Health Legislation Amendment Bill 2011

Explanatory Notes

Short title

The short title of the Bill is the Health Legislation Amendment Bill 2011.

Policy objectives and the reasons for them

The Health Legislation Amendment Bill 2011 (the Bill) makes amendments to Health portfolio legislation to support policy initiatives to protect the health of Queenslanders and to improve the effective operation of the relevant Acts. In particular, the Bill amends the:

- *Food Act 2006* to provide for the establishment of a consistent framework for local governments to implement a food business rating scheme for licensed food businesses in their area; to improve the powers of the Chief Executive to respond to suspected intentional food contamination; to alleviate the regulatory burden on operators of food vending machines; to improve the process for considering applications for persons applying for approval as an auditor; to improve the mechanism by which an auditor is required to advise of a conflict of interest; and to update modifications to the application of the Food Standards Code in Queensland and redundant references in the legislation;
- *Health Act 1937* to create a fee-making head of power;
- *Health Quality and Complaints Commission Act 2006* to clarify the ability of the Health Quality and Complaints Commission to interact with both state and national boards to effectively deal with complaints concerning registered health practitioners;
- *Pest Management Act 2001* to prescribe a competency document that must be submitted to support an application for a pest management licence;
- *Public Health Act 2005* to improve the operation of powers to control the spread of contagious conditions at schools and child care services,

and to allow the Chief Executive to delegate the power to release information from the Notifiable Conditions Register;

- *Public Health (Infection Control for Personal Appearance Services) Act 2003* to update a superseded document reference; and
- *Tobacco and Other Smoking Products Act 1998* (Tobacco Act) to ban the sale of fruit-flavoured and confectionary-flavoured cigarettes; to clarify the intent of designated outdoor smoking areas at licensed premises; to remove a redundant obligation on some businesses to display 'no smoking signs'; to ban the sale of objects, such as novelty items, that resemble smoking products; and to provide for smoking products seized from minors to be forfeited to the State.

Food Act 2006

The Bill addresses a number of key policy issues related to the Food Act.

- **Food business rating system**

The main purposes of the Food Act are to: ensure 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. Some of the ways in which the purposes are achieved are by providing for the licensing of particular food businesses and by providing for the monitoring and enforcement of compliance with the Act and the Food Standards Code.

Using the functions of the Food Act as a basis, some local governments have implemented, or have shown an interest in implementing, a food business rating scheme within their local government area as a means of improving food safety standards, reducing incidences of food borne illness and assisting consumers to make informed food and dining choices. A food business rating scheme operates by assessing a food business against specific criteria to provide a rating of the food safety and hygiene standards of the business. As confidentiality provisions of the Food Act prevent publication of the results of food safety audits without the consent of the food business concerned, participation in these local government schemes is voluntary for food businesses.

If local governments implement their own framework for a food business rating scheme, there could potentially be up to 74 different schemes operating across Queensland. This could create inconsistency with ratings or criteria being used by local governments, which may confuse consumers or businesses operating over several local government areas. It may also undermine consumer confidence in any food business rating scheme.

Mandating a consistent framework for local governments would ensure the effectiveness of food business rating schemes operating across Queensland.

The merits of a consistent framework for a food business rating scheme have been recognised at a national level, with work currently underway through the Implementation Sub-Committee of the Australia and New Zealand Food Regulation Ministerial Council to develop a national framework for a scheme. Queensland is actively participating in discussions to develop the national framework. In accordance with the national approach to food regulation within Australia, which saw the re-signing in 2008 of the Council of Australian Governments' Food Regulation Agreement (in which all States and Territories agreed to adopt Annex A of the national Model Food Act), jurisdictions may then prescribe the national framework in their respective food legislation.

- **Reducing the recurrence of suspected food contamination**

The Food Act establishes a range of investigatory and enforcement powers in relation to the suspected intentional contamination of food. In particular:

- the responsible person for a food business must orally report suspected intentional contamination of food to the Chief Executive, Queensland Health immediately on first forming the suspicion; and
- the Chief Executive, on receipt of such a report, may give the responsible person a reasonable direction about identifying the source of the contamination and preventing or minimising the risk to public health or safety caused by the potentially contaminated food.

However, these powers do not provide the Chief Executive with the necessary means to direct a food business to undertake appropriate procedures to prevent a recurrence of the contamination. Specifically, the Food Act does not empower the Chief Executive to give a food business in relation to which a report has been made, a direction to comply with the provisions of the national Food Standards Code in relation to food intended for sale. This action is prevented because local government has the responsibility for enforcing the relevant section of the Act that requires compliance with the Food Standards Code.

- **Food businesses carried on from vending machines**

To carry on a licensable food business in Queensland, the Food Act requires a person to apply for a licence. For a business that does not involve off-site catering, where the business is to be carried on from fixed

or temporary premises, the application must be made to the local government for the area in which the premises is located. Where the business is to be carried on from mobile premises, the application may be made to any local government for an area in which the business intends to operate. The selling of unpackaged foods, such as hot chips, from vending machines is considered a licensable activity for the purposes of the Food Act. As a vending machine does not meet the definition of mobile premises, it must currently be licensed as fixed premises. In practice, vending machines are frequently moved between locations based on demand. Operators are therefore required to apply to the relevant local government for a new licence each time they are moved into that local government area. This creates an unnecessary burden on industry that can be alleviated by capturing vending machines as mobile premises for the purposes of the Food Act.

- **Failure to decide a food safety program auditor application**

An individual may apply to the Chief Executive for approval as an auditor of accredited food safety programs ('an approved auditor'). The Chief Executive has 30 days in which to decide an application for approval as an auditor, and failure to meet this timeframe is taken to be a decision to refuse the application. However, the Chief Executive may only grant approval if satisfied the applicant is a suitable person to be an auditor, which in practice requires a criminal history check to be undertaken in relation to each applicant. Situations have occurred where information, such as a criminal history check, has not been received in sufficient time to allow the application to be decided within 30 days, resulting in automatic refusal of otherwise eligible applicants. In these cases, the ability to extend the initial 30-day time period by a further 30 days would benefit applicants.

- **Conflicts of Interest**

The Food Act provides that an auditor's approval is subject to the auditor giving the Chief Executive notice of a direct or indirect financial or other interest the auditor may have in a food business that could conflict with the proper performance of their functions, or any other reasonable conditions the Chief Executive considers appropriate for the proper conduct of an audit. The approved auditor must give written notice to the Chief Executive immediately after the auditor becomes aware of the interest. In practice, the requirement to provide written notice is unreasonably inflexible, taking into account legitimate reasons why immediate written notice may be impractical, such as the auditor being in a remote location, the time of day the conflict becomes known and other various factors.

Therefore, a more flexible method for an auditor to give notice of a conflict of interest is required.

- **Modifications to the application of the Food Standards Code**

Queensland is a signatory to the Food Regulation Agreement in which all States and Territories agreed to adopt Annex A of the national Model Food Act. Annex A includes the requirement that food businesses comply with the Australia New Zealand Food Standards Code (the Code), which comprises national food safety standards. The Queensland Food Act was passed before the Model Food Act was finalised and consequently varies to some degree from the Model Food Act. In particular, the Food Act adopts the Code with some modifications, including that Standard 3.2.1 (*Food Safety Programs*) does not apply in Queensland. Instead, the Food Act includes extensive provisions about food safety programs

A new food safety standard (*Standard 3.3.1 – Food Safety Programs for Food Service to Vulnerable Persons*) commenced in October 2008, requiring food businesses that process or serve potentially hazardous food to six or more vulnerable persons to comply with Standard 3.2.1. As Standard 3.2.1 does not apply in Queensland, Standard 3.3.1 also has no effect. However, Standard 3.3.1 must be prescribed in the Food Act as a modification. Otherwise, the obligation on food businesses to comply with the Code can not be met. In order to address this anomaly, a regulation was made under section 278 of the Food Act as a temporary measure (until an amendment could be made to the Food Act) to exempt the new Standard 3.3.1 from applying to the Food Act. This regulation expired one year after it was made and cannot be remade.

- **Reference to a redundant buyer licence scheme**

The Food Act provides exemptions from licensing requirements for certain food businesses. Currently, the processing or sale of fisheries resources under a buyer licence issued under the *Fisheries Regulation 1995* (now the *Fisheries Regulation 2008*) is included in these exemptions. The buyer licence under the Fisheries Regulation was repealed on 1 January 2010 to facilitate introduction of the Seafood Food Safety Scheme. All primary production food businesses intended to be exempt from licensing under the Food Act are captured by an existing exemption (i.e. for businesses involved in the production of primary produce under an accreditation granted under Part 5 of the *Food Production (Safety) Act 2000*). The exemption for the processing or sale of fisheries resources under a buyer licence therefore became redundant on 1 January 2010.

Health Act 1937

In Queensland, fees and charges for government services should be set at a level that enables departments and statutory bodies to recover costs involved in supplying goods and services. This principle is supported by:

- the Queensland Treasury Principles for fees and charges;
- the *Financial and Performance Management Standard 2009*; and
- the Auditor-General's Report to Parliament No.4 of 2007.

When the Health Act was first drafted in 1937 there was not the same level of complexity surrounding drugs and poisons that currently exists. In addition, the Health Act has been the subject of an extensive review commencing in 1994, which has seen much of the Act repealed to create independent legislation for managing public health risks and licensing regimes for the pest management industry and private health facilities. As a result, the Health Act does not provide a specific head of power for the prescribing of fees to be paid for endorsement services in relation to the regulation of drugs, poisons and therapeutic substances. Consistent with government policy and current legislation, amendments are required to provide a head of power to enable the setting of fees for endorsement services.

Health Quality and Complaints Commission Act 2006

The Health Quality and Complaints Commission Act (HQCC Act) establishes the Health Quality and Complaints Commission (the Commission) to provide oversight and review of the quality of health services, and independent review and management of health complaints.

The HQCC Act works in concert with the *Health Practitioner Regulation National Law* (the National Law), which is contained as a Schedule to the *Health Practitioner Regulation National Law Act 2009* (Qld) and is the principal legislation for the National Registration and Accreditation Scheme for the Health Professions (the National Scheme) which commenced on 1 July 2010. The two Acts set out the circumstances and requirements to enable interactions to take place in relation to complaints about health services or health practitioners.

Section 150 of the National Law describes how the Commission and a National Board must work together should a notification or complaint be made about a nationally registered provider. Since the introduction of the National Law, the Australian Health Practitioner Regulation Agency (the National Agency) and the health complaints entities in each jurisdiction

(other than New South Wales) have entered into a memorandum of understanding (MOU) to support the implementation of section 150 of the National Law. The MOU sets out:

- the roles and responsibilities of the National Agency, the National Boards and the health complaint entities; and
- the agreed procedures and timeframes as to how each of these bodies will ensure compliance with section 150 in relation to the sharing of information, making preliminary enquiries about a matter, developing recommendations about how a matter should be dealt with having regard to the mechanisms provided under the National Law as compared to a jurisdictions' health complaints legislation and reaching consensus on which body and how this body should deal with a matter.

Chapter 5 of the HQCC Act sets out a range of provisions in relation to the making and handling of a health complaint. The various parts under this chapter define what a health complaint is for the purposes of the Act (i.e. a health quality complaint or a health service complaint), who may make a health complaint, how to make a health complaint, and the actions that may be taken by the Commission in relation to a health complaint. This chapter needs to work in concert with the requirements of section 150 of the National Law.

The Commission has identified some gaps in the HQCC Act as a result of its experience in handling matters concerning nationally registered providers. These gaps are restricting the ability for the Commission to continue to effectively deal with complaints relevant to nationally registered health practitioners. It is therefore necessary to clarify the ability of the Commission to interact with both state and national boards to effectively deal with complaints concerning registered health practitioners.

Pest Management Act 2001

One of the requirements to be licensed in Queensland as a pest management technician is to hold a relevant pest management qualification for the pest management activity intended to be carried out under the licence. A licence issued under the Act for a fumigation activity will be limited to the site environment in which the person applying for the licence has demonstrated competence. A fumigation activity includes measuring, mixing or weighing when preparing a fumigant for use, and also includes the use of a fumigant to kill a pest, or sterilise grain or seed to prevent

germination. Competence in a fumigation activity must be demonstrated in one or more site environments, such as a ship's hold or a silo.

The Pest Management Act currently requires a licence to state the site environments under which a fumigation activity may be carried out. Despite this requirement, the Act does not stipulate that a declaration of assessment in relation to that competence must be provided in support of an application for a pest management licence. Instead, this competency document is sought administratively. To overcome this discrepancy, it is necessary to prescribe a document – a declaration of assessment – that is required to accompany an application for a pest management technician licence, if the application is for a licence under which a fumigation activity may be carried out only in a certain site environment.

Public Health Act 2005

The Bill addresses a number of key policy issues related to the Public Health Act.

- **Managing outbreaks of childhood contagious conditions**

In recent years, outbreaks of measles, Avian Influenza and Human Swine Influenza in Queensland have provided a platform for a review of the practical application of current powers under the Public Health Act for managing the spread of childhood contagious conditions, which provide that:

- at least one child at a school or child care service must be confirmed as having, or must exhibit symptoms of a contagious condition before powers to remove the child from the school or service are activated; and
- there must be an outbreak of a contagious condition at a school or child care service before powers to take preventative action, such as school/service closures or issuing directions about precautions to minimise exposure, are activated.

A review of these provisions, in light of the above outbreaks of contagious conditions, has highlighted that these powers do not reflect that exposure by an unvaccinated child to a contagious condition may occur outside the school or service, such as through social functions, through interschool sports carnivals or via a sibling coming into contact with the condition at a different school. Having to restrict activation of these powers until a contagious child attends the school or service, or for an outbreak to occur at the school or service, places unvaccinated or partly vaccinated children at

the school or service at risk of contracting the condition and does not help to prevent an outbreak in the first place.

Recognising the broader range of scenarios in which a child or person may be exposed to a contagious condition will enable earlier activation of powers to remove a contagious child from a school or child care service, or to close a school or service, as a more appropriate means of interrupting the transmission cycles of contagious conditions, including vaccine preventable conditions, and protecting children from contracting conditions which can potentially have fatal outcomes.

- **Releasing information from the Notifiable Conditions Register**

The objects of the Public Health Act include preventing, controlling and reducing risks to public health, and providing for the identification of, and response to, notifiable conditions. Notifiable conditions, prescribed under the Act, represent serious, communicable diseases, such as Acquired Immunodeficiency Syndrome (AIDS), Avian influenza, Dengue, Diphtheria, Hendra virus infection, Hepatitis (A, B, C, D and E), Human Immunodeficiency Virus (HIV) infection, Measles, Meningococcal, Severe Acute Respiratory Syndrome (SARS) and Tuberculosis.

The Notifiable Conditions Register is established under the Public Health Act to help protect the community from death and illness from the spread of communicable diseases (notifiable conditions), while maintaining an appropriate balance between the health of the public and individuals' rights and privacy. Information about people who have, or may have, a notifiable condition must be reported to Queensland Health for inclusion on the register. This process enables Queensland Health to, amongst other things, undertake contact tracing, infection control and provision of relevant information, to identify outbreaks and assist in their management, to undertake surveillance and develop public health policy and strategies to better manage outbreaks and transmission.

