



New South Wales

# Public Health Amendment (Legionella Control) Regulation 2018

under the

Public Health Act 2010

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Public Health Act 2010*.

BRAD HAZZARD, MP  
Minister for Health

## Explanatory note

The object of this Regulation is to change the *Legionella* control requirements that the *Public Health Regulation 2012* imposes on the occupiers of premises on which certain regulated systems are installed.

This Regulation remakes all existing provisions dealing with *Legionella* control, with some changes, which are explained below. A new provision makes it an offence to falsify test results relating to certain regulated systems.

The installation, operational and maintenance requirements relating to cooling water systems are modified as follows:

- (a) by amending the qualifications required to be a “competent person”, by referring to a requirement that a competent person is a person who has had appropriate training or experience (or both) in the relevant subject, sufficient to provide safe and satisfactory performance,
- (b) by imposing an additional installation requirement, namely that a unique identification number designated by the local government authority for the area must be displayed on each cooling tower in the cooling water system (including an existing system),
- (c) by imposing an additional operational requirement, namely that the local government authority for the area must be notified within 24 hours if a high level of *Legionella* bacteria, or a high heterotrophic colony count, is detected,
- (d) by modifying the maintenance requirements, requiring occupiers to do the following:
  - (i) maintain systems in accordance with AS/NZS 3666.3:2011 *Air-handling and water systems of buildings—Microbial control, Part 3: Performance-based maintenance of cooling water systems* (which includes a requirement to develop a risk assessment for a cooling water system),
  - (ii) maintain systems in accordance with certain control strategies for *Legionella* and heterotrophic micro-organisms contained in AS/NZS 3666.3:2011 *Air-handling and water systems of buildings—Microbial control, Part 3: Performance-based maintenance of cooling water systems* and the risk assessments required by that Standard,
  - (iii) carry out risk assessments in accordance with that document, at least once every 60 months, and carry out additional assessments in circumstances where an earlier risk assessment

determined that the cooling water system was high-risk or when a competent person requires a further assessment,

- (iv) ensure that compliance with the risk assessment is audited annually by an approved auditor,
  - (v) keep certain documents on the premises and make them available for inspection,
- (e) by omitting a provision about annual certification,
  - (f) by increasing the fee to accompany a notification of the installation of a cooling water system or warm-water system from \$100 to \$115,
  - (g) by requiring the unique identification number designated by the local government authority, and details of risk assessments, test results and audits of cooling water systems, to be included in the register of cooling water systems and warm-water systems kept by each local government authority.

This Regulation is made under the *Public Health Act 2010*, including Division 2 of Part 3 (Legionella control) and section 134 (the general regulation-making power).

## **Public Health Amendment (Legionella Control) Regulation 2018**

under the

Public Health Act 2010

### **1 Name of Regulation**

This Regulation is the *Public Health Amendment (Legionella Control) Regulation 2018*.

### **2 Commencement**

This Regulation commences on the day on which it is published on the NSW legislation website.

## Schedule 1 Amendment of Public Health Regulation 2012

### [1] Part 2

Omit the Part. Insert instead:

## Part 2 Legionella control

### Division 1 Preliminary

#### 4 Definitions

(1) In this Part:

*AS/NZS 3666.1:2011* means AS/NZS 3666.1:2011 *Air-handling and water systems of buildings—Microbial control, Part 1: Design, installation and commissioning*.

*AS/NZS 3666.2:2011* means AS/NZS 3666.2:2011 *Air-handling and water systems of buildings—Microbial control, Part 2: Operation and maintenance*.

*AS/NZS 3666.3:2011* means AS/NZS 3666.3:2011 *Air-handling and water systems of buildings—Microbial control, Part 3: Performance-based maintenance of cooling water systems*.

*AS/NZS 3666.4:2011* means AS/NZS 3666.4:2011 *Air-handling and water systems of buildings—Microbial control, Part 4: Performance-based maintenance of air-handling systems (ducts and components)*.

*competent person* has the same meaning as in AS/NZS 3666.1:2011.

*cooling tower* means a device for lowering the temperature of water or other liquid by evaporative cooling, or an evaporative condenser that incorporates a device containing a refrigerant or heat exchanger.

*dwelling* means a single occupancy dwelling that does not have common property and is not controlled by an owners corporation (within the meaning of the *Strata Schemes Management Act 2015*).

*risk assessment* means a risk assessment that is required by AS/NZS 3666.3:2011.

