



**Regulation Review Committee  
Parliament of New South Wales**

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**Report on the Postponement  
of the Staged Repeal of the  
Public Health Regulation 1991**

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### APPENDIX A

Letter from NSW Health Department to the Committee  
dated 17 November 1999

## **Regulation Review Committee**

### **Members:**

Mr P. R. Nagle, MP, Chairman  
Hon J. A. Saffin, MLC, Vice Chairman  
Ms C. A. Burton MP  
Hon D. T. Harwin, MLC  
Hon M. I. Jones MLC  
Dr E. A. Kernohan, MP  
Ms M. F. Saliba, MP  
Mr R. W. Turner, MP

### **Secretariat:**

Mr J. Jefferis, Director  
Mr G. Hogg, Project Officer  
Mr D. Beattie, Clerk to the Committee  
Ms S. Dale, Assistant Committee Officer

## Functions of Regulation Review Committee

The Regulation Review Committee was established under the *Regulation Review Act 1987*. A principal function of the Committee is to consider all regulations while they are subject to disallowance by Parliament. In examining a regulation the Committee is required to consider whether the special attention of Parliament should be drawn to it on any ground, including any of the following:

- (a) that the regulation trespasses unduly on personal rights and liberties;
- (b) that the regulation may have an adverse impact on the business community;
- (c) that the regulation may not have been within the general objects of the legislation under which it was made;
- (d) that the regulation may not accord with the spirit of the legislation under which it was made, even though it may have been legally made;
- (e) that the objective of the regulation could have been achieved by alternative and more effective means;
- (f) that the regulation duplicates, overlaps or conflicts with any other regulation or Act;
- (g) that the form or intention of the regulation calls for elucidation; or that any of the requirements of sections 4, 5 and 6 of the *Subordinate Legislation Act 1989*, or of the Guidelines and requirements in Schedules 1 and 2 to that Act, appear not to have been complied with, to the extent that they were applicable in relation to the regulation.

The Committee may, as a consequence of its examination of a regulation, make such reports and recommendations to each House of Parliament as it thinks desirable, including reports setting out its opinion that a regulation ought to be disallowed.

## Chairman's Foreword

This report sets out the Committee's consideration of the third postponement of the staged repeal of the *Public Health Regulation 1991* so far as it relates to Part 6 of the regulation – Microbial Control.

When the regulation was first considered by the Committee in 1992, it reported to Parliament that Part 6 of the regulation, concerning the prevention of Legionnaires' Disease, contained a number of defects including the lack of co-ordination between the Code of Practice, the regulation and the relevant Australian Standard.

In response, the then Government proposed the formation of an Interdepartmental Advisory Group to address these concerns. The regulation was due for staged repeal under the Subordinate Legislation Act in 1997 but that repeal has now been postponed on three occasions.

In view of the importance of this regulation the Committee called for a briefing on the third postponement by the relevant stakeholders on Thursday 11 November, 1999.

It emerged in the course of the briefing that despite several reviews commissioned by Department of Health and some consultation with industry, the position has largely remained unaltered since 1992 and there is still a lack of co-ordination between the Code of Practice, the regulation and the relevant Australian Standard.

The main reason for this is that the Department has coupled the review of the regulation with the review of the Act under the *Competition Principles Agreement*. While there may be good administrative reasons for this approach, the consequence of it is that Part 6 of the regulation lags seriously behind changes to the current standard on microbial control that it professes to adopt.

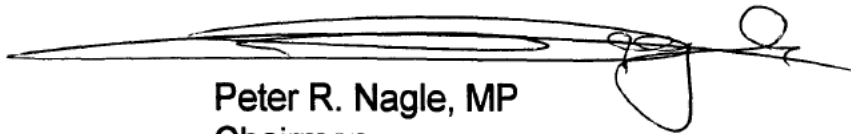
The Committee has resolved to report to the Minister and the Parliament its view that he should expedite the assessment and review of the *Public Health Regulation 1991*, in particular Part 6 of that regulation concerning Microbial Control, in accordance with the provisions of the *Subordinate Legislation Act*, in order to ensure that new legislation will be in place by the due date for staged repeal, 1 September 2000.