Information reported to the register is highly protected from disclosure, except in specific circumstances, including for persons performing duties under the Act (such as for contact tracing). Queensland Health can use information reported to the register to help trace and assist persons who may have been exposed to a notifiable condition to prevent the spread of the condition in the community.

Section 81 of the Public Health Act permits the disclosure of confidential information where the Chief Executive (Queensland Health) believes, on reasonable grounds, that the disclosure is in the public interest. A 'public

interest disclosure' must be authorised in writing by the Chief Executive and reported (without identifying information) in the department's annual report. In practice, there have been instances where it has been proposed that confidential information be disclosed in the public interest, but due to the unavailability of the Chief Executive, written approval could not be obtained in a timely manner. This has serious public health implications in circumstances where the urgent release of the information to parties who may have been exposed to a condition is reasonably required to prevent the spread of the condition. In order to avoid this situation recurring in circumstances where action needs to be taken urgently to prevent the spread or minimise the exposure of individuals to a notifiable condition, it is proposed to enable the Chief Executive to delegate their authority under section 81, but to limit the delegation to the Chief Health Officer or an appropriately qualified senior officer of the department with the necessary expertise and experience in public health to exercise the powers.

Public Health (Infection Control for Personal Appearance Services) Act 2003

The Public Health (Infection Control for Personal Appearance Services) Act (Public Health (ICPAS) Act) sets out the criteria that local governments may consider when deciding whether premises are suitable for providing higher risk personal appearance services (such as body piercing, scarring and tattooing), including whether the premise would comply with the Queensland Development Code (QDC). The QDC consolidates Queensland's building standards into a single document and covers matters outside the scope of, or in addition to, the Building Code of Australia. The Public Health (ICPAS) Act currently references Part 15 of the QDC in relation to mandatory building standards to minimise the risk of infection in a place or business where higher risk personal appearance services are provided. The QDC has adopted a revised numbering system and Part 15 is now referred to as MP 5.2. Therefore, the reference to Part 15 of the QDC in the Public Health (ICPAS) Act requires updating.

Tobacco and Other Smoking Products Act 1998

The Bill addresses a number of key policy issues related to the Tobacco Act.

- **Prohibited products**

The Tobacco Act currently prohibits certain conduct that makes tobacco more easily obtainable or more desirable to children. This includes prohibiting the sale of food or toys that resemble tobacco products or the

sale of single cigarettes. Prohibiting the sale of food or toys that resemble tobacco products is based on studies that show that children who have used these novelty products are more likely to experiment with tobacco than children who have not. Recently, a number of gadgets and trinkets, such as cigarette shaped pens and lighters, have emerged and are available for sale in Queensland. Despite having a similar novelty value to toys, these products do not fall within the general meaning of toys, because their use is often for more practical purposes than to play with. However, like toys and food, these items normalise smoking to young people and encourage experimentation with smoking.

In addition, a number of tobacco products which appear to be specifically targeted at young people have emerged on the market in recent years. These include fruit-flavoured or confectionary-flavoured cigarettes sold in attractive packaging with pleasant aromas and appealing descriptions of their tobacco flavours, such as Cherry Cheesecake and Vanilla Filter. In response to concerns about the impact of these products on influencing young people to take up smoking, the Australian Health Ministers' Conference agreed for all jurisdictions to ban the sale of fruit-flavoured and confectionary-flavoured cigarettes; a decision later ratified by the Ministerial Council on Drug Strategy. Queensland supported these decisions, as the availability of these products is contrary to the intent of the Tobacco Act to prohibit conduct which makes tobacco desirable to children.

- **Smoking at licensed premises**

The Tobacco Act prohibits smoking in an outdoor place where eating or drinking is allowed, such as an alfresco dining area of a restaurant or café. However, licensees of licensed premises (such as clubs and hotels) may designate a smoking area within an outdoor area of the premises, known as a 'designated outdoor smoking area' (DOSA), where drinking and smoking is permitted (though drinks may only be brought into, and not served, in the area). A DOSA must meet minimum statutory requirements, which include having a buffer impervious to smoke adjacent to other parts of the outdoor area of the premises ordinarily accessed by patrons. Offences apply to licensees and occupiers (i.e. the manager or person in control of the place) who do not ensure the DOSA complies with statutory requirements.

The policy intent behind these DOSA requirements when they were introduced in 2004 is to balance the need to protect public health by reducing the exposure of hospitality workers and patrons to the harmful

effects of environmental tobacco smoke (ETS), with the ability for licensees to provide an onsite area to be used infrequently and for short periods of time by smoking patrons, without exposing other patrons and staff to ETS. Licensees choosing to establish a DOSA are required to develop a smoking management plan to manage and minimise the adverse effects of smoking in the licensed premises.

Enforcement of the DOSA provisions has highlighted contrary interpretations of some of the provisions by licensees. To remove ambiguity in the legislation and improve compliance by licensees, it is necessary to clarify the original policy intent of the statutory requirements in relation to measuring a buffer between smoking and non-smoking areas of different floor height, and providing appropriate examples of a screen that is impervious to smoke.

- **Forfeiture of smoking products seized from children**

The Tobacco Act empowers an authorised person to seize a thing if the person reasonably believes the thing is evidence of an offence against the Act. If a person is convicted in relation to the alleged offence, a court may order the forfeiture of the thing to the State. However, where the person is not convicted, the thing is required to be returned to the person, either at the end of six months or at the end of any proceeding in relation to the offence. The practical effect of these provisions means that, for example, if cigarettes are seized from a child (whether purchased by the child or supplied to the child by an adult) and a prosecution is not pursued or is unsuccessful in relation to offences of supplying cigarettes to children, the cigarettes must be returned to the child. This is an undesirable policy outcome and contrary to the intent of the Tobacco Act.

- **Display of a 'no smoking sign'**

The Tobacco Act requires a licensee of licensed premises to display a 'no smoking sign' at the entrance to the premises. This provision was particularly important when the smoke-free laws were first introduced and reinforced the Government's intended anti-smoking message. However, it has been found in practice to be broader than required, given the large number and diverse range of premises captured by this provision, such as licensed boats, long distance trains and bottle shops located within shopping centres. The chief intent of this provision is to capture high risk premises such as clubs, hotels and casinos. This is because these venues have the option of designating an outdoor smoking area where both drinking and smoking may occur, so it is important in these premises to

reinforce that smoking indoors is strictly prohibited. It is unnecessary to require signage to be displayed at every entrance to all licensed premises, such as those located entirely within facilities which are already smoke-free (such as shopping centres) and those which are not available to public use.

Achievement of policy objectives

Food Act 2006

The Bill provides for the establishment of a statewide food business rating scheme that local governments may decide to implement for licensed food businesses in their local government area. To achieve statewide consistency, the Bill creates an offence that prohibits a local government from implementing a scheme that does not comply with the model prescribed in Regulation. A penalty of 1,000 penalty units applies to the offence. The Bill does not provide for the immediate introduction of a model scheme, as this is reliant upon the approval by the Australia and New Zealand Food Regulation Ministerial Council of the national framework for a food business rating scheme that is currently being developed. However, the Bill establishes a head of power to provide for the establishment of a consistent statewide model for local governments to implement.

The Bill makes further amendments to the Food Act to:

- improve the powers of the Chief Executive for responding to suspected intentional food contamination by requiring a business to undertake steps to comply with the Food Standards Code, to prevent recurrence of the contamination;
- alleviate the current burden on licensees operating food vending machines selling unpackaged food, such as hot chips, by capturing food vending machines as 'mobile premises' rather than 'fixed premises' (to remove the requirement for those licensees to seek a new food business licence each time a vending machine is moved to a new location within a different local government area);
- avoid automatic refusal of an application for approval as an auditor in cases where additional information, such as a criminal history report, is not received within the initial 30-day time period to decide an application, by enabling the 30-day time period to be extended by a further 30 days;

- improve the current mechanism (immediate written notice) by which an approved auditor must advise the Chief Executive of a conflict of interest in relation to a food business, by requiring oral notification to be provided immediately, followed by written notification within 24 hours of becoming aware of the conflict; and
- update the legislation by removing a reference to a discontinued scheme for a fisheries buyer licence, and updating the modifications to the Food Standards Code in Schedule 2 of the Act to accurately reflect the way in which the Code is applied in Queensland.

Health Act 1937

The Bill amends the Health Act to create a fee-making head of power for endorsements provided under the Health Act. This will enable Queensland Health to appropriately recover costs involved in supplying services in relation to endorsements, in accordance with government policy.

Health Quality and Complaints Commission Act 2006

Amendments to the Health Quality and Complaints Commission Act will ensure that the Health Quality and Complaints Commission can interact with state and national boards to effectively deal with complaints about registered health practitioners.

Pest Management Act 2001

The Pest Management Act is amended to prescribe a document that is required to accompany an application for a pest management technician licence, if the application is for a licence under which a fumigation activity may be carried out only in a certain site environment. The amendment will specify that the application must be accompanied by a written declaration of assessment, signed by an accredited assessor, which states the site environments in which the person has demonstrated competence in undertaking a fumigation activity.

Public Health Act 2005

The Bill amends existing powers in the contagious conditions provisions of the Public Health Act to enable a child to be removed from a school or child care service, or to enable the closure of a school or child care service, in situations where exposure of a child to a contagious condition, or an outbreak of a condition, has occurred in the community, rather than in the school or service.

Amendments are also made to the Public Health Act to enable the Chief Executive to delegate the power to authorise a public interest disclosure in relation to a notifiable condition to the Chief Health Officer or another appropriately qualified senior officer of the department with expertise in public health.

Public Health (Infection Control for Personal Appearance Services) Act 2003

The Bill updates a superseded reference to part 15 of the Queensland Development Code (QDC) in the Public Health (Infection Control for Personal Appearance Services) Act, to reflect the renaming of this part in 2007 to 'MP 5.2'.

Tobacco and Other Smoking Products Act 1998

Amendments to the Tobacco Act will ban the sale of fruit-flavoured and confectionary-flavoured cigarettes. This amendment will bring Queensland into line with other jurisdictions and will give effect to the decisions of the Australian Health Ministers' Conference and the Ministerial Council on Drug Strategy for all jurisdictions to enact legislation to prohibit the sale of these products. The ban will not capture the sale of menthol cigarettes or fruit flavoured loose tobacco, such as shisha tobacco smoked in traditional hookah pipes, as these products are not marketed specifically at children. Further minor amendments are proposed to:

- broaden the types of products that are prohibited from sale under the Act, from toys and food that resemble tobacco products, to all objects that resemble tobacco products. This will capture gadgets and trinkets with a similar 'novelty' value to toys, such as cigarette shaped pens and lighters, which normalise smoking to young people and encourage experimentation with smoking;
- clarify the original policy intent of designated outdoor smoking areas (DOSAs) at licensed premises by:
  - — specifying how the required 2.1 metre high buffer between smoking and non-smoking areas of different floor height must be measured, to ensure the full 2.1 metre buffer is provided to protect non-smoking patrons from environmental tobacco smoke; and
  - — removing 'a thick screening hedge' as an example of a screen that is impervious to smoke.

- narrow the current requirement for a 'no smoking' sign to be displayed at every entrance to a licensed premise, to only the public entrances to the enclosed parts of clubs, hotels and casinos; thus removing an onerous requirement for signage at places that already prohibit smoking, such as a bottle shop located inside a shopping centre; and
- provide for smoking products seized from a child in relation to an offence to be automatically forfeited to the State, regardless of whether a person is convicted of the offence, to avoid these items having to be returned to the child.

Alternative ways of achieving policy objectives

For all the amendments in the Bill, there are no other viable alternatives that would achieve the policy objectives other than the proposed Bill.

Estimated cost for government implementation

The cost of enforcing the food business rating scheme provisions are likely to be minimal and these costs will be met within current departmental resources. The costs for implementing the remaining amendments will be minimal and will be met from existing budget allocations.

Consistency with fundamental legislative principles

A number of potential breaches of Fundamental Legislative Principles arise in the Bill.

Food Act

- **Compliance with the Food Standards Code**

The amendment to section 271D of the Food Act will enable the Chief Executive of Queensland Health to require a business to undertake steps to comply with the Food Standards Code (the Code), which comprises national food safety standards, to prevent recurrence of the contamination. This will be in addition to existing directions the Chief Executive may give under section 271D(3) to prevent or minimise the risk to public health or safety caused by potentially contaminated food.

As the Code is not subject to disallowance by Parliament, the proposed amendment to the Food Act to empower the Chief Executive to direct a

food business to comply with the Code raises the question of whether the amendment has sufficient regard to the institution of Parliament (*Legislative Standards Act 1992*, section 4(4)) and whether it sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly (*Legislative Standards Act 1992*, section 4(4)(b)).

The Government provides input to the development of the Code through a mechanism prescribed under the *Food Standards Australia New Zealand Act 1991*(Cth). This process requires Food Standards Australia New Zealand to conduct two rounds of public consultation on proposals to vary existing standards or to include new standards in the Code. The Australia and New Zealand Food Regulation Ministerial Council (ANZFRMC), comprised of Health Ministers from each jurisdiction, needs to endorse any proposal before it becomes law.

Further, the Food Act gives effect to a national approach to food regulation within Australia. On 3 July 2008, the Council of Australian Governments re-signed the Food Regulation Agreement, in which all States and Territories agreed to adopt Annex A of the national Model Food Act. Annex A includes the requirement that food businesses comply with the Code.

The Food Act already requires food businesses to comply with the Code (as modified by section 14 of the Food Act). The proposed amendment will not impose new obligations on businesses, but will simply provide a further means of ensuring compliance in circumstances which present an unacceptable risk of harm to the public.

- **Food Business Rating Scheme**

The Bill inserts a new Part 3B into Chapter 11 of the Food Act to establish a head of power and an offence (new section 271H), whereby a local government may implement a food business rating scheme (defined in new section 271F), but only if it complies with the model prescribed under section 271G. New section 271G provides that a Regulation may prescribe requirements applying to a food business rating scheme. In addition, a penalty of 1,000 penalty units applies to a local government that introduces a non-compliant scheme.

New Part 3B raises a number of fundamental legislative principles in relation to whether the Bill has sufficient regard to the institution of Parliament and to the rights and liberties of individuals. Specifically:

- whether the Part authorises the amendment of an Act by another Act (*Legislative Standards Act 1992*, section 4(4)(c)) – also known as a Henry VIII clause;
- whether the Part is unambiguous and drafted in a sufficiently clear and precise way (*Legislative Standards Act 1992*, section 4(3)(k)).

In addition, the creation of a new offence and penalty raises a fundamental legislative principle previously considered by the former Scrutiny of Legislation Committee of whether consequences imposed by legislation are proportionate and relevant to the actions to which the consequences are applied by the legislation.