(2) Unless an expression is used or otherwise defined in the Act, or is otherwise defined in this Part, an expression used in this Part and in any of the following publications has the same meaning as it has in that publication:

- (a) AS/NZS 3666.1:2011,
- (b) AS/NZS 3666.2:2011,
- (c) AS/NZS 3666.3:2011,
- (d) AS/NZS 3666.4:2011.

### Division 2 Air-handling systems

#### 5 Exemption of systems installed in dwellings

For the purposes of section 27 of the Act, an air-handling system that is installed in a dwelling is exempt from the operation of Division 2 of Part 3 of the Act.

#### 6 Installation requirements

For the purposes of section 28 of the Act, an air-handling system:

- (a) must be installed in accordance with AS/NZS 3666.1:2011, and

- (b) must be fitted with supply air filters.

#### **7 Operating requirements**

For the purposes of section 29 of the Act:

- (a) an air-handling system must be operated as required by AS/NZS 3666.2:2011, and
- (b) there must be safe and easy access to an air-handling system for the purpose of the cleaning, inspection and maintenance of the system.

#### **8 Maintenance requirements**

For the purposes of section 30 of the Act, an air-handling system must be maintained in accordance with:

- (a) AS/NZS 3666.2:2011, or
- (b) AS/NZS 3666.4:2011.

### **Division 3 Hot-water systems**

#### **9 Exemption of systems installed in dwellings**

For the purposes of section 27 of the Act, a hot-water system that is installed in a dwelling is exempt from the operation of Division 2 of Part 3 of the Act.

#### **10 Installation requirements**

For the purposes of section 28 of the Act, a hot-water system must be installed in accordance with AS/NZS 3666.1:2011.

#### **11 Operating requirements**

For the purposes of section 29 of the Act, a hot-water system must be operated as required by AS/NZS 3666.2:2011.

#### **12 Maintenance requirements**

For the purposes of section 30 of the Act:

- (a) a hot-water system must be maintained in accordance with AS/NZS 3666.2:2011, and
- (b) maintenance must be carried out on a hot-water system to ensure that at any time when the system is in operation it delivers water at each outlet each time the outlet is turned on at not less than 60 degrees Celsius, once any water standing in the pipe to that outlet before it was turned on has been expelled.

### **Division 4 Humidifying systems**

#### **13 Exemption of systems installed in dwellings**

For the purposes of section 27 of the Act, a humidifying system that is installed in a dwelling is exempt from the operation of Division 2 of Part 3 of the Act.

#### **13A Operating requirements**

For the purposes of section 29 of the Act:

- (a) a humidifying system must be operated as required by AS/NZS 3666.2:2011, and

- (b) there must be safe and easy access to a humidifying system for the purpose of the cleaning, inspection and maintenance of the system.

**13B Maintenance requirements**

For the purposes of section 30 of the Act, a humidifying system must be maintained in accordance with AS/NZS 3666.2:2011.

**Division 5 Warm-water systems**

**13C Exemption of systems installed in premises other than hospitals**

For the purposes of section 27 of the Act, a warm-water system that is installed in a dwelling or any other premises is exempt from the operation of Division 2 of Part 3 of the Act, except where those premises are a hospital.

**Note.** *Hospital* is defined in the Act to include a nursing home.

**13D Installation requirements**

- (1) For the purposes of section 28 of the Act, a warm-water system:
  - (a) must be installed in accordance with AS/NZS 3666.1:2011, and
  - (b) must not be installed in a hospital unless it is of a kind approved in writing by the Secretary.
- (2) An application for an approval by the Secretary under this clause must be accompanied by a fee of \$180.

**13E Operating requirements**

For the purposes of section 29 of the Act:

- (a) a warm-water system must be operated as required by AS/NZS 3666.2:2011, and
- (b) there must be safe and easy access to a warm-water system for the purpose of the cleaning, inspection and maintenance of the system.

**13F Maintenance requirements**

For the purposes of section 30 of the Act:

- (a) a warm-water system must be maintained in accordance with AS/NZS 3666.2:2011, and
- (b) maintenance carried out on a warm-water system must comply with the document entitled *Water—Requirements for the provision of cold and heated water* published by the Ministry of Health.

**13G Notification of installation of warm-water systems**

- (1) For the purposes of section 31 of the Act, the local government authority for the area in which the premises are located is prescribed and the notice is to be in writing and is to be accompanied by the fee (not exceeding \$115) determined by the local government authority.
- (2) The occupier of premises on which a warm-water system is installed must notify the local government authority for the area in which the premises are located within 7 days of any change in the particulars provided to the authority in the approved form under section 31 of the Act.  
Maximum penalty: 10 penalty units.
- (3) No fee is payable for a notification referred to in subclause (2).