It would appear that there is some doubt as to the version of Standard AS/NZS3666 that applies under the regulation, and this matter requires urgent clarification.

One option that should be examined for expediting the matter is to consider publishing separate regulations for each of the major parts of the existing regulation, particularly Part 6, if it appears that the review of the legislation may be further delayed.

The lack of clear progress in the review of the regulations over several years urgently requires the drawing up of a management plan for the project and an appraisal of current staffing levels to support the review project.

A copy of the management plan and staffing review should be made available in due course to the Regulation Review Committee.

A handwritten signature in black ink, appearing to read 'Peter R. Nagle', is written over a horizontal line. The signature is stylized and includes a large loop at the end.

Peter R. Nagle, MP  
Chairman

## Recommendations

1. In accordance with section 11 (5) of the Subordinate Legislation Act the Committee recommends to the Minister and the Parliament that the Minister expedite the assessment and review of the Public Health Regulation 1991 in particular Part 6 of that regulation concerning Microbial Control in accordance with the provisions of the Subordinate Legislation Act in order to ensure that new legislation will be in place by the due date for staged repeal, 1 September 2000.
2. The Committee recommends that in the interests of expediting the review and securing public health, consideration should be given to publishing separate regulations for each of the major parts of the existing regulation, particularly Part 6, if it appears that the review of the legislation may be further delayed.
3. The Committee recommends that a management plan for the review of the Regulation be prepared containing specific objectives to be achieved at nominated intervals. In conjunction with the drawing up of that plan an appraisal should be made to identify whether current staffing levels and expertise in the Department of Health are adequate to support the review project. A copy of the management plan and staffing review should be made available in due course to the Regulation Review Committee.
4. It would appear that there is some doubt as to the version of Standard AS/NZS3666 that applies under the regulation, and this matter requires urgent clarification.



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## **POSTPONEMENT OF THE STAGED REPEAL OF THE PUBLIC HEALTH REGULATION 1991**

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On 29 July 1999 the Minister for Health wrote to the Committee advising that a further postponement of the staged repeal of the *Public Health Regulation 1991* had been sought from the Governor.

He advised that he sought this postponement because the Act is currently under review in accordance with the Competition Principles Agreement and he wished to avoid a duplication of effort.

Under the staged repeal program, which is embodied in section 10 of the *Subordinate Legislation Act*, each principal statutory rule has a five year life span.

At the end of that time three basic options are available:

1. The rule be repealed under the staged repeal program and not be replaced;
2. The rule be repealed under the staged repeal program and be replaced by a new rule or other measure as justified by a Regulatory Impact Statement or;
3. The staged repeal of the rule be postponed for one year in accordance with section 11 of the Act and guidelines issued by the Premier.

A maximum number of five postponements, each of a year in duration, are permitted by this section. Postponements are usually required when the principal Act is being amended and is likely to result in major changes to the regulations.

As this rule was originally published in the Gazette on 15 November 1991 it came within stage 7 of the program comprising those rules published between 2 September 1991 and 1 September 1992 and which were to be repealed on 1 September 1997.

The staged repeal has therefore now been postponed on three occasions.

## **Premier's Memorandum**

The Premier's Memorandum No 98-34, outlined the arrangements for the staged repeal of rules under the Subordinate Legislation Act 1989 which was due on 1 September 1999. This includes previously postponed rules, as in the present case.

The Memorandum states that generally, consideration would only be given to requests for postponements if:

1. They have been approved by Cabinet;
2. The regulations are lengthy and complex and the timetable for review would allow new regulations to be in place by 1 September 2000; or
3. The Act and or regulations are subject to national review and the timetable for new regulations does not extend beyond 1 September 2000.

The Memorandum also refers to reviews required under the National Competition Principles Agreement and says that the fact that such reviews are under way will be considered in any postponement requests. Ministers are also requested to coordinate such reviews in order to avoid duplication.

The Committee has resolved to monitor all notifications of postponements to ensure that they comply with the Memorandum and give just grounds for postponement. In addition section 11(5) provides that the Regulation Review Committee may make such reports to the responsible Minister and to each House of Parliament as it thinks desirable in connection with the third, fourth or fifth postponement of the repeal of a statutory rule.