Henry VIII clause

Prescribing the details of the scheme in Regulation raises the fundamental legislative principle of whether the Bill has sufficient regard to the institution of Parliament and whether it authorises the amendment of an Act by another Act (*Legislative Standards Act 1992*, section 4(4)(c)).

The food business rating scheme to be prescribed in Regulation will reflect the national framework currently being developed through the Implementation Sub-Committee of the ANZFRMC. It is anticipated that a national framework will not be finalised until at least 2012, shortly after which Queensland will make a Regulation to prescribe the details and requirements of the nationally agreed framework.

The Bill is consistent with the national approach to food regulation within Australia, including the model food legislation, and with the intent of the ANZFRMC to maintain national consistency by developing a framework for a food business rating scheme for all jurisdictions to adopt. It is expected that other jurisdictions will introduce similar amendments to their food legislation in the future to prescribe the national framework.

The use of a statutory instrument to prescribe the requirements of the scheme was deemed the most appropriate mechanism, as the translation of the national framework into legislation has the potential to result in provisions that are technical, complex and prescriptive in nature. The regulation will facilitate the effective application of an innovative legislative concept.

The benefits to be gained from the introduction of a consistent regulatory framework for a local government to conduct a food business rating scheme will be lost if it falls out of step with refinements that may be made at the national level once jurisdictional implementation of the approved

scheme has occurred. Furthermore, as the Regulation is subordinate legislation, it will be subject to Part 6, Division 3 of the *Statutory Instruments Act 1992*, which allows the Legislative Assembly to pass a resolution disallowing the subordinate legislation.

Ambiguity

Adherence to fundamental legislative principles requires that liability should be expressed with clarity, as it is important where a sanction applies that a person should be able to determine with a degree of confidence whether they are subject to the sanction.

New section 271H prescribes the offence of a local government that conducts a food business rating scheme other than in compliance with the requirements prescribed in Regulation (under new section 271G). It is essential for a local government to know what it does, or does not do, that would constitute a breach of the offence. For this reason, the meaning of 'conduct' has been sufficiently defined in new section 271H. In addition, new section 271E, which outlines the purpose of new Part 3, has been inserted to help mitigate the potential ambiguity that arises from the current lack of detail about the prescribed scheme.

Penalty

The offence penalty of 1,000 penalty units is consistent with other penalties in the Food Act in relation to compliance with food and hygiene standards. As a scheme may be indicative of a licensed food business's level of compliance with the Food Act and may potentially influence consumer choice, ensuring a robust and consistent scheme throughout the State is as imperative to the success of the scheme as the food standards and hygiene legislation on which it is based. Consequently, an adequate and proportionate penalty was required to ensure compliance by local governments. The penalty is therefore considered proportionate to the offence and is consistent with other penalties within the Food Act that relate to similar matters.

Health Act

- **Regulation-making power to set fees for endorsements**

An amendment to the Health Act will insert a regulation-making head of power to prescribe fees for endorsements. This amendment raises the fundamental legislative principle of whether the Bill has sufficient regard to the institution of Parliament and whether it allows the delegation of

legislative power only in appropriate cases and to appropriate persons (*Legislative Standards Act 1992*, section 4(4)(a)).

Agencies have a responsibility under the *Financial and Performance Management Standard 2009* (the Standard) to set user charges at a rate which accurately reflects the cost of providing the related service. The Standard, issued under the *Financial Accountability Act 2009* authorises the accountable officer of a department (such as the Chief Executive) to fix fees and charges for goods and services provided by the department. When identifying goods and services for which users are to be charged, the accountable officer must consider whether the administrative costs of charging and collecting charges for the goods and services offered are more than, or may be more than, the revenue collected.

Similarly, the Auditor-General's Report to Parliament No. 4 of 2007 requested departments develop and implement suitable methodologies to accurately identify the costs of delivering the products and services that make up the department's output.

The clear intent behind the provisions of the Financial Accountability Act, the Standard and the Auditor-General's Report is that fees and charges for government services should be set at a level that enables a department to recover costs involved in supplying goods and services.

Furthermore, in Queensland, the setting of fees and charges must be undertaken in accordance with Queensland Treasury's Principles for fees and charges issued in January 2006. Fees and charges for departments and statutory bodies are to be indexed annually by the full movement in the Australian Bureau of Statistics Brisbane All Groups Consumer Price Index (CPI).

Consistent with other legislation, particularly within the Health portfolio, the setting of fees by subordinate legislation is a more appropriate means of prescribing fees, as it saves pressure on Parliamentary time and enables fees to be prescribed and updated in a timely manner in order to meet statutory obligations and adhere to government policy.

Public Health Act

- **Releasing information from the Notifiable Conditions Register**

The power for the Chief Executive to delegate their authority to authorise a public interest disclosure from the Notifiable Conditions Register (the Register) to an appropriately qualified senior officer of the department

raises the fundamental legislative principle of whether the clause has sufficient regard to rights and liberties of individuals, specifically whether it allows the delegation of administrative power only in appropriate cases and to appropriate persons (*Legislative Standards Act 1992*, section 4(3)(c)).

It is recognised that the power to disclose confidential information from the Register creates significant implications for the rights of affected individuals. Any disclosure on public interest grounds should only occur where the public interest is clearly established, such as to prevent the imminent risk of the transmission of a notifiable condition. In order to maintain public confidence in, and cooperation with, public health authorities, it is critical that the power to disclose information is at all times exercised transparently and accountably.

With these strong precautionary points in mind, a number of strict safeguards are built into the legislation to provide transparency and to prevent any misuse, or perception of misuse, from arising in relation to this delegation. These include providing that:

- a delegation may only be made to the Chief Health Officer or another appropriately qualified senior officer of Queensland Health that the Chief Executive is satisfied has the necessary expertise or experience in public health issues;
- sub-delegation of the power by either delegate is not permitted; and
- any decisions by the delegate to disclose confidential information from the Register, and the nature of the information disclosed, must be included in Queensland Health's annual report (as is currently required for public interest disclosures by the Chief Executive).

Tobacco and Other Smoking Products Act

- **Forfeiture of seized tobacco products from children**

Amendments to the Tobacco Act provide for tobacco products seized from a minor to be forfeited to the State, rather than be returned to the child, even where no person is convicted over the offence in relation to which the products were seized. This raises the fundamental legislative principle of whether the clause has sufficient regard to rights and liberties of individuals, specifically whether it provides for the compulsory acquisition of property without fair compensation (*Legislative Standards Act 1992*, section 4(3)(i)). However, it is considered that the forfeiture of tobacco

products in these circumstances is amply justified by the clear public interest in limiting children's access to tobacco products, which is the overriding objective of the Tobacco Act. To require the products to be returned to the minor or the minor to be otherwise compensated for the forfeiture would have the effect of sanctioning the illegal sale or supply of smoking products and harmful behaviour by children, and potentially enabling its recurrence.

Consultation

Targeted consultation was undertaken with key stakeholders in relation to the Bill.

A consultation draft of the amendments to the Food Act was provided to the Local Government Association of Queensland.

Consultations were also undertaken with the Health Quality and Complaints Commission, the Australian Health Practitioner Regulation Agency and the Office of Health Practitioner Registration Boards in relation to the amendments to the HQCC Act.

The following stakeholders were provided with a consultation draft of the amendments to the Public Health Act in relation to responses to childhood contagious conditions:

- C & K Pre-schooling Professionals
- Childcare Queensland
- Queensland Catholic Education Commission
- Independent Schools Queensland
- The Gowrie (Queensland)
- Queensland Lutheran Early Childhood Services.

The Cancer Council Queensland was advised of the amendments to the Tobacco Act, and Clubs Queensland and the Queensland Hotels Association were advised of the amendments to the DOSA provisions of the Tobacco Act.

Consistency with legislation of other jurisdictions

The Bill is mostly specific to the State of Queensland and, with the exception of the matters outlined below, the extent to which it is uniform

with or complementary to the Commonwealth or another state is not relevant in this context.

- **Food business rating scheme**

Amendments to the Food Act will establish a framework for local governments to implement a food business rating scheme for licensed food businesses in their area. The development of a national framework for a food business rating scheme, for adoption by jurisdictions, will continue at a national level. However, the introduction of the Bill will provide Queensland with a legislative basis for later prescribing the national framework in advance of the national agenda. This will enable Queensland to act quickly to prescribe the scheme, in order for interested local governments to implement a food business rating scheme as soon as possible after the national framework is agreed upon and approved by the Australia and New Zealand Food Regulation Ministerial Council.

- **Fruit-flavoured and confectionary-flavoured cigarettes**

The introduction of amendments to the Tobacco Act will align Queensland with all other jurisdictions, except Western Australia, who have already introduced a ban on fruit-flavoured and confectionary-flavoured cigarettes.

- **Health practitioner complaint investigations**

The amendments to the HQCC Act to clarify the ability of the Health Quality and Complaints Commission to share information with the national health practitioner registration boards in relation to complaint investigations, will ensure consistency with the *Health Practitioner Regulation National Law*, which gives effect to the Council of Australian Governments' Intergovernmental Agreement for a National Registration and Accreditation Scheme for the Health Professions.

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 2011*.

Commencement

Clause 2 provides for commencement of the Act.

To facilitate implementation of some of the amendments, the following sections will commence on a day to be fixed by proclamation:

- sections 5 and 14, and section 18 (to the extent it inserts new definition food business rating scheme), which relate to the amendments to the Food Act to provide for the establishment of a food business rating scheme;
- sections 52 to 63, which relate to the amendments to the Public Health Act to improve the operation of powers to control the spread of contagious conditions at schools and child care services; and
- sections 70 to 72, which relate to the amendments to the Tobacco Act to ban the sale of fruit-flavoured and confectionary-flavoured cigarettes, to clarify the intent of designated outdoor smoking areas at licensed premises, and to ban the sale of objects that resemble smoking products.

The remainder of the Act will commence on Assent.

Part 2 Amendment of Food Act 2006

Act amended

Clause 3 specifies that this Part amends the *Food Act 2006*.

Amendment of s 14 (Meaning of *food standards code*)

Clause 4 amends section 14 of the Food Act, which prescribes the meaning of the term *food standards code* for the purposes of the Act, and which also provides for modifications to the Code to ensure consistency with Queensland's food safety regulatory system. The modifications specify which parts of the Code are applied with changes and which parts of the Code are not applied.

Section 14(2)(b) is amended to remove 'clause 9 of standard 1.6.2' from, and to insert 'standard 3.3.1' into, the list of parts of the Food Standards Code that do not apply in Queensland. These amendments reflect that:

- Standard 3.3.1 does not apply in Queensland, because it relies upon the application of Standard 3.2.1 which is already prescribed in section 14(2)(b) as not having effect in Queensland; and
- Clause 9 of Standard 1.6.2 was removed from the Code in 2005 and the reference to this clause in section 14(2)(b) is redundant.

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

Clause 5 amends section 22 of the Food Act, which prescribes the provisions of the Act which are administered only by the State and not by local governments.

The Bill amends section 22(1) to insert a reference to new section 271H, which relates to the administering by the State of a new offence about a local government conducting a food business rating scheme that does not comply with the prescribed model. This is a consequential amendment arising from the insertion of new Part 3B under clause 14, which provides for the establishment of a statewide food business rating scheme that local governments may choose to implement in their local area, for voluntary participation by licensed food businesses.

Amendment of s 48 (Meaning of *licensable food business*)

Clause 6 amends section 48 of the Food Act, which prescribes the meaning of *licensable food business* for the purposes of the Act. Section 48(1)(b) provides a list of examples of food businesses that involve the sale of unpackaged food by retail, which are considered to be licensable food businesses. Included in this list is *a food business that involves selling unpackaged food from a vending machine*. Section 48(2) lists food

businesses that are not considered to be a licensable food business. Included in subsection (2)(b) is a business that consists of *the processing or sale of fisheries resources under a buyer licence issued under the Fisheries Regulation 1995*.

Section 48(1)(b) is amended to refer to a *food vending machine*, rather than a *vending machine* in the example referred to above. This is a consequential amendment that arises from other amendments to capture food vending machines as mobile premises for licensing purposes and will ensure consistency with the use of terms in relation to food vending machines across the Act.

Section 48(2) is amended to omit subsection (b), which refers to a buyer licence issued under the *Fisheries Regulation 1995*. This amendment reflects the repeal of the *Fisheries Regulation 1995*, which makes this exemption under the Food Act redundant. Section 48(2)(c) to (l) are renumbered as section 48(2)(b) to (k) as a consequence of omitting subsection (b). A consequential amendment is made to section 48(3) to remove the definition for *processing*, which was used for omitted section 48(2)(b).

Amendment of s 53 (What the application must state)

Clause 7 amends section 53 of the Food Act, which prescribes what must be stated in an application for a licence to carry on a licensable food business. Section 53(1)(e) prescribes the information that must be included in an application for a business operated from mobile premises. A minor amendment to this section is required as a result of capturing food vending machines as mobile premises.

The Bill amends section 53(1)(e) to include information required if the mobile premise is a food vending machine. New section 53(1)(e)(i)(B) requires an applicant to state the serial number or other unique identifying number or mark of the food vending machine on an application. This will assist with identification of the food vending machine.

Amendment of s 94 (Form of licence)

Clause 8 amends section 94 of the Food Act, which prescribes the form and content of a licence to carry on a licensable food business issued to a person under the Act. Section 94(b)(iii) prescribes the information that must be stated on a licence for a business operated from mobile premises.

A minor amendment to this section is required as a result of capturing food vending machines as mobile premises.

The Bill amends section 94(b)(iii) to include information required if the mobile premise is a food vending machine. New section 94(b)(iii)(B) requires a licence to state the serial number or other unique identifying number or mark of the food vending machine. This will assist with identification of the food vending machine. This identifying information is provided in the application for a licence under the amendment to section 53 made under clause 7.

Amendment of s 134 (Failure to decide application)

Clause 9 amends section 134 of the Food Act, which specifies that failure by the Chief Executive (Queensland Health) to decide an application for approval as an auditor under the Act within 30 days after the receipt of the application is taken to be a decision to refuse to grant the application. However, this action is subject to section 134(2), which states that the Chief Executive may require the applicant to provide further information or a document to support the applicant's information, and to section 134(3), which states that the Chief Executive is taken to have refused to grant the application if it is not decided within 30 days after receipt of the further information or document requested under section 134(2).

The Bill amends section 134(1) to state that the automatic refusal to grant an application for approval as an auditor within 30 days after the receipt of the application is also subject to new section 134A. New section 134A enables an extension of the 30-day time period in certain circumstances because of the complexity of the matters that need to be considered.

Insertion of new s 134A

Clause 10 inserts new section 134A into the Food Act to provide for an extension of the 30-day time period for the Chief Executive (Queensland Health) to decide an application for approval as an auditor under the Act, by a further 30 days, in certain circumstances. The Chief Executive may only extend the time period if more time is needed to make a decision about the application because of the complexity of the matters that need to be considered (section 134A(1)).

