Health Legislation Amendment Bill 2013

Explanatory Notes

Short title

The short title of the Bill is the Health Legislation Amendment Bill 2013.

Policy objectives and the reasons for them

The Health Legislation Amendment Bill 2013 (the Bill) amends six Health portfolio Acts to support policy initiatives of the Government, and to improve the effective operation of the Acts. In particular, the Bill amends the:

- *Health Legislation Amendment Act 2011* to stop the introduction of a statewide voluntary food business rating scheme under the *Food Act 2006*;
- *Hospital and Health Boards Act 2011* to enable land and buildings to be transferred between the Department of Health to Hospital and Health Services, and between Services, by way of a transfer notice made by the Minister and published in the Government Gazette;
- *Public Health Act 2005* to establish the Maternal Death Statistics Collection to increase awareness of maternal death, analyse obstetric patterns and outcomes, facilitate research and help plan obstetric health services and strategies to prevent or minimise maternal mortality;
- *Queensland Institute of Medical Research Act 1945* to enable the membership of the Council to be staggered, and to allow the Council to enter into agreements without first having to obtain the approval of the chief executive; and
- *Transplantation and Anatomy Act 1979* to address a number of operational deficiencies that are hampering implementation of the legislation in an efficient and effective manner.

Health Legislation Amendment Act 2011

The *Health Legislation Amendment Act 2011* included amendments to the *Food Act 2006* to introduce a statewide model for food business rating schemes that could be adopted by local governments.

It had been intended that Queensland's statewide model would be based on a nationally agreed scheme being developed under the auspices of the Implementation Sub-Committee (ISC) of the Food Regulation Standing Committee of the Australia and New Zealand Food Regulation Ministerial Council.

In August 2012, the ISC endorsed a high-level framework that set out guiding principles to support the design and implementation of a food business rating scheme (the national principles). However, there is no obligation on jurisdictions to implement a statewide model

for food business rating schemes that accords to the principles endorsed by the ISC. Rather, the general approach being adopted by other jurisdictions is one of cooperation between the state and local governments to examine how such schemes can be implemented having regard to the national principles.

The Bill therefore amends the *Health Legislation Amendment Act 2011* to prevent the amendments to the *Food Act 2006*, which provide for the establishment of a statewide model, from coming into effect. The repeal of these provisions accords with the Government's regulatory reform agenda by avoiding the imposition of a new regulatory burden on local government. Furthermore, it will ensure that local governments are not restricted in their ability to design and implement a scheme that takes into account the needs of their local community and food businesses. In doing so, individual councils will be able to draw on the work undertaken to develop the national principles, as they deem to be appropriate.

Hospital and Health Boards Act 2011

The *Health and Hospitals Network and Other Legislation Amendment Act 2012* was introduced in May 2012. It was announced at this time that land and buildings operated by Hospital and Health Services would be transferred from the Department of Health to the relevant Services.

Subsequent to this announcement, the *Blueprint for better healthcare in Queensland* (the Blueprint) was released by the Queensland Government in February 2013, and identified a number of initiatives to improve the management of infrastructure and assets across the Health portfolio. Consideration of how these initiatives are to be implemented meant that it was not possible to transfer land and buildings to the Hospital and Health Services before the transfer notice provisions expired on 30 June 2013.

While land and buildings could be transferred by agreement, the use of a transfer notice enables:

- transfers to be done efficiently, particularly where large numbers of properties are involved;
- the Minister to direct the transfer of land and buildings within the Health portfolio in accordance with Government initiatives such as the Blueprint; and
- land and buildings to be transferred as future circumstances may warrant, such as on the completion of capital works.

It is therefore proposed that a new suite of provisions be included in the Act to enable land and buildings to be transferred between the Department of Health and Hospital and Health Services, as well as between Services, by way of a transfer notice made by the Minister for Health.

Public Health Act 2005

The object of the *Public Health Act 2005* is to protect and promote the health of the Queensland public. This object is, in part, achieved by collecting and managing particular health information, and establishing mechanisms for health information to be accessed for appropriate research.

