the exemption to the privilege against self-incrimination in s.212(2)(a).</p>   | <b>1</b> |
| N/A        | <p>Require annual renewal of rooming house registration</p>   | <p>Under s.74(d) of the <i>PHWA</i> councils can determine the period of registration up to a maximum of three years.</p>   | <b>1</b> |

## Registered Premises

Fifteen submissions commented on the registered premises provisions in the proposed regulations. As a result of the comments received, five amendments to the proposed regulations will be made (highlighted in bold in the below table). The comments and Department's responses are outlined below.

| Draft reg. | Submission  | Department of Health Response  | subs     |
|------------|---|--|----------|
| 32         | Support changes to record keeping requirements for tattooing and body piercing  | <i>No response required</i>  | 2        |
| 30         | Support mandatory hand washing facilities   | <i>No response required</i>  | 1        |
| 30         | The requirement for hand basins should be more prescriptive in regards to: <ul style="list-style-type: none"> <li>- Location</li> <li>- Hot and cold water</li> <li>- Hands free</li> <li>- Liquid soap</li> <li>- Provision of paper towels</li> </ul> | The provisions in regards to hand basins are similar to those in the <i>Australia New Zealand Food Standards Code</i> .<br><br>While the regulations are not overly prescriptive the <i>Health Guidelines for Personal Care and Body Art Industries</i> are currently being updated and will include more prescriptive information about the location and set up of hand basins. Once updated this document will be made available to authorised officers and relevant stakeholders and will be available on the Department's website. | 11       |
| 30         | There should be a requirement for 'cleaning sinks' in registered premises, in addition to hand basins, to ensure hand basin is always available for cleaning hands  | Requiring additional sinks may result in overregulation and unnecessary provision of additional amenities across an entire industry. It would also impose a significant burden on some premises to do additional renovations without sufficient evidence of a health benefit. Clarification about the need for hand basins and appropriate use will be provided in the <i>Health guidelines for Personal Care and Body Art Industries</i> that are currently being revised.  | 1        |
| <b>29</b>  | <b>The proposed change to the personal hygiene requirements in draft reg 29 from person 'is clean' to person has 'clean hands' limits ability to address unclean clothing, hair etc. This provision should be more general.</b>                         | <b>Agreed. The regulations should continue to apply generally to the person, but include a specific requirement about 'hands'. The regulations will be amended to reflect this</b>   | <b>1</b> |
| <b>28</b>  | <b>Clean and sanitary provisions for equipment that is not used to penetrate the skin should be included (eg for razors and scissors).</b><br><br>Suggest that heading of reg 28 is changed to include reference to articles not used to                | Draft regulation 28(1) (c) requires the occupier of premises where a registered business is located to ensure that "any article is clean before it is used on a person".<br><br><b>The heading of the regulation will be amended so that it refers to all articles used at registered premises and not only "skin penetrating equipment".</b><br><br>The requirement in draft reg. 28 (1)(a) for equipment to be sterile only applies to equipment intended to penetrate the skin.   | <b>2</b> |

| Draft reg. | Submission   | Department of Health Response  | subs |
|------------|--|--|------|
|            | penetrate the skin.  | The Health guidelines for personal care and body art industries contains additional information about the cleanliness of articles that are not intended to penetrate the skin such as razors. The guidelines should be read in conjunction with the Act and the regulations.   |      |
| 27         | There should be an obligation on registered businesses to keep fixtures and fittings clean and hygienic.   | The obligation in draft reg. 27 to keep premises “in a clean and hygienic condition” applies to fixtures and fittings .  | 1    |
| 27         | <b>Draft reg 27 refers to “clean and hygienic” whereas other draft provisions refer to “clean, sanitary and hygienic condition”. These should be made consistent.</b>                                    | <b>Draft reg. 27 will be amended so that it refers to premises being kept in a “clean, sanitary and hygienic condition”.</b>   | 1    |
| 32         | <b>Premises that provide tattooing or body piercing should be required to record and store client phone numbers as well as names and addresses – to assist in quick contact being made if necessary.</b> | <b>Agreed. Draft regulation 32 will be amended so that it requires proprietors to ensure that the name, address and <i>phone number</i> of each client is recorded and stored at the premises.</b>   | 1    |
| 32         | <b>Where the regulations require the collection and use of personal information, they should include privacy protections.</b>  | <b>Agreed.</b><br><b>A new regulation will impose a condition on the registration of a prescribed accommodation that requires all proprietors who must keep a register under draft regulation 25(1) to take all reasonable steps to protect the information in the register; and</b><br><b>A new regulation will impose a condition on the registration of premises required to be registered under Part 6, Division 3 of the PHWA, upon which tattooing or body piercing are conducted, that a person required to keep records under draft sub regulation 32(1) must take reasonable steps to protect those records from misuse and loss.</b> | 1    |
| 32         | Records should be kept for 12 months following each procedure not just the last procedure. This indicates records for clients that are not 12 months old can be destroyed                                | Records that are required to be kept include name and address, not information about a particular procedure. If this information is kept for 12 months from the date of the last procedure they will not be able to be destroyed earlier and will ensure only the most recent details are kept.  | 1    |
|            | Those performing skin penetration procedures should be required to be vaccinated against vaccine preventable   | Those performing these services can choose to be vaccinated against vaccine preventable blood-borne diseases if they wish.   | 2    |

