Health Legislation Amendment Bill 2015

Explanatory Notes

Short title

The short title of the Bill is the Health Legislation Amendment Bill 2015 (the Bill).

Policy objectives and the reasons for them

The Bill amends six Health portfolio Acts to support policy initiatives of the Government, and to improve the effective operation of the Acts. In particular, the Bill amends:

- the *Food Act 2006* (the Food Act) to require fast-food chains, snack-food and drinks chains, bakery chains, café chains, and supermarkets to display nutritional information, and to authorise disclosure of confidential information for limited public health and safety reasons
- the *Health Ombudsman Act 2013* (the Health Ombudsman Act) and the *Hospital and Health Boards Act 2011* (the Hospital and Health Boards Act) to enable the Minister to temporarily appoint persons to the public panel of assessors and Hospital and Health Boards respectively
- the *Pest Management Act 2001* (the Pest Management Act) to enable the chief executive to delegate the chief executive's powers to appropriately qualified employees of the Hospital and Health Services
- the *Public Health Act 2005* (the Public Health Act) to streamline the process for enabling registered midwives to access the Queensland Pap Smear Register (the Pap Smear Register), and
- the *Transplantation and Anatomy Act 1979* (the Transplantation and Anatomy Act) to make clear that the definition of blood products under section 42AB does not include cord blood, that is, blood obtained from the placenta via the umbilical cord for the collection of stem cells (*Haematopoietic Progenitor Cells* or *HPCs*).

The Bill also makes other minor and technical amendments to these Health portfolio Acts.

Food Act 2006

- **Fast-food menu labelling**

Population-wide weight gain is causing significant problems for Queensland's health system, community, economy and for individual Queenslanders. While the drivers of obesity are complex, the widespread availability, marketing and consumption of unhealthy food are key factors in developing obesity.

In 2009-2010, Queensland households spent on average 15.2 per cent of weekly food expenditure on fast-food and takeaway foods. In 2011, nearly 50 per cent of Queensland children aged 5-17 years were having takeaway food at least once per week. This increased with age, with 59 per cent of adolescents aged 16-17 years eating takeaway food at least weekly. In 2014, 30 per cent of Queensland adults were consuming takeaway food at least once per week, with this increasing to 48 per cent for adults aged 18-24 years.

Studies have shown that consumers greatly underestimate the amount of energy, saturated fat, sugar and salt in unhealthy foods. One United States (US) study indicated that 84-96 per cent of consumers underestimate the amount of energy (kilojoules) and 67-95 per cent of consumers underestimate the saturated fat content, in less healthy foods. Another US study found that people who consider energy (kilojoule) information consume nearly 690 kilojoules less than those who do not use the information, and that food label users consumed nine grams less fat, 240 milligrams less sodium and 12 grams less sugar.

The Bill will amend the Food Act to establish a statewide menu labelling scheme to assist consumers to make informed and healthier fast-food choices by providing them with easily understood nutrition information at the point-of-sale, whether that is in a queue in-store, at home ordering over the phone or internet, or when on-the-go and ordering via a mobile application.

These amendments implement a 2015 election commitment regarding the introduction of fast-food menu labelling as already implemented in New South Wales (NSW), as outlined in *A Healthier Queensland: Labor's action plan for a healthier Queensland.*

- **Disclosing information for public health reasons**

The Food Act provides that a person must not disclose confidential information gained by the person in administrating or performing a function under the Act, unless the disclosure is specifically authorised. Confidential information means information, other than information that is publicly available:

- about a person's personal affairs or reputation, or
- that would be likely to damage the commercial activities of a person to whom the information relates.

The disclosure of the name of a person or business that has sold unsafe food has the potential to damage the reputation or commercial activities of these parties and is therefore *confidential information* for the purposes of the Food Act.

There are exceptions to the restriction on disclosing confidential information, such as where the person consents, or where the disclosure is for the purpose of ensuring public health or safety and the information is being disclosed to certain entities. However, the Food Act does not authorise disclosure of confidential information to the public where it is reasonably necessary for public health and safety reasons.

This has limited Queensland Health's ability to issue warnings to the public about food safety risks and has significant implications for the public health and safety. For example, in 2015, Queensland Health was unable to issue warnings to the public to not consume certain brands of eggs known to be linked with outbreaks of salmonella.

An amendment is required to ensure confidential information may be disclosed where disclosure is reasonably necessary to prevent or reduce the possibility of a serious danger to public health, or to mitigate the adverse consequences of a serious danger to public health.

Health Ombudsman Act 2013

The Health Ombudsman Act provides for the establishment of a public panel of assessors and 16 professional panels of assessors (e.g. dentists panel of assessors). Their role is to provide expert advice in response to questions of fact from the judicial member who constitutes the independent Queensland Civil and Administrative Tribunal (QCAT) for the purpose of hearing disciplinary matters relating to a registered health practitioner.

The Health Ombudsman Act provides that, in conducting disciplinary hearings relating to a registered health practitioner, QCAT must generally be assisted by one assessor from the public panel and two assessors from the professional panels. While the Act allows QCAT to conduct a hearing without assessors if necessary due to the urgency of the matter, this option is intended for use only in exceptional circumstances.