The Queensland Maternal and Perinatal Quality Council (QMPQC) recommended, in its 2011 report, that the *Public Health Act 2005* be amended to require that any death of a woman during pregnancy, or within one year of the end of a pregnancy, be reported. This has been proposed to improve the quality of information available for review of the causation of deaths and the possible presence of avoidable factors. QMPQC is a quality assurance committee which works in collaboration with a number of bodies (such as the Statewide Maternal and Neonatal Clinical Network and the Private Hospital Maternity Liaison Group) to monitor and assist in the adoption of standards and quality activities aimed at improving the care of mothers and babies in Queensland.

Traditionally, maternal mortality rates have been used as a marker of the quality of maternal care, being one of the oldest recorded forms of healthcare quality assurance activity. However, the QMPQC's 2011 report noted significant difficulties were encountered in gathering data regarding maternal deaths, and the work of the Council was hampered due to the poor quality of data being provided by some sectors.

While the number of maternal deaths in Queensland may be low by international standards, the monitoring and review of maternal mortality is critical to the provision of evidence-based services capable of supporting women during and following pregnancy. Furthermore, the available research indicates up to half of the maternal deaths occurring in Australia may be preventable and, as such, the review of each maternal death is an important way of shedding light on policy, practice, and system changes required to improve maternal health care. The introduction of mandatory reporting requirements will facilitate the collection of information relevant to the Queensland context, and address the difficulties experienced by the QMPQC in being able to obtain sufficient information about maternal deaths.

As a consequence of the potential data linkages between the Perinatal Statistics Collection and the Maternal Death Statistics Collection, the Bill also provides for new exceptions to be introduced in relation to the duty of confidentiality governing the Perinatal Statistics Collection. These exceptions mirror those proposed for the Maternal Death Statistics Collection to enable the transfer of data between the two collections and enable confidential information to be disclosed to a coroner investigating, or who has investigated, a death the subject of a perinatal notification.

Queensland Institute of Medical Research Act 1945

The Bill provides for the *Queensland Institute of Medical Research Act 1945* to be amended to address two operational issues to enhance the efficient and effective operation of the Queensland Institute of Medical Research (QIMR).

- **Council members' terms of appointment**

Currently, the *Queensland Institute of Medical Research Act 1945* specifies that members of the QIMR Council may be appointed for a term of three years. In order to ensure that the QIMR Council has the necessary expertise and skills to lead the QIMR over time, an amendment is required to enable individual appointments to be staggered. It is proposed that a member may be appointed for a period of up to four years, and be appointed for a maximum period of 12 consecutive years (that is, three consecutive terms). However, it is intended that the Act recognise that there may be extenuating circumstances which necessitate a member continuing to serve on the Council in excess of three consecutive terms.

The Minister will therefore be empowered to waive the maximum period restriction in special circumstances.

This will ensure the continuity of the work undertaken by the QIMR Council, as well as ensuring the Council is comprised of persons who have the appropriate expertise and skills to meet changes in the scientific, research and funding environments.

- **Council may carry out agreements**

The *Queensland Institute of Medical Research Act 1945* provides that the QIMR Council may enter into agreements and arrangements with a range of specified entities and any other bodies that accord with the purposes of the Act. All agreements and arrangements must be approved by the chief executive of the Department of Health.

It is considered that the requirement for the QIMR Council to obtain the approval of the chief executive imposes an unnecessary burden, as the QIMR is bound by the requirements of the *Statutory Bodies Financial Arrangements Act 1982* and the *Financial Accountability Act 2009*. The *Statutory Bodies Financial Arrangements Act 1982* prescribes basic financial arrangements for statutory bodies, including the establishment of bank accounts, the investment and borrowing powers of the Council, and the ability to enter into financial arrangements or agreements. The *Financial Accountability Act 2009* governs the financial management of departments and statutory bodies, and requires annual audits to be undertaken and annual reports to be prepared and provided to Parliament and other government departments.

