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Review of the NSW Public Health Act 2010

Submitted to NSW Health

by

The Australian Institute for Refrigeration Air Conditioning and Heating

Advocacy and thought leadership for the HVAC&R industry on:

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About AIRAH

Established in 1920, AIRAH has established itself as the pre-eminent member institute for Australian HVAC&R professionals. AIRAH is Australia's most dynamic and progressive HVAC&R organisation, earning recognition and respect from government and industry bodies, for its leadership, collaboration, expertise and professionalism.

AIRAH has a reach of 25,000 air conditioning, refrigeration, ventilation and heating professionals across Australia. AIRAH is recognised for its expertise across a wide range of issues in the area of engineering services for the built environment. AIRAH encourages world's best practice within the industry. Through continuing professional development, accreditation programs and a wide range of technical publications, AIRAH has earned a reputation for developing the competence and skills of practitioners within the air conditioning and refrigeration industries.

AIRAH submission on the review of the NSW Public Health Act 2010

Thank you for the opportunity to provide feedback to NSW health on the review of the NSW Public Health Act 2010.

Regulation Review

The discussion paper states that “The Regulations will be reviewed as part of the staged repeal process and so are not being considered at this time.”

It seems counter intuitive to review the Act and not review the corresponding regulations at the same time. AIRAH recommend that the regulations be reviewed in concert with the Act.

The Title of Division

Regulated systems include air-handling systems, hot water systems, humidifying systems, warm-water systems and water-cooling systems. The required standard of design, installation and operation is the AS/NZS 3666 series of standards which address Legionella control and also microbial control more broadly. Perhaps the Title of this Division of the Act should be broadened to “Microbial control” to reflect the non-legionnaires aspects of the regulation requirements.

The Role of Local Government

Local government authorities could play a more important and pro-active role in the regulation of cooling towers under the Act. Authorised Local government officers could review Legionella management documentation and audit a small percentage.

There could be a requirement under the Act, that owners of cooling towers should submit a compliance certificate to show that they have complied with the regulations. Council officers could review (desktop) these certificates and audit a small number (5%) to provide assurance that the certificates are valid.

The Responsible Party

With respect to Legionella and cooling towers the review discussion paper is limited to the definition of the responsible party. The Act states that the definition of occupier under the Act means:

- (a) except as provided by paragraph (b), the owner of the premises or part, or*
- (b) if any other person is entitled to occupy the premises or part to the exclusion of the owner, the person so entitled.*

The current definition basically means the occupier of the premises is the responsible party and this has caused issues in multi tenanted buildings, and in strata titled buildings with a mix of multiple tenants and owner-occupiers. Defining the occupier as the responsible party creates a grey area in many building scenarios. This grey area has resulted in a 'softer' view of the risk in

the property industry in NSW compared to Victoria where the responsibility for compliance with the regulations clearly and unequivocally sits with the building owner. This was based on a very firm industry recommendation provided to the Government when the Victorian regulations were being formed. AIRAH recommend that the NSW regulations move to a clear definition nominating the owner as the responsible party (regardless of contractual arrangements) as per the Victoria regulations. AIRAH believe that the NSW Health Act should be amended to reflect the correct responsible party with respect to 3.4b Legionella control.

The owner of a multi-tenanted building should be considered the responsible party even if that responsibility is delegated to a manager or contracted to a third party. This is because the owner may or may not approve expenditure to adequately meet all regulated requirements whether it is maintenance inspection, monitoring, frequency of monitoring and/or cleaning. The manager may not have authority to authorise the work required to prevent contamination or outbreak.

Ultimately it is the owner who makes the resource decisions and it is the owner that must bear the responsibility of those decisions. The Act should make the owner of the building responsible for compliance (and any non-compliance).

Warm water systems

AIRAH members report that warm water systems in health care and aged care facilities present particular microbial challenges and these systems and the associated requirements should be the subject of particular consideration in the review.

Notification

The current requirements do not require automatic notification of health authorities once a positive test for Legionella (in cooling tower water) has been completed. NSW Health may like to consider including a requirement that a laboratory that conducts a positive test for Legionella (above the specified limit) must notify NSW Health of the result independent of the owner or manager.

End of submission