



Queensland

Health Legislation Amendment Regulation (No. 2) 2012

Explanatory Notes for SL 2012 No. 208

made under the

Food Act 2006

Health Act 1937

Public Health Act 2005

General outline

Short title

Health Legislation Amendment Regulation (No. 2) 2012.

Authorising law

Section 278 of the *Food Act 2006*

Section 180 of the *Health Act 1937*

Section 461 of the *Public Health Act 2005*

Policy objectives and the reasons for them

The *Health Legislation Amendment Act 2011* (the Amendment Act) was passed in the Legislative Assembly on 17 November 2011 and received assent on 24 November 2011.

The main purpose of the regulation is to make consequential amendments to the *Food Regulation 2006*, the *Health (Drugs and Poisons) Regulation 1996* and the *Public Health Regulation 2005*, arising from amendments

made to the principal Acts under the Amendment Act. The regulation also corrects a number of minor typographical, grammatical, punctuation and formatting errors in the *Health (Drugs and Poisons) Regulation 1996* and the *Public Health Regulation 2005*.

The amendments to the *Food Regulation 2006*:

- replicate the new requirements under the *Food Act 2006* that require the serial number or unique identifying mark of a vending machine to be included on a licence and displayed on the machine; and
- update a reference to a section in the *Food Act 2006* that was renumbered under the Amendment Act.

The amendments to the *Health (Drugs and Poisons) Regulation 1996*

- update the section that provides for the prescribing of fees in Appendix 2 of the *Health (Drugs and Poisons) Regulation* to ensure consistency with the language in the amended head of power in section 132(ze) of the *Health Act 1937*; and
- address a number typographical, formatting and grammatical errors, update references to documents that have been amended or renamed since first being prescribed, and address omitted words to ensure consistency between related provisions of the regulation.

The amendments to the *Public Health Regulation 2005*:

- ensure consistency with the amendments to the *Public Health Act 2005*, by acknowledging the concept of an unvaccinated child being at risk of contracting a condition in section 12E of the regulation; and
- update references to documents that have been amended or renamed since first being prescribed.

Prescribed periods for contagious conditions

In addition, the regulation amends the *Public Health Regulation 2005* to update the prescribed periods for which a child must not attend a school, education and care or child care service if the child has, may have or may be at risk of contracting, a contagious condition.

Part 6 of the Amendment Act amended the *Public Health Act 2005* to improve the operation of powers to control the spread of contagious conditions at schools and child care services. The amendments recognise a broader range of scenarios in which a child or person may be exposed to a contagious condition and will enable earlier activation of powers to

interrupt the transmission cycles of contagious conditions, including vaccine preventable conditions. These powers include removing a contagious child or an unvaccinated child from a school, education and care service or child care service, or closing a school or service, in order to protect children from contracting conditions which can potentially have fatal outcomes.

Consequential amendments to the *Public Health Regulation 2005* are therefore required to ensure the prescribed periods for not sending a child to a school or service correspond with the amendments to the Act, particularly as they relate to an unvaccinated child who is suspected of having contact with a person with the condition. These prescribed periods are based on national guidelines and clinical practice guidelines.

Achievement of policy objectives

To achieve the policy objectives, the regulation:

- amends section 3 of the *Food Regulation 2006* to omit the reference to section 48(2)(l) and replace it with the renumbered section 48(2)(k);
- amends section 17 of the *Health (Drugs and Poisons) Regulation 1996* to ensure consistency with the terminology for 'endorsements' used in amended section 132(ze) of the *Health Act 1937*; and
- makes miscellaneous amendments to correct minor typographical, grammatical, punctuation, formatting or cross-referencing errors in the *Health (Drugs and Poisons) Regulation 1996* and the *Public Health Regulation 2005*.

In addition, the regulation amends the *Public Health Regulation 2005* to update the prescribed periods for contagious conditions in Schedule 2A, Part 1 to reflect the application of this Part to a child who is suspected of having the condition and to a child who is suspected of having the condition as a result of exposure to the condition.

In Schedule 2A, Part 2, the prescribed period for measles is updated to reflect the application of this Part to outbreaks of the condition in relation to an 'unvaccinated child', and the entry for pertussis is omitted.