Transplantation and Anatomy Act 1979

- **Definition of senior available next of kin**

The definition of senior available next of kin in the *Transplantation and Anatomy Act 1979* was modelled on the Draft Legislation in the Law Reform Commission Report No. 7, Human Tissue Transplants published in 1977. The definition has not been amended since the Act was passed (with the exception of the recognition of same sex de facto partners as a result of changes to the *Acts Interpretation Act 1954* in 2002). Concern has been expressed over who may be considered a person's senior available next of kin in light of contemporary domestic and family arrangements. In order to address these concerns, amendments are required to modernise the definition of senior available next of kin from whom consent may be sought for removal of organs and tissues from a deceased person.

- **Person's intention to donate**

The *Transplantation and Anatomy Act 1979* sets out how organ and tissues may be lawfully retrieved for transplantation or another therapeutic, medical or scientific purpose from the body of a deceased person.

Where the body of a deceased person is in a hospital, the designated officer for the hospital must be satisfied that the deceased person did not express an objection to the removal of tissue from their body after their death, and that the statutory requirements governing the consent of the senior available next of kin have been complied with.

Where the body of a deceased person is not at a hospital, the senior available next of kin must also authorise the removal of their deceased relative's organs or tissues. However, such authorisation cannot be granted if it is believed the deceased person had, during his or her lifetime, expressed an objection to the removal of tissue from his or her body and had not withdrawn that objection.

The different forms of expression used in the relevant sections of the Act have been a source of concern for those staff responsible for obtaining the consent of a potential donor's next of kin. It is therefore proposed that the wording of the relevant sections be amended to clarify that the wishes of a person who dies in hospital are honoured if at some point in their life they had expressed an objection to donation, but later changed their views.

- **Place for conduct of post-mortem examinations**

The *Transplantation and Anatomy Act 1979* sets out the circumstances under which a post-mortem examination may be performed if a person dies in a hospital. The Act requires that steps must be taken to: establish whether the deceased had consented, or expressed an objection, to undergoing a post mortem; obtain the consent of the senior available next of kin; and have the medical officer appointed as the designated officer for the hospital authorise the post-mortem. Where the death of the person is the subject to the provisions of the *Coroners Act 2003*, the consent of the coroner must also be obtained.

Subject to these requirements being met, the *Transplantation and Anatomy Act 1979* enables a medical practitioner to conduct the post-mortem examination. However, there is a concern that the Act does not contemplate that a post-mortem may need to be conducted at a hospital other than the hospital where the person died. This creates an operational difficulty, as not all hospitals in Queensland are equipped with a mortuary suitable to conduct post-mortem examinations.

It has been established practice for those hospitals which do not have a suitable mortuary for authorisation to be granted by a designated officer in accordance with the Act, but that arrangements then be made for the deceased to be transferred to a hospital that has a suitable mortuary so that the post-mortem examination can be conducted.

Current practice reflects the belief that the designated officer at the hospital where a person dies is best placed to make the necessary enquiries in order to determine whether a post-mortem examination is warranted and to ensure consent is obtained prior to authorising the post-mortem examination. Amendments to the Act will ensure that the requirements of the Act reflect what is considered to be best practice.

- **Definition of donated tissue**

The *Transplantation and Anatomy Act 1979* prohibits trade in human tissue, other than when a permit has been issued by the Minister for Health, or a person obtains donated tissue from a prescribed tissue bank.

The *Transplantation and Anatomy Act 1979* only regulates the operation of tissue banks in relation to donated tissue (i.e. tissue removed under a consent or authority under the Act). It does not regulate the operation of tissue banks which are repositories for tissue that has been

obtained as a by-product of a routine medical procedure or operation (e.g. a tumour or suspected cancerous mass removed during exploratory surgery).