## **Division 6 Cooling water systems**

### **Subdivision 1 Application of Division**

#### **13H Exemption of systems used to make snow**

For the purposes of section 27 of the Act, a cooling water system that is used solely for making snow is exempt from the operation of Division 2 of Part 3 of the Act.

### **Subdivision 2 Installation and operating requirements**

#### **13I Installation requirements**

For the purposes of section 28 of the Act, a cooling water system must be installed in accordance with AS/NZS 3666.1:2011.

#### **13J Operating requirements**

For the purposes of section 29 of the Act:

- (a) a cooling water system must be operated as required by AS/NZS 3666.2:2011, and
- (b) a cooling water system must be equipped with a disinfection procedure that is in operation at all times and that is designed to control microbial growth so that:
  - (i) the level of *Legionella* in the system is less than 10 colony-forming units per millilitre, and
  - (ii) the heterotrophic colony count in the system is less than 100,000 colony-forming units per millilitre, and
- (c) there must be safe and easy access to a cooling water system for the purpose of the cleaning, inspection and maintenance of the system.

#### **13K Display of unique identification number on each cooling tower**

- (1) The occupier of premises on which a cooling water system is installed must ensure that a unique identification number designated by the local government authority is displayed on each cooling tower of a cooling water system.
- (2) That number must be displayed on a sign affixed to the cooling tower, being a sign that:
  - (a) has a minimum size of 148 mm x 210 mm (A5 size), and
  - (b) is clearly visible to a person examining or inspecting the cooling water system, and
  - (c) is made of a durable material.
- (3) That number must be first displayed no later than 30 days after the local government authority gives the occupier of the premises notice of the unique identification number that it has designated.

Maximum penalty: 20 penalty units.

### **Subdivision 3 Maintenance requirements**

#### **13L Maintenance requirements**

- (1) For the purposes of section 30 of the Act:
  - (a) a cooling water system must be maintained in accordance with AS/NZS 3666.3:2011, and
  - (b) a cooling water system must be maintained in accordance with the control strategies set out in Table 3.1 (for *Legionella*) and Table 3.2 (for heterotrophic micro-organisms) of that Standard, and
  - (c) the risk assessments for a cooling water system that are required under AS/NZS 3666.3:2011 must be conducted in accordance with the following maintenance requirements prescribed by this Subdivision:
    - (i) the risk assessments must be conducted in the manner required by clause 13M, including through the conduct of any further risk assessment required by clause 13M (5),
    - (ii) each risk assessment must be documented and reported in accordance with clause 13N,
    - (iii) compliance with each risk assessment must be audited in accordance with clause 13O, and
  - (d) a cooling water system must be maintained in a manner that is subject to the sampling, testing and inspection required by clause 13Q.
- (2) Despite subclause (1) (a) and (b), a cooling water system at a thermal power station is not required to be maintained in accordance with clauses 3.2 and 3.3 of AS/NZS 3666.3:2011, but must instead be maintained in accordance with the protocols entitled *Thermal Power Station Main Water Cooling Systems—Trigger Action Response Protocols*, published by the Ministry of Health.

#### **13M Conduct of risk assessments**

- (1) A risk assessment for a cooling water system must be undertaken by, or under the supervision of, a competent person.
- (2) The competent person who undertakes a risk assessment must indicate in the report of the assessment whether, after having regard to the approved form used in setting out a risk assessment, the competent person has determined that the cooling water system is:
  - (a) low-risk, or
  - (b) medium-risk, or
  - (c) high-risk.
- (3) A risk assessment must be completed before the cooling water system commences operating.
- (4) However, in the case of a cooling water system that was in operation immediately before the date of commencement of this clause, a risk assessment must be completed no later than:
  - (a) 30 November 2018, or
  - (b) any other date (that is after 30 November 2018 but before 1 July 2019) that is notified to the occupier by the local government authority for the area.
- (5) If a competent person who undertook any risk assessment of the cooling water system determined that the cooling water system was high-risk, a further risk assessment must be undertaken:

- (a) no later than 12 months after that determination was made, or
- (b) if there is reason to believe that the latest risk assessment is no longer valid, no later than 30 days after that reason becomes apparent.

**Note.** This provision requires a risk assessment at least once every 12 months. If an additional risk assessment is required because an earlier assessment is no longer valid, or revealed that the system is high-risk, the next risk assessment will be required 12 months after that.