Other minor amendments to the *Public Health Regulation 2005* will:

- update the definition of 'vaccinated' to ensure the most recent version of the National Immunisation Program Schedule, published by the Commonwealth Department of Health and Ageing, is referenced;

- amend the headings in Schedule 2A, Part 2 to remove the concept of an 'at risk' child to coincide with the removal of this concept from the *Public Health Act 2005*;
- omit definitions for 'at risk child', 'infected person' and 'infectious period' which are redundant as a result of the above consequential amendments; and
- insert or amend definitions for 'confirms', 'symptoms' and 'relevant contact' and 'diagnose'.

Consistency with policy objectives of authorising law

The amendments are consistent with the main purposes of the *Food Act 2006* which are to ensure that food for sale is safe and suitable for human consumption, to prevent misleading conduct in relation to the sale of food and to apply the Food Standards Code.

Amendments relating to the *Health (Drugs and Poisons) Regulation 1996* will enable the prescribing of fees payable for endorsements and will ensure the terminology in the Regulation is consistent with the *Health Act 1937*.

Consequential amendments to the *Public Health Regulation 2005* are consistent with the objects of the *Public Health Act 2005* to prevent, control and reduce risks to public health. The amendments will support the improved operation of powers to control the spread of contagious conditions at schools, education and care services and child care services.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is consistent with the main objectives of other legislation.

Alternative ways of achieving policy objectives

The Amendment Regulation is the only means of meeting the policy objectives.

Benefits and costs of implementation

None of the amendments are expected to impose significant financial or other costs on government or other stakeholders.

Consistency with fundamental legislative principles

The amendments are consistent with fundamental legislative principles.

In considering fundamental legislative principles, it is acknowledged that the amendment to section 12C of the *Public Health Regulation 2005* (see clause 21) amends the way in which the National Immunisation Program Schedule (NIP Schedule) is referenced. Ordinarily the prescribing of a document made by an entity outside the framework of government may adversely affect the institution of Parliament by delegating law-making power to outside bodies. The amendment references the document as in force 'from time to time' rather than providing a specific publication date. This approach is more appropriate, as the document is periodically modified in light of new information, best practice guidelines and new vaccines being registered for use in Australia.

The following points reflect deliberations on similar matters by the former Parliamentary Scrutiny of Legislation Committee:

- the NIP Schedule is technical in nature;
- the NIP Schedule is readily accessible to the public via the Commonwealth Government's "immunise" website or by contacting an infoline or relevant State/Territory bodies);
- future modified versions of the NIP Schedule will also be readily accessible to the public; and
- it would be more cost effective and practical to ensure that the regulation does not need to be updated each time the NIP Schedule is modified.

Consultation

Targeted consultation was undertaken with key stakeholders and State agencies during development of the corresponding provisions of the Amendment Act.

Notes on provisions

Part 1 Preliminary

Short Title

Clause 1 provides the short title of the regulation.

Commencement

Clause 2 provides for the commencement of the regulation.

Part 4 (other than sections 19, 20, 21 and 23), which amends the *Public Health Regulation 2005*, will commence immediately after the commencement of corresponding sections 52 to 63 of the *Health Legislation Amendment Act 2011*. The remaining provisions of the regulation, including sections 19, 20, 21 and 23 of Part 4, will commence on gazettal.

Part 2 Amendment of Food Regulation 2006

Regulation amended

Clause 3 specifies that Part 2 of the regulation amends the *Food Regulation 2006*.

Amendment of s 3 (Sale of prescribed food--Act, s 48)

Clause 4 amends section 3 of the Food Regulation to omit the reference to section 48(2)(1) and replace it with section 48(2)(k). This amendment reflects the renumbering of section 48(2) of the *Food Act 2006* in the Amendment Act.

Replacement of s 17 (Applications--form and fee)

Clause 9 amends section 17 to reflect amendments to the *Health Act 1937* which provide a more accurate head of power for a regulation to be made in relation to endorsements. Licenses, in relation to the regulation of drugs, poisons and therapeutic goods, are now covered under the meaning of endorsements. The amendments ensure consistency with the head of power by allowing the setting of fees for endorsement functions.