Should a prescribed tissue bank operate outside the authority of the legislation, it could be charged with an offence against the Act. Currently, there are five tissue banks that have been prescribed as such under the *Transplantation and Anatomy Regulation 2004* – the Queensland Bone Bank, the Queensland Eye Bank, Queensland Heart Valve Bank, Queensland Skin Bank, and the Australia Red Cross Blood Service (for blood and blood products derived from blood).

The majority of donated tissue that is retrieved by Queensland's prescribed tissue banks comes from donors in Queensland. However, in order to meet the growing demand for donated tissue, at times these entities may need to source tissue from interstate donors, as well as provide donated tissue to interstate recipients.

The prohibition on the trade in human tissue means that Queensland's tissue banks are not able to recover the reasonable costs associated with evaluating, processing, storing or distributing tissue if the tissue has been sourced from a donor outside of Queensland. While it is possible for a Ministerial permit to be issued to overcome this situation, it is not considered a viable long-term solution as it would impose a significant regulatory burden on government as well as the prescribed tissue banks, their interstate counterparts and the hospitals involved in the transplantations. An amendment to the *Transplantation and Anatomy Act 1979* is required to amend the definition of 'donated tissue' to encompass tissue removed in other jurisdictions.

- **Schools of anatomy**

The *Transplantation and Anatomy Act 1979* provides for the regulation of schools of anatomy. A school of anatomy is defined as a suitable place where the study and practice of anatomy may be carried on in connection with a university or a school of medicine.

Under the Act, an individual, once deceased, may donate their body for therapeutic, medical or scientific purposes for the study of anatomy by students undertaking a degree in one of the health sciences. Currently, the Governor in Council is responsible for authorising the establishment of a school of anatomy and the appointment of an inspector for each school of anatomy to monitor and enforce compliance with the requirements of the Act.

Given the administrative nature of these provisions, it is proposed that responsibility for actioning these matters should be allocated to the chief executive (that is, the Director-General of Queensland Health). Making the chief executive, rather than the Governor in Council responsible for these statutory responsibilities will help to streamline the administration of the legislation and, as a consequence, reduce the regulatory burden on the government and schools of anatomy.

Achievement of policy objectives

Health Legislation Amendment Act 2011

The Bill amends the *Health Legislation Amendment Act 2011* to stop amendments to the *Food Act 2006*, that provide for the establishment of a statewide food business rating scheme model, from coming into effect. The repeal of these provisions will ensure that local governments are not restricted in their ability to design and implement a scheme that takes into account the needs of their local community and food businesses.

Hospital and Health Boards Act 2011

In order to give effect to Government's intention that specified land and buildings be transferred to Hospital and Health Services, the Bill amends the *Hospital and Health Boards Act 2011* to facilitate the transfer of land and buildings under a new suite of transfer notice provisions that will apply on an ongoing basis.

Public Health Act 2005

To give effect to the recommendations of the QMPQC's 2011 Report, the Bill amends the *Public Health Act 2005* to establish the Maternal Death Statistics Collection to facilitate the collection of data to help with the monitoring of maternal mortality rates, increase awareness of the incidence and causes of maternal death, monitor and analyse obstetric patterns and outcomes, research into obstetric care and strategies to improve obstetric care and the planning of obstetric health services to prevent or minimise maternal mortality.

The Bill sets out the circumstances under which a health professional must report a maternal death, and empowers the chief executive to ask specified persons for further information in order to ensure the accuracy, completeness and integrity of the data comprising the Maternal Death Statistics Collection.

Given the sensitivity of the information that may be collected about a deceased woman and the health professionals involved in a woman's care, the Bill imposes a duty of confidentiality on the chief executive, as well as persons involved in the administration and enforcement of the new provisions. However, in order to ensure that the data can be used to achieve the stated purposes of the Maternal Death Statistics Collection, the Bill includes a number of exceptions to the duty of confidentiality to enable information to be disclosed under specified circumstances.

Queensland Institute of Medical Research Act 1945

The Bill amends the *Queensland Institute of Medical Research Act 1945* to address a number of operational issues in order to enhance the effective and efficient operation of the QIMR.