In practice, there are a range of scenarios that may require the extension of time. For example, if the Chief Executive has requested criminal history information about the applicant, which is a necessary part of determining

the suitability of a person for approval as an auditor, and has not received that information from another entity within the 30 days. Ultimately, it is undesirable for a person's application to be automatically refused if supporting documentation or other information, such as a criminal history report, that would otherwise have resulted in the approval of the application, has not been received within the prescribed period.

Section 134A(2) requires the Chief Executive to give the applicant notice of the extension of time to consider the application. Although the initial time period may be extended by a further 30 days, section 134A(3) enables the applicant and the Chief Executive to agree in writing on a day by which the application must be decided.

Similar to section 134, under section 134(4), the Chief Executive is taken to have refused to grant the application if the Chief Executive does not decide the application by:

- the end of the extended 30-day period (the *extended day*); or
- the day agreed upon between the Chief Executive and the applicant (the *agreed extended day*); or
- the later of the above two days, if both apply.

If automatic refusal occurs, the Chief Executive is required to advise the applicant of the decision via an information notice (section 134A(5)).

Section 134A(6) provides a meaning for the term *final consideration day*, as it applies to the new section.

Amendment of s 136 (Conditions of approval)

Clause 11 amends section 136 of the Food Act, which specifies the standard conditions of an auditor's approval, including additional conditions the Chief Executive (Queensland Health) considers appropriate for the proper conduct of an audit. It is a statutory condition that an approved auditor must give notice to the Chief Executive (Queensland Health), of any direct or indirect financial or other interest the auditor has in a food business that could conflict with the proper performance of the auditor's functions (section 136(1)(a)). A notice in these circumstances must be given to the Chief Executive immediately after the auditor becomes aware of the interest (section 136(2)).

In practice, the ability of an auditor to immediately give a notice to the Chief Executive of a conflict of interest is unreasonably inflexible, taking

into account legitimate reasons why immediate written notice may be impractical. For example, at the time of becoming aware of the interest the auditor may be in a remote location or it may be outside of business hours.

The Bill amends section 136 to provide appropriate flexibility for an auditor to notify the Chief Executive of a conflict of interest. Subsection (2) is replaced with a revised requirement that an auditor must, unless the auditor has a reasonable excuse:

- orally notify the Chief Executive of the interest immediately; and
- give the Chief Executive notice about the interest in the approved form within 24 hours after becoming aware of the interest.

Amendment of s 265 (Content of registers)

Clause 12 amends section 265 of the Food Act, which prescribes what must be contained on the register of food businesses required to be kept by the Chief Executive (Queensland Health) under section 264 of the Act. A minor amendment to this section is required as a result of capturing food vending machines as mobile premises.

The Bill amends section 265 to include information required if the mobile premise is a food vending machine. New section 265(2)(e)(ii) requires the register to contain the serial number or other unique identifying number or mark of the food vending machine. This is consistent with other amendments that require this same information to be stated on an application for a food business licence and on a licence issued under the Act.

Amendment of s 271D (Chief Executive may give direction)

Clause 13 amends section 271D of the Food Act, which enables the Chief Executive (Queensland Health) to give a person responsible for a food business, a reasonable direction in response to a report by that person of suspected intentional contamination of food at the business. Currently, the directions the Chief Executive may give are limited to:

- identifying the source of the contamination or the potentially contaminated food; or
- preventing or minimising the risk to public health or safety caused by the potentially contaminated food.

Section 271D does not provide authority for the Chief Executive to require a food business to undertake appropriate procedures to prevent a recurrence of the contamination. Specifically, it does not empower the Chief Executive to give a a direction to comply with the provisions of the national Food Standards Code in relation to food intended for sale. This is because local government has the responsibility of enforcing compliance with section 39(1) of the Food Act, which requires compliance with the Food Standards Code.

The Bill amends section 271D to enable the Chief Executive, where a report has been made under section 271B, to direct the responsible person for the food business to undertake steps to comply with the Food Standards Code. This will improve the operation and enforcement of these provisions and minimise the risk to public safety caused by potentially contaminated food without unduly expanding the Chief Executive's powers or enabling the imposition of unreasonable requirements on food businesses. Steps required of a business may include such things as:

- providing protective barriers that minimise the likelihood of contamination by customers (clause 8(2)(c) of Standard 3.2.2); or
- storing chemicals in a separate area from the food processing area to prevent the likelihood of food being contaminated (clause 7(1)(b)(i) of Standard 3.2.2).

Insertion of new ch 11, pt 3B

Clause 14 inserts new Part 3B into Chapter 11 of the Food Act, which deals with miscellaneous matters relating to food regulation, to provide for the establishment of a statewide food business rating scheme which local governments may choose to implement in their local area, for voluntary participation by licensed food businesses. The new part consists of new sections 271E, 271F, 271G and 271H.

Section 271E – Purpose of pt 3B and how purpose is achieved

New section 271E prescribes the purpose of Part 3B and how the purpose is to be achieved. This section is included to help provide clarity about the purpose of prescribing matters in relation to a food business rating scheme.

The purpose of Part 3B is to enshrine in legislation a consistent way for local governments to provide information to consumers about compliance by food businesses with the Food Act and the Food Standards Code, and with information about food hygiene in premises from which food

businesses are carried on. The way in which this is achieved is by regulating local governments in relation to the conduct of rating schemes that provide this information to consumers.

Section 271F – Meaning of *food business rating scheme*

New section 271F prescribes the meaning of *food business rating scheme* to capture the key elements of a rating scheme, which are:

- to assess the compliance by food businesses with the Food Act and with the Food Standards Code, or with food hygiene in premises from which food businesses are carried on; and
- to assign a rating to the food business according to the assessed level.

Section 271G – Prescribed requirements for food business rating schemes

New section 271G prescribes the requirements applying to a food business rating scheme. The provision states that these requirements will be prescribed in a regulation.

The requirements to be prescribed in regulation will reflect the national framework for a food business rating scheme currently being developed by a working group of the Implementation Sub-Committee (ISC) of the Australia and New Zealand Food Regulation Ministerial Council (ANZFRMC).

Section 271H – Offence about conducting food business rating scheme

New section 271H establishes an offence for a local government to conduct a food business rating scheme that does not comply with the scheme prescribed in regulation under new section 271G. A penalty of 1,000 penalty units applies to this offence. To remove ambiguity, the term *conduct* is defined to encapsulate the actions a local government may take that would constitute non-compliance.

As the scheme may be indicative of the level of compliance of a licensed food business with the Food Act, the penalty is proportionate to the offence and is consistent with other penalties in the Act in relation to compliance with food standards and hygiene.

Amendment of ch 12, pt 2, hdg (Transitional provisions)

Clause 15 amends the heading for Chapter 12, Part 2, which provides for the transitional provisions arising from the repeal of the *Food Act 1981* and commencement of the *Food Act 2006* (Act No. 3 of 2006) on 1 July 2006.

The heading is amended to specify that Part 2 relates only to the original transitional provisions for Act No.3 of 2006, so that a new Part 3 can be inserted for transitional provisions that apply to the Health Legislation Amendment Act 2011 as a result of capturing food vending machines as mobile premises for licensing purposes.

Insertion of new ch 12, pt 3

Clause 16 inserts new Part 3 into Chapter 12 to provide for transitional provisions that relate to amendments being made in this Bill as a result of capturing food vending machines as mobile premises. Part 3 consists of new sections 299, 300, 301 and 302.

Section 299 – Definitions for Part 3

New section 299 provides for definitions used in the new Part and provides the meaning of *commencement* and *relevant licence*.

The term *commencement* is defined to mean the commencement of new Part 3 and is included to differentiate from the meaning of the same term in Part 2, which refers to commencement of that part. In accordance with clause 2, which provides for commencement of the Bill, new Part 3 will commence on assent. This will coincide with the commencement of other provisions in the Bill that relate to amendments to capture food vending machines as mobile premises for licensing purposes.

The term *relevant licence* refers to a licence for a food business that is carried on from fixed or temporary premises, where the premise is a food vending machine, on the commencement of Part 3. A *relevant licence* is therefore referring to the existing regime for a licence for a food vending machine.

Section 300 – Existing relevant licence

New section 300 provides for the transition of an existing licence for a food vending machine (i.e. an existing *relevant licence*) from being a fixed or temporary premises licence to being a mobile premises licence.

Section 300(1) specifies that section 300 applies to an existing licence (i.e. a *relevant licence*) that was in force immediately before commencement of new Part 3.

Section 300(2) specifies that, on and from the commencement of new Part 3 (which will coincide with commencement of other provisions of the Bill relating to food vending machines on assent), a licence for a vending machine that has been issued as if the premise was a fixed or temporary premise is taken to be a licence issued as if the premise was a mobile premise. An existing licence will continue in force with any conditions to which the licence was subject to immediately before commencement.

Amendments to sections 94 and 265 require the serial number or other identifying number or mark of a food vending machine to be stated on the licence (section 94) and included on the register of food businesses kept by the Chief Executive, Queensland Health (section 265). However, to reduce the burden on local governments and licensees, upon commencement of these provisions an existing licence for a food vending machine is taken to comply with these requirements.

Providing that existing licences automatically comply with amended sections 94 and 265 is not deemed to present a risk to any person, as there are only a small number of food vending machines in operation throughout the State. In addition, section 300(3) provides that this deeming provision is only temporary.

Section 300(3) specifies that subsection (2) ceases to apply when the existing licence is first renewed after the commencement date. Therefore, upon the first renewal of the licence, local governments and existing licensees will need to comply with sections 94 and 265, by ensuring the serial number or other identifying mark of the food vending machine is provided for inclusion on the licence and register of food businesses.

Section 301 – Pending applications for relevant licence

Section 301 provides for the transition of an existing application (i.e. a pending application) for a licence for a food vending machine that was made, but undecided, prior to commencement of new Part 3.

Section 301(1) specifies that section 301 applies to an application for a licence for a food vending machine (i.e. a *relevant licence*) that was made, but not decided, before commencement of new Part 3.

Section 301(2) specifies that, on and from the commencement of new Part 3, the application is taken to be an application for a food vending machine

(i.e. a licence for a food business carried on from mobile premises that are a food vending machine).

Section 301(3) specifies that the application is not invalid if it does not comply with section 53(1)(e). Section 53 is amended under this Bill to specify that an application for a food vending machine is to include the serial number or other identifying number or mark of the vending machine.

If the serial number or other identifying mark of the food vending machine information is not provided on the application, section 301(3) specifies that this will not invalidate the application. However, a local government may, under section 59 of the Food Act, require the applicant to give this information to the local government. Section 59 of the Food Act enables a local government to make further inquiries before deciding an application. This may include the local government, by notice given to the applicant, requiring the applicant to give the local government further information or a document the local government reasonably requires to decide the application. Therefore, the local government can use this power to request the applicant to provide the serial number or other identifying number or mark of the vending machine, in order to comply with amended sections 53, 94 and 265.

Section 302 – Pending applications for renewal, restoration or amendment of relevant licence

Section 302 provides for the transition of an existing application (i.e. a pending application) for the renewal, restoration or amendment of an existing licence for a food vending machine (i.e. a *relevant licence*) that was made, but undecided, prior to commencement of new Part 3.

Section 302(1) specifies that section 302 applies to an application for the renewal, restoration or amendment of an existing licence for a food vending machine (i.e. a *relevant licence*) that was made, but not decided, before commencement of new Part 3.

Section 302(2) specifies that, on and from the commencement of new Part 3, the application is taken to be an application for the renewal, restoration or amendment of an existing licence for a food vending machine (i.e. a food business carried on from mobile premises that are a food vending machine).

The renewal, restoration or amendment of a licence may require the local government to reissue the licence. Therefore, this will require the local government to comply with amended section 94 of the Food Act, which

requires a licence to state the serial number or other identifying number or mark of the machine. If this information has not previously been provided, a local government may, under section 75 of the Food Act, require the applicant to give this information to the local government.

Section 75 of the Food Act enables a local government to make further inquiries before deciding an application for the renewal, restoration or amendment of a licence. This may include the local government, by notice given to the applicant, requiring the applicant to give the local government further information or a document the local government reasonably requires to decide the application. Therefore, the local government can use this power to request the applicant to provide the serial number or other identifying number or mark of the vending machine, in order to comply with amended sections 94 and 265.

Amendment of sch 2 (Changes to food standards code)

Clause 17 amends Schedule 2 of the Food Act, which outlines the amendments or modifications made to the Food Standards Code, as they are applied in Queensland.

Subsection (1) of this clause inserts a note in Schedule 2, item 2, in relation to the definition of *appropriate enforcement agency* as it applies in the Queensland context. The note specifies that section 23 of the Food Act outlines the provisions of the Act that are administered only by local governments. This is to clarify the link between the current definition of *appropriate enforcement agency*, which refers to local government areas, and the provision under the Act that provides for enforcement of certain matters by local governments, and not the state government.

Subsection (2) of this clause replaces the current definition of *food premises* in Schedule 2, item 3 to ensure the Food Standards Code applies to food vending machines, as a result of capturing food vending machines as mobile premises for licensing purposes. The Food Standards Code classifies food vending machines as equipment rather than premises. However, for licensing purposes in Queensland, a food vending machine is considered to be premises (currently fixed or temporary premises, but under amendments made in this Bill, they will be considered mobile premises).

Amendment of sch 3 (Dictionary)

Clause 18 amends Schedule 3 of the Food Act, to update or insert definitions for application throughout the Act.

Subsection (1) of this clause omits the current definitions for *commencement* and *mobile premises*. These definitions are replaced with new definitions as a result of capturing food vending machines as mobile premises.

Subsection (2) of this clause inserts new or modified definitions for *commencement*, *food business rating scheme*, *food vending machine*, *mobile premises* and *relevant licence*.

Definition of 'commencement'

The current definition of *commencement*, which was omitted in subsection (1) of this clause, is replaced to include a reference to the two sets of transitional provisions in the Food Act in section 280 and new section 299.

Definition of 'food business rating scheme'

A definition of *food business rating scheme* is inserted to refer to the meaning of this term as provided for in new section 271F.

Definition of 'food vending machine'

A definition of *food vending machine* is inserted to mean a machine or device operated by money, token, debit card or credit card and used, or intended for use, for the sale of food. This is a consequential amendment as a result of capturing food vending machines as mobile premises throughout the Food Act.

Definition of 'mobile premises'

The current definition of *mobile premises*, which was omitted in subsection (1) of this clause, is replaced to also mean a food vending machine. This is a consequential amendment as a result of capturing food vending machines as mobile premises throughout the Food Act.

Definition of 'relevant licence'

A definition of *relevant licence* is inserted to refer to the meaning of this term as provided for in section 299.

Definition of 'premises'

Subsection (3) of this clause amends the current definition for *premises* to include new subsection (e) which refers to a food vending machine. This

captures food vending machines as premises under the Act, which means standards and hygiene that apply to other premises will also apply to food vending machines, as appropriate.

Part 3 Amendment of Health Act 1937

Act amended

Clause 19 specifies that this Part amends the *Health Act 1937*.

Amendment of s 132 (Regulations about drugs, articles, substances, appliances etc.)