| Draft reg. | Submission   | Department of Health Response   | subs        |
|------------|--|---|-------------|
|            | blood-borne diseases.  |   |             |
| N/A        | Solaria should be considered a public health risk and registered   | Solaria are regulated under the <i>Radiation Act 2005</i> and associated regulations.   | 1           |
| 14         | Exempt businesses provisions currently mean that mobile hairdressers are exempt – they should not be   | There is no change to this provision from the current regulations. Mobile hairdressers and beauty therapists must register their principle place of business.   | 3           |
| 77         | Regulations should include greater ability to issue infringement notices for registered premises offences.   | <p>The proposed list of “infringeable” offences was developed in consultation with the Department of Justice under the Attorney-General’s Guidelines to <i>the Infringement Act 2006</i>. These guidelines set out the policy outlining what is appropriate to be dealt with by way of infringement and how that policy should be applied by agencies seeking to make new offences infringeable.</p> <p>One aspect of the guidelines is that currently offences that require proof not only as to actions, but also as to the state of mind (or presumed state of mind) of the alleged offender are not suitable to be made “infringeable”.</p> | 2           |
| N/A        | Regulations should include examples of types of premises requiring registration and left general enough to include emerging practices such as dry needling   | Section 68 of the PHWA outlines the businesses that are required to be registered. This provision has been left generic enough to capture ‘new businesses’ that may be high risk. Providing examples of premises that fall into these categories may limit the application of the provision.  | 2           |
| N/A        | Compliance with best practice guidelines such as the ‘Health Guidelines for Personal Care and Body Art Industries’ should be made mandatory under the regulations.   | The Act and regulations impose fundamental requirements to protect people from potential exposure to infectious diseases. A variety of communication material including updated guidelines will be produced and distributed by the Department. This information will support the Act and regulations by providing greater clarity around the requirements as well as information on best practice for particular industries.  | 3           |
| N/A        | <p>Proprietors of registered businesses should be required to be licensed.</p> <p>There should be a requirement for staff to be trained, particularly for tattooing and body piercing (eg accredited training, first aid)</p> <p>Should have to display certification of completion of accredited training</p> | A requirement to licence proprietors would need to be included in legislation and is outside the scope of the regulations. It was considered during the review of the <i>Health Act 1958</i> but not adopted in the PHWA.   | 1<br>3<br>1 |
|            | More prescriptive regulation of registered premises would be advantageous to local government and operators.   | There is insufficient evidence on the transmission of infectious diseases to support a more prescriptive regime than what is contained in the Act and proposed regulations. Without evidence, a more prescriptive regime would be in conflict with the government’s commitment to reduce the regulatory burden  | 1           |

| Draft reg. | Submission  | Department of Health Response   | subs |
|------------|---|---|------|
| N/A        | There needs to be training for authorised officers on colonic irrigation  | The current Health Guidelines for Personal Care and body art Industries provides information about the process of colonic irrigation and best practice standards. The Guidelines will be updated to include changes and new requirements included in the PHWA and regulations and will be distributed once this has occurred. In the meantime, the current version is available on the Department's website at: <a href="http://www.health.vic.gov.au/ideas/regulations">http://www.health.vic.gov.au/ideas/regulations</a>   | 3    |
| N/A        | A definition of beauty therapy is required  | A definition of beauty therapy is included in s3 of the PHWA.   | 1    |
| 15         | Businesses should be required to submit a floor plan when applying for registration.  | Sections 70 and 71 of the PHWA outline the registration requirements for registered premises.<br><br>Section 71 provides that an application for registration must be made to the Council:<br><ul style="list-style-type: none"> <li>- in the form approved by the Council;</li> <li>- containing any information in respect of the prescribed accommodation or the premises required by the Council;</li> <li>- containing the prescribed particulars;</li> <li>- together with the relevant fee.</li> </ul><br>This provision allows a council to request a floor plan for registered premises if they consider it necessary. | 3    |
| 28         | Sterilization requirements in regulations leave loopholes where equipment may not be sterile but comply with the regulations – eg regulations don't require articles within sealed container marked sterile to actually be sterile. | The regulations provide that equipment intended to penetrate the skin must be sterile and in the event of skin being penetrated must be sterilised or destroyed following use.  | 3    |
| 30         | Personal care and body art guidelines should contain detail about what makes a hand basin "adequate and accessible".  | The <i>Health Guidelines for Personal Care and Body Art Industries</i> are currently being updated and will include more prescriptive information about the location and set up of hand basins. Once updated this document will be made available to authorised officers and relevant stakeholders and will be available on the Department's website.   | 2    |