Transplantation and Anatomy Act

- **Definition of senior available next of kin**

The Bill amends the definition of senior available next of kin, to take account of contemporary domestic and family arrangements. These amendments recognise a biological

sibling, an adopted sibling, a sibling through surrogacy, a step brother or sister, a person who under Aboriginal tradition or Torres Strait Islander custom is regarded as a sibling or parent, as well as the cultural traditions of culturally and linguistically diverse communities. The amended definition will ensure that contact with families will be able to be progressed in a more efficient and effective manner as staff responsible for obtaining consent will have certainty they are acting in accordance with the legislation.

- **Person's intention to donate**

The Bill amends the *Transplantation and Anatomy Act 1979* to provide consistency for the authority to remove tissue from the body of a deceased person, whether the body is in a hospital or not. The amendment has the effect that a senior available next of kin may not authorise the removal of organs or tissue from the body of a deceased person if they believe the deceased did not wish to be an organ donor.

- **Place for conduct of post-mortem examinations**

The Bill enables the designated officer at a hospital to authorise and make the necessary arrangements for a post-mortem examination to be conducted at another facility if the hospital at which a person died does not have the necessary facilities to carry out the post-mortem.

- **Definition of donated tissue**

The Bill amends the definition of 'donated tissue' to encompass tissue removed in other jurisdictions. This has the effect of enabling a prescribed tissue bank to charge an amount to recover the reasonable costs associated with removing, evaluating, processing, storing and distributing tissue that was retrieved under a consent or authority of the Queensland Act, or a corresponding law of another State or Territory, or a corresponding law of another country.

- **Schools of anatomy**

The Bill amends the *Transplantation and Anatomy Act 1979* to make the chief executive, rather than the Governor in Council, responsible for the authorisation of schools of anatomy and the appointment of inspectors for these schools. These amendments will help streamline the administration of the legislation and, as a consequence, reduce the regulatory burden on the government and schools of anatomy.

Alternative ways of achieving policy objectives

There are no other viable alternatives that would achieve the policy objectives of the Bill.

Estimated cost for government implementation

The costs to government associated with implementation of the Bill will be minimal.

The development, implementation and maintenance of the Maternal Death Statistics Collection, as well as supporting clinicians to comply with their mandatory reporting requirements, will be met from within existing budget allocations. Information about

maternal deaths has been collected administratively for a number of years through the combined efforts of the Department of Health and the Queensland Maternal and Perinatal Quality Council. As such, the necessary administrative and infrastructure requirements to support the collection are already in place, and no additional costs will be incurred.

Consistency with fundamental legislative principles

Right to privacy

The amendments to the *Public Health Act 2005* include placing an obligation on health professionals in relation to maternal deaths, which may be considered to impact on a deceased woman's right to privacy, particularly whether the provisions have sufficient regard to the rights and liberties of an individual.

Under the proposed amendments to the *Public Health Act 2005*, specified health professionals will be required to provide the chief executive with information about the death of a woman while pregnant, or within 365 days of the end of pregnancy, irrespective of the duration and site of the pregnancy, and including deaths from accidental or incidental causes (a maternal death). Such data is currently collected by the QMPQC under its auspices as a quality assurance committee, and is consistent with the approach adopted by the majority of other Australian jurisdictions (e.g. New South Wales, South Australia, Western Australia and Tasmania).

One of the key outcomes to be achieved through the collection of data about maternal deaths is the development of evidence-based best practice to prevent or minimise the risk of such deaths. This work not only focuses on deaths directly linked to complications associated with pregnancy (e.g. eclampsia, amniotic fluid embolism, rupture of uterus, postpartum haemorrhage) but indirect and incidental deaths. Indirect deaths result from a pre-existing disease or a disease that develops during pregnancy, which are aggravated by the physiological effects of pregnancy (e.g. pulmonary-cardiac conditions, diabetes or renal disease). Incidental deaths result from conditions occurring during pregnancy where the pregnancy is unlikely to have contributed significantly to the death, although it is possible to postulate a distant association (e.g. some malignancies). It is evident from the work that has been undertaken in this area that indirect and incidental deaths may occur at least six to 12 months after pregnancy.

