



Queensland

# Health Legislation Amendment (Postponement) Regulation 2012

## Explanatory Notes for SL 2012 No. 207

made under the

*Health Legislation Amendment Act 2011*

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## General outline

### Short title

*Health Legislation Amendment (Postponement) Regulation 2012.*

### Authorising law

Section 15DA of the *Acts Interpretation Act 1954*

Section 2 of the *Health Legislation Amendment Act 2011*

### Policy objectives and the reasons for them

The *Health Legislation Amendment Act 2011* (Amendment Act) received Royal Assent on 24 November 2011. Some of the provisions of the Amendment Act that relate to amendments to the *Food Act 2006* and the *Tobacco and Other Smoking Products Act 1998* require an exemption from automatically commencing on 25 November 2012 under the *Acts Interpretation Act 1954*.

In relation to the *Food Act 2006*, the relevant provisions provide for the establishment of a framework for local governments to implement a food business rating scheme for licensed food businesses in their area. The

requirements of the scheme are to be prescribed in regulation. It is intended for the framework to be based on a consistent national framework which is currently being developed through the Implementation Sub-Committee of the Australia and New Zealand Food Regulation Ministerial Council. It is anticipated that the framework will be finalised in 2013.

Section 26ZS of the *Tobacco and Other Smoking Products Act 1998* currently bans the sale of food and toys that resemble tobacco products. The Amendment Act amends this provision to capture other novelty objects, such as pens and lighters that resemble cigarettes. The policy intent of this amendment was to capture other items that normalise smoking to young people and may encourage young people to experiment with smoking.

It has recently been identified that the amendment to section 26ZS will apply more broadly than the policy intent. For example, the provision would capture legitimate smoking and smoking related products, such as cigarette tubes.

### **Achievement of policy objectives**

The regulation will postpone the commencement of sections 5, 14, 16 (to the extent it inserts new section 303) and 18 (to the extent it inserts new definitions *conduct*, *disallow*, *disallowance notice*, *food business rating scheme* and *prescribed requirements*) of the Amendment Act. These provisions relate to the food business rating scheme amendments in the *Food Act 2006*. Postponing the automatic commencement of these provisions will enable time for the national food business rating scheme to be finalised by the Implementation Sub-Committee of the Australia and New Zealand Food Regulation Ministerial Council.

The regulation will also postpone the automatic commencement of section 71 of the Amendment Act. This will provide sufficient time to examine options to rectify the issue with the broadening of banned products that resemble tobacco products, to ensure the provision meets the original policy intent.

The regulation will postpone the automatic commencement of the above provisions by 12 months, to 25 November 2013. The regulation will expire on 26 November 2013.

## **Benefits and costs of implementation**

There are no costs arising from the implementation of this regulation.

If automatic commencement of the food business rating scheme provisions is not postponed, the State and local governments would be unable to comply with their statutory requirements. If automatic commencement of section 71 of the Amendment Act is not postponed, there would be significant impact on retailers and manufacturers. This would essentially result in the prohibition of legitimate tobacco products and would not align with the original policy intent which was to capture novelty items that resemble tobacco products and encourage the uptake of smoking by young people.

## **Consistency with fundamental legislative principles**

The regulation is consistent with fundamental legislative principles.

## **Consultation**

No consultation has been undertaken with the community or industry stakeholders in relation to this regulation. However, local governments have been advised of the intention to seek postponement of the commencement of the food business rating scheme provisions.

The Department of the Premier and Cabinet and Queensland Treasury and Trade were consulted and support the regulation.

## **Notes on provisions**

### **Short Title**

Clause 1 provides the short title of the regulation.

### **Postponed commencement of uncommenced provisions**

Clause 2 extends the period before automatic commencement of the following provisions of the *Health Legislation Amendment Act 2011*, to 25 November 2013:

- sections 5 and 14, section 16 (to the extent it inserts new section 303) and section 18 (to the extent it inserts new definitions *conduct*, *disallow*, *disallowance notice*, *food business rating scheme* and *prescribed requirements*), which relate to the food business rating scheme provisions to be inserted into the *Food Act 2006*; and
- section 71, which relates to the provision to broaden the objects that are banned from sale if they resemble tobacco products under the *Tobacco and Other Smoking Products Act 1998*.

## **Expiry**

Clause 3 provides that the regulation will expire on 26 November 2013.

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### ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Queensland Health.

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