For disciplinary proceedings relating to the provision of a health service to a particular person, the Health Ombudsman Act also requires that if the judicial member constituting the QCAT is not the same gender as the person to whom the health service was provided, at least one assessor must be the same gender as the person to whom the health service was provided.

Panel members are appointed by the Governor in Council for terms up to five years. Currently, the Health Ombudsman Act allows the Minister to temporarily appoint individuals to professional panels, subject to certain conditions, for periods of up to six months, but no such provision exists for the public panels.

The amendments will allow the Minister to make temporary appointments to public panels where, for example:

- there are insufficient public assessors available for QCAT matters, or
- none of the current public assessors of a particular gender are available for a QCAT matter.

Hospital and Health Boards Act 2011

Under the Hospital and Health Boards Act, each Hospital and Health Service is independently and locally controlled by a Hospital and Health Board. The Hospital and Health Boards Act provides that each Board must have five or more members, at least one of whom must be a clinician.

Members are appointed by Governor in Council on the Minister's recommendation for terms of up to four years. The Minister must recommend persons the Minister considers have the skills, knowledge and experience required for the Hospital and Health Service to perform its functions effectively and efficiently. Section 24 provides that the Minister must advertise for expressions of interest before making recommendations about board members to Governor in Council, unless the vacancy arises due to resignation or a board member being removed from office.

Currently, the Hospital and Health Boards Act does not enable the Minister to temporarily appoint Board members. The process of appointing members by Governor in Council can take several months, as the Minister must first advertise for expressions of interest.

The amendments will allow the Minister to temporarily appoint a Board member where, for example, a Board member takes unexpected leave or is suspended. Enabling temporary appointments to the Board will ensure the Board has the appropriate number of members for a quorum and/or the appropriate skills mix to continue to conduct its business.

Pest Management Act 2001

Currently, the Pest Management Act allows the chief executive to delegate the chief executive's powers under the Act (except for the power to review an original decision under division 1 of part 4 of the Pest Management Act) to an appropriately qualified person who is an employee of the department.

Amendments to the Hospital and Health Boards Act in 2011 replaced the existing Health Service Districts with separate statutory bodies, Hospital and Health Services. The Hospital and Health Boards Act also made provision for Hospital and Health Services to become employers in their own right.

Since the Pest Management Act came into force a number of delegations have been made to appropriately qualified Queensland Health officers. However, some of these Queensland Health employees have now been made employees of relevant Hospital and Health Services. An amendment is required to ensure that the chief executive is able to delegate powers under the Pest Management Act to employees of Hospital and Health Services.

Public Health Act 2005

Until recently, nursing and midwifery were considered to be part of the same health care profession. However, they are now recognised as related but discrete professions. Under the *Health Practitioner Regulation National Law* (National Law), there is a single registration and accreditation body for nurses and midwives (the Nursing and Midwifery Board of Australia), but two separate registers (the Register of Midwives and the Register of Nurses). Accordingly, a person no longer needs to be registered as a nurse in order to be registered as a midwife.

The Public Health Act establishes the Pap Smear Register. The Pap Smear Register ensures women with an abnormal Pap smear result are advised about appropriate medical investigation and interventions. Under the Public Health Act, the chief executive can forward information about a woman's abnormal test results to the woman's treating health practitioner.

Currently, a health practitioner, for the purposes of accessing the Pap Smear Register, includes a person who is registered under the National Law to practise in the nursing and midwifery professions as a nurse (other than a student) and in the registered nurses division of that profession. This definition does not capture those midwives who are not also registered nurses. Accordingly, to access the Pap Smear Register, those midwives must first be designated as health practitioners by the chief executive via a gazettal notice.

An amendment is required to ensure that registered midwives are able to access the Pap Smear Register without first being designated as a health practitioner by the chief executive.

The Bill will also make a technical amendment to correct the numbering of provisions in the Public Health Act.

Transplantation and Anatomy Act 1979

The Transplantation and Anatomy Act prohibits the buying, advertising to buy, and selling of human tissue (trading restrictions). Cord blood is captured by the definition of *tissue* under the Transplantation and Anatomy Act and therefore is subject to trading conditions. Cord blood is blood that is obtained from the placenta via the umbilical cord following birth for the main purpose of extracting stem cells, which are used in the treatment of a range of medical conditions including leukaemia, lymphoma and anaemia, as well as immune and metabolic disorders.

The *Health and Other Legislation Amendment Act 2014* amended the Transplantation and Anatomy Act to enable certain entities to be exempted from the trading restrictions. Section 42AB provides that an entity is exempt if, for *tissue other than blood products*, the entity is party to an agreement with the Commonwealth or with the State for the buying or selling of tissue, and is prescribed by regulation.

The Australian Bone Marrow Donor Registry (ABMDR) is a non-profit organisation that conducts searches for matching cord blood units. It was intended that the ABMDR be exempted under this provision for the purposes of trading in cord blood. However, it is arguable that cord blood is a blood product.