The data comprising the Maternal Death Statistics Collection will be subject to a strict duty of confidentiality. The chief executive and staff responsible for the Collection will be prevented from disclosing information unless explicitly authorised by the legislation. For example, the release of aggregated and de-identified information, to enable the QMPQC to analyse the data in its capacity as a quality assurance committee or to provide information to a coroner who is investigating, or has investigated, a maternal death.

It is considered that the legislation strikes an acceptable balance between the public health benefits to be achieved and the rights and liberties of the individual. The framework for the Maternal Death Statistics Collection has been developed having due regard to the potential public health benefits of collecting data up to 365 days, the duty of confidentiality which will restrict access to the data, consistency with other jurisdictions in Australia and work being undertaken nationally to improve maternal death reporting.

Conferring immunity from proceedings or prosecution

The amendments to the *Public Health Act 2005* include provisions that afford protection to a person for the giving of information under specified circumstances. That is, if information was provided under a requirement of the legislation, that would otherwise be deemed to be confidential, the person giving the information will not have contravened any relevant legislation, oaths, rules of law or practice by giving the information, and will not be liable to disciplinary action for giving the information.

The inclusion of these provisions may be considered to breach fundamental legislative principles insofar as legislation should not confer immunity from proceeding or prosecution without adequate justification. However, it is considered that these provisions are justified.

In order to ensure the accuracy, completeness or integrity of the data comprising the proposed Maternal Death Statistics Collection in the *Public Health Act 2005*, the chief executive is empowered to ask specified persons for additional information regarding a maternal death. In order to ensure that those individuals are not breaching any duty or professional obligation to protection of confidential information, the amendments to the *Public Health Act 2005* clearly specifies this. Arrangements to this effect currently apply in relation to requests for further information made in connection with the Notifiable Conditions Register, the Queensland Cancer Register, the Pap Smear Register, and the Perinatal Statistics Collection.

Ensuring that the data comprising the Maternal Death Statistics Collection is accurate and complete is essential if it is to be relied upon to increase awareness of maternal death, analyse obstetric patterns and outcomes, facilitate research and help plan obstetric health services and strategies to prevent or minimise maternal mortality.

Transfer notices

It is considered that the transfer notice provisions to be inserted in the *Hospital and Health Boards Act 2011* may breach fundamental legislative principles by failing to have sufficient regard to the institution of Parliament, insofar as the power to transfer land and buildings is exercised by gazette notice rather than by regulation. These provisions enable the Minister to issue a transfer notice by gazette notice, to transfer land and buildings between the Department of Health and a Hospital and Health Service, or between Hospital and Health Services, on an ongoing basis.

Similarly, the provisions may be considered to have insufficient regard to the rights and liberties of an individual. The provisions provide that a decision is final and conclusive, and cannot be challenged, appealed or called into question, and that the State or an employee or agent of the State is not liable for civil action, including for breach of contract. For example, a contract entered into by the State with a particular person may include a requirement that a specified asset may not be transferred without the person's consent. If the asset is transferred under a transfer notice, the person is taken to have consented to the transfer, despite the condition requiring consent, and without the contract being renegotiated. These provisions may infringe upon the rights of third parties who are deemed to have given their advice, consent or approval under a transfer notice.

These provisions have been included in the Bill to support the Government's intention to transfer land and buildings to decentralise decision-making and to improve the management

of infrastructure and assets across the Health portfolio. Expedient transfer of these interests, unimpeded by the delay and cost of review rights, is necessary for the proper functioning of Hospital and Health Services. The transfer notice provisions will enable the efficient and effective transition of land and buildings to relevant Services, thereby supporting and strengthening the autonomy of and delivery of local healthcare services. They will be utilised in appropriate circumstances, and are an administrative tool to facilitate significant macro organisational change. As such, the potential breaches of fundamental legislative principles are considered justified in these circumstances.