Clause 20 amends section 132 of the Health Act, which prescribes the matters about which a regulation may be made under the Act. Amendments are made to ensure that terms used in the Act are up-to-date and accurately reflect the purpose of the Act.

A comprehensive, staged review of the Health Act commenced in 1994 in response to concerns that, due to its age and the breadth of areas it covered, the Act was becoming increasingly outdated and unwieldy, causing significant operational difficulties. As each stage of the review has been completed, stand-alone primary and subordinate legislation have been made to modernise and replace selected components of the Health Act, including the *Public Health Act 2005* and the *Private Health Facilities Act 1999*.

The remaining provisions of the Health Act, together with the *Health (Drugs and Poisons) Regulation 1996* and the *Health Regulation 1996*, relate primarily the regulation of drugs, poisons and therapeutic goods.

Section 132(zd) of the Health Act specifies that a regulation may be made about the conditions on which licences and registrations may be granted, suspended, or revoked. Section 132(ze) of the Health Act provides for a regulation to be made to prescribe the fees to be paid for:

- licences and registration (including annual renewal);
- applications for approval or registration as a public analyst or public expert; and
- the analysis of any drug or article by an analyst.

The head of power for licences and registrations under the Act have been repealed and licences, in relation to the regulation of drugs, poisons and therapeutic goods, are now covered under the meaning of endorsements. In accordance with section 136 of the Health Act, *endorsement* is defined by regulation in the *Health (Drugs and Poisons) Regulation 1996* as meaning an authority, an approval, a drug licence, a wholesale representative licence, a poison licence, a cyanide permit, or a strychnine permit.

Therefore, the Bill amends section 132(zd) and 132(ze) to provide a more accurate head of power for a regulation to be made in relation to endorsements. Section 132(zd) is amended to replace the outdated reference to *licences and registrations* with a reference to *endorsements*. Section 132(ze) is omitted and replaced with a more appropriate head of power for prescribing fees payable for:

- an application for, or renewal of, an endorsement;
- an application for an amendment of, or the repeal of a decision to suspend or cancel, an endorsement; or
- the analysis of a drug or article by a State analyst.

In relation to the third item – analysis of a drug or article by a State analyst – this ensures consistency of terms across the Act, as the Health Act now only refers to a State analyst.

A consequential amendment is made to the sub-heading for section 132(ze) to more accurately correspond with the substance of section 132(ze), which is to provide authority for a regulation to prescribe fees payable under the Act.

Part 4 Amendment of Health Quality and Complaints Commission Act 2006

Act amended

Clause 21 specifies that this Part amends the *Health Quality and Complaints Commission Act 2006* (the HQCC Act).

Amendment of s 2 (Commencement)

Clause 22 amends section 2 which details how the Act commenced. The amendment omits subsection (2) in accordance with current drafting practices.

Amendment of ch 5, hdg (Health complaints)

Clause 23 provides for a note to be included at the beginning of Chapter 5, which sets out a range of provisions in relation to the making and handling of a health complaint. The various parts under this chapter define what is a health complaint for the purposes of the HQCC Act (i.e. a health quality complaint or a health service complaint), who may make a health complaint, how to make a health complaint, and the actions that may be taken by the Health Quality and Complaints Commission (the Commission) in relation to a health complaint.

The note has been included to alert the reader to the requirements of the *Health Practitioner Regulation National Law Act 2009* (the National Law), particularly section 150. The Commission and a registration board established under the National Law (a National Board) have obligations in relation to the management of:

- a health complaint made to the Commission under the HQCC Act about a health practitioner registered under the National Law (a nationally registered provider); and
- a notification made to a National Board about a nationally registered provider under the National Law that also provides a ground for a health complaint to the Commission.

Section 150 of the National Law details how the Commission and a National Board must work together should a notification or complaint be made about a nationally registered provider.

If a notification made under the National Law provides a ground for a health complaint under the HQCC Act, the National Board that received the notification must:

- notify the Commission about the notification, as soon as practicable; and
- give the Commission a copy of the notification and any other information relevant to the notification.

Similarly, if a health complaint is made under the HQCC Act concerning a nationally registered provider, the Commission must:

- notify the relevant National Board as soon as practicable; and
- give the National Board a copy of the complaint and any other information relevant to the complaint.

A National Board and the Commission must then consult each other in order to determine how a notification or complaint is to be managed – that is, which body is to deal with the matter (in whole or part) and how that body proposes to deal with the matter. If agreement on the proposed course of action cannot be reached, the more serious action proposed by either the Board or Commission must be taken.

Section 150 also requires a National Board and the Commission to exchange information as a result of any action taken to deal with a matter. If action is taken at a national level, the relevant National Board must advise the Commission about the action taken in relation to concerns raised about the health, conduct or performance of the practitioner. On the other hand, if an assessment, investigation, conciliation or other action taken by the Commission raises issues about the health, conduct or performance of a nationally registered practitioner, the Commission must advise the relevant National Board about these issues and any action taken to deal with these issues.

Insertion of new s 37A

Clause 24 inserts a new section 37A to clarify how the Commission may deal with a notification made under the National Law, which also provides a ground for a health complaint (i.e. a health quality complaint or a health service complaint) under the HQCC Act.

A health quality complaint may be made about the quality of a health service, problems affecting the provision of services to more than one healthcare consumer or the failure of a provider to comply with their duty under the HQCC Act to establish, maintain and implement reasonable processes to improve the quality of health services they provide. Anyone may make a health quality complaint at any time.

A health service complaint may be made about a provider (an individual health professional) or an entity (such as a hospital or clinic). Complaints may, for example, be made that a provider acted unreasonably in providing a health service, a provider shared confidential information without

permission or the provider's behaviour was inappropriate. This type of complaint may be made by health consumers, a person acting on behalf of a health consumer, or the Minister for Health. Health service complaints must be made within one year of an incident occurring, or within one year of the person making the complaint becoming aware of the matter.

If a notification is referred to the Commission under section 150 of the National Law, the Commission may deal with the notification as if it were a health quality complaint or health service complaint made under the HQCC Act. Although it should be noted that the HQCC Act enables the Commission to deal with a health quality complaint, or a matter arising in the course of the Commission dealing with a health quality complaint, as a health service complaint.

Once it is agreed that the Commission is to deal with a notification or complaint, the Commission will be able to use the powers under the HQCC Act to deal with the matter, including facilitating early resolution of the matter, conducting an assessment of the matter, conciliating the matter, investigating the matter, holding an inquiry into the matter, referring the complaint to a more appropriate body to deal with any issues raised during the course of an assessment or investigation, or deciding not to take any action on the matter (e.g. if it was found that the complaint was frivolous, vexatious or trivial).

Insertion of new ch 5, pt 2A

Clause 25 inserts a new part 2A in chapter 5, comprised of sections 49A to and 49E, to complement the processes under the National Law (section 149), whereby a National Board must conduct a preliminary assessment to decide whether a notification:

- relates to a person who is a health practitioner or a student registered by the Board; and
- relates to a matter that is a ground for notification under the National Law; and
- could also be made to a health complaints entity.

New section 49A specifies that part 2A applies to a health complaint (i.e. a health quality complaint or health service complaint) about a nationally registered provider. As explained above, such a complaint may be referred to the Commission as a result of:

- a health complaint made to the Commission about a nationally registered provider; or
- a notification made to a National Board about a nationally registered provider that also provides a ground for a health complaint to the Commission.

New section 49B states that the Commission must immediately conduct a preliminary assessment of a health complaint and consider:

- whether the health complaint is a health quality complaint or health service complaint;
- if the complaint is a health service complaint, whether the complaint may be able to resolve their concerns directly with the provider;
- whether the Commission could help to facilitate the resolution of a health complaint under the new section 49E;
- whether it is more appropriate for a National Board to deal with the health complaint;
- whether another entity may be able to investigate or take other appropriate action about the health complaint.

This section ensures the Commission has the necessary authority to conduct a preliminary assessment of a matter to help inform their discussions with a National Board, as required by section 150 of the National Law, about how a complaint or notification concerning a nationally registered provider should be managed. Consideration of these matters will inform their discussions with a National Board about what complaint resolution mechanisms under the HQCC Act may be appropriate to deal with a matter, or if it may be more appropriate for the Board or another entity to deal with a matter (e.g. Queensland's Crime and Misconduct Commission).

However, the Commission is not required to start a preliminary assessment until it is provided with all relevant material. In relation to a health complaint arising from a notification under the National Law, subsection 49B(2) states that the Commission need not conduct the preliminary assessment until the relevant National Board has given the Commission a copy of the notification and any other information relevant to the notification.

Section 49B also clarifies that a preliminary assessment is subject to section 66 of the HQCC Act and also to (new) section 49C. Section 66

enables the Commission to immediately refer a health service complaint about a registered provider to the relevant Registration Board (i.e. state or national). Such referrals may be made in the public interest, for example, if the Commission considers that the behaviour of a registered provider has the potential to place health consumers at risk of serious harm. Under these circumstances, rather than commencing or continuing with a preliminary assessment, the Commission may determine that it is more appropriate to immediately refer the complaint to a Board (e.g. so that the Board could instigate the necessary processes to suspend the practitioner's registration).

New section 49C, which applies to a health complaint made under the HQCC Act, states that the Commission must not start a preliminary assessment until:

- the Commission is satisfied that the complainant is eligible to make the health service complaint
- if the complaint is made orally, that the complainant has confirmed the complaint in writing or the Commission decides that there is a good reason this not necessary
- the complainant gives the Commission their name, address and other information the Commission requires in relation to the complainant's identity or the Commission decides to accept the complaint in the public interest
- the complainant complies with any request by the Commission for further information or for the further information or complaint to be verified by oath or statutory declaration.

The new section 49C has been modelled on existing provisions within the HQCC Act (e.g. see sections 53 and 64) that ensure the Commission is provided with all necessary information that may be requested by the Commission under division 3, part 2 of Chapter 5 in relation to the making of a health complaint.

New section 49D clarifies what actions the Commission may take following the conduct of a preliminary assessment and consultations with the relevant National Board under section 150 of the National Law. Such actions include:

- attempting to resolve the health complaint under new section 49E discussed below

- referring the complaint to another entity that the Commission considers is able to investigate or take other appropriate action about the complaint
- taking action under part 3 of chapter 5 to deal with a health quality complaint
- taking action under part 4 of chapter 5 to deal with a health service complaint
- deciding not to take action about the health complaint.

The circumstances under which the Commission may decide not to take action have been modelled on existing provisions within the HQCC Act. In relation to a health quality complaint, the Commission may decide that no action is warranted or no action needs to be taken as the complaint is being dealt with by a National Board. In relation to a health service complaint, the Commission may decide not to take action having regard to:

- section 63 which sets out the circumstances when the Commission must decide not to take action on a health service complaint. For example, if it is considered that the complaint: is frivolous, vexatious or trivial; is misconceived or lacking in substance; or has been adequately dealt with by the Commission, a registration board or another public authority.
- section 64 which sets out the circumstances when the Commission may decide not to take action on a health service complaint. For example, if the complaint has been resolved since it was made; or the health consumer has commenced a civil proceeding about the matter and a court has begun to hear it, or the matter has been referred to an alternative dispute resolution process under the *Uniform Civil Procedure Rules 1999*.
- section 65 which specifies that the Commission may decide not to take action if a complainant withdraws a health service complaint.

If it is decided that the Commission is not to take any action on a health complaint, subsection 49D(3) requires that as soon as practicable after the making the decision, the Commission must notify the complainant and explain the Commission's decision.

Section 49E enables the Commission to facilitate the early resolution of a health complaint concerning a nationally registered provider subject to this course of action being agreed to by the relevant National Board under section 150 of the National Law.

One of the key objects of the Commission is to facilitate the timely resolution of complaints. Consequently, when a person contacts the Commission, the Commission will always consider if an issue can be resolved through direct resolution between a health consumer and healthcare provider; or whether the Commission may be able to facilitate early resolution of a complaint.

It is envisaged that some complaints about a nationally registered provider may be able to resolved in a timely fashion (e.g. if a clear explanation is provided that addresses a consumer's concerns) and that it would be appropriate for the Commission to facilitate this process. Consequently, section 49E empowers the Commission to take the action it considers necessary to facilitate the resolution of a health complaint. However, the Commission must cease to act under this section, if it becomes apparent that early resolution is not possible or that 30 days have lapsed since receipt of the complaint by the Commission.

If early resolution is not successful, dependent on the agreement reached between the Commission and a National Board under section 150, the Commission may continue to deal with the matter under the HQCC Act or the matter may be dealt with by the Board under the National Law. As detailed in new section 49D, the Commission may deal with the matter as a health quality complaint under part 3 of chapter 5 or a health service complaint under part 4 of chapter 5.

Amendment of s 50 (How Commission must deal with a health quality complaint)

Clause 26 amends section 50, which requires the Commission to deal with a health quality complaint in a way that is consistent with protecting the public and improving the quality of health services.

A new subsection (4) is to be inserted to clarify that as soon as practicable after making a decision about how the Commission will deal with a health quality complaint, the Commission must notify the complainant and explain the Commission's decision. Under subsection 50(2) the Commission may deal with a health quality complaint by doing any or all of the following:

- seek information from a provider, user, the complainant or anyone else
- refer the complaint to a registration board, if the complaint is about a registered provider and the Commission considers the provider may

have acted in a way that would provide a ground for disciplinary action against the provider under the *Health Practitioners (Professional Standards) Act 1999* or the National Law

- refer the complaint to another entity that the Commission considers is able to investigate or take other appropriate action about the complaint
- investigate the complaint under chapter 7 of the Act
- inquire into the complaint under chapter 8 of the Act.

A new subsection (5) is to be inserted to also specify that if the Commission decides no action is warranted, the Commission must notify the complainant and explain the Commission's decision.

Amendment of s 52 (Early resolution)

Clause 27 amends section 52, which provides for the early resolution of a health service complaint, if the Commission considers early resolution is possible and the complainant agrees. In such circumstances the Commission has up to 30 days to take the action it considers reasonable to facilitate the resolution of the complaint, before it must commence an assessment of the complaint.

Section 52 is to be amended as a consequence of the new section 49E, which providers for the early resolution of health complaints about nationally registered providers. The amendment replaces the reference to section 53 with a reference to subsection 53(1), to clarify that the Commission will only be able to facilitate early resolution of a health service complaint that does not concern a nationally registered provider under section 52.

As discussed above, early resolution of a complaint concerning a nationally registered provider may be attempted under the new section 49E. This section enables early resolution to be attempted at an earlier point in the complaint handling process given that the Commission and National Boards are required to work together to manage notifications or complaints about a nationally registered providers.

As a consequence of a preliminary assessment and consultations with the relevant National Board it may be decided that a notification or complaint concerning a nationally registered provider should initially be managed by the Commission. As a first step it may be agreed that the Commission should attempt to facilitate resolution of the complaint under the new section 49E. However, if this was not successful, it is possible that the

matter may then be dealt with by either the Commission under the HQCC Act or the Board under the National Law.