As it is arguable that cord blood is a blood product, it is necessary to amend section 42AB of the Transplantation and Anatomy Act to clarify that cord blood is not a blood product as defined under section 42AB(2). This will enable the ABMDR to be exempted from trading restrictions for the purposes of trading in cord blood, and so achieve the original policy intent of the *Health and Other Legislation Amendment Act 2014*.

Achievement of policy objectives

Food Act 2006

- **Fast-food menu labelling**

To assist consumers to make informed and healthier fast-food choices, the Bill will amend the Food Act to require certain food businesses that sell ready-to-eat food to display on their menus, both in-store and where distributed electronically and in print, the average kilojoule content of each standard food or drink item that they sell.

The amendments to the Food Act provide that a standard food outlet of a prescribed licensable food business under the Food Act must display nutritional information for standard food items sold at the outlet. The nutritional information required to be displayed is the average energy content of food or drink (expressed in kilojoules), and an average energy intake statement for adults. This will assist consumers to compare the kilojoules between

different food and drinks, and with reference to the average adult daily energy intake of 8,700 kilojoules per day. Additional nutritional information to be displayed may be prescribed in future by regulation. For transparency, consistency and accuracy of nutritional information, the Bill provides that the nutritional information to be displayed must be worked out in the way prescribed by regulation and displayed at the places and in the way prescribed by regulation.

The Bill provides for certain food businesses to be exempted from the menu labelling provisions, if prescribed in regulation.

Standard food outlets that are not captured by the scheme, but that voluntarily display nutritional information will be required to comply with the nutritional information display requirements in the Act in doing so. This is to ensure standard food outlets provide consistent nutritional information to consumers.

A maximum penalty of 500 penalty units will apply to a person who intentionally contravenes the mandatory requirement to display nutritional information. Otherwise, a person who contravenes the mandatory display requirements will commit an offence carrying a maximum penalty of 100 penalty units. It will also be an offence for a proprietor of a standard food outlet to contravene the provision relating to voluntary display of nutritional information, carrying a maximum penalty of 100 penalty units. In accordance with the *Penalties and Sentences Act 1992*, the maximum penalty for a corporation is five times higher than the penalty unit amount stated for an individual.

While the amendments will commence on assent, the provisions will not apply to a proprietor of a food business until 12 months after commencement. This will allow impacted businesses a transitional period in which to ensure compliance with the requirements.

- **Disclosing information for public health reasons**

The Bill will also amend the Food Act to enable the chief executive of the department to authorise, in writing, a relevant person to disclose information, including confidential information, if the chief executive believes, on reasonable grounds, that disclosure is necessary to prevent or reduce the possibility of a serious danger to public health, or to mitigate the adverse consequences of a serious danger to public health. This provision is similar to existing provisions authorising disclosure of confidential information in the Public Health Act.

As an additional safeguard, the chief executive's power to authorise the disclosure of confidential information may only be delegated to the chief health officer of the department.

Health Ombudsman Act 2013

The Bill will amend the Health Ombudsman Act to provide that the Minister may temporarily appoint persons to the public panel of assessors for a period of up to six months.

The Bill will enable the Minister to make a temporary appointment if the Minister reasonably believes it is necessary to urgently appoint an individual, because the principal register of the

Queensland Civil and Administrative Tribunal has advised the Minister that:

- none of the existing public panel members will be available for a hearing, or
- a panel member of a particular gender is required, and either none of the existing panel members are of that gender, or none of the panel members of that gender will be available to hear the matter.

To ensure temporary appointments can be made in a timely manner, the Minister will not be required to invite nominations and advertise prior to making a temporary appointment and will not be required to seek Governor in Council approval for temporary appointments.

The qualification requirements for appointment of individuals as temporary members will be the same as for appointments by the Governor in Council under section 118. Section 120, which relates to disqualification from membership of panels, will also apply in relation to temporary appointments to the public panel. For example, persons who are or have been a health practitioner will be disqualified from membership.

Section 25(1)(c) of the *Acts Interpretation Act 1954* (the Acts Interpretation Act) will apply to temporary appointments to the public panel. This section provides that, if an Act authorises a person to appoint a person to an office, the power includes power to reappoint a person to the office if the person is eligible to be appointed to the office. Accordingly, the appointment power may be exercised as required. However, this is limited by the condition in new section 118A(1), which provides that the Minister may only make a temporary appointment following advice from the principal registrar of QCAT.

Hospital and Health Boards Act 2011

The Bill will amend the Hospital and Health Boards Act to enable the Minister to temporarily appoint an individual to a Hospital and Health Board for a period of up to six months, and to extend such a temporary appointment for up to a further six months, providing for a maximum temporary appointment of 12 months.

The amendments provide that the Minister may make a temporary appointment if the Minister reasonably believes it is necessary to urgently appoint a board member because:

- the Board does not have at least five members
- the Minister considers the Board does not have the requisite skills, knowledge or experience to perform its functions effectively and efficiently, or
- none of the Board members are clinicians.

To ensure temporary appointments can be made in a timely manner, the Minister will not be required to invite nominations and advertise prior to making a temporary appointment. However, a person will only be qualified for temporary appointment if the person has the skills, knowledge or experience required to be recommended for appointment under the usual appointment processes in section 23. A person appointed as a clinician member must be a clinician within the meaning of section 23(4).