Amendment of s 20F (Time for deciding applications for operating approvals)

Clause 10 amends section 20F(4) to insert the word 'decision' into the reference to 'agreed extended period' to ensure consistency with the introduction of this term in section 20F(3)(b).

Amendment of s 59 (Hospitals)

Clause 11 makes a minor formatting change to section 59(5), in accordance with current drafting practices.

Amendment of s 186 (Acitretin, etretinate, isotretinoin and tretinoin)

Clause 12 amends sections 186(3)(a) and (b) to ensure consistency with section 186(1) as it relates to human therapeutic use and human oral therapeutic use. The amendment deletes the reference to tretinoin in section 186(3)(a) and inserts a reference to tretinoin in section 186(3)(b).

Amendment of s 200 (Authorised persons to obtain restricted drugs on purchase order)

Clause 13 amends section 200(3)(b) by inserting the word 'must' to read 'must have' as it relates to purchase orders placed by an optometrist, podiatrist or a surgical podiatrist, in accordance with current drafting practices.

Amendment of s 2K (Purpose of div 2)

Clause 19 amends the note to refer to 'designated pests' as opposed to 'a designated pest'. This is consistent with the defined term in Schedule 2 of the *Public Health Act 2005*.

Amendment of s 2R (Purpose of div 3)

Clause 20 amends the note in Section 2R to refer to 'designated pests' as opposed to 'a designated pest'. This is consistent with the defined term in Schedule 2 of the *Public Health Act 2005*.

Amendment of s 12C (Requirements for vaccination--Act, s 158, definition *vaccinated*)

Clause 21 amends section 12C(2) to remove the reference to the specific publication date (November 2005) of the National Immunisation Program Schedule (NIP Schedule). The document is instead referred to as amended from time to time by the Department of Health and Ageing. This reflects that the document is periodically modified in light of new information, best practice guidelines and new vaccines being registered for use in Australia.

Amendment of s 12E (Prescribed period for a contagious condition--Act, s 160)

Clause 22 amends section 12E as it refers to prescribed periods for a vaccine preventable condition for a child who does not have the condition but who is suspected of having not been vaccinated for the condition. The amendments change the focus from a non-vaccinated child having contact with a child suspected of having a vaccine preventable condition to the non-vaccinated child being at risk of contracting the condition if they continue to attend school, education and care service or child care service. This amendment ensures consistency with the amendment made to section 160 of the *Public Health Act 2005*.

Amendment of s 20 (Human research ethics committee--Act, sch 2, definition *human research ethics committee*)

Clause 23 amends the reference to the prescribed National Health and Medical Research Council (NHMRC) document to reflect the current title and year of publication.

Amendment of sch 2A (Contagious conditions)

Clause 24(1) amends Schedule 2A, parts 1 and 2 as they relate to prescribed periods for contagious conditions and vaccine preventable conditions. The amendments reflect the concept of an unvaccinated child being at risk of contracting a condition and update the prescribed periods for which a child must not attend a school, education and care or child care service if the child has, may have or may be at risk of contracting, a contagious condition.

In general, the periods prescribed relate to the period of time during which a child may be infectious or at risk of infection in the case of a child who has not been vaccinated for a vaccine preventable condition. The prescribed periods are based on the minimum periods of exclusion recommended by the Department of Health and Ageing (Commonwealth) and the NHMRC and are determined in practice by the treating doctor or other suitably qualified persons.

Under the *Public Health Act 2005* (s455) the chief executive may delegate their powers to an appropriately qualified person who is a public service officer or employee, or a health service employee. Appropriately qualified includes having the qualifications, experience or standing appropriate to the exercise of the power. In practice, the powers relating to provisions regarding contagious conditions are often delegated down to the Chief Health Officer, senior qualified staff in Queensland Health (Communicable Diseases area) and Public Health Medical Officers. These delegations are published in the Queensland Health Delegations Manual. Amendments to the Delegations Manual are made from time to time to reflect legislative amendments and changes to administrative arrangements and are approved by the chief executive.

The delegated officers work closely with education providers and with children and families. Delegated officers take into account a wide variety of clinical and national guidelines to determine the best course action for a child.