Amendment of s 53 (Commission to immediately assess each health service complaint)

Clause 28 amends section 53, which specifies that the Commission must immediately assess a health service complaint, unless the Commission has taken action to facilitate the early resolution of a complaint under section 52.

Section 53 is to be amended as a consequence of the insertion of the new part 2A to provide for the conduct of a preliminary assessment and early resolution of a health complaint about a nationally registered provider. The new part 2A has been inserted to enable the Commission to comply with their obligations under section 150 of the National Law and therefore work collaboratively with a National Board to deal with a complaint or notification concerning a nationally registered provider.

As outlined above, it may be decided that a notification or complaint concerning a nationally registered provider should be managed by the Commission. As a first step it may be agreed that the Commission attempt to facilitate resolution of the complaint under the new section 49E. However, if this was not successful, then the Commission may need to utilise the complaint handling processes under the HQCC Act to deal with the matter.

Should the Commission be required to deal with the matter as a health service complaint, the Commission will need to assess the complaint as provided for in division 2 of part 4. The information obtained during the assessment (e.g. inviting submissions from the complainant and provider) will then inform the Commission's decision as to what further action it would be appropriate for the Commission to take on the matter. As detailed in section 61 of the HQCC Act, if the Commission accepts a health service complaint, the Commission may conciliate or investigate the complaint or refer the complaint to another entity that may be better placed to investigate or take action about the matter. It should be noted, however, that the Commission may attempt to resolve a health service complaint during the assessment phase should new information come to light that indicates that this may be appropriate. Section 71 of the HQCC Act clearly states that the Commission may attempt, at any time, to resolve a health service complaint in whatever lawful way it considers appropriate.

Amendment of s 54 (Notice of decision to assess health service complaint)

Clause 29 amends section 54 which specifies that the Commission must, as soon as practicable, and within 14 days of beginning the assessment of a complaint, notify the complainant, the provider to whom the complaint relates, and the provider's registration board that the complaint is being assessed.

As a consequence of the enactment of the National Law, an amendment is required to limit the application of section 54 to providers who are registered with one of the four State Boards - the *Dental Technicians Registration Act 2001*, *Medical Radiation Technologists Registration Act 2001*, *Occupational Therapists Registration Act 2001* or the *Speech Pathologists Registration Act 2001.*

As currently occurs, if a complaint is made about a provider who is registered with one of these boards, the Commission must notify the relevant board that it is assessing a complaint against the provider. However, if a complaint is made about a nationally registered provider, the Commission will notify the relevant National Board about the complaint in accordance with the requirements of section 150 of the National Law.

Amendment of s 57 (Consultation with registration board)

Clause 30 amends section 57, which requires the Commission to consult with the relevant registration board about a health service complaint about a registered provider.

As a consequence of the enactment of the National Law, an amendment is required to limit the application of section 57 to providers who are registered with one of the four state-based registration boards - the *Dental Technicians Registration Act 2001*, *Medical Radiation Technologists Registration Act 2001*, *Occupational Therapists Registration Act 2001* or the *Speech Pathologists Registration Act 2001.* As currently occurs, if a health service complaint has been made about a provider who is registered with one of these boards, the Commission must consult the relevant board before a decision is made to accept the complaint for action or that no action will be taken (e.g. the complaint is vexatious, lacking in substance or has been adequately dealt with by commission or another authority).

If a complaint is made against a provider registered under the national registration and accreditation scheme, consultation between the

Commission and the relevant national body will be undertaken in accordance with the requirements of section 150 of the National Law.

Amendment of s 64 (When Commission may decide not to take action)

Clause 31 amends section 64, which sets out some of the circumstances whereby the Commission may decide not to take action on a health service complaint. They are: the complainant fails to comply with the Commission's request to confirm the complaint in writing; provide more information about their identity; provide more information about their complaint or verify the complaint or information by oath or statutory declaration; the complaint has been resolved since it was made; or the user has commenced a civil proceeding about the matter and a court has begun to hear it, or the matter has been referred to an alternative dispute resolution process under the *Uniform Civil Procedure Rules 1999*.

This section is to be amended to also specify that the Commission may decide not to take action about a health service complaint, if a National Board or adjudication body under the National Law is dealing with the complaint. This may occur if a health service complaint concerning a nationally registered provider is made to the Commission but as a result of consultations with the relevant National Board, it is decided under section 150 of the National Law that the Board is the more appropriate body to deal with the matter. In the event that action is taken against the registered provider under the National Law, the Commission will be advised of any issues raised about the health, conduct or performance of the registered provider and the action taken in relation to these issues.

Amendment of s 65 (Withdrawal of complaint)

Clause 32 amends section 65, which specifies that the Commission may decide not to take action if a complainant withdraws a health service complaint. However, the withdrawal of a complaint does not prevent the Commission from assessing the complaint, referring the complaint to another entity, investigating the complaint or conducting an inquiry in relation to the complaint.

Section 65 is to be amended as a consequence of the inclusion of a preliminary assessment process for complaints concerning nationally registered providers. That is, the withdrawal of a complaint will not

prevent the Commission from conducting a preliminary assessment of a health service complaint.

The ability of the Commission to conduct a preliminary assessment, although a complaint has been withdrawn, is consistent with the Commission's obligations to act in the public interest.

Amendment of s 68 (Registration board may delegate function under s 57)

Clause 33 amends section 68, which provides that either a State or National Board may delegate a function or power of the board under section 57 (Consultation with registration board) to specified persons. Under section 57, if the Commission consults a registration board about a health service complaint concerning a registered health practitioner, the board is required to provide the Commission with comments, which may include whether or not the complaint warrants action by the board.

The reference to a registration board established under the National Law in subsection 68(1)(d) is to be omitted. As explained above, the need to consult with a registration board under section 57 is to be limited to the four State Boards - the *Dental Technicians Registration Act 2001*, *Medical Radiation Technologists Registration Act 2001*, *Occupational Therapists Registration Act 2001* or the *Speech Pathologists Registration Act 2001.* Consultations between the Commission and National Boards will be carried out in accordance with the requirements of section 150 of the National Law.

The amendment renumbers subsection (1) (c) (i) and (ii) as subsection (1) (c) and (1) (d) respectively. As currently provided for by the HQCC Act, a State Board may delegate a function of the Board under section 57 to either the executive officer of the Office of Health Practitioner Registration Boards appointed under the *Health Practitioner Registration Boards (Administration) Act 1999* or with the executive officer's agreement—another member of the staff of the Office of Health Practitioner Registration Boards.

In addition, the amendment provides for the definition of 'State health law' in subsection 68(2) to be omitted. This definition is redundant as the omission of subsection 68(1)(d) means that there is no need to make a distinction between State and National Boards for the purposes of section 68.

Amendment of s 87 (Referral to another entity)

Clause 34 amends section 87, which enables the Commission to refer a matter raised in the course of an investigation to another entity that may be better placed to investigate or take action about the matter. Such an entity may include a National Board.

It may be appropriate for the Commission to refer a matter to a National Board if, for example, the Commission was investigating a complaint about the quality of health services at a hospital and concerns were raised about the professional conduct of a nationally registered practitioner. However, as a consequence of the enactment of the National Law, the Commission must not only act in accordance with the requirements of section 87, but also with section 150 of the National Law.

Consequently, section 87 is to be amended to include a note to clarify that, as required by section 150 of the National Law, if an investigation conducted by the Commission raises issues about the health, conduct or performance of a nationally registered provider, the Commission must notify the relevant National Board. Such a notice must include sufficient information in order to identify the provider, details of the issues raised about the health, conduct or performance of the provider, or details of action taken by the Commission in response to the health, conduct or performance issues raised about the provider.

Amendment of s 89 (Commission's powers not affected by reference)

Clause 35 amends section 89, which provides that the Commission's powers to investigate a matter are not affected by referral of the matter to another entity under section 87.

As a consequence of the enactment of the National Law, section 89 is to be amended to clarify that the Commission's powers to investigate a matter are not affected by the requirement that it must advise a National Board if an investigation being conducted by the Commission raises issues about the health, conduct or performance of a nationally registered provider.

Section 89 enables the Commission to continue with an investigation, even though a matter raised during the course of an investigation is referred to another entity (including a National Board) that has the prerequisite statutory authority to investigate or otherwise act on the matter. This provision, for example, enables the Commission to continue with a systemic investigation into the quality of a health service, despite the fact

that the Commission may have advised a National Board about the unprofessional conduct or unsatisfactory professional performance of a provider registered by the Board.

The amendment also clarifies, that as required by section 150, the Commission must notify a National Board if an investigation by the Commission raises issues about the health, conduct or performance of a nationally registered provider.

Amendment of s 149 (Assistant Commissioners)

Clause 36 amends section 149, which provides that there are to be a minimum of 5 and a maximum of 7 Health Quality and Complaints Assistant Commissioners.

Currently, this section specifies at least one of the assistant Commissioners must be a lawyer, one must be a person who is a medical practitioner with clinical experience, at least one must be a nurse or midwife, one must be an allied health professional, and one must have skills and experience in consumer issues.

Subsection 149(4) sets out a number of definitions for the purposes of section 149, including for example, who may be considered to be an allied health professional, medical practitioner, midwife, registered nurse, or registered provider. The definition of 'health practitioner registration Act' needs to be amended, as a consequence of the term 'State health law' being defined for the purposes of the Act to collectively refer to the four Acts providing for the registration of certain health practitioners at a state level.

Amendment of s 164 (Other directions by Minister)

Clause 37 amends section 164, which sets out what directions the Minister for Health may give to the Commission, including the provision of a report on a specified matter; investigating a health complaint or systemic issues relating to the quality of health services; and intervening in disciplinary proceedings against a registered provider.

As a consequence of the insertion of the new section 190A, subsection 164 (1) (d) is to be amended. That is, to clarify that the Minister may give a written direction to the Commission to intervene in disciplinary proceedings against a registered provider under section 190 (which deals with disciplinary proceedings concerning state registered health

practitioners) or section 190A (which deals with disciplinary proceedings concerning nationally registered providers).

Amendment of s 176 (Status)

Clause 38 amends section 176, which clarifies that the Office of the Health Quality and Complaints Commission is not a statutory body for the *Financial Administration and Audit Act 1977* or the *Statutory Bodies Financial Arrangements Act 1982.*

This section is to be amended to correct an error – the year in the title of the *Statutory Bodies Financial Arrangements Act* is cited as being 1992 rather than 1982.

Amendment of s 188 (Information from registration board)

Clause 39 amends section 188, which allows the Commission to ask, and allows a registration board to give the Commission information, comment and recommendations about a health complaint or a registered provider to whom the complaint relates.

A minor amendment is to be made to this section to ensure parity with section 189, which enables a registration board to ask the Commission for information. An amendment is to be made to subsection (3) to specify that the board must comply with the Commission's request as soon as practicable.

Amendment of s 189 (Registration board may ask Commission for information)

Clause 40 amends section 189, which allows a registration board to ask the Commission for information about any complaints made to the Commission about the registration board's registered providers. The Commission must comply with a request from the registration board.

In order to ensure parity with section 188, which enables a registration board to ask the Commission for information, a new subsection (3) is to be inserted. This subsection clarifies that the Commission's obligation to comply with a request from a registration board, only applies to information in the possession of the Commission.

Under subsection 189(2), the Commission is already required to comply with the board's request as soon as practicable.

Replacement of s 190 (Commission may intervene in disciplinary proceedings)

Clause 41 replaces section 190, which allows the Commission to intervene in disciplinary proceedings taken against a registered provider and appeal against decisions made in those proceedings.

As a consequence of the enactment of the National Law, section 190 has been redrafted to limit its application to disciplinary proceedings concerning state registered providers being conducted under *Health Practitioners (Professional Standards) Act 1999.* The new section 190A will enable the Commission to intervene in disciplinary proceedings concerning a nationally registered provider being conducted under the National Law.

As currently provided for by section 190, this will mean that the Commission may:

- intervene in disciplinary proceeding before a disciplinary body under the *Health Practitioners (Professional Standards) Act 1999* because of a health complaint or a matter in relation to which the Commission is conducting an inquiry under the HQCC Act
- intervene at any time and, on intervention, become a party to the disciplinary proceeding
- be represented by a lawyer or another person, if it intervenes in a disciplinary proceeding before Queensland Civil and Administrative Tribunal (QCAT)
- nominate a person, other than a lawyer, to appear in a disciplinary proceeding before a State Board or a professional conduct review panel established under the *Health Practitioners (Professional Standards) Act 1999*
- intervene in an appeal against a decision of a disciplinary body made in a disciplinary proceeding. On intervention in the appeal, the Commission becomes a party to the appeal.

The ability to intervene in such proceedings is warranted in light of the Commission's statutory responsibilities to identify, review and improve the quality of health services provided in Queensland as well as to act in the public interest when responding to health complaints.

This clause also inserts a new section 190A to enable the Commission to intervene in the following disciplinary proceedings concerning a nationally registered provider being conducted under the National Law:

- the hearing of a matter by a performance and professional standards panel established under section 182 of the National Law
- a proceeding before QCAT, for a matter referred to QCAT under section 193 of the National Law
- an appeal before QCAT of a specified decision made by a National Board or a panel established to assess the health or performance of a nationally registered provider as listed in section 199 of the National Law.

The Commission may intervene in a disciplinary proceeding at any time and, on intervention, becomes a party to the disciplinary proceeding.

If the Commission intervenes in a disciplinary proceeding before a performance and professional standards panel, the Commission may be represented by a lawyer or another person with leave of the panel.

If the Commission intervenes in a disciplinary proceeding before QCAT, the Commission may be represented by a lawyer or another person.

The ability to intervene in such proceedings is warranted in light of the Commission's statutory responsibilities to identify, review and improve the quality of health services provided in Queensland as well as to act in the public interest when responding to health complaints.

Replacement of s 210 (Commission may provide information)

Clause 42 replaces section 210, which states that if the Commission refers a health complaint to a registration board or other entity under Chapter 5 (Health complaints) or Chapter 7 (Investigations by Commission), the Commission may give the board or other entity any information given to, or gathered by, the Commission in the course of dealing with the complaint, except for information obtained through conciliation.

As a result of the enactment of the National Law, this section has been redrafted to clarify that it also applies when the Commission notifies a National Board that it has received a health complaint about a nationally registered provider. This amendment removes any doubt that the Commission is able to share information with a National Board as part of

the notification and consultation processes under section 150 of the National Law.

Amendment of ch 15, pt 2, hdg (Transitional provisions)

Clause 43 amends the heading for part 2 as a consequence of the insertion of a new part 3 to set out the transitional arrangements for the amendments to the HQCC Act being made by the Bill. The transitional arrangements under part 2 emanate from the introduction of the HQCC Act in 2006.

Insertion of new ch 15, part 3

Clause 44 inserts a new part 3 into Chapter 15, comprised of sections 231 to 233, to set out the transitional arrangements for the amendments to the HQCC Act being made by the Bill.

Section 231 – Definitions for Part 3

Section 231 defines the term 'amendment Act' and 'commencement' for the purposes of the part – that is, amendment Act means the *Health Legislation Amendment Act 2011* and commencement means the commencement of this part.