Although the Minister in his letter of 29 July 1999 indicated that substantial progress in the review of the Act had been made, he did not provide a timetable for the review or indicate that it would not extend beyond 1 September 2000. However he said that the review had been coordinated with the Competition Policy review in order to avoid duplication.

## **The Regulation**

The regulation adapts a number of procedures to help control the spread of serious diseases. It also adapts hygienic procedures for the preparation and burial or cremation of the dead, as well as ensuring cremations are carried out only after appropriate checks as to identity and cause of death.

The regulation provides for the notification and registration of scheduled medical conditions and requires procedures to avoid the spread of serious diseases in:

- (a) the operation of a public swimming pool or spa;
- (b) the installation and operation of large air-conditioning and water-heating systems;
- (c) procedures that may involve the penetration of a client's skin (for example testing for blood cholesterol or blood sugar, tattooing, acupuncture, ear-piercing and the removal of hair);
- (d) the handling of bodies for burial or cremation and the exhumation of bodies.

## **1992 Report**

When the Public Health regulation was first considered by the Committee in 1992, the Committee made a report to Parliament arising out of its examination of Part 6 of the regulation concerning microbial control. That part mainly deals with the installation and operation of large air-conditioning and water-heating systems. The Committee's report, number 16 of the 50th Parliament, chiefly concerned the procedures that had been put in place to prevent the outbreak of Legionnaires' Disease which can be caused by improperly maintained air-conditioning cooling towers.

The Committee held discussions with the relevant experts and interest groups on the major issues concerning the regulation, and reported on the following defects:

- (i) the lack of a system for ensuring compliance;
- (ii) the prescription of inadequate technical standards;
- (iii) the lack of co-ordination between the code of practice, the regulation and the relevant Australian standard; and
- (iv) the inadequate assessment of the costs and benefits of the regulation in the RIS.

In response, the then Government proposed the formation of an Interdepartmental Advisory Group to address these concerns.

### **Recent Press Commentary**

Shortly before the Minister wrote to the Committee advising of the third postponement of the regulation, several articles on Legionnaires Disease appeared in the Sydney Morning Herald of Tuesday, July 13, 1999 which were critical of the postponement.

### **Issues Paper on the Review of the *Public Health Act* and Regulation**

In September an Issues Paper on the review of the *Public Health Act* and regulation was released by the Department of Health. It states that during 1997 the Department wrote to key stakeholders in relation to the requirement to review the Public Health Regulation under the *Subordinate Legislation Act 1989*, and that in reviewing subsequent submissions, it became apparent that a comprehensive review of the Act and Regulations would need to be undertaken concurrently.

The Issues Paper also states that during 1998, the Department engaged Professor Allars and others in the Sydney University Faculty of Law to undertake a preliminary mapping exercise to assist with the identification of issues relevant to public health law in New South Wales and that a number of issues identified by the consultants in their paper *Reform of Public Health Law in NSW* have been raised for formal consideration in the Issues Paper. The Issues Paper states that the review is also being undertaken to meet the requirements of the *Competition Principles Agreement*.

The Issues Paper says that industry generally supports the need for some form of regulation but it criticises the operating and maintenance costs. The paper notes that while New South Wales has the most prescriptive regulations of any Australian State, it also has the highest incidence of Legionnaires' Disease. The paper says that to minimise the costs of preventing this disease, industry favours the development of performance-based standards or the adoption of AS/NZS 3666 which has been adopted in Queensland, the ACT and Western Australia.

The paper goes on to say *"This standard sets out the requirements for the design, installation and commissioning of air handling systems and for the heating and cooling of water employing a performance-based approach. Were New South Wales to follow this path it has been estimated that the present regulatory regime could be significantly reduced without affecting public health."*

At discussion point 23 in the Issues Paper submissions are invited on whether:

- AS/NZS 3666 on its own is a sufficient standard to regulate for the control of Legionella, or
- provision should be made for both outcomes-based performance standards and prescriptive requirements within the legislation, or
- whether third party accreditation systems could be adopted.

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## BRIEFING

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In view of the significance of this regulation, the Committee sought a briefing from New South Wales Health and interest groups on the timetable for the review of the legislation and to what extent the review will address the issues raised in the Committee's 1992 report.