- (6) If a competent person who undertook any risk assessment of the cooling water system determined that the cooling water system was low-risk or medium-risk, a further risk assessment must be undertaken:

- (a) no later than 60 months after that determination was made, and
- (b) if there is reason to believe that the latest risk assessment is no longer valid, no later than 30 days after that reason becomes apparent.

**Note.** This provision requires a risk assessment at least once every 60 months. If an additional risk assessment is required because an earlier assessment is no longer valid, or revealed that the system is high-risk, the next risk assessment will be required 12 months after that earlier assessment.

### **13N Reporting on risk assessments**

- (1) A risk assessment for a cooling water system must be documented in the approved form.
- (2) The occupier of the premises on which a cooling water system is installed must notify the local government authority for the area, in the approved form, no later than 7 days after a risk assessment required by this clause has been completed.

### **13O Auditing of risk assessment**

- (1) Compliance with the risk assessment of a cooling water system over a 12-month audit period must be audited.
- (2) The audit period for an ordinary risk assessment is:
  - (a) the 12 months after the first ordinary risk assessment is required by clause 13M (3) or (4), and
  - (b) each 12 months after that.
- (3) The audit period for an additional risk assessment is:
  - (a) the 12 months after the additional risk assessment is required by clause 13M (5) or (6), and
  - (b) each 12 months after that.
- (4) An audit must be completed within 2 months after the end of the audit period.
- (5) An audit must be carried out by a person who has been approved by the Secretary as an auditor, being a person who is not:
  - (a) the person who undertook the risk assessment, or
  - (b) the occupier, or
  - (c) a duly qualified person who installed the cooling water system in the previous 5 years, or
  - (d) a duly qualified person who operates or maintains the cooling water system, or who has done so in the previous 5 years, or
  - (e) a person who operates a laboratory that carried out any monthly testing of the cooling water system in the previous 5 years.

- (6) An audit must be documented in the approved form.
- (7) The occupier must notify the local government authority for the area, in the approved form, no later than 7 days after each audit required by this clause is completed.
- (8) For the purposes of subclause (5):
  - (a) an application for approval as an auditor is to be made to the Secretary in the approved form, and
  - (b) an approval of the Secretary has effect for the period specified by the Secretary when the approval is given, unless it is sooner revoked in writing by the Secretary.

**13P Secretary may require additional risk assessments**

- (1) The Secretary may notify an occupier that a new risk assessment must be undertaken of a cooling water system:
  - (a) if any reportable test results have been notified for the cooling water system under clause 13R, or
  - (b) if the Secretary considers that the existing risk assessment is not sufficient to protect public health.
- (2) If the Secretary notifies an occupier that a new risk assessment must be undertaken, the occupier must ensure that the new risk assessment is carried out by, or under the supervision of, a competent person within 30 days of the notice being given.
- (3) An authorised officer may review a risk assessment at any time.

**13Q Sampling, testing and inspection**

- (1) Samples of water must be taken from a cooling water system:
  - (a) at least once a month, and
  - (b) in accordance with AS/NZS 3666.3:2011, and
  - (c) by a duly qualified person.
- (2) Samples taken in accordance with this clause must be tested for *Legionella* and heterotrophic colony count in accordance with AS/NZS 3666.3:2011.
- (3) A cooling water system must be inspected and a chemical analysis of the cooling water system must be carried out:
  - (a) at least once a month, and
  - (b) in accordance with AS/NZS 3666.3:2011, and
  - (c) by a duly qualified person.
- (4) A report prepared by a duly qualified person, in relation to the testing, inspection and chemical analysis required by this clause:
  - (a) must be prepared in accordance with AS/NZS 3666.3:2011, and
  - (b) must be provided to the occupier at least once a month, and
  - (c) must be in the approved form.

## Subdivision 4 Provision of information

### 13R Provision of test results

- (1) The occupier of premises on which a cooling water system is installed must ensure that any reportable test results are provided, in the approved form, to the local government authority for the area no later than 24 hours after they are received by the occupier.

Maximum penalty: 20 penalty units.

- (2) In this clause:

**reportable test results** means the results of a laboratory test of a cooling water system carried out in accordance with clause 13Q, being test results that show either of the following:

- (a) if the number of colony-forming units for *Legionella* is greater than or equal to 1,000 colony-forming units per millilitre,
- (b) if the heterotrophic colony count is greater than or equal to 5,000,000 colony-forming units per millilitre.

### 13S Availability of records and other information

- (1) The occupier of premises on which a cooling water system is installed must ensure that each of the required documents is either:

- (a) kept on the premises, and made available for inspection on request by an authorised officer, or
- (b) kept electronically, and made available for inspection, on request by an authorised officer, within 4 hours of the request.