Section 232 – Existing health complaints not finally dealt with

Section 232 clarifies how a health complaint or notification under the National Law is to be dealt with, if the complaint or notification has not been finally dealt with before the commencement of part 3. That is, the Commission must continue to deal with the complaint or notification under the HQCC Act as if the amendment Act had not been made.

Section 233 – Health complaints made after the commencement

Section 233 clarifies how a health complaint or notification under the National Law is to be dealt with after the commencement of part 3. That is, the HQCC Act, as amended by the Bill, will apply to all health complaints and notifications whether or not the complaint or notification is about a matter that happened before the commencement of part 3.

Omission of sch 2 (Registration boards)

Clause 45 omits Schedule 2, which lists the entities that are "registration boards" for the purpose of the definition of that term in Schedule 5 of the Act.

This schedule is to be omitted as a result of the inclusion of a definition for the term "State health law". State health law is to be defined for the purposes of the Act as meaning any 1 of the following Acts: the *Dental Technicians Registration Act 2001*; the *Medical Radiation Technologists Registration Act 2001*; the *Occupational Therapists Registration Act 2001*; or the *Speech Pathologists Registration Act 2001*.

Amendment of sch 5 (Dictionary)

Clause 46 amends Schedule 5, which sets out the definitions for certain terms used in the Act. As a consequence of the amendments being made to the Act:

A new definition of 'registration board' is to be inserted to mean a State Board (defined as a board established under a State health law) or a National Board (defined as a national board established under the Health Practitioner Regulation National Law).

A definition for the term 'State health law' is to be inserted to mean any 1 of the following Acts: the *Dental Technicians Registration Act 2001*; the *Medical Radiation Technologists Registration Act 2001*; the *Occupational Therapists Registration Act 2001*; or the *Speech Pathologists Registration Act 2001*.

A definition for the term 'notification' is to be inserted to pick up the meaning of this term as defined in the Health Practitioner Regulation National Law.

The definition of 'completion notice' is to be amended to cite the new term 'State health law' – that is, a completion notice means for a registration board established under a State health law, a notice under *the Health Practitioners (Professional Standards) Act 1999*, section 383. Under certain circumstances, the Commission is prevented from taking any further action in relation to a health service complaint until it has received a completion notice that no further action is to be taken by a registration board in relation to the complaint. That is, if a complaint about a registrant is being dealt with by the registrant's board or a disciplinary body under the *Health Practitioners (Professional Standards) Act 1999* and the Commission has advised the registrant's board that the Commission intends to conciliate, or continue to conciliate, the complaint as provided for by sections 62(3), 66(3) and 76(3) of the HQCC Act.

The definition of 'disciplinary body is to be amended to include a reference to the new term 'performance and professional standards panel'. Under the

National Law, a National Board may establish a performance and professional standards panel if the Board reasonably believes, because of a notification or for any other reason, that the practise of a registered practitioner is or may be unsatisfactory; or that the professional conduct of a registered practitioner is or may be unsatisfactory. Under the new section 190A, the Commission may intervene in a disciplinary proceeding before a performance and professional standards panel.

In addition, a number of definitions are to be amended to confirm with current drafting practices whereby a reference to the applicable chapter and section of the Act is to be cited in the definition. For example, the definition of the term "proposed action" will now appear as "*proposed action* for chapter 3, see section 25(1)(c)".

Part 6 Amendment of Pest Management Act 2001

Act amended

Clause 47 specifies that this Part amends the *Pest Management Act 2001*.

Amendment of s 19 (Requirements about application for licence)

Clause 48 amends section 19 of the Pest Management Act, which prescribes the elements required for an application by a person for a pest management technician licence (in order to carry out pest management activities). Section 19(c) requires the application to be accompanied by an application fee prescribed under a regulation.

One of the requirements to be licensed as a pest management technician is to hold a relevant pest management qualification for the pest management activity intended to be carried out under the licence. A licence issued under the Act for a fumigation activity will be limited to the site environment in which the person applying for the licence has demonstrated competence. A fumigation activity includes measuring, mixing or weighing when preparing a fumigant for use, and also includes the use of a fumigant to kill a pest, or sterilise grain or seed to prevent germination.

Competence in a fumigation activity must be demonstrated in one or more site environments, such as a ship's hold or a silo.

Section 24 of the Pest Management Act currently requires a licence to state the site environments under which a fumigation activity may be carried out. Despite this requirement, the Pest Management Act does not stipulate that a declaration of assessment in relation to that competence must be provided in support of an application for a pest management licence. Instead, this competency document is sought administratively. To overcome this discrepancy, the Bill amends section 19 to prescribe a document – a declaration of assessment – that is also required to accompany an application for a pest management technician licence, if the application is for a licence under which a fumigation activity may be carried out only in a certain site environment. The declaration of assessment must be in writing and signed by an accredited assessor. Section 19 is further amended to include definitions for *accredited assessor* and *declaration of assessment*.

Amendment of sch 3 (Dictionary)

Clause 49 amends Schedule 3 of the Pest Management Act to correct a minor punctuation error in the current definition of *site environment*.

Part 7 Amendment of Public Health Act 2005

Act amended

Clause 50 specifies that this Part amends the *Public Health Act 2005*.

Amendment of s 81 (Disclosure of confidential information in the public interest)

Clause 51 amends section 81, which enables confidential information held in the Notifiable Conditions Register (the Register) if the Chief Executive believes, on reasonable grounds, that the disclosure is in the public interest.

Chapter 3, Part 2 of the Public Health Act provides for the establishment of the Notifiable Conditions Register (the Register) to help protect the community from notifiable conditions, while maintaining an appropriate

balance between the health of the public and individuals' rights and privacy. In accordance with this objective, the Register is used to:

- supply data to monitor and analyse the incidence and patterns of notifiable conditions, to study the management and treatment of these conditions, and to increase public awareness about these conditions;
- identify outbreaks of notifiable conditions so the Commonwealth, the State or a local government can take steps to protect public health;
- help in the identification of persons who have, or may have, contracted a notifiable condition so that action can be taken to provide treatment in order to prevent or minimise the transmission of the notifiable condition; or
- help in the planning of services and strategies to prevent or minimise the transmission of notifiable conditions.

Given the sensitive nature of information that may be included on the Register, the Act regulates how this information may be used and disclosed (see sections 76 to 88). It is an offence for a person to disclose information obtained as a result of the person performing a function under part 2, unless the disclosure is expressly authorised. While section 81 enables the disclosure of information in the public interest, the only individual within Queensland Health who may authorise such a disclosure is the Chief Executive.

The Bill therefore provides for section 81 to be amended to enable the Chief Executive to delegate this responsibility to the Chief Health Officer or another officer who has expertise or experience in the management of public health issues. As currently provided for by the Act, should the Chief Executive, Chief Health Officer or another senior officer approve the release of information in the public interest, this must be detailed in the department's annual report tabled in the Queensland Parliament. The information included in the report will not include any identifying data but rather the type of information released and the purpose for which the information was released.

This amendment will ensure that Queensland Health will be able to respond to an imminent public health concern, involving a notifiable condition, which requires the timely release of information in the public interest. Such action may be warranted in order to prevent or minimise the spread of a notifiable condition with potentially fatal or long-term

consequences for the health of a person (e.g. HIV, hepatitis A, a pandemic flu, etc).

Amendment of s 160 (Meaning of *prescribed period*)

Clause 52 amends section 160 of the Public Health Act, which defines the term *prescribed period* for the purposes of Chapter 5, Part 2 of the Act. A prescribed period is the period of time that a child, who is the subject of a direction under Part 2, must not attend school or a child care service.

As a consequence of the amendments being made to Part 2, the head of power for the making of a regulation about the prescribed period for a vaccine preventable condition under subsection 160(3) is to be amended. The amendment will enable a prescribed period to be set for a child who does not have a vaccine preventable condition but who is suspected of (i) not having been vaccinated for the condition and (ii) being at risk of contracting the condition if the child continues to attend a school or child care service.

The amendment changes the focus of the existing provision 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 or child care.

The periods prescribed under the regulation will be set having regard to the recommendations of the National Health and Medical Research Council (NHMRC) about the prevention of infectious conditions in schools, pre-schools and child care services. The minimum periods for excluding a child from school, pre-school and child care centres recommended by the NHMRC are currently utilised by schools and child care services to inform their policies on how to deal with children who are ill when they arrive at the facility, or who become ill while in care.

Amendment of s 161 (When parent must not send a child to school or child care service)

Clause 53 amends section 161 of the Public Health Act, which imposes an obligation on parents not to send their children to school or child care if they know, or ought reasonably to know, their child has a contagious condition or the parent has been directed under Chapter 5, Part 2 to remove and not to send their child to the school or service for a prescribed period.

This section is amended to provide clarity about when a parent must not send a child to school or child care service, by capturing cases where the parent knows or ought reasonably to know the child has, or may have, a contagious condition. Reasons for the suspicion may include exposure of the child to another person with the contagious condition.

Currently, the focus of the provisions under Chapter 5, Part 2 is on the spread of contagious conditions within a particular school or child care service. As such, it fails to adequately recognise that an outbreak of a contagious condition within the broader community may spread to children attending a particular school or child care service. For example, a child may be exposed through their attendance at social functions, participation in club sports or contact with their younger siblings attending a different school or child care.

The NHMRC recommends that one of the most important ways of preventing the spread of an infectious condition is to exclude children who have the condition and, in some cases, children who have had contact with other persons who have the condition. Section 161 reinforces the role parents have in helping to prevent the spread of contagious conditions.

Preventing the spread, or breaking the transmission cycle, of a contagious condition among children at school or in child care will not only help to maintain the health of Queensland children but help to curtail the overall incidence of these conditions within the broader community.

Amendment of s 162 (When teacher or carer must advise person in charge)

Clause 54 amends section 162 of the Public Health Act, which requires a teacher or child care worker to advise the person in charge of their school or child care service that a child attending the school or service may have a contagious condition.

This section is to be amended to more clearly state that this obligation applies to a teacher or carer who reasonably suspects that a child has, or may have, a contagious condition. It also provides consistency with terminology used across Part 2 in relation to whether a child "has or may have" a contagious condition and reflects that a suspicion may be based on a number of reasons, including as a result of exposure of a child to another person with a contagious condition that has occurred within or outside the school or child care service.

Amendment of s 163 (Person in charge may advise parent about suspicion of contagious condition)

Clause 55 amends section 163 of the Public Health Act, which enables a person in charge of a school or child care service to provide advice to the parents of the children attending the school or service if it is suspected that a child at the school or service may have a contagious condition.

This section is to be amended to more clearly state that the person in charge may provide such advice if they reasonably suspect that a child has, or may have, a contagious condition. It also provides consistency with terminology used across Part 2 in relation to whether a child "has or may have" a contagious condition and reflects that a suspicion may be based on a number of reasons, including as a result of exposure of a child to another person with a contagious condition that has occurred within or outside the school or child care service.

Under this section, the person in charge may advise a child's parent:

- that a child attending the school or service has, or may have, a contagious condition and other children attending the school or service may be at risk of contracting the condition; and
- about their obligation under section 161 to keep their child away from school or child care if they know, or ought reasonably know, their child has or may have a contagious condition; and
- about their obligation to remove their child, and keep their child away from school or child care for a prescribed period, if the parent is issued with a direction under chapter 5, part 2.

Amendment of s 164 (Person in charge may direct parent not to send child to school or child care service)

Clause 56 amends section 164 of the Public Health Act, which enables the person in charge of a school or child care service to direct the parent of a child to remove and not send their child to the school or service for a prescribed period.

This section is to be amended to more clearly state that this section will apply if the person in charge reasonably suspects that a child has, or may have, a contagious condition. It also provides consistency with terminology used across Part 2 in relation to whether a child "has or may have" a contagious condition and reflects that a suspicion may be based on a number of reasons, including as a result of exposure of a child to another

person with a contagious condition that has occurred within or outside the school or child care service.

A direction under section 164 may only be issued if:

- the person in charge has provided at least one of the child's parents with advice as provided for by section 163; and
- the child continues to attend the school or service, or the parent tells the person in charge that the child will continue to attend the school or service; and
- the person in charge reasonably suspects that the child still has, or may have, a contagious condition and that this may place other children at risk of contracting the condition; and
- the person in charge has consulted a doctor or another person authorised by the Chief Executive (Health).

Amendment of s 165 (Person in charge may advise parent of child not vaccinated about suspicion of vaccine preventable condition)

Clause 57 amends section 165 of the Public Health Act, which enables a person in charge of a school or child care service to advise a child's parent if they reasonably suspect that a child attending the school or service who has not been vaccinated for a contagious condition (i.e. a vaccine preventable condition) may be at risk of contracting the condition because another child attending the school or service has the condition.

This section is to be amended to enable a person in charge to provide advice to parents, when the person in charge reasonably suspects that a child attending the school or service:

- has not been vaccinated for a vaccine preventable condition; and
- may be at risk of contracting the condition if the child continues to attend the school or service.

This amendment more accurately reflects the risk a non-vaccinated child may face if there is an outbreak of a vaccine preventable condition in their community and there is evidence to suggest that the condition may be spread to children attending a particular school or child care service.

Amendment of s 167 (Chief executive may authorise examination of children at school or child care service)

Clause 58 amends section 167 of the Public Health Act, which enables the Chief Executive (Health) to arrange for a doctor to examine the children attending a school or child care service to decide whether the children, have or may have, a contagious condition, including a vaccine preventable condition.

Subsection (1) is to be amended to more clearly state that this section will apply if it is reasonably suspects that some or all of the children at a school or child care service should be examined because a child attending the school or service has, or may have, a contagious condition. It also provides consistency with terminology used across Part 2 in relation to whether a child "has or may have" a contagious condition and reflects that a suspicion may be based on a number of reasons, including as a result of exposure of a child to another person with a contagious condition that has occurred within or outside the school or child care service.

Section 167 specifies that the Chief Executive must consult with the person in charge of the school or service and give the person in charge prior notice about the date, time, reasons and who will be conducting the examination as well as the children, or class of children, to be examined.

In addition, section 168 requires that if a child is to be examined, prior notice must be given to at least one of the child's parents, including:

- the date, time, reasons and who will be conducting the examination;
- that the parent's consent is required for the examination to be carried out;
- that the parent may be present during the examination;
- that the parent may elect to have a doctor of their own choice certify whether or not the child has, or may have, the condition.

The Chief Executive must also advise the parent that they may be directed to remove and not send their child to school or child care service, if:

- the parent fails to have their child examined either by a doctor of their choice or the doctor nominated by the Chief Executive; or
- the examination of their child reveals the child has, or may have, the condition.

Amendment of s 169 (Chief executive may direct person in charge in relation to child)

Clause 59 amends section 169 of the Public Health Act, which sets out the circumstances under which the Chief Executive may direct a person in charge of a school or child care service to direct a parent that they must remove and not send their child to school or child care.