The Acts Interpretation Act, section 25(1)(c) will not apply to temporary appointments to the Hospital and Health Boards. This mitigates any risk that ongoing temporary appointments will substituted for longer-term appointments by Governor in Council.

Pest Management Act 2001

The Bill will amend the Pest Management Act to provide that the chief executive of the department may delegate the chief executive's powers under the Act to an appropriately qualified employee of a Hospital and Health Service.

Public Health Act 2005

The Bill will expand the definition of *health practitioner* in the Public Health Act to include a registered midwife. This will enable registered midwives who are not also registered nurses to access the Pap Smear Register without first being designated as a health practitioner by the chief executive of the department.

Transplantation and Anatomy Act 1979

The Bill will amend the Transplantation and Anatomy Act to exclude cord blood from the definition of *blood products*. This will enable the ABMDR to be exempted from the prohibitions on buying, advertising to buy and selling of human tissue under section 42AB(2)(b) of the Transplantation and Anatomy Act for the purpose of trading in stem cells contained in cord blood.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives of the Bill.

Estimated cost for government implementation

There will be costs to Government associated with the menu labelling scheme arising from a consumer industry and awareness campaign, business support mechanisms, ongoing monitoring and enforcement and evaluation and review. The Government is providing additional funding of $525,000 over two years for education activities to support consumers to make informed choices, and for evaluation of the impacts of the menu labelling scheme. This funding will support consumer/market research, and campaign development and delivery. The implementation of the menu labelling scheme will be met from within existing budget allocations.

The costs to government associated with implementation of other amendments in the Bill will be minimal and met from existing budget allocations.

Consistency with fundamental legislative principles

- **Disclosing confidential information**

Clause 8 inserts new section 272A of the Food Act, which will allow the chief executive to authorise a relevant person to disclose information, including confidential information, in certain limited circumstances. Confidential information includes information about a person's personal affairs or reputation, or information that would be likely to damage the commercial activities of a person to whom the information relates. This may be seen as breaching the principle that legislation must have sufficient regard to individuals' rights and liberties.

However, this must be balanced against the risk to public health and safety of not disclosing the information.

The amendments provide that confidential information can only be disclosed if the chief executive believes, on reasonable grounds, that disclosure is necessary to prevent or reduce the possibility of a serious danger to public health, or to mitigate the adverse consequences of a serious danger to public health. The chief executive must authorise the publication in writing. The amendments also limit delegation of the chief executive's powers to publish confidential information to the chief health officer only: clause 9. The information can only be disclosed by a relevant person, namely the chief health officer or an appropriately qualified public service officer or employee of the department or health service employee.

The provision is consistent with the Privacy Principles in the *Information Privacy Act 2009* (Qld), which expressly permit the disclosure of personal information where the agency reasonably believes that the disclosure is necessary to lessen or prevent a serious threat to public health: see Information Privacy Principle 11(1)(c) and National Privacy Principle 2(1)(d).

- **Matters to be prescribed in regulation**

The amendments made by clause 5 would enable certain matters relating to the fast food menu labelling scheme to be prescribed in the *Food Regulation 2006* (the Food Regulation) including:

- items of ready-to-eat food that are, and are not, standard food items
- the way in which the average energy content of a standard food item must be worked out in compliance with the Australia New Zealand Food Standards Code as defined in the *Food Standards Australia New Zealand Act 1991* (Cwlth) (Food Standards Code)
- the way in which a standard food outlet must display nutritional information
- other nutritional information required to be displayed
- the content of the average energy intake statement
- the places nutritional information for a standard food item must be displayed
- the food businesses that will be captured by, and exempt from, the scheme, and
- provisions about the display or distribution of explanatory materials or other material about nutritional information for food.

Prescribing matters in regulation may be seen to breach the principle that legislation must have sufficient regard to the institution of Parliament. It is justified in this instance to put matters of detail in the Food Regulation as it will provide flexibility to ensure the scheme can be expanded in the future. It will also allow the Government to respond quickly to emerging issues that may impact on the integrity and effectiveness of the scheme, such as new products or ways of marketing and packaging products.

Prescribing these matters in regulation is also consistent with the *Principles for Introducing Point-of-Sale Nutrition Information at Standard Food Outlets* (the National Principles), which provide that jurisdictions that elect to adopt legislation for point-of-sale nutrition information should not preclude the jurisdiction from expanding point-of-sale nutrition information at a later date to also include disclosure of other information such as sugar, sodium and fat content.

New section 164E(5) provides that, for the purpose of prescribing how nutritional information is to be worked out, the regulation may prescribe this by applying, adopting or incorporating a provision of the Food Standards Code. Section 4(4)(a) of the *Legislative Standards Act 1992* provides that a Bill must allow the delegation of legislative power only in appropriate cases and to appropriate persons. It is appropriate to provide that the average energy content of food and drink must be worked out by applying the Food Standards Code. The Food Standards Code applies across Australia and New Zealand and, accordingly, its application will ensure consistent nutritional information across those jurisdictions with a menu labelling scheme.