## Aquatic Facilities

Sixteen submissions commented on the aquatic facility provisions in the proposed regulations. As a result of the comments received, several amendments to the proposed regulations will be made (highlighted in bold in the below table). The comments in submissions and Department's responses are outlined below.

| Draft reg. | Submission   | Department of Health Response  | No. of subs |
|------------|--|--|-------------|
| 39         | Daily pool water testing frequency is inadequate and should be 4 hourly  | The proposed regulations will be amended to require 4 hourly testing consistent with the current regulations.  | 14          |
| 37         | The Aquatic Facility regulations should prescribe levels and testing for: <ul style="list-style-type: none"> <li>• Combined Chlorine</li> <li>• Alkalinity</li> <li>• Cyanuric Acid</li> </ul> | The proposed regulations will be amended to include testing frequencies consistent with the current regulations for: <ul style="list-style-type: none"> <li>• Combined Chlorine</li> <li>• Alkalinity</li> <li>• Cyanuric Acid.</li> </ul>   | 7           |
|            | Temperature requirement should be kept in the regulations  | The proposed regulations will be amended to prescribe a maximum water temperature consistent with the current regulations.   | 1           |
|            | Requirement to test total bromine should be included   | The proposed regulations will be amended to require testing for bromine consistent with the current regulations.   | 4           |
| 33         | The words "intended to be" in draft reg. 33 should be removed, as a small whirlpool should be considered a spa if it is not emptied.   | If a spa can be emptied it is up to the user to empty it before use.   | 1           |
|            | Requirement to test total chlorine should be included – reduced visibility, increased chloramines  | The proposed regulations will be amended to require testing for total chlorine consistent with the current regulations.  | 2           |
|            | Good filtration system is particularly important for removing Cryptosporidium  | The proposed regulations will be amended to require filtration consistent with the current regulations   | 1           |
| 40         | Section 40 – could/should be reworded to include Crypto/Giardia outbreaks as well as Legionella  | Giardiasis is not nationally notifiable or notifiable in a number of other jurisdictions and poses only a low level of public health risk.<br><br>Proposed reg. 38 sets out the action required in response to microbiological quality in swimming pool water, but does not include Giardia or Cryptosporidium.<br><br>Sampling and testing for the full range of micro-organisms that are required (in draft reg 66) to be notified in food or drinking water would be prohibitively expensive and time consuming with little health benefits if applied to aquatic facilities. | 2           |
|            | Pool operators training should be mandatory  | Mandatory training would create an unnecessary burden on pool operators. The Department is developing comprehensive guidelines for pool operators that will support the Act and the  | 3           |

| Draft reg. | Submission   | Department of Health Response  | No. of subs |
|------------|--|--|-------------|
|            |  | Regulations and will be distributed to relevant stakeholders   |             |
|            | <b>Do not support the move to allow operators to further regulate themselves</b>   | <b>The proposed regulations will be amended to be more prescriptive, consistent with the current regulations</b>   | <b>2</b>    |
| N/A        | Infringement notices should be introduced for offences in relation to aquatic facilities.  | The proposed list of “infringeable” offences was developed in consultation with the Department of Justice under the Attorney-General’s Guidelines to <i>the Infringement Act 2006</i> . These guidelines set out policy on offences that are appropriate to be dealt with by way of infringement and how that policy should be applied. The proposed offences were not considered appropriate under the guidelines.  | 1           |
|            | Should give authorised officers power to: <ul style="list-style-type: none"> <li>• close aquatic facilities and</li> <li>• direct that a microbiological sample to be taken</li> </ul> | The powers to deal with aquatic facilities that may pose a risk to health are set out in the PHWA, for example: <ul style="list-style-type: none"> <li>• The Department of Health or a council can issue a prohibition or improvement notice under s.194;</li> <li>• Authorised officers can exercise the powers in s.175, including the power to take a sample for analysis in subsection (f); and</li> <li>• The Chief Health Officer can authorise use of the public health risk powers in s.190. The powers include the ability to close any premises for the period of time reasonably necessary to investigate, eliminate or reduce the risk to public health (s190(1)(a)).</li> </ul> | 4           |
| N/A        | Council officers should be allowed to determine reduction in frequency of testing based on operator compliance   | It is important to have a consistent approach across the state. The regulations will provide a minimum standard that must be complied with. While operators may go above this standard they must adhere to the minimum stipulated in the regulations.  | 1           |
| N/A        | Aquatic Facility regulations should include provisions that prescribe cleanliness levels for (ablution) shower facilities  | The scope of the proposed regulations relate to the risk associated with pool and spa water quality  | 2           |
|            | There should be a requirement to conduct pool water testing half an hour before a pool opens.  | The Department is updating the ‘Pool Operators Handbook’, further guidance on pool testing times will be proved in this document   | 1           |
|            | Councils should be empowered to collect fees from operators of aquatic facilities, so that council costs can be recovered.   | Cost recovery through fees could only occur if aquatic facilities were required to be registered and pay a registration fee.<br><br>A requirement to register pools and spas would need to be included in the Act and is therefore outside the scope of the regulations.   | 2           |