The following persons attended to brief the Committee with their views on the regulation on Thursday 11 November, 1999 in the Jubilee Room at Parliament House:

Dr Jeremy McAnulty  
Specialist Adviser, Department of Health

Mr Neil Shaw  
Manager, General Environmental Health Unit, Department of Health

Mr Anthony Lean  
Legal Officer (Legislation), Department of Health

Mr Steve Hennessy  
Technical Committee, Property Council of Australia  
and Director, AHA Facilities Management

Ms Katy Ng  
Policy Adviser, Property Council of Australia (New South Wales)

Mr Clive Broadbent  
Engineering Director, Clive Broadbent & Associates Pty Ltd, and  
Chairman of the Australian Standards Committee on Air-Conditioning

Mr Nicholas Tamp  
Chairman, National Water Treatment Group

Mr Derek Scott  
Member, National Water Treatment Group

Mr Bill Pugh  
Member, National Water Treatment Group

## **Legionnaires' Disease**

Dr Jeremy McAnulty said that Legionnaires' Disease is a notifiable disease and accordingly laboratories and doctors, by law, have to report cases. The last cluster of reported cases that seemed unusual occurred in February in 1999 in Western Sydney when there were nine cases recorded. An investigation was pursued by the public health units involved in Western Sydney to identify common factors in those cases.

He said that surveillance has only been very good, or fairly good, since 1992 when laboratory-based reporting was introduced and that year by year figures which give an indication of *Legionella pneumophila*, which is the disease of interest, are as follows:

In 1991 there were 16 cases reported. The peak was in 1992 with 80 cases, in 1993 there were 34 cases; 1994, 30 cases; 1995, 35 cases; 1996, 34 cases; 1997, 18 cases and 1998, 22 cases.

Death caused by the disease is not reportable as such but he estimates that about 20 per cent of cases from the literature tend to die from *Legionella* disease.

## **Present Position of the Review**

Mr Anthony Lean indicated that preliminary consultation on the review started in early 1997 when it was found that there was a general feeling that the Department should do a review of the Act and the regulations together because of the overlap between *Subordinate Legislation Act* issues and *National Competition Policy* issues.

Mr Lean said that the Department commissioned a scoping paper from Sydney University on issues relating to the public health legislation and the major themes they would need to address in any review. He said that the Department then commenced preparing the issue paper which contains a fundamental review of the objectives and the structure of the current Act, specifically whether they should continue to regulate in certain areas.

He said *One of the difficulties with the Public Health Act is the division in a number of areas between the Act and the regulations. The Act and the regulations are very inter-related and it is very different when you are talking about say a regulatory system like, say, microbial control, to separate the two and review the two parts separately. That is part of the reason why we have decided to progress a joint review of both the Act and the Regulations.*

He indicated that the Department had engaged consultants to prepare a Regulatory Impact Statement on the regulation of the funeral industry but that the other Regulatory Impact Statements on microbial control, skin penetration, swimming pools, and spa regulation and regulation of scheduled medical conditions will all be prepared in house and overseen by working parties.

He said the Department is looking to prepare a final report for release early next year and that the release of the Regulatory Impact Statements would either occur at the same time as the release of the final report or shortly after in March or April next year.

## **Stakeholders' View on the Postponement**

Mr Clive Broadbent said that New South Wales led the world in 1991 in adopting the first Standard and Code of Practice on Legionnaires Disease but had now fallen behind. He said "I put in a plea not to let this subject be deferred yet another year. I want, like many other people, to make sure there are no more outbreaks of Legionnaires' Disease or even cases and I want the public health authorities to be right up with the best ways of doing that in a cost-effective way"

Mr Steve Hennessy said that the Property Council strongly objected to the postponement of the review of the regulation yet again. He said that the Property Council believes that the microbial regulations are outdated and directly at odds with the Building Code of Australia.

He said New South Wales has to spend more on microbial control measures in buildings than any other State but derives no additional benefit and is actually being disadvantaged by the measures in place at the moment.



## **Performance-Based Regulation**

Mr Neil Shaw indicated that the Department would prefer to have a more performance-based regulation as specified in the Australian Standard, than the current prescriptive one, in order to ensure greater understanding and participation, particularly by industry and building owners.