Applying the Food Standards Code through the regulation will ensure that any changes to the Food Standards Code in the future can be adopted without requiring amendments to the Food Act.

- **New offences**

New section 164E, inserted by clause 5, provides that a proprietor of a standard food outlet of a prescribed licensable food business must ensure that:

- required nutritional information is displayed in the way and places prescribed, and
- the nutritional information is worked out in the way prescribed by the regulation.

Section 164E provides penalties for contravention of these requirements. The nature of contraventions against section 164E may range from minor and inadvertent to serious, ongoing and deliberate. To ensure the penalties are proportionate to the nature of the contravention, section 164E has a two-tiered offence structure, with a higher penalty applying for an intentional contravention than for a simple contravention.

The maximum penalty for intentionally contravening section 164E is 500 penalty units: section 164E(3). The maximum penalty for otherwise contravening section 164E is 100 penalty units: section 164E(4). Under new section 252(3) of the Food Act, inserted by clause 6 of the Bill, the offence under section 164E(4) is an alternative verdict for a charge under section 164E(3).

New section 164F, also inserted by clause 5, provides that if a standard food outlet not captured by the mandatory menu labelling scheme chooses to display nutritional information of the kind required to be displayed under section 164E, the proprietor must not display the information unless it is worked out in the way prescribed by the regulation and displayed in the way and places prescribed by regulation for the purposes of the mandatory provisions. The maximum penalty for contravening section 164F is 100 penalty units.

In accordance with the *Penalties and Sentences Act 1992*, the maximum penalty for a corporation is five times higher than the penalty unit amount stated for an individual.

The maximum penalties, as expressed in penalty units, are consistent with corresponding penalties in the NSW and the Australian Capital Territory (ACT) menu labelling provisions. However, variations between the value of Queensland, NSW and ACT penalty units result in different monetary penalties.

The maximum penalty for intentional contravention of the mandatory display provisions, under section 164E, is also consistent with the current Queensland offence of misleading conduct relating to the sale of food in section 37 of the Food Act.

The maximum penalty of 100 penalty units for any other contravention of the mandatory display provisions in section 164E and contravention of the voluntary display provisions in section 164F is consistent with the penalty for other offences in the Food Act. For example, the maximum penalty under section 163 for obstructing an auditor without reasonable excuse is 100 penalty units.

These new offences may infringe on the principle that an Act must have sufficient regard to the rights and liberties of individuals as they impose a penalty on the person for breach of the provision. However, an offence provision is necessary to encourage compliance with the requirements of the menu labelling scheme and to ensure that consistent and accurate nutritional information is being provided to the consumer.

Consultation

- **Fast-food menu labelling**

A discussion paper on the proposed fast-food menu labelling scheme was distributed electronically to over 120 organisations, including:

- food businesses within the proposed scope of the scheme (or close to the proposed scope)
- peak food industry bodies
- consumer and public health organisations, and
- applicable food regulation and public health government departments.

Seventeen submissions were received in response to the discussion paper, from two food businesses, two national food industry peak bodies, four government agencies, eight public health and consumer organisations and one consultancy business. The responses largely indicated support for the menu labelling scheme. There was strong support for a nationally consistent scheme and for the delivery of a community education campaign to support the introduction of the legislation.

Queensland Health has also directly approached those food businesses that will be captured by the proposed Queensland legislation but that are not currently captured by other jurisdictions' schemes or who may be captured in the near future with minor expansion of outlet numbers. Of these 12 businesses, four were unable to be contacted, one advised they did not believe they would be captured by the proposed legislation and the remaining seven businesses stated they were aware of the proposal, had no concerns with the proposal and had either already rolled out the requirements nationally or were preparing to roll out.

Stakeholder feedback was considered and incorporated, where appropriate, during the development of the Bill.

- **Other amendments**

There was no consultation external to Government on the other amendments in the Bill as they are procedural or corrective in nature.

Consistency with legislation of other jurisdictions

- **Fast-food menu labelling**

In 2009, the Council of Australian Governments and the Forum on Food Regulation (formerly known as the Australia and New Zealand Food Regulation Ministerial Council) agreed to undertake a comprehensive review of food labelling law and policy. The final report, *Labelling Logic: Review of food labelling law and policy*, was released in January 2011. To assist consumers to make informed choices about food purchases, the report recommended the mandatory display of the energy content of standardised food items on menus in chain food service outlets and on vending machines.

In 2011, the former Ministerial Council endorsed the National Principles. The National Principles are designed to facilitate national consistency if jurisdictions elect to introduce legislation for the display of point-of-sale nutrition information in standard food outlets. They require that any change to the existing approach in a jurisdiction for point-of-sale nutrition information should:

- recognise that any change should contribute to improving public health outcomes
- be consistent with the nationally agreed approach regarding definitions and explanations of terms, requirements for the display of nutrition information, and the provision of a minimum 12-month transition/compliance period for industry
- be supported by a communication strategy that engages and informs appropriate stakeholders
- include an evaluation strategy to assess the impact of any point-of-sale approach introduced, and
- not preclude jurisdictions from expanding point-of-sale nutrition information at a later date to also include disclosure of other information such as sugar, sodium and fat content.

