

Health Legislation Amendment Regulation (No. 2) 2015

Explanatory notes for SL 2015 No. 96

made under the

Public Health Act 2005

Transplantation and Anatomy Act 1979

General Outline

Short title

Health Legislation Amendment Regulation (No. 2) 2015

Authorising law

Section 461 of the *Public Health Act 2005*

Section 52 of the *Transplantation and Anatomy Act 1979*

Policy objectives and the reasons for them

The *Health and Other Legislation Amendment Act 2014* (the Amendment Act) was passed by the Legislative Assembly on 26 November 2014 and received Royal Assent on 5 December 2014. The Amendment Act amended eight Health portfolio Acts, and also amended the *Building and Construction Industry Payments Amendment Act 2014* to address transitional issues raised by the Queensland Law Society since passage of that Act. The Amendment Act included amendments that:

- transferred civil liability for asbestos related matters from local governments to the State, under the *Public Health Act 2005*, and
- supported accessibility of blood products and therapeutic tissue to patients and service providers, and remove restrictions on advertising for gamete donors for personal use, under the *Transplantation and Anatomy Act 1979*.

The objectives of the *Health Legislation Amendment Regulation (No. 2) 2015* (the Regulation) are to ensure that:

- local governments meet the training obligations under the asbestos liability conditions in the *Public Health Act 2005*, and

- the Australian Bone Marrow Donor Registry (ABMDR) can lawfully trade in bone marrow under the *Transplantation and Anatomy Act 1979*, without requiring a Ministerial permit.

Prescribing asbestos-related training for authorised officers

Under the *Public Health Act 2005*, local governments have responsibility for the administration and enforcement of a range of initiatives that minimise the public health risks associated with asbestos. These asbestos-related matters may include:

- the dispersal or release of a by-product of manufacturing, construction, repair, alteration, cleaning or demolition work in a non-workplace setting, or
- an accumulation or deposit of a substance or thing associated with asbestos.

The *Public Health Act 2005* authorises certain persons appointed by the State or a local government ('authorised persons') to take enforcement actions to manage public health risks, including giving public health orders and checking compliance with those orders. Only those persons who are appropriately qualified and have the necessary knowledge, skills and expertise can be appointed as authorised persons.

Section 454G of the *Public Health Act 2005* requires local governments to ensure that an authorised person who exercises their powers under that Act in relation to an asbestos-related event has satisfactorily completed the training prescribed by regulation.

The Chief Health Officer has approved the required training for authorised persons. The training includes the following modules:

- the regulatory environment for control of asbestos risks in Queensland
- asbestos products and likely uses in domestic settings
- health risks of exposure to asbestos, and
- the application of regulatory measures under the *Public Health Act 2005* to control asbestos risk.

When approving the required training, the Chief Health Officer has had regard to relevant matters, including:

- the content and quality of the curriculum, including its relevance to the powers and functions of an authorised person, and
- the qualifications, knowledge and experience of the person who is to provide the training.

Prescribing the ABMDR as an 'exempt entity'

The *Transplantation and Anatomy Act 1979* prohibits buying (including advertising to buy) and selling human tissue (including holding out to sell). However, the Minister has the authority to permit a person to buy tissue if satisfied it is warranted by special circumstances.

Section 42AB of the *Transplantation and Anatomy Act 1979* provides that third party suppliers contracted by the Commonwealth or State to supply human tissue products can buy, advertise and sell those products in Queensland if two conditions are met.

The first condition is that the trade in tissue is carried out by either an ‘exempt entity’ or the Commonwealth acting for the benefit of an exempt entity. The second condition is that the tissue is the subject of an agreement between the exempt entity and the Commonwealth or the State. There are two types of exempt entities:

- For blood products, an exempt entity is an entity mentioned as a supplier in the national products price list, agreed annually by the Council of Australian Governments’ Health Council under the National Blood Agreement, and published by the National Blood Authority.
- For ‘other tissue’, an exempt entity is an entity that is a party to an agreement with the Commonwealth or the State for the buying or selling of tissue, and that has been prescribed in regulation.

The ABMDR is responsible for recruiting volunteer donors of bone marrow and blood stem cell, and for the administrative management of the National Cord Blood Collection Network of public cord blood banks in Australia. The ABMDR is funded by the Commonwealth, State and Territory governments through a variety of contracts.

The functions of the ABMDR require it to trade in bone marrow. The ABMDR meets the requirements of new section 42AB, in that it is an entity that is a party to an agreement with the Commonwealth or the State for the buying or selling of tissue. However, to enable it to lawfully trade in bone marrow, the ABMDR must also be prescribed in regulation.

Achievement of policy objectives

The Regulation:

- amends the *Public Health Regulation 2005* to prescribe the required training for authorised officers exercising their power in relation to an asbestos-related event under the *Public Health Act 2005*, and
- amends the *Transplantation and Anatomy Regulation 2004* to prescribe the ABMDR as an ‘exempt entity’ to ensure the ABMDR can fulfil its agreement with the Commonwealth Department of Health, in relation to trading in bone marrow.

Consistency with policy objectives of authorising law

The Regulation is consistent with the main objectives of the *Public Health Act 2005* and the *Transplantation and Anatomy Act 1979*.

Inconsistency with policy objectives of other legislation

No inconsistencies with the policy objectives of other legislation have been identified.

Alternative ways of achieving policy objectives

The Regulation is the only effective means of achieving the policy objectives.

Benefits and costs of implementation

The Regulation is not expected to impose financial or other costs on stakeholders. The implementation costs for Government are minimal and will be met from within existing budget allocations.

Consistency with fundamental legislative principles

The proclamation is consistent with fundamental legislative principles in section 4 of the *Legislative Standards Act 1992*.

Consultation

Queensland Health has worked closely with the Local Government Association of Queensland (LGAQ) to prepare for commencement of the requirements relating to the asbestos liability provisions in the *Public Health Act 2005*. The LGAQ has taken responsibility for consultation and communication with all local governments about the implementation of the asbestos liability provisions and is supportive of the training course being prescribed.

The ABMDR was consulted during drafting of the Amendment Act regarding new section 42AB of the *Transplantation and Anatomy Act 1979*. The ABMDR supported the amendment as it enables an entity such as itself to be prescribed as an 'exempt entity', in order to buy and sell bone marrow without the need for a permit from the Minister for Health.

The Office of Best Practice Regulation was consulted on the Regulation, in satisfaction of the requirements of the Regulatory Impact Statement (RIS) System. The Office of Best Practice Regulation advised that a RIS is not required.

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 on 1 September 2015. The commencement date coincides with a proclamation to commence authorising provisions of the principal Acts on that date.

Part 2 Amendment of Public Health Regulation 2005

Regulation amended

Clause 3 specifies that this part amends the *Public Health Regulation 2005*.

Insertion of new s 20A

Clause 4 inserts new section 20A to prescribe the required training for the indemnity conditions in section 454G of the *Public Health Act 2005*.

Part 3 Amendment of Transplantation and Anatomy Regulation 2004

Regulation amended

Clause 5 specifies that this part amends the *Transplantation and Anatomy Regulation 2004*.

Insertion of new s 12A

Clause 6 inserts new section 12A to prescribe the Australian Bone Marrow Donor Registry (ABMDR) as an 'exempt entity' for the purposes of section 42AB of the *Transplantation and Anatomy Act 1979*. The prescribing of the ABMDR will allow it to lawfully trade in tissue other than blood products, under the *Transplantation and Anatomy Act 1979*, without the need for a Ministerial permit.