| Draft reg. | Submission   | Department of Health Response   | No. of subs |
|------------|--|---|-------------|
|            |  | It could be considered in a future review of the <i>Public Health and Wellbeing Act</i> , should a case for registration of pools and spas be developed.  |             |
|            | There could be separate testing requirements for different classes of pools  | We are unable to recommend different maintenance and testing schedules for different type pools because of the prescriptive nature of the new recommended regulations   | 4           |
|            | It is unclear when water testing should be completed – should be in guidance material.   | The Department is updating the 'Pool Operators Handbook', further guidance on pool testing times will be provided in this document  | 2           |
| 4          | The definition of aquatic facility is unclear/inadequate because of the use of the phrase "to which the public has access".  | <p>The phrase "to which the public has access" must be interpreted by the council (or the Department) by reference to the specific arrangements for each facility.</p> <p>A range of pools may be accessible to the public including, for example, school and club pools that allow public access at specified times.</p> <p>It was therefore decided that it was not preferable to list specific types of facilities, but rather to require that the facility is one to which the public has access.</p> | 5           |
| 38         | <p>Is microbiological testing required under the regulations?</p> <p>Should laboratories notify Councils or the Department of Health with non-conforming results of microbiological tests?</p> | Microbiological testing is not required in the current regulations and will not be required in the proposed regulations. It will be discussed in the guidelines.  | 2           |
| N/A        | There is no requirement for treatment/action/testing pool if faecal accident occurs  | A faecal accident policy will be included in the guidelines (as it is in the current pool operators hand book)  | 1           |
|            | Expectations of local government are unclear. Are they required to do inspections, check records, do testing?  | Section 24 of the PHWA places public health responsibilities on councils. The aquatic facility provisions in the regulations enable councils to fulfil these requirements using the relevant powers in the Act including the power to enter and inspect and to issue, prohibition and improvement notices.  | 1<br>1<br>2 |
|            | <b>Cost saving by reduced water testing does not outweigh the public health risks</b>  | <b>The proposed regulations will be amended to be more prescriptive, consistent with the current regulations</b>  | <b>2</b>    |
|            | The Pool Operators Handbook should be developed in consultation with industry representatives.   | Agree. Industry will be consulted on the update to the Pool Operators Handbook  | 1           |
|            | <b>Regulations do not specify the remedial actions to be taken if test results are poor. Should be included in pool operators handbook</b>   | <b>The proposed regulations will be amended to maintain the requirements of the current regulations in relation to remedial actions following unsatisfactory test results.</b>  | <b>2</b>    |

| Draft reg. | Submission  | Department of Health Response   | No. of subs |
|------------|---|---|-------------|
|            | Reduction in record keeping requirements is supported   | Following an examination of the comments submitted to the Department through the RIS process, we are amending the proposed regulations which will mean record keeping requirements will not change        | 1           |
|            | Support a risk based approach to public swimming pool maintenance                                 | Following an examination of the comments submitted to the Department through the RIS process, we are amending the proposed regulations to be more prescriptive consistent with the current regulations.   | 1           |
|            | Welcome a risk- based approach to the pool operators handbook and involvement with its production | Following an examination of the comments submitted to the Department through the RIS process, we are amending the proposed regulations to be highly prescriptive consistent with the current regulations. | 1           |

## Cooling Tower Systems and Legionella Risks in Certain Premises

Nine submissions commented on the proposed regulations applying to cooling tower systems and Legionella risks in certain premises. There are no changes to the regulations as a result of the comments received. The comments and Department's responses are outlined below.

