



Australian Veterinary Association

NSW Division

Response to NSW Government

Consultation paper: Regulation amendments for medical gas work

September 2020

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The Australian Veterinary Association (AVA) is the only national association representing veterinarians in Australia. Founded in 1921, the AVA today represents 9500 members working in all areas of animal science, health and welfare.

Veterinary roles extend far beyond caring for the health and welfare of our pets and production animals. Veterinarians are the pathologists, field officers and inspectors that secure the safety of our food, ensure market access for our exports, and help to safeguard the human population from zoonotic diseases.

## Summary

While the AVA supports the intent of the original Gas Legislation Amendment (Medical Gas Systems) Bill 2020, we consider that the provisions are unnecessary in relation to veterinary facilities and to include them is a misapplication of important human health regulation to the veterinary sphere.

If applied to veterinary facilities, the legislation will increase the regulatory burden on veterinary services and ultimately the cost to the animal owning public, without providing any health benefits.

As such, we strongly recommend the removal of veterinary hospitals from this legislation.

## Background

In June 2020, the NSW Government initiated changes to existing legislation to adjust licensing of medical gas installers along with testing and compliance of all medical gas facilities used in healthcare. This action follows the 2016 death of an infant and the hypoxic brain injury of another infant at Bankstown-Lidcombe Hospital due to the incorrect installation of medical gas supplies in the neonatal unit.

The original Gas Legislation Amendment (Medical Gas Systems) Bill introduced to Parliament did not include veterinary hospitals. However, the Bill was amended on the floor of the Parliament to broaden the definition of medical facility to include veterinary hospitals as defined by the *Veterinary Practice Act 2003*. The AVA was neither consulted on the original Bill, nor on the proposed amendment to include the veterinary sector.

Similar regulation changes have been created in Queensland under the Queensland Building and Construction Commission Regulation 2018 (QBCC Regulation) and came into force 1st January 2020. The Queensland legislation **does not include veterinary facilities**.

The current consultation paper and the associated proposed Regulations follow the passage of the *Gas Legislation Amendment (Medical Gas Systems) Act 2020* and aims to introduce a robust regulatory new scheme including a licensing framework for medical gas systems in medical facilities. This has been the AVA's first opportunity to comment on the implications of including veterinary facilities within the scope of this legislation.

Two sets of draft regulations are included:

- Gas and Electricity (Consumer Safety) Amendment (Medical Gas Work) Regulation 2020
- Home Building Amendment (Medical Gas Work) Regulation 2020

The proposed regulations are aimed to begin their transition into force on the 1st November 2020. The NSW Government has asked for submissions for key stakeholders to these changes including the veterinary profession.

The AVA is very pleased to be included and to be able to provide feedback, however we are very disappointed that the AVA was not consulted sooner on this and given the opportunity to provide comment prior to the inclusion of veterinary hospitals within the scope of the Act.

## Overview of legislative changes and proposed changes

The legislation focuses on the regulation medical gas installations and maintenance of reticulated systems. The consultation paper notes the key elements of the proposed changes as:

- prescribing substances used for medical purposes as medical gases
- referencing relevant Australian and International Standards to ensure that medical gas work is compliant with these standards
- conduct of safety and compliance tests on medical gas work and reporting requirements
- obligations to report defective work
- reporting of a serious medical gas accident
- machinery provisions to allow for the regulation of medical gas installations
- prescribing specialist categories of work for the purposes of licensing under the Home Building Act, and
- details around information sharing.

With the changes to the Act passed by Parliament in August, a new definition is inserted for medical facility<sup>1</sup>:

***medical facility*** means the following—

- (a) a hospital within the meaning of the *Public Health Act 2010*,
- (b) an aged care facility,
- (c) a veterinary hospital within the meaning of the *Veterinary Practice Act 2003*,
- (d) another place where medical gas is supplied or removed (except as prescribed by the regulations).

Substances encompassed in the definition of medical gas are those used for medical purposes and prescribed by the regulations. The proposed regulations detail these as<sup>2</sup>:

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<sup>1</sup> *Gas Legislation Amendment (Medical Gas Systems) Act 2020*

<sup>2</sup> Draft: Gas and Electricity (Consumer Safety) Amendment (Medical Gas Work) Regulation (No 2) 2020

### 3B Definition of “medical gas”

For the purposes of the definition of *medical gas* in section 4(1) of the Act, the following substances are prescribed—

- (a) oxygen,
- (b) nitrous oxide,
- (c) helium,
- (d) nitrogen,
- (e) carbon dioxide,
- (f) medical air,
- (g) surgical tool gas,
- (h) common mixtures of the gases referred to in paragraphs (a)–(g),
- (i) waste anaesthetic gas.

The legislation created three categories of specialist work:

- medical gasfitting work
- medical gas technician work
- mechanical services and medical gas work

These categories of specialist work relate to the installation, testing and certification of reticulated medical gas systems. This will place additional licensing requirements on those undertaking the installation of these systems in veterinary hospitals.