As noted in the Regulatory Impact Statement, Chapter 5 of the Public Health Act 2005 and the corresponding provisions in the Public Health Regulation were developed in light of the following publications that are currently used by the education, child care and health sectors to manage outbreaks of contagious conditions among children:

- Recommended minimum periods of exclusion from school, pre-school and child care centres for cases of and contact with infectious diseases published by the National Health and Medical Research Council (NHMRC);
- Queensland Health Time Out Posters;
- Staying Healthy in Child Care, Preventing infectious diseases in child care, Commonwealth of Australia;
- Control of Communicable Diseases Protocol Manual, Queensland Health;
- Department of Education Manual, Health and Safety, HS-18: Infection Control;
- The Australian Immunisation Handbook published by the National Health and Medical Research Council; and
- National Immunisation Program Schedule published by the Department of Health and Ageing (Cwlth).

The underlying principle of the powers to exclude a child from a school or service, or to close a school or service, is to minimise the amount of time the child is removed. As symptoms and conditions present differently in children, and the exposure/symptoms may also differ, it is necessary to have flexibility to ensure a child can resume school, education or child care as soon as possible.

Schedule 2A, Part 1

Clause 24 amends Part 1 to update prescribed periods to include a period for a child who is diagnosed with the condition and a period for a child who has had exposure to the condition. The amendments relate only to those conditions where removal of a child from a school, education and care or child care service, is required to prevent transfer to another person in accordance with national guidelines.

In practice, the powers to exclude a child are not used unless absolutely necessary. In the case of human influenza, an amendment clarifies that the

prescribed period refers only to human influenza with pandemic potential rather than the occasional seasonal cases.

Amendments are made to the prescribed periods to provide for the chief executive to determine the end of the period. This reflects current practice and the delegated authority as outlined under section 455 of the *Public Health Act 2005*. For poliomyelitis however, an 'appropriately qualified' person, as opposed to the treating doctor, is considered the appropriate authority to determine the end of the prescribed period.

Under the International Health Regulations 2005, cases of poliomyelitis are notifiable to the World Health Organization (WHO). The purpose and scope of the International Health Regulations are to 'prevent, protect against, control and provide a public health response to the international spread of disease in ways that are commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade'.

Australia has not had a notifiable case of poliomyelitis for more than 20 years and currently has a poliomyelitis free status. Given the significance of poliomyelitis as a reportable condition and in the interest of maintaining Australia's current status, Queensland Health would be closely involved in the management of any future case of poliomyelitis. For this reason, the amendments specifically provide that the chief executive is able to end the prescribed period. In practice, this may be undertaken by a delegated officer and would occur in close collaboration with the child's treating doctor.

For some contagious conditions, the absence of symptoms is not a viable indication that the person does not have the infection or that they are no longer infectious. For example, persons with hepatitis A, paratyphoid, typhoid or poliomyelitis may not exhibit symptoms but may still have the infection. Amendments are made to include 'diagnosis' as one way of determining the start of the prescribed period for these conditions.

Schedule 2A, Part 2

Clause 24 amends Part 2 to omit the reference to 'at risk' child and insert the concept of 'unvaccinated' child. The amendments provide for the exclusion of unvaccinated children from a school, education and care service, or child care service, if they are at risk of contracting measles due to an outbreak in the school, education and care service, child care service or community.

The amendment omits pertussis (whooping cough) as the prescribing of the period refers to household contacts, and Part 2 is now relevant to outbreaks in the community or education and care sectors.

Schedule 2A, Part 3

Clause 24(2) amends Schedule 2A, Part 3 by omitting the definitions for 'at risk child', 'infected person' and 'infectious period' as they are now obsolete.

Clause 24(3) inserts definitions for the terms 'confirms' and 'symptoms'. The term 'relevant contact' is omitted in subclause (1) and inserted in subclause (2) with amendments. The term 'diagnose' is replaced by the term 'diagnosed'.

Amendment of sch 4 (Dictionary)

Clause 25 makes consequential amendments to the Dictionary to refer to the definitions in Schedule 2A, Part 3, which reflect current drafting practices.

ENDNOTES

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

© State of Queensland 2012