| Draft reg. | Submission  | Department of Health Response  | No. of subs |
|------------|---|--|-------------|
|            | Recommendations for changes   |  |             |
| N/A        | Insert a requirement that following 2 Legionella detections within twelve months the risk management plan must be reviewed  | Section 92 of the <i>Public Health and Wellbeing Act 2008</i> requires the risk management plan to be reviewed following 2 Legionella detections within twelve months.   | 1           |
| N/A        | The definition of "clean" that is in the Health (Legionella) Regulations 2001 should be included in the new Public Health and Wellbeing Regulations   | This definition was removed because in many circumstances it is impossible to confirm compliance. Guidance will however be provided in the guidelines being developed by the Department.   | 1           |
| 52         | <p>There is no definition of "decontamination" in the regulations. It is recommended that a definition be included in the regulations to prevent confusion as to what is required during a system decontamination.</p> <p><i>In the Guide to Developing Risk Management Plans for Cooling Tower Systems</i> the definition of decontamination is: "A process used when a cooling tower system is suspected or implicated as a source of infection of Legionnaires' disease".</p> <p>The decontamination process is usually determined in consultation with the Department of Health's Environmental Health Unit. It involves a series of actions to disinfect, clean and re-disinfect the cooling tower system.</p> | Regulation 52 allows for a flexible response to a cooling tower system being implicated in a case of disease. Prescribing a certain action would remove the ability to have a flexible approach to suit different circumstances. | 1           |
| 50         | The response time to a high HCC given as "within 24 hours" in proposed sub-Regulations 50 (1) and (3) would be more realistic if it were extended to "within 48 hours" or better still "within 72 hours" (allowing for weekends).   | The majority of industry representatives consulted did not identify this as a problem.   | 1           |
| N/A        | Cooling tower systems should be required to be shut down until Legionella is not detected in a re-sample.   | Experience has found that disinfecting a system following the detection of Legionella is a satisfactory remedial action.   | 1           |
| N/A        | Training of Cooling tower system service technicians should be provided by TAFE.  | The proposal is outside the scope of these regulations.  | 1           |
| Part 6     | As warm water systems are included in the regulation the title of this part should reflect that.  | The title in the proposed regulations is broad enough to cover warm water systems. The Department is developing resources for industry to support the Act and the regulations. These resources will refer                        | 1           |

| Draft reg. | Submission  | Department of Health Response  | No. of subs |
|------------|---|--|-------------|
| 50         | Proposed sub-regulations 50(6)(a) –(e) concerns an existing practice by some WTSPs for some CTSs whereby dosing of biocide is done pre-emptively immediately following sampling. If the pre-emptive dosing is conducted, there is a need for this biocide addition to be logged or recorded.  | specifically to warm water systems.<br>Industry consultation identified this flexible approach will reduce the regulatory burden.  | 1           |
| 53         | Neglected within this regulation is the need for keeping of: <ul style="list-style-type: none"> <li>• records older than 12 months</li> <li>• registration and audit certificates</li> <li>• CTS repair receipts</li> <li>• Risk Management Plans and Reviews</li> <li>• Section 98 declared optional variations together with the relevant RMPs</li> </ul>   | Records must be kept long enough to pass an audit - the Department will be alerted if they do not exist.<br><br>The department issues registration certificates and is notified of audits<br><br>The regulations require the keeping of maintenance records.<br><br>Risk management plans and reviews are required to be kept to comply with auditing requirements.<br><br>Optional variations will be declared with a condition that the risk management plan will reflect the details.   | 1           |
| 56         | Detections of Legionella, when it rarely occurs, is often at very low levels and immediate response within 24 hours as provided in Regulation 56 is required.<br><br>The requirement for a response within 24 hours is more justified in situations where people are potentially being immersed, sprayed or covered in the water supplied than it is for cooling tower systems.<br><br>However consideration should be given for some graded responses according to the level of detection of Legionella within a system. | Experience has shown that cooling tower systems that have been identified as the source of an outbreak of disease may have detected low levels of Legionella bacteria in samples collected during the investigation  | 1           |
|            | Registration and monitoring of cooling towers should be undertaken by Local Government with provision for cost recovery – as is the practice in NSW and SA.   | Registration of cooling tower systems was previously the responsibility of the Building Commission. From 1 January 2010, the registration requirements will shift to the Department of Health under the <i>Public Health and Wellbeing Act 2008</i> .<br><br>The Department of Health (previously Department of Human Services) has had responsibility for monitoring and enforcement of cooling tower systems since 2001.<br><br>Since this time there has been a significant reduction in the number of cases of Legionnaires' disease notified to the department. There is no evidence to suggest a change in this strategy is warranted. | 1           |

| Draft reg. | Submission   | Department of Health Response   | No. of subs |
|------------|--|---|-------------|
| 47         | <p>The responsible person must ensure that the water of the cooling tower system is continuously treated with—</p> <ul style="list-style-type: none"> <li>(a) one or more biocides to effectively control the growth of micro-organisms, including Legionella; and</li> <li>(b) chemicals or other agents to minimise scale formation, corrosion and fouling; and</li> <li>(c) a bio-dispersant.</li> </ul> <p>What does “continually treated” mean?</p> | <p>The purpose of the proposed regulation is to ensure that bio-dispersant is maintained in the water of the system at levels required to be effective. Industry consultation identified that the majority of commercially available biocides contain bio-dispersants at a satisfactory concentration to be dosed as part of the biocide at the same frequency.</p> | 1           |
| 49(3)      | <p>Quarterly Legionella testing for domestic cooling tower systems is over-burdensome</p>  | <p>Section 98 of the <i>Public Health and Wellbeing Act 2008</i> allows the Secretary to declare optional variations. It is anticipated that arrangements will be made so that certain classes of cooling tower systems (domestic and dairy farm) will be exempt from the requirement to test for Legionella.</p>   | 1           |
| 50         | <p>CHANGING OF HCC UPPER LIMIT FROM 100,000 TO 200,000 CFU/mL<br/>While this change in levels may be welcomed by many, including owners and WTSPs, it may be detrimental to the management of cooling towers.</p>  | <p>Industry consultation identified the increase of the HCC limit to 200,000 cfu/ml as being a reduction in burden without a reduction in public safety.</p>  | 1           |
| 4          | <p>There is no mention about levels of chlorine for disinfection and action to be taken if there is a non compliance.</p>  | <p>The disinfection process is described in the definitions section of the proposed regulations</p>   | 1           |