To date NSW, South Australia (SA) and the ACT have introduced legislation consistent with the National Principles, but containing some jurisdictional variations relating primarily to the scope of businesses to which the requirements apply.

The proposed amendments are consistent with the NSW legislation and the National Principles and broadly consistent with SA and ACT legislation.

- **Other amendments**

The other amendments in the Bill are specific to Queensland.

Notes on provisions

Part 1 Preliminary

Short Title

Clause 1 provides that, when enacted, the short title of the Act will be the *Health Legislation Amendment Act 2015.*

Part 2 Amendment of Food Act 2006

Act amended

Clause 2 specifies that this part amends the *Food Act 2006.*

Amendment of s 9 (How main purposes are primarily achieved)

Clause 3 inserts new paragraph (d) into section 9, which outlines how the main purposes of the *Food Act 2006* (the Food Act) are primarily achieved. New paragraph (d) refers to providing for the display of nutritional information for food. Existing paragraph (d) is renumbered to paragraph (e).

Amendment of s 22 (Provisions that are administered only by the State)

Clause 4 inserts new paragraph (d) into section 22(1), which sets out the provisions of the Food Act that are to be administered and enforced by the State and not by local governments. New paragraph (d) lists new chapter 6A. The effect of this provision is that the menu labelling provisions will be administered by the State.

Existing paragraph (d) is renumbered as paragraph (e).

Insertion of new ch 6A

Clause 5 inserts new chapter 6A, which provides for the display of nutritional information for food.

New section 164A provides that chapter 6A applies to the sale of food by retail.

New section 164B defines new terms for the purposes of chapter 6A. A *menu* means a menu that lists or otherwise shows one or more items of food and is either:

- on a board, poster, leaflet or similar thing at the premises from which the items of food shown on the menu are sold, or
- distributed or available outside of the premises from which the items of food shown on the menu area sold.

A menu may be in printed or electronic form. A menu may also include a banner, screen, touch screen, identifying tags and labels. The term *menu* is given its ordinary meaning. In accordance with the *Principles For Introducing Point-Of-Sale Nutrition Information At*

Standard Food Outlets (the National Principles), a menu does not include general advertising material such as catalogues, that do not enable ordering of food or drink at the point-of-sale.

Ready-to-eat food means food in a state in which it is ordinarily consumed, but does not include nuts in the shell or raw fruit or vegetables that are intended to be hulled, peeled or washed by the consumer. For chapter 6A, ready-to-eat food will include, for example, burgers, hot chips, pizza, kebabs, pies, salads, sandwiches, ice-creams, doughnuts, muffins, coffee, juice and soft drink.

New section 164C defines a *standard food item*. Subsection (1) provides that a standard food item is an item of ready-to-eat food that is sold in servings that are standardised for portion and content and is either:

- listed or otherwise shown on a menu, or
- displayed for sale with a price tag or label or an identifying tag or label.

Subsection (2) provides that a standard food item also includes any item of ready-to-eat food prescribed by regulation.

Subsections (1) and (2) of section 164C operate as alternative, but not mutually exclusive, limbs of the definition of a standard food item. Accordingly, a food item falls within the definition of standard food item in any of the following circumstances:

- the food item meets the criteria in subsection (1) but is not prescribed under subsection (2)
- the food item is prescribed under subsection (2), but does not meet the criteria in subsection (1)
- the food item meets the criteria in subsection (1) *and* is prescribed under subsection (2).

An item may be prescribed as a standard food item under subsection (2) if, for example, there is uncertainty about whether the food item meets the criteria in section 164C(1), or if it is clear the food item does not meet the criteria in section 164C(1).

Subsection (3) provides that if a number of standard food items are provided for sale as a combination (for example, a burger, chips and drink meal deal), the entire combination is to be treated as a single standard food item.

Subsection (4) provides that if an item of food mentioned in subsections (1) or (2) is shown or displayed in different sizes, such as small, medium and large, each standard size or portion is to be treated as a separate standard food item.

Subsection (5) provides that a standard food item does not include an item of ready-to-eat food that is prepackaged in a way prescribed by regulation.

New section 164D provides that a *standard food outlet* of a food business is a premises at which standard food items are sold by the food business if:

- the business sells standard food items at other premises or while operating in a chain of food businesses that sell standard food items, and

- at least 1 of the standard food items sold at the premises has been standardised for portion and content so as to be substantially the same as standard food items of that type sold at the other premises or by the other businesses in the chain.

A food business operates in a chain of food businesses that sell standard food items if:

- the business is operating as one of a group of food businesses that sell standard food items under franchise arrangements with a parent business or under common ownership or control, or
- the business sells standard food items under the same training name as a group of other food businesses that sell standard food items.

New section 164E sets out the requirement for certain standard food outlets to display nutritional information. Subsection (1) provides that this section applies to a standard food outlet of a prescribed licensable food business. Subsection (2) provides that a proprietor must ensure that:

- certain nutritional information is displayed for standard food items at the outlet
- the nutritional information is worked out in the way prescribed by regulation, and
- the nutritional information is displayed in the way and at the places prescribed by regulation.