Section 169 is to be amended in line with the amendments being made to Chapter 5, Part 2 to reflect the risk a non-vaccinated child may face if there is an outbreak of a vaccine preventable condition in their community. The Chief Executive will be able to issue a direction under section 169 if the Chief Executive reasonably suspects that a child attending a school or child care service has not been vaccinated for a vaccine preventable condition and will be at risk of contracting the condition if they continue to attend school or child care. Under such a direction, the parent will be asked to remove their child from the school or service for the prescribed period for the condition.

As explained above, the prescribed period for a condition will be set having regard to the recommendations of the NHMRC about the prevention of infectious conditions in schools, pre-schools and child care services.

Amendment of s 172 (Chief executive may require details if child suspected of having a contagious condition)

Clause 60 amends section 172 of the Public Health Act, which enables the Chief Executive to obtain specified information from the person in charge of a school or child care service, to the extent that it is available to the person in charge. The information that may be required is limited to that which is necessary for the Chief Executive to act under Chapter 5, Part 2. For example, a child's place and date of birth, contact details for a child's parents and if available, whether the child has been vaccinated for a particular condition.

Subsection (1) is to be amended to more clearly state that this section will apply if it is reasonably suspects that a child attending at a school or child care service has or may have a contagious condition and other children at the school or service may be at risk of contracting the contagious condition.

Amendment of s 173 (Giving health information held by the department)

Clause 61 amends section 173 of the Public Health Act, which enables health information held by the health department to be given to the Chief Executive, a person in charge of a school or child care service, or another person involved in the administration of part 2.

Subsection (4) is to be amended as a consequence of the changes being made to section 165. That is, to enable a person in charge to advise the parent of a child who may be at risk of contracting a vaccine preventable condition if the child continues to attend the school or service. In order to be able to act under this section, a person in charge may need to obtain information from Queensland Health about whether or not a child has been vaccinated for a vaccine preventable condition.

Amendment of s 180 (Directions to person in charge of school or child care service)

Clause 62 amends section 180 of the Public Health Act, which enables the Chief Executive (Health) to give directions to a person in charge of a school or child care service about the ways to minimise the risk of children and staff at the school or service contracting a contagious condition, if the Chief Executive is satisfied there is an outbreak of the condition at the school or service.

The amendment broadens the circumstances under which the Chief Executive may issue such a direction to more accurately reflect the risk children face when there is an outbreak of a contagious condition in their community and there is evidence to suggest that the condition may be spread to children attending a particular school or child care service. Currently, this provision may only be utilised when the Chief Executive is satisfied there is an outbreak at a school or child care service. The amendment will enable such directions to also be issued if the Chief Executive is satisfied that there is an outbreak of a contagious condition in the community and there is a risk that children or staff at a school or service may contract the condition.

As currently provided for by section 180, a direction must be in writing and state ways of minimising the risk of contracting the contagious condition by children and staff at the school or service including, for example, by:

- preventing the sharing of eating utensils, drinking cups, bed linen and clothing;

- requiring that eating utensils, drinking cups, bed linen, toys or other equipment be disinfected;
- requiring that stated procedures for cleaning and disinfecting be followed; or
- requiring the person in charge to give information to staff, children or parents about the contagious condition including about the way it may be treated and measures to prevent its spread.

The amendment does not alter the obligation on the Chief Executive (Health) to consult with the school or child care service and the relevant Chief Executive of the department responsible for the education sector or child care sector, prior to issuing a written direction. The ability to issue such directions may be an important step in controlling the spread of a contagious condition. However, the first line of response of the public health sector, when managing an outbreak, will be to provide expert advice and work collaboratively with schools, child care services and parents to manage an outbreak.

Amendment of s 181 (Temporary closure of school or child care service)

Clause 63 amends section 181 of the Public Health Act, which enables the Minister for Health to issue a written notice to a person in charge of a school or child care service to temporarily close the school or service for a period of not more than 1 month.

Similar to the previous amendment, section 181 is to be amended to enable the Minister to act under this section if satisfied that there is an outbreak of a contagious condition in the community and there is a risk that the children or staff at a school or service may contract the condition. In this case, however, the Minister must be satisfied that the risk is significant.

The amendment does not alter the obligation on the Minister to consult with the relevant Minister responsible for either the education sector or the child care sector, prior to issue a written notice under section 181.

Part 8 Amendment of Public Health (Infection Control for Personal Appearance Services) Act 2003

Act amended

Clause 64 specifies that this Part amends the *Public Health (Infection Control for Personal Appearance Services) Act 2003*.

Amendment of s 36 (Suitability of premises at which higher risk personal appearance services are to be provided)

Clause 65 amends section 36, which sets out the criteria that local government may consider when deciding whether premises are suitable for providing higher risk personal appearance services, including whether the premise would comply with the Queensland Development Code (QDC).

A minor amendment is required to section 36 to reflect the revised numbering system adopted by the QDC. MP 5.2 of the QDC (previously Part 15) sets out mandatory building standards to minimise the risk of infection in a place or business where higher risk personal appearance services are provided. Higher risk personal appearance services are those skin penetration procedures in which the release of blood or other bodily fluid is an expected result (e.g. body piercing; scarring; tattooing; implanting natural or synthetic substances into a person's skin).

The amendment is machinery in nature and does not alter the intent of the provision.

Amendment of s 41 (Conditions of licence)

Clause 66 amends section 41, which sets out the standards conditions for a licence to carry on a business providing higher risk personal appearance services, including that the licensee comply with the QDC.

A minor amendment is required to section 36 to reflect the revised numbering system adopted by the QDC. MP 5.2 of the QDC (previously Part 15) sets out mandatory building standards to minimise the risk of infection in a place of business where higher risk personal appearance services are provided.

The amendment is machinery in nature and does not alter the intent of the provision.

Amendment of sch 2 (Dictionary)

Clause 67 amends the definition of *second local government* in the dictionary for the Act to correct a grammatical error.

Part 9 Amendment of Tobacco and Other Smoking Products Act 1998

Act amended

Clause 68 specifies that this Part amends the *Tobacco and Other Smoking Products Act 1998* (the Tobacco Act).

Amendment of s 26S (No smoking sign)

Clause 69 amends section 26S of the Tobacco Act, which provides for the display of a 'no smoking sign' by a licensee at the entrance to a licensed premise. In practice, this requires the licensee to display a 'no smoking sign' at all entrances to the premises. This provision was particularly important when smoke-free laws were first introduced in Queensland, as a means of both educating the public and reinforcing the no smoking message. However, it has been found in practice to be broader than required, given the large number and diverse range of premises captured by this provision (including licensed boats, long distance trains and bottle shops located within an enclosed shopping centre).

The intent is not for signage to be displayed at every entrance to all licensed premises, such as those located entirely within facilities that are already smoke-free (such as shopping centres) and those that are not available to public use. The amendments will focus the intent of this provision on premises such as clubs, hotels and casinos that have the option of establishing a designated outdoor smoking area (DOSA) where both drinking and smoking may occur. It is important for these premises to continue to reinforce that smoking indoors is strictly prohibited.

To achieve this policy intent, section 26S is amended to apply only to the licensee of premises to which a commercial hotel, community club or commercial special facility (that contains all or part of a casino) licence under the *Liquor Act 1992* applies, and only in relation to a public entrance from an outdoor area to an enclosed place at licensed premises. The current requirement for the sign to be displayed as prescribed under a regulation will continue.

Amendment of s 26ZA (Designating an outdoor smoking area)

Clause 70 amends section 26ZA of the Tobacco Act, which provides for a licensee of particular licensed premises (i.e. premises to which a commercial hotel, community club or commercial special facility licence under the *Liquor Act 1992* applies) to designate a part of the licensed outdoor area of the premises as an area in which drinking and smoking, but not eating, is allowed (known as a designated outdoor smoking area or DOSA).

Under section 26ZA, a DOSA must meet certain minimum requirements, which include having a buffer adjacent to other parts of the outdoor area of the premises ordinarily accessed by patrons. The buffer may be either a 2.1 metre high vertical screen impervious to smoke, or a two metre horizontal area in which patrons are not allowed to eat, drink or smoke. The policy intent behind the buffer requirements for a DOSA is to reduce exposure of workers and patrons to environmental tobacco smoke (ETS) and clearly separate smoking areas from non-smoking outdoor areas. The buffer between a smoking and non-smoking outdoor area is integral to a DOSA and essential to reduce the flow of ETS into non-smoking areas.

Examples of buffers are currently provided in section 26ZA(7) to assist licensees in identifying what may be considered to be a vertical screen impervious to smoke and in order to be clear that licensees are afforded some flexibility in satisfying their statutory obligations.

The Bill clarifies the original policy intent of the buffer requirements by clarifying what constitutes a screen that is impervious to smoke and how a buffer height should be measured between areas with different floor heights.

Screen impervious to smoke

The amendment to section 26ZA(7) removes the current example of a 'thick screening hedge' as a permitted buffer. In practice, it has been found

that a thick hedge typically does not meet the requirements of a screen that is impervious to smoke and the example has been found to be ambiguous and vulnerable to abuse. Some licensees have interpreted this example as meaning that any plant material of the required height will provide a sufficient buffer. This is not consistent with the legislative intent behind giving examples of acceptable buffers.

Measuring vertical buffers

Section 26ZA is further amended to specify that the height of a buffer screen is to be measured as if the base of the screen were level with the highest point of the ground or floor within one metre on either side of the screen.

The Tobacco Act does not currently specify the topographical features of the area that must be taken into account when measuring the height of a vertical screen buffer to determine whether it satisfies the statutory height requirement. In practice, some premises have a DOSA and non-smoking area adjacent to each other, but with different floor heights. Typically, the DOSA in these instances is located on the higher level, and the non-smoking area on the lower level. In these cases, the licensees have correctly placed a vertical buffer between the two areas of differing heights, but have measured the height of the buffer from the lower (non-smoking) area to satisfy their statutory obligations. The differing heights, however, mean that the buffer on the higher (DOSA) level typically has a height of less than 2.1 metres. This allows for smoke to drift over the screen and into non-smoking areas, increasing exposure of patrons and staff in those non-smoking areas to ETS. This is inconsistent with the legislative intent of a 2.1 metre high vertical screening buffer between a DOSA and non-smoking area.

- The intended effect of this amendment is to ensure that where a buffer screen is placed between two areas of different heights, the screen must be 2.1 metres from the highest point of the ground or floor within one metre on either side of the screen. In practice, this will provide licensees with two alternatives:

- locate the vertical buffer one metre or more from the perimeter of the DOSA and measure the 2.1 metre screen from the lowest ground or floor level of the two areas (in this case, the one metre between the DOSA and the non-smoking area works in conjunction with the 2.1 metre screen to provide an adequate buffer from ETS); or

locate the vertical buffer at less than one metre from the perimeter of the DOSA and measure the 2.1 metre screen from the highest ground or floor level of the two areas (in this case, the screen would be greater than 2.1 metres in total, but would be the statutory 2.1 metres from the ground or floor level of the highest area).

Renumbering of subsections (8) and (9), to subsections (9) and (10) enables this clarification to be inserted at an appropriate place within section 26ZA, as new subsection (8).

Amendment of s 26ZS (Supply of food or toys resembling tobacco products)

Clause 71 amends section 26ZS of the Tobacco Act, which prohibits, as part of a business activity, the supply (which includes sale) of a toy or food that is not a tobacco product, but resembles a tobacco product.

The primary objective of the Tobacco Act when introduced in 1997 (enacted at that time as the *Tobacco Products (Prevention of Supply to Children) Act 1998*) was to reduce the number children in Queensland who take up smoking. This objective was supported by studies that show that reducing the number of children who take up smoking is the most effective way of reducing the incidence of smoking in the community and reducing the deaths and illnesses caused by smoking and the resultant demands on the health care system.

Accordingly, the Tobacco Act prohibits certain conduct which makes tobacco more easily obtainable or more desirable to children, or which normalises smoking to children (e.g. the sale of single cigarettes, or food or toys that resemble tobacco products). The policy of prohibiting the supply of food or toys that resemble tobacco products is based on studies that show that children who have used such products are more likely to experiment with tobacco than children who have not.

Despite capturing toys, the sale of other novelty items that resemble tobacco products (such as cigarette shaped pens) is not currently prohibited under section 26ZS. This is because these items would not normally fall within the meaning ordinarily ascribed to the term 'toy' (which are not defined in the Act), despite having a similar 'novelty' value. These novelty items may therefore be legally sold, and are in fact available for sale in Queensland. Like toys and food that resemble smoking products, these novelty items normalise smoking to young people and may encourage

young people to experiment with smoking, and should therefore be subject to the same prohibition.

The Bill amends section s26ZS to clarify that the supply of any object that is not a tobacco product but resembles a tobacco product is prohibited. This amendment is intended to capture more broadly any food, toy or novelty item.

Insertion of new s 26ZT

Clause 72 inserts new section 26ZT into the Tobacco Act to prohibit the sale of cigarettes that are confectionary-flavoured or fruit-flavoured. An offence is created for breaching this provision, with a maximum penalty of 140 penalty units (currently $14,000).

The Bill does not prohibit the sale of menthol cigarettes. In addition, this clause will not capture the sale of loose tobacco which may contain fruit flavouring, such as shisha used for smoking in traditional hookah pipes. This is because the definitions of *cigarette* and *loose smoking blend* are mutually exclusive.

Insertion of new s 42E

Clause 73 inserts new section 42E into the Tobacco Act to provide for the forfeiture to the State of smoking products seized in relation to an offence of supplying a smoking product to a child under the Act.

Sections 40 and 41 of the Tobacco Act empower authorised persons to seize a smoking product or thing if they reasonably believe the smoking product or thing is evidence of an offence against the Act. In particular, section 40 relates to the seizure of smoking products in instances where the products have been, or are reasonably believed to have been, supplied to a child, which constitutes evidence of an offence against the Tobacco Act (e.g. section 10 prescribes an offence for a supplier to supply a smoking product to a child and section 11 prescribes an offence for a supplier failing to ensure an employee of the supplier does not supply a smoking product to a child).

If a person is convicted in relation to the alleged offence, section 43 provides that a court may order the forfeiture of the seized smoking product to the State. Where the person is not convicted, section 44A requires the smoking product to be returned to the person, either at the end of six months or at the end of any proceeding in relation to the offence.

In practice, the effect of section 44A means that, for example, if cigarettes are seized from a child (whether purchased by the child or supplied to the child by an adult) and a prosecution is not pursued or is unsuccessful, the cigarettes must be returned to the child. This is an undesirable policy outcome and contrary to the intent of the Tobacco Act.

The Bill, therefore, inserts new section 42E to clarify that where a smoking product is seized under section 40, the smoking product is forfeited to the State at the end of six months from the day it was seized, or if a proceeding involving the supply of the smoking product is started within six months from the day it was seized – at the end of the proceeding and any appeal from the proceeding.

In effect, this means that cigarettes and tobacco products seized from a minor as evidence of an offence against the Tobacco Act are automatically forfeited to the State, regardless of whether a person is subsequently convicted in relation to the suspected offence to which the cigarettes or products relate.