## Infectious Diseases – Notifications and other general provisions

Seven submissions commented on the general infectious diseases provisions in the proposed regulations. As a result of the comments received, one amendment to the proposed regulations will be made (highlighted in bold in the below table). The comments and Department's responses are outlined below.

| Draft reg.        | Submission  | Department of Health Response   | No. of subs |
|-------------------|---|---|-------------|
| 65                | <p>Laboratories may interpret the point of isolation/detection of a prescribed contaminant in different ways. On occasions, the laboratory personnel may have concerns about an initial result and will undertake confirmatory testing. This clearly requires additional time.</p> <p>The obvious challenge is to manage the public health imperative whilst being fair to suppliers.</p> <ul style="list-style-type: none"> <li>- If confirmatory testing supports the initial finding of a proscribed contaminant, delay in notification may have serious consequences for public health.</li> <li>- If the initial test is demonstrated to be a false positive, any follow up activities already initiated - such as a recall - may have serious repercussions for the supplier.</li> </ul> <p>It is recommended that a definition of when an isolation/detection has occurred be included in the regulations and that consideration is given to a two stage notification process.</p> | <p>It was not considered possible to craft a definition of "isolated or detected" that would accurately apply to the range of tests that are currently used or may be used in the future to detect micro-organisms in food or drinking water. The current process where laboratories generally notify a confirmed result is considered to work well and no delays have come to the attention of the Department of Health.</p>   | 1           |
| 38 & Sched. 4 & 5 | <p>The Department of Health and local councils should be notified by the laboratory if a notifiable organism such as Giardia or Cryptosporidium is found in a sample of public swimming pool water.</p> <p>Do not support the removal of Giardia from the notifiable infectious diseases list</p>   | <p>Giardiasis is not nationally notifiable or notifiable in a number of other jurisdictions and poses only a low level of public health risk.</p> <p>Proposed reg. 38 sets out the action required in response to microbiological quality in swimming pool water, but does not include Giardia or Cryptosporidium.</p> <p>Sampling and testing for the full range of micro-organisms that are required (in draft reg 66) to be notified in food or drinking water would be prohibitively expensive and time consuming with little health benefits if applied to aquatic facilities.</p> | 2           |
| 66                | Regulation 66, Notification of notifiable   | This provision relates to notifications of  | 1           |

|          |  |  |          |
|----------|--|--|----------|
|          | micro-organisms in food and drinking water<br>- the title should include swimming pool water   | micro-organisms found in food or drinking water, it is not relevant to water from swimming pools. See comment above regarding notification in regards to swimming pools  |          |
|          | <b>Now that there is no longer a requirement for Councils to have a Medical Officer of Health, will Councils no longer be expected to investigate notifications as directed by DOH?</b>  | <b>Councils have a clear responsibility for responding to risks to public health in their municipality under section 24 of the PHWA.</b><br><br><b>However, to remove doubt about the role of councils in relation to infectious disease investigations, regulations will be inserted as follows</b><br>-<br><br>- <b>a regulation enabling the Department to notify a council of a municipal district that may be affected by a notifiable condition.</b><br><br>- <b>a regulation enabling the Department to give any written direction to a council authorised officer that may be reasonably necessary for the purpose of limiting the spread of any case of infectious disease notified; and</b><br><br>- <b>a regulation enabling council authorised officers to give written directions for the purpose of implementing the directions given by the Department.</b> | <b>5</b> |
| Sched. 7 | Schedule 7 lists the minimum period of exclusion from primary schools and children's services centres for infectious disease cases and contacts. In this schedule Hepatitis B, Hepatitis C and HIV/AIDS are included yet they are not excludable conditions. Recommendation that that these conditions are not included in the lists. The list should only be for diseases with exclusionary details as the title suggests. All other conditions in the list have some kind of exclusionary provision. | Whilst the purpose of the exclusion table is designed to illustrate what is excludable it is also used to show what is not. Having these listed provides certainty and takes away any ambiguity on whether exclusion is required or not. In addition, the regulations have been drafted to try to achieve national consistency on both the notifiable list and exclusion table.  | 1        |
| 67<br>68 | Recommendation that hepatitis C should also be included as a medical condition that requires mandatory counselling.  | It is standard medical practice that good information will be provided to patients to allow them to provide informed consent. However, as part of the changes in counselling requirements and the change to 'units of competency' the department has signalled to the sector that these Units will continue to cover broader issues in relation to the skills needs for providing positive results for blood borne viruses (in the boarder sense). While the Act provides that other diseases besides HIV can be prescribed under the regulations as a condition that requires mandatory counselling, it was intended that this  | 1        |