The nutritional information that must be displayed is: the average energy content of the standard food items, expressed in kilojoules; a statement about the average adult daily energy intake, as prescribed in the regulation; and any additional nutritional information prescribed in the regulation.

It is an offence for a person to intentionally contravene section 164E, carrying a maximum penalty of 500 penalty units. Otherwise contravening section 164E carries the lesser maximum penalty of 100 penalty units.

Section 164E(5) provides that, for the purpose of prescribing how nutritional information must be worked out, the regulation may apply, adopt or incorporate a provision of the Australia New Zealand Food Standards Code as defined in the *Food Standards Australia New Zealand Act 1991* (Cwlth).

New section 164F applies to a standard food outlet of a food business, other than a standard food outlet captured by the mandatory display provisions in section 164E. Subsection (2) provides the proprietor of the standard food outlet must not display nutritional information mentioned in section 164E(2)(a) for standard food items sold at the premises unless the nutritional information:

- is worked out in a way prescribed by regulation, and
- is displayed in the way and at the places prescribed by regulation.

This provision carries a maximum penalty of 100 penalty units.

New section 164G provides that a regulation may make provision about the display or distribution by a standard food outlet of explanatory material or any other material about nutritional information for food. This may include interpretive information that allows consumers to better understand the average kilojoule content of standard food items, or

materials such as tray mats and brochures that are used by businesses to communicate information about menu labelling to their consumers.

Amendment of s 252 (Alternative verdicts for serious food offences)

Clause 6 amends section 252, which provides for alternative verdicts for certain offences under the Food Act.

New section 252(3) provides for an alternative verdict in a trial of a person charged with the offence against 164E(3) of intentionally contravening the mandatory menu labelling display requirements. If the trier of fact is not satisfied the person committed the offence intentionally, but is satisfied the person contravened the mandatory display requirements, the trier of fact may find the person not guilty of the offence against section 164E(3), but guilty of the offence against section 164E(4). The person is then liable to be punished for the offence against section 164E(4), which carries a maximum penalty of 100 penalty units.

Clause 6 also amends the heading to section 252, to reflect that it provides alternative verdicts for offences other than serious food offences.

Amendment of s 272 (Confidentiality of information)

Clause 7 omits the definition of *confidential information* in section 272(4). Clause 11 inserts this definition into the schedule 3, dictionary.

Insertion of new s 272A

Clause 8 inserts new section 272A, which will enable the chief executive of the department to authorise a relevant person to disclose confidential information, if the chief executive has reasonable grounds to believe it is necessary to prevent or reduce the possibility of a serious danger to public health, or to mitigate the adverse consequences of a serious danger to public health. The chief executive's authorisation must be in writing.

New subsection (3) provides examples of the types of information the chief executive may disclose. This list of examples is non-exhaustive.

Persons who may be authorised by the chief executive to disclose the information are the chief health officer or an appropriately qualified:

- public service officer or employee of the department, or
- health service employee.

If confidential information is disclosed under section 272A, the person will not commit an offence under section 272.

The chief executive may exercise the new disclosure power under section 272A independently of, or concurrently with, the chief executive's emergency powers under chapter 7, part 4 of the Food Act. For this reason, the disclosure power is not located in chapter 7, part 4. Accordingly, the chief executive may authorise disclosure of information under new section 272A, whether or not the chief executive has also made an order under section 216.

Amendment of s 276 (Delegation by chief executive)

Clause 9 amends section 276, which provides for the chief executive's powers under the Food Act to be delegated. The effect of these amendments is that the chief executive's power to authorise a relevant person to disclose information in section 272A may only be delegated to the chief health officer.

Clause 9 also omits and replaces existing section 276(2), which defines the term *appropriately qualified*. This is because appropriately qualified is now defined in the section 36 and schedule 1 of the *Acts Interpretation Act 1954* (Acts Interpretation Act).

Insertion of new ch 12, pt 4

Clause 10 inserts new section 303, which provides that the menu labelling amendments do not apply to the proprietor of a food business until 12 months after the commencement. This is to allow impacted businesses a 12 month transition period to comply with the food labelling scheme.

Amendment of sch 3 (Dictionary)

Clause 11 inserts definitions of *chief health officer*, *confidential information*, *menu*, *ready-to-eat food*, *standard food item* and *standard food outlet* into the schedule 3, dictionary.

Part 3 Amendment of Health Ombudsman Act 2013

Act amended

Clause 12 specifies that this part amends the *Health Ombudsman Act 2013.*

Insertion of new s 118A

Clause 13 inserts new section 118A, which enables the Minister to temporarily appoint an individual to the public panel of assessors, for a period of not more than six months. A temporary appointment may be made where the Minister reasonably believes it is necessary to urgently appoint an individual, on the basis of advice from the principal register of the Queensland Civil and Administrative Tribunal that:

- none of the panel members will be available for the hearing of a disciplinary proceeding, or
- a panel member of a particular gender is required by the Act for a disciplinary hearing and either none of the panel members are of that gender, or the panel members of that gender will not be available to hear the matter.