These provisions are based on similar provisions relating to the transfer or disposal of assets in other legislation, including the *Infrastructure Investment (Asset Restructuring and Disposal) Act 2009*, the *Airport Assets (Restructuring and Disposal) Act 2008*, the *South East Queensland Water (Restructuring) Act 2007*, and the *Energy Assets (Restructuring and Disposal) Act 2006.*

Consultation

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

A consultation draft of the amendments to the *Public Health Act 2005* was provided to:

- Australian College of Midwives (Queensland)
- Australian College of Rural and Remote Medicine (Queensland)
- Australian Medical Association (Queensland)
- Queensland Centre for Mothers and Babies
- Private Hospitals Association (Queensland)
- Royal Doctors Association (Queensland) and
- Royal Australian and New Zealand College of Obstetricians and Gynaecologists
- The Office of the State Coroner.

Stakeholders were supportive of the proposed amendments. A number of stakeholders sought clarification regarding wording in particular provisions and their practical application, which was provided by the Department of Health. The Australian Medical Association (Queensland) expressed concern that the World Health Organisation (WHO) definition of ‘maternal death’ was not adopted in the Bill. The WHO defines maternal death as the death of a woman while pregnant, or within 42 days of termination of pregnancy, irrespective of the duration and site of the pregnancy, from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes. This definition includes both direct and indirect maternal deaths, and focuses on obstetric related issues.

The definition of ‘maternal death’ in the Bill incorporates the WHO definition, and goes further to include ‘late maternal deaths’ (up to 365 days after the end of the pregnancy). Data regarding late maternal deaths provides valuable information that is important in planning obstetric health services and strategies to prevent or minimise maternal mortality. Maternal death quality committees in other Australian jurisdictions, New Zealand and the United Kingdom all look at both maternal deaths captured by the WHO definition, as well as so-called ‘late maternal deaths’.

A consultation draft of the amendments to the *Transplantation and Anatomy Act 1979* was provided to:

- Queensland Eye Bank
- Queensland Heart Valve Bank
- Queensland Bone and Skin Bank
- Transplant Australia and
- DonateLife

A number of minor wording changes were suggested by stakeholders and, as far as practicable, these suggestions were incorporated into the Bill in consultation with the Office of the Queensland Parliamentary Counsel.

Some stakeholders felt that the modernisation of the definition of 'senior available next of kin' did not go far enough. It was suggested that the definition should be broadened to incorporate situations where an individual does not have relatives who fulfil the criteria of a senior available next of kin, and to enable close friends to consent on behalf of a potential donor where such relationships are akin to that of a sibling.

Expanding the definition in this way would represent a significant policy change requiring extensive community consultation and, as such, would be more appropriate to consider in any broader review that may be undertaken of the *Transplantation and Anatomy Act 1979* in future.

The Local Government Association of Queensland, Brisbane City Council and Logan City Council had raised concerns with Government about the potential implications for councils should they be required to comply with a statewide model. In particular, the costs that would need to be borne by individual councils and, to a lesser extent, the food businesses currently participating in an existing food business rating scheme. In light of these concerns, the Local Government Association of Queensland, the South East Queensland Council of Mayors and a number of regional councils (including Brisbane City Council, Logan City Council, Moreton Bay Regional Council and Gold Coast City Council) were advised of the proposed amendment of the *Health Legislation Amendment Act 2011* to remove the food business rating scheme provisions from the *Food Act 2006.*

While there was broad support for the amendments to stop the commencement of the food business rating scheme provisions, some local governments have expressed concern about the potential for the lack of consistency between local government areas if the provisions do not commence.

However, it is possible to ensure consistency without legislation. The national principles endorsed by the Implementation Sub-Committee (ISC) of the Food Regulation Standing Committee of the Australia and New Zealand Food Regulation Ministerial Council are intended to support the design and implementation of food business rating schemes. Consistency in food business rating schemes between local governments can be achieved by considering these national principles, while still taking into account local community and business needs.