- (2) The occupier of premises on which a cooling water system is installed must ensure that the required information is provided (in either electronic or paper form) on request by an authorised officer within 4 hours of the request.

- (3) In this clause:

**required documents**, in relation to a cooling water system, means each of the following:

- (a) the documentation of the risk assessment (prepared under clause 13N (1)),
- (b) the notice of the risk assessment (given under clause 13N (2)),
- (c) the documentation of each audit of compliance with the risk assessment that was carried out in the last 60 months (prepared under clause 13O (6)),
- (d) the notice provided of each such audit of compliance (under clause 13O (7)),
- (e) the reports of each monthly testing and inspection carried out in the last 60 months (prepared under clause 13Q (4)),
- (f) the operating and maintenance manuals for the system,
- (g) all records of the maintenance and service of the system.

**required information**, in relation to a cooling water system, means:

- (a) the name and contact details of each duly qualified person who installed, operated or maintained the cooling water system in the last 5 years, and

- (b) the name and contact details of any competent person who has provided services in relation to the cooling water system in the last 5 years.

Maximum penalty: 20 penalty units.

**13T Notification of installation of cooling water systems**

- (1) For the purposes of section 31 of the Act, the local government authority for the area in which the premises are located is prescribed and the notice is to be in writing and is to be accompanied by the fee (not exceeding \$115) determined by the local government authority.
- (2) The occupier of premises on which a cooling water system is installed must notify the local government authority for the area in which the premises are located within 7 days of any change in the particulars provided to the authority in the approved form under section 31 of the Act.
- Maximum penalty: 10 penalty units.
- (3) No fee is payable for a notification referred to in subclause (2).

**Division 7 Conduct of tests on any regulated system**

**13U Conduct of certain tests**

For the purposes of sections 29 and 30 of the Act, all tests for the presence of *Legionella* in the system, and all tests to determine the heterotrophic colony count in the system, that are carried out in the course of complying with this Part must be carried out in a laboratory accredited by the National Association of Testing Authorities for that purpose.

**13V Falsifying test results**

A person who furnishes any test results in purported compliance with a requirement under this Part, knowing that the test result is false or misleading in a material respect, is guilty of an offence.

Maximum penalty: 20 penalty units.

**Division 8 Maintenance precautions and prohibition orders**

**13W Maintenance precautions**

If maintenance of a regulated system is being carried out on the premises on which it is installed, the occupier or duly qualified person, or any other person carrying out the maintenance otherwise than as an employee, is guilty of an offence if appropriate measures are not taken:

- (a) to minimise contamination of adjoining areas and the ambient environment by aerosols, dust, particulate matter or effluent, and
- (b) to prevent public access to the area in which the maintenance is being carried out.

Maximum penalty: 20 penalty units.

**13X Display of prohibition orders**

The occupier of premises on which a regulated system is installed who has been served with a prohibition order must display a copy of the order in a conspicuous place at or near each entrance to the premises concerned.

Maximum penalty: 10 penalty units.

## **Division 9 Registers kept by local government authorities**

### **13Y Register of cooling water systems and warm-water systems**

- (1) Each local government authority is to maintain a register of cooling water systems and warm-water systems installed on premises in its area.
- (2) The register must contain the following particulars relating to each cooling water system or warm-water system:
  - (a) the address and telephone number of the premises on which the system is installed,
  - (b) the name and contact details of the occupier of the premises (including residential address, email address and home, business and mobile telephone numbers),
  - (c) the Australian Business Number (ABN) or Australian Company Number (ACN) (if any) of the occupier of the premises,
  - (d) the type of system,
  - (e) in the case of a cooling water system—the unique identification number designated by the local government authority for each cooling tower in the system,
  - (f) whether or not the local government authority has been notified by the occupier that a risk assessment has been prepared for the system,
  - (g) the reportable test results (within the meaning of clause 13R) of which the local government authority has been notified by the occupier,
  - (h) details of each notice of audit of system compliance with the risk assessment that has been provided to the local government authority by the occupier (in accordance with clause 13O (7)),
  - (i) details of any inspections carried out by the local government authority for the purposes of the Act.
- (3) A local government authority must on request make its register available for inspection without charge by the Secretary, a public health officer or an officer of the Ministry of Health authorised by the Secretary.

### **[2] Schedule 4 Penalty notice offences**

Omit the matter relating to section 28.

### **[3] Schedule 4**

Omit the matter relating to clauses 10 (1) and 13. Insert instead:

Clause 13K	\$220	\$440
Clause 13X	\$220	\$440