He said that the Australian Standard has a handbook that comes with it which would save the Department the need to produce such a lengthy Code of Practice. As the Department had already done a lot of work on the emergency management plan for its own hospital cooling towers he was looking forward to the process of being able to upgrade everything at the one time in a comprehensive package.

Mr Nicholas Tamp of the National Water Treatment Group said that even when the regulation was first introduced, there were some difficulties with it and as early as 1993 the National Water Treatment Group recommended a performance-based approach. He said that his Group believes that Australian Standard AS3666 with the introduction of Part 3 endorses that approach.

He said his group fully supports the need to alter the regulations and the incorporation of a performance-based approach. In particular he believes the Health Department should approve a product registration process instead of approving the processes of disinfection.

## **Consultation with Stakeholders**

While the stakeholders considered that they were kept up to date fairly well, the delay in implementing the new standard was of concern. Mr Broadbent

said the fundamental problem is that the Department is hamstrung by out of date legislation. He said

*It really comes down to a lot of technical detail associated with the Code of Practice which is a document that is not specifically prescribed but it is openly called up as a defence and I think industry, I speak for the air-conditioning industry, is pretty confused about what they are supposed to do. Are they supposed to follow a 1989 version of the Australian Standard, the 1995 version of it, the 1996 version of it, the 1998 version of it? All the legislation in New South Wales at the present time only speaks of 1989. And so much has happened since then. So in ongoing coordination and discussion with New South Wales health officers there is this fundamental problem. We are talking modern day technical issues with out of date legislation. So I put it that way, that people are hamstrung by the legislation.*

## **National Competition Policy Review**

Mr Lean indicated that the Department not only had the 1 September deadline under the Subordinate Legislation Act to comply with but the absolute deadline for National Competition Policy reviews of 31 December 2000. He said that while the Department is working towards the 1 September 2000 deadline, they are obviously subject to Parliamentary timetabling and competing Government priorities in that area.

Mr Shaw said that while the National Competition Policy Review was likely to lead to more flexible performance standards, the Department felt that there was probably less risk associated with public health in the adoption of these standards because they enabled the Department to engage more of the stakeholders in ownership of the process.

## **Management and Resources**

Mr Lean was asked whether the delay in the review of the regulation was due to a lack of resources within the Department. While he believed the project did not lack resources he said that the one off Competition Principles Agreement project has imposed a large amount of work in a short amount of time and it has diverted resources away from other projects. He said : *I think it is important to recognise that there are a number of reviews going on at the moment which also need to be completed. They are resourced to be done and so forth but its just a matter of timing, that we have to do so much in a short period of time.*

The stakeholders felt that resources may be a problem in the review.

## **Expediting the Review of Part 6**

The Committee put to Mr Lean that the delays in updating Part 6 arise because a general regulation is attempting to cover all features of the health spectrum. It was suggested that the Department could make specific regulations just dealing with microbial control and that would allow it in future years to concentrate on updating that particular area. It appeared to the Committee that at present other areas of the regulation that are less urgent are holding back the current upgrading of Part 6.

Mr Lean thought that such an approach has some merit and drew to the Committees attention the fact that recently when the tobacco advertising legislation was transferred into the *Public Health Act* a separate stand alone regulation, *The Public Health Tobacco Regulation 1999*, was made. He said that implicit in that decision is a recognition that bundling all areas up together is probably not the best way to go and that one of the key issues that was raised in the review of the Act and regulations is the structure.

He said the review of the structure of the Act concerns the issue of whether more of an enabling type legislation is required and perhaps codes of practice or stand alone regulations dealing with specific issues made under that Act.

He said it is something that is being actively looked at and that the Department would certainly like to sort out some of the cumbersome problems with the division for responsibility between the Act and regulations and the way the regulations bundle up a number of unrelated issues.

## **Subsequent Advice from Department of Health**

Following the Committee's briefing on 11 November the Acting Chief Health Officer and Acting Director-General Public Health, Mr Ross O'Donoghue wrote to the Chairman on 17 November 1999 setting out further advice on matters that arose in the course of the briefing. A copy of the letter is attached as Appendix A to this report.