An individual is only qualified for appointment to the panel under new section 118A if the individual is qualified for appointment under section 118(3).

The requirement to advertise and invite nominations will not apply where the Minister temporarily appoints an individual to the public panel. This is because these requirements

only apply where the Minister is recommending an individual to the Governor in Council to be a member of the public panel.

Section 120, which deals with when an individual is disqualified from being a member of the public panel, applies to persons temporarily appointed under section 118A.

Amendment of s 119 (Temporary appointment of panel of assessors)

Clause 14 amends the heading of section 119 to make clear that this section relates to temporary appointments to the professional panel.

Amendment of s 122 (Duration of appointment)

Clause 15 omits the existing note and inserts a new note that refers to the two sections under which panel members may be temporarily appointed.

Amendment of sch 1 (Dictionary)

Clause 16 amends the examples of a corporate support service in the definition of *support service* to correct a typographical error in the examples provided.

Part 4 Amendment of Hospital and Health Boards Act 2011

Act amended

Clause 17 specifies that this part amends the *Hospital and Health Boards Act 2011*.

Insertion of new s 24A

Clause 18 inserts new section 24A, which enables the Minister to temporarily appoint a member of a Hospital and Health Board. The Minister may make a temporary appointment if the Minister reasonably believes it is necessary to urgently appoint a board member because:

- the board does not have at least five members
- the Minister considers the board does not have the skills, knowledge or experience to perform its functions effectively and efficiently, or
- none of the board members are clinicians.

The term *clinician* has the same meaning as the definition provided in section 23(4).

Subsection (2) provides that the Minister may appoint a person as a member of the board for a period of not more than six months, and reappoint the person as a member of the board for a further six months, for a total temporary appointment period of not more than 12 months.

Subsection (3) provides that the limits on reappointment in subsection (2) apply despite section 25(1)(c) of the Acts Interpretation Act. Section 25(1)(c) of the Acts Interpretation Act provides that, unless the contrary intention appears, the power to appoint a person includes the power to reappoint the person if the person is eligible to be appointed to the office.

The Minister is not required to advertise for members of the board before making a temporary appointment. The requirement to advertise in section 24 only applies where the Minister is recommending persons to the Governor in Council for appointment to a board. Individuals temporarily appointed to a board may vacate office in accordance with sections 27 and 27A of the Act and are subject to the conditions for removal from the board in section 28.

Amendment of s 26 (Conditions of appointment)

Clause 19 amends section 26, which provides for the conditions of appointment for board members. A note is inserted to refer to temporary appointments of board members under section 24A.

Clause 19 also amends subsection (2) to note that all members, including those temporarily appointed, are entitled to the fees and allowances fixed by the Governor in Council. Members temporarily appointed under new section 24A hold office under any other conditions of appointment fixed by the Minister, rather than Governor in Council.

Part 5 Amendment of Pest Management Act 2001

Act amended

Clause 20 specifies that this part amends the *Pest Management Act 2001*.

Amendment of s 128 (Delegation by chief executive)

Clause 21 amends section 128, which enables the chief executive to delegate powers under the *Pest Management Act 2001*. New subsection (1) will enable the chief executive to delegate powers to appropriately qualified health service employees as well as to appropriately qualified officers of the department.

Clause 21 also omits the definition of *appropriately qualified* as this term is now defined in the section 36 and schedule 1 of the Acts Interpretation Act.

Part 6 Amendment of Public Health Act 2005

Act amended

Clause 22 specifies that this part amends the *Public Health Act 2005*.

Amendment of s 158 (Definitions for ch 5)

Clause 23 omits the definition of *registered nurse* from section 158. Clause 29 inserts this definition into the schedule 2, dictionary.

Amendment of s 214 (Definition for pt 1)

Clause 24 omits the definition of *midwife* from section 214. Clause 29 inserts this definition into the schedule 2, dictionary.

Amendment of s 251 (Definition for pt 3)

Clause 25 amends the definition of health practitioner for the purposes of part 3 of the *Public Health Act 2005*, inserting a reference to *a midwife*. This amendment will ensure that registered midwives are able to access the Queensland Pap Smear Register without first being designated as a health practitioner by the chief executive of the department. Clause 25 makes other amendments to the definition to reflect that the term *registered nurse* is now defined in the schedule 2, dictionary.

Amendment of s 284 (Decision about application)

Clause 26 renumbers section 284(4) to (8) to correct the numbering of the provisions.

Amendment of s 285 (What notice must state)

Clause 27 amends section 285 to correct a cross reference to section 284.

Amendment of s 291 (Restriction on disclosure of information)

Clause 28 amends section 291 to correct a cross reference to section 284.

Amendment of schedule 2 (Dictionary)

Clause 29 amends the schedule 2, dictionary to insert new definitions of *midwife* and *registered nurse*.

Part 7 Amendment of Transplantation and Anatomy Act 1979

Act amended

Clause 30 specifies that this part amends the *Transplantation and Anatomy Act 1979.*

Amendment of s 42AB (Trading of tissue by, with or for exempt entity)

Clause 31 omits and inserts a new definition of *blood products*. The new definition makes clear that the definition of blood products does not include cord blood.