|                 |   |  |          |
|-----------------|---|--|----------|
|                 |   | would only be used for 'new/emerging' diseases for which counselling would be needed in the future.  |          |
| Sched. 6 Form 1 | In the notification forms for Group A and Group B notifiable conditions, the names of people identified as having an infectious disease are in full and not coded. However forms for Group C and D notifiable conditions are name coded. Believe that hepatitis C (in Group B) should be treated as equally in confidence as HIV (in Group D) | <p>In regards to HIV and STIs (listed in Group C), the name coding was introduced to provide a level of anonymity to individuals presenting for testing to encourage and maintain levels of regular testing in the community and was in response to community perceptions. In addition, the responsibility of undertaking contact tracing for these diseases rests with the treating doctor. As such, the Department has no need to identify these clients.</p> <p>While hepatitis C does not usually require contact tracing, in an event that it does, this would be undertaken by the Department. Having full name available means that it is easier to identify and match duplicate notifications from doctors and laboratories, and easier to initiate an investigation if required.</p> <p>In regards to privacy, all information provided to the department is treated 'in confidence' and as such all notifications received are processed the same way and are compliant with privacy regulations. The forms that individuals complete (both those being tested and practitioners ordering tests) also provide instruction on how information is treated.</p> | 1        |
| <b>Sched 8</b>  | <b>Infringements – Schedule 8 reference 13 offence 69, possible error identified. Should the penalty units be greater for an organisation rather than an individual</b>   | <b>Agreed. The penalty units for natural person should be 4 (not 12).</b>  | <b>2</b> |
|                 | How will proprietors be educated about the requirement to report results of reg 66(2) (re food premises or food vending machines) to the Secretary?   | Is an existing regulation. Education will occur through food safety material issued to registered food premises.   | 1        |
| 74              | Proposed reg. 74 does not clear up the issue with head lice. Does this mean that the parents do not need to notify the school under s74 but the principal needs to enforce s75.   | <p>Proposed regulation 74 requires a parent to notify the relevant primary school or children's services centre if a child is infected with an excludable condition (as listed in Schedule 7).</p> <p>Schedule 7 of the proposed regulations lists head lice (pediculosis) as an excludable condition. Therefore, yes, a parent should notify the school if their child has head lice.</p>   | 1        |
|                 | Clarification is sought as to what will be expected from local government in regard to the investigation of such notifications of high levels of lead in blood .  | The Department is currently reviewing the roles and responsibilities of the Department of Health and local government under the <i>Public Health and Wellbeing Act 2008</i> in order to develop a  | 2        |

|  |  |  |  |
|--|--|--|--|
|  |  | <p>process for responding to elevated blood lead notifications.</p> <p>The Department expects the majority of cases to be occupational in origin and to be referred to WorkSafe for further action with relatively few notifications for the whole of Victoria associated with non-occupational exposures. The Department of Health will consult with local councils further on this matter.</p> |  |
|--|--|--|--|

## Infectious Diseases – Immunisation

Eight submissions commented on the immunisation provisions in the proposed regulations. There are no changes to the regulations as a result of the comments received. It has however been noted that there is some confusion around the proposed provisions. Clarification around this confusion is provided in the Department's responses outlined below and will be further addressed in communications material that will be developed to support the implementation of the Act and the regulations.

| Draft reg. | Submission  | Department of Health Response   | No. of subs |
|------------|---|---|-------------|
| 70         | <p>The definition of immunisation is far less prescriptive than the current definition in s6 of the Health (Immunisation) Regulations 1999 which states how many doses of each vaccine is required to be considered immunised for that prescribed infectious disease</p> <p>The National Health and Medical Research Council makes recommendations on immunisation doses that may be different from the product information provided and the regulations should recognise this.</p> | <p>The proposed regulations provide a definition of immunised for the purposes of a school entry immunisation status certificate (SEIC).</p> <p>The SEIC will be a current history statement of vaccination listed by date and vaccine/s administered on those dates. Certificates will not be categorized as "complete" or "incomplete" therefore, the definition does not need to be prescriptive.</p> <p>The Regulations and Act do not stipulate doses just whether or not a child is immunised against a vaccine preventable disease. In recognition that different brands may require different doses and that these change from time to time, immunisation providers will be able to rely on product information or NHMRC recommendations or other relevant guidelines when administering a vaccine.</p> | 2           |
| 73         | Access to immunisation certificates must be allowed to authorised officers – who are these authorised officers?   | "Authorised officer" is defined in the PHWA .   | 2           |
|            | Recommend that a process is in place to ensure that records of immunisation that occurred outside Australia may be generated by local government  | S 147 of the Act gives local government the power to issue an immunisation status certificate.  | 1           |
| 72, 75     | Why do the immunisation provisions not apply to secondary schools?  | <p>The primary and booster immunisation schedule is completed at 4 years of age and thus there are no immunisations due in primary school.</p> <p>The purpose of the school entry immunisation status certificate is to remind parents and immunisation providers about the immunisation schedule to try to ensure that a child's immunisations are up to date.</p> <p>They can also be used to exclude/not exclude children in the event of a case of an excludable disease. As the immunisation schedule is complete</p>  | 1           |