The Committee notes with interest the advice as to the number of deaths that have occurred since the regulation was first published arising from *Legionella pneumophila* and the Department's view as to the version of Standard AS3666 that is applied by the regulation. As it would appear that there is some doubt as to the version of that Standard that applies under the regulation, this matter requires urgent clarification by the Crown Solicitor.

A further matter of concern is the fact that despite the earlier Ministerial undertaking to establish an Interdepartmental Advisory Group for the control of *Legionella* following the Committee's report in 1992, that Group was not established but instead consultation has proceeded on an ad hoc basis with other Government Departments.

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## Committee's Conclusions

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The Committee is concerned that despite several reviews commissioned by the Department of Health and some consultation with industry, the position has largely remained unaltered since 1992 and there is still a lack of co-ordination between the Code of Practice, the regulation and the relevant Australian Standard. Had the Department implemented the Minister's undertaking in 1992 to establish an Interdepartmental Advisory Group the substantial delays in the review may not have occurred.

The main reason given by the Department for the delay is the need to couple the review of the regulation with the review of the Act under the *Competition Principles Agreement*.

While there may be good administrative reasons for this approach, the consequence of it is that Part 6 of the regulation lags seriously behind changes to the current standard on microbial control that it professes to adopt.

Under section 11 (5) of the *Subordinate Legislation Act* the Committee can report its views to the responsible Minister and to each House of Parliament in connection with the third postponement of the repeal of a regulation.

The Committee resolved to report to the Minister and the Parliament its view that he should expedite the assessment and review of the *Public Health Regulation 1991*, in particular Part 6 of that regulation concerning Microbial Control, in accordance with the provisions of the *Subordinate Legislation Act*, in order to ensure that new legislation will be in place by the due date for staged repeal, 1 September 2000.

One option that should be examined for expediting the matter is to consider publishing separate regulations for each of the major parts of the existing regulation, particularly for Part 6, if it appears that the review of the legislation may be further delayed.

The lack of clear progress in the review of the regulations over several years requires the drawing up of a management plan for the project containing specific objectives to be achieved at nominated intervals. This should be done as a matter of urgency.

In conjunction with the drawing up of that plan an appraisal should be made to identify whether current staffing levels and expertise in the Department are adequate to support the review project.

A copy of the management plan and staffing review should be made available in due course to the Regulation Review Committee.

## **APPENDIX A**

Mr P Nagle MP  
Chairman  
Regulatory Review Committee  
NSW Parliament  
SYDNEY NSW 2000

Dear Mr Nagle

**Re: Public Health Regulation 1991**

I refer to the briefing provided to the Regulation Review Committee of the NSW parliament by officers of the NSW Department Health on 11 November 1999.

I understand that the Departmental officers who attended the briefing undertook to provide the Committee with additional information on a number of points. The Department also wishes to clarify a number of issues for the Committee.

**Data Concerning Incidence of Legionella Pneumophila**

Cases of *L. pneumophila* are principally, though not exclusively, connected with the operation of regulated systems within the meaning of the Public Health Act 1991. Dr McAnulty, Specialist Medical Adviser provided the Committee with details of the number of cases of *L Pneumophila*. The Committee also requested further information on deaths.

***L. Pneumophila***

<i>Year</i>	<i>Cases</i>	<i>Deaths</i>
1991	16	1
1992	80	7
1993	34	6
1994	30	3
1995	35	4
1996	34	5
1997	18	3
1998	22	0

## **Automatic Adoption of AS3666 by Reference**

I am advised that discussion at the briefing was directed at identifying the reasons why the revised version of AS3666 released in 1995 was not automatically called up by the provisions of the Public Health Act 1991. Legal advice has been obtained on this point.