## Issues and Discussion

### Realities of Veterinary Practice and Impact of Proposed Changes

As of 30 June 2019, there were 701 licenced veterinary hospitals in NSW. This figure includes the majority of veterinary businesses in the state.

LICENSED HOSPITAL TYPE	NUMBER
SMALL ANIMAL HOSPITALS	635
MIXED ANIMAL HOSPITALS	50
LARGE ANIMAL HOSPITALS	16
<b>TOTAL</b>	<b>701</b>

In the *Veterinary Practice Act 2003*, a veterinary hospital is licensed as premises that are appropriate for conducting major surgery. Major surgery as defined as a procedure according to current standards of veterinary practice that require an anaesthetic (other than a local anaesthetic).

***The Veterinary Practice Regulation 2013 Schedule 2 Veterinary practitioners code of professional conduct*** requires veterinarians to “carry out professional procedures in accordance with...current standards.”

A veterinary practitioner in accordance with current standards of practice would be required to administer gaseous general anaesthetics and delivery of therapeutic oxygen to patients.

This would indicate that in NSW there would be 701 licensed hospitals that would utilise oxygen plus other medical gases. Many of these hospitals would use bottled oxygen, and not a reticulated medial

gas installation. As such, these hospitals would not be captured under the provisions of the proposed Regulations contained in *Gas Legislation Amendment (Medical Gas Systems) Act 2020*.

However, a number of these hospitals will have reticulated medical gas installations and it would be expected that this number would grow. In veterinary practice the most common medical gas used is oxygen. Some hospitals would also have a supply of medical air. Both these gases are life sustaining and do not constitute the risk of inert gas supply to patients. It is unlikely, and certainly not observed, that veterinary facilities would have any of the other medical gases referred to in the definition 3B. The risk of cross-over of gas reticulated supply then would not constitute the grave risks that were associated with the tragedies that gave rise to these proposed Regulation changes.

Many of the licenced veterinary hospitals are in regional and rural environments. Access to technicians licenced under these proposed changes will be limited and impact the installation and repair of medical gas installations in veterinary facilities, leading to delays and potential harm to veterinary patients.

Use of general anaesthesia for veterinary procedures is more common than for human health equivalents. For the safety of the animal and the veterinary staff, sedation of animals is often required. Where a human doctor or dentist can expect a patient to remain still during a procedure, this is not the case with animals. For example, what would be an uneventful visit to a dentist for a human requires admission for general anaesthesia in a veterinary patient undergoing a dental procedure. The frequency of anaesthesia for a wider range of procedures means registered veterinarians are required to perform such procedures in licenced veterinary hospitals throughout NSW. Veterinary patients are not referred to central hospitals for such procedures.

### Serious medical gas accident

The legislation also introduces the concept of a serious medical gas accident. The *Gas Legislation Amendment (Medical Gas Systems) Act 2020* states:

***serious medical gas accident*** means an accident—

- (a) caused by the use of a medical gas installation or by work carried out on a medical gas installation, and
- (b) as a consequence of which a person dies or suffers permanent disability, is hospitalised, receives treatment from a registered health practitioner or is unable to attend work for any period of time.

While crucial in human medical facilities, by definition, this is not relevant to veterinary facilities. The injury sustained does not include veterinary patients.

### Obligations on practice owners

The proposed Regulation change 38B Responsibilities of persons concerning the safety of medical gas installations; makes the veterinary practitioner operating the facility responsible for any installation faults. The Act states:



### **38B Responsibilities of persons concerning the safety of medical gas installations**

- (1) A person responsible for a medical gas installation at a place must, to the best of the person's ability and knowledge, ensure that the installation is, while it is connected to the source of the supply of medical gas, maintained in accordance with—
- (a) the relevant Australian standards or, if a particular Australian standard is prescribed by the regulations in relation to the installation, that Australian standard, and
  - (b) any relevant standards of the International Organization for Standardization that are prescribed by the regulations in relation to the installation.

Maximum penalty—500 penalty units in the case of a corporation and 150 penalty units in the case of an individual.

- (2) In this section—  
**person responsible** for a medical gas installation at a place means—
- (a) the occupier of the place, or
  - (b) if there is no occupier, any owner of the place.

This provision will increase the costs of compliance and hence directly increase the costs of veterinary care to the public with no safety benefit.

The proposed Regulation changes impose an undue burden on veterinary facilities with no safety benefit to the intent of the Act, namely persons undergoing medical procedures. The limited availability of newly licenced technicians will impact on the timely delivery of veterinary care and increase the costs to the general public significantly. The Regulation changes beyond the change in definition of medical facility, make no reference to veterinary facilities and the unique nature of the work conducted in veterinary hospitals.

## Recommendations

- That Veterinary facilities should not be captured under these legislative changes.
- That the *Gas Legislation Amendment (Medical Gas Systems) Act 2020* be amended to remove veterinary hospitals from the definition of 'medical facility'.

**These changes provide no benefit to veterinary patients. They will increase the costs of veterinary care significantly and increase the risk of delay to veterinary treatments, thus risk further harm to patients, particularly in regional and rural areas.**

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