|  |  |  |   |
|--|--|--|---|
|  |  | before primary school, the benefits of requiring a certificate in secondary school are not proportionate to the workload required to provide it. If there is a case of an excludable vaccine preventable disease at a secondary school, the immunisation records can be requested at that stage.   |   |
|  | Will the HPV vaccine continue to be provided to school age females as it is not listed as a vaccine in the Regulations?  | HPV vaccine is scheduled for Year 7 school girls and will continue to be provided. It does not impact on the SEIC and as such is not listed as a vaccine preventable disease.  | 2 |
|  | Increasing the number of vaccine preventable diseases raises concerns. This will result in the regulations automatically requiring children to be vaccinated against these before a complete immunisation certificate can be issued. This will result in an increase in the number of non-complete immunisation certificates being issued.<br><br>Rotavirus, Haemophilus influenza type b and Pneumococcal vaccinations are funded as part of the infant schedule with certain age requirements/restrictions. If a child is outside the age appropriate range and has not received the above vaccines would they receive an incomplete status certificate? | A school entry immunisation status certificate (SEIC) will be a current history statement of vaccination listed by date and vaccine/s administered on those dates as presented in documented evidence. Certificates will not be categorized as "complete" or "incomplete".<br><br>It is anticipated that the majority of certificates obtained by parents will come from the Australian Childhood Immunisation Register. | 3 |
|  | How do you intend to manage the issue of children whose parents are confident that the child has had a varicella infection but don't have any medical evidence to support this history?  | The Department is developing resources to support the implementation of the Act and the regulations. Information in regards to the issuing of immunisation certificates and the evidence required to support a request for a certificate will be included in these resources and distributed to local councils, relevant stakeholders and placed on the Departments websites.  | 1 |
|  | Will DH provide Councils with an updated School Entry Certificate template?  | A template for producing a SEIC is no longer required as local council will provide a printout from their immunisation program software program (e.g. ImPS) a current history statement on council letterhead.   | 3 |

## Infectious Diseases – Information to Sex Workers and Clients

Three submissions commented on the provisions relating to sex workers and clients in the proposed regulations. There are no changes to the regulations as a result of the comments received. Comments were generally supportive of the regulations and raised concern about the ability of the sector to provide some of the required information to workers and clients. The Department's responses to comments are outlined below.

| Draft reg. | Comment in Submissions   | Department of Health Response   | No. of subs |
|------------|--|---|-------------|
|            | General comments   |   |             |
|            | Support change in terminology from 'prostitute' to 'sex worker'  | <i>No comment required</i>  | 2           |
|            | Commend application of regulations to escort agencies as well as brothels  | <i>No comment required</i>  | 1           |
|            | Support review of penalties and increased penalties  | <i>No comment required</i>  | 1           |
|            | Support improved peer education for sex worker about their rights under the Act  | <i>No comment required</i>  | 2           |
|            | Endorse the change regarding STI information provision by proprietors to sex workers/clients   | <i>No comment required</i>  | 1           |
|            | Support greater role in leadership on policy issues including a review of s66 of <i>Prostitution Control Act 1994</i> re health oriented campaigns and community engagement for sex workers            | The issue of the <i>Prostitution Control Act</i> (specifically s66) and awareness raising of the rights of sex workers is an issue for the Department of Justice (Consumer Affairs Victoria). While raised as part of the Public Health and Wellbeing Regulations RIS this issue is not within the scope of the proposed regulations  | 2           |
|            | Concern at ability to provide information in languages due to the limited availability of appropriate resources – request that appropriate resources are developed to support the proposed legislation | Information on safe sex and the prevention of transmission of sexually transmissible infections is available in a variety of languages and as such is not a barrier to the adoption/implementation of the new regulations. The BBV/STI Section will undertake a project in conjunction with key agencies (sex workers and CALD) , with the intent to review and if necessary, produce, resources that are both culturally and industry specific for sex workers | 1           |