"AS 3666" is defined in clause 59 of the Public Health Regulation as "the publication of the Standards Association of Australia called 'Air-handling and water systems of buildings-microbial control'. Compliance with the standard is required by the Regulation in several instances. Section 69 of the Interpretation Act 1987 states

*(1) In any Act or instrument, a reference to a publication other than an Act or instrument is a reference to the publication:*

- (a) if a particular day is specified for that purpose in the Act or instrument-as in force or current on that particular day; or*
- (b) in any other case-as in force or current on the day on which the provision containing the reference took effect.*

*(2) Notwithstanding subsection (1), a reference in any Act or instrument to a publication extends to the publication, as in force for the time being;*

- (a) if that intention appears in the Act or instrument; and*
- (b) where that intention appears in the instrument-if the Act under which the instrument is made provides that such instruments may apply, adopt or incorporate publications, as in force for the time being.*

Although subsection 82(4) of the Public Health Act allows the Public Health Regulation to apply, adopt or incorporate a publication as in force for the time being, the definition of AS 3666 in the Public Health Regulation does not state that the term applies to that standard as in force for the time being, nor does it imply a similar intention. The reference to specific sections of the publication (which are likely to change as the publication is updated) supports the view that the reference is a specific reference to the standard as in force at the time of commencement of the Regulation.

Accordingly, the Department is of the view that references to AS 3666 in the Regulation are references to the standard which was in force by that name as at the date of commencement of the relevant provisions of the Public Health Regulation, being 19 June 1992.

## **Performance-based AS3666.3 under the Current Regulatory Framework**

Industry stakeholders at the meeting sought clarification as to relevance of the position of AS3666.3, which provides a performance-based system for water cooling systems, under the current Public Health Act 1991 and Regulations.



As indicated above the 1989 standard is currently called up by the Regulation. However, the Regulation provides some flexibility in relation to operation and maintenance requirements so that alternative compliance mechanisms can be approved in certain cases. For example, the requirement for cooling towers to be shut down and cleaned every three months can be varied in a specific case by the Director-General.

Those wishing to use a performance-based approach based on the interim AS3666.3 could seek such an approval from the Director-General. Compliance with AS3666.3 would be a relevant consideration for the Director-General in deciding to grant an extension.

To provide an interim solution on this issue, the Department will issue a revised circular on microbial control to public health units outlining the relevance of the performance based system under AS3666.

### **Outcomes of the Legionella Taskforce**

In response to the Regulatory Review Committee's Report in 1992, a Legionella Taskforce was established. The Committee sought further advice on the outcomes of that process in relation to the Committee's concerns on the relationship between the Act, the Regulations, the Code and the relevant Australian Standards.

A copy of the recommendations is attached. Some of the recommendations were implemented immediately by the Department including the review of the Legionnaire's disease Emergency Management Plan, providing support to local government on enforcement, continued liaison with local government on outbreak management and development of a video on legionnaire's disease.

The recommendation that the Premier's Department establish an Inter-Departmental Advisory Group for the control of legionella did not proceed. Notwithstanding that the group was not formally established the Department has maintained contact with other Government departments on a regular basis. This has ensured that issues arising from implementation of the emergency management plan and the Code of Practice have been addressed on an ongoing basis.

I note that stakeholders at the briefing advised the Committee of the ongoing consultation and contact with the Department which had been maintained during this period. Notwithstanding the extensive consideration given to the issues raised by the Committee in its 1992 Report, the Department recognises that these are matters of an ongoing nature and they are being revisited in the current review where appropriate. Specifically I draw your attention to the discussion in the Issues paper concerning adequacy of current standards at page 67, and the discussion concerning the role of local government at page 30, co-ordination across government at page 28, and enforcement capacity at page 88.

### Consultation Conducted in 1997

Advice was sought on the number of submissions that were received during preliminary consultation on the review of the Public Health Regulation 1991 carried out by the Department in 1997. Twenty-six submissions were received with five specifically addressing issues relating to microbial control. Four directly addressed the issue of microbial control legislation, and as advised at the briefing, the issues raised in these submissions are canvassed in the Departmental Issues Paper.

Consultation also occurred in 1998 on the report prepared by Clive Broadbent and Associates. Sixteen submissions were received from industry, government departments and local councils. The issues raised in these submissions will be used in preparing the required Regulatory Impact Statement.

I trust that this information clarifies the committees concerns. If you require any further information, please contact Mr Anthony Lean, Legal Officer (Legislation) on ph 9391 9626.

Yours sincerely



Ross O'Donoghue  
**Acting Chief Health Officer and  
Acting Deputy Director-General Public Health**

17/11/99

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