The Department of the Premier and Cabinet, the Department of Justice and the Attorney-General, Queensland Treasury and Trade, and the Queensland Competition Authority's Office of Best Practice Regulation were also consulted about the Bill.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland with the exception of the matters outlined below.

- **Maternal Death Statistics Collection**

The amendments to the *Public Health Act 2005* to establish the Maternal Death Statistics Collection are consistent with the approach taken in a number of other Australian jurisdictions (including New South Wales, South Australia, Western Australia and Tasmania) regarding the collection of maternal death data.

- **Food business rating scheme**

There is no obligation on jurisdictions to implement a statewide model for food business rating schemes that accord with the high-level framework endorsed by the ISC. The approach being adopted in other jurisdictions is one of cooperation between state and local governments to examine how such schemes can be implemented having regard to the national principles.

Removing the food business rating scheme provisions from the *Food Act 2006* by amending the *Health Legislation Amendment Act 2011* will enable local governments to develop and implement schemes that take into account their local community and business needs, together with the national principles, as appropriate.

- **Transplantation and Anatomy Act**

Each jurisdiction has enacted legislation to govern the donation of organ and tissues for transplantation or other therapeutic, medical or scientific purposes, modelled on the Draft Legislation in the Law Reform Commission Report No. 7, Human Tissue Transplants. While the overall legislative framework continues to be consistent, each jurisdiction has modified particular aspects of their legislation in recent years.

Notes on provisions

Part 1 Preliminary

Clause 1 provides that, when enacted, the short title of the Act will be the *Health Legislation Amendment Act 2013*.

Clause 2 provides that, with the exception of the amendments to the *Public Health Act 2005*, which will commence on a day to be fixed by proclamation, the Bill is to commence on assent. Commencing the amendments to the *Public Health Act 2005* by proclamation will enable an education and awareness program to be conducted about the new reporting requirements for maternal deaths in Queensland.

Part 2 Amendment of Health Legislation Amendment Act 2011

Clause 3 specifies that this part amends the *Health Legislation Amendment Act 2011*.

Clause 4 removes the provision relating to commencement of amendments to the *Food Act 2006* to implement a model for food business rating schemes in Queensland. The provision stated that the commencement was on a day to be fixed by proclamation.

Clause 5 removes sections 5 and 14 of the *Health Legislation Amendment Act 2011*. Section 5 amends section 22 of the *Food Act 2006*, which lists those provisions of the Act that are to be administered by the State (not by local government). Section 22 was amended in 2011 as a consequence of the insertion of new Part 3B under section 14 of the *Health Legislation Amendment Act 2011*. Part 3B provides for the establishment of a statewide model for food business rating schemes that local governments may choose to implement in their local area, for voluntary participation by licensed food businesses.

Sections 5 and 14 of the *Health Legislation Amendment Act 2011* are to be omitted to stop the introduction of a state-wide model for food business rating schemes, to avoid the imposition of a new regulatory burden on local government by ensuring that they are restricted in their ability to design and implement a scheme that takes into account the needs of their local community and food businesses.

Clause 6 removes section 16 from the *Health Legislation Amendment Act 2011*. Section 16 inserted transitional provisions into the *Food Act 2006* as a consequence of the insertion of the new Part 3B to establish a statewide food business rating scheme. As the new Part 3B will not be enacted, the transitional provisions are redundant.

Clause 7 removes section 18 from the *Health Legislation Amendment Act* 2011. Section 18 provided for a number of new terms to be inserted in the dictionary of the *Food Act 2006* (Schedule 3) as a consequence of the insertion of the new Part 3B. As the new Part 3B will not be enacted it is not necessary for the definitions for *conduct*, *disallow*, *disallowance notice*, *food business rating scheme*, and *prescribed requirements* to be included in Schedule 3.

Part 3 Amendment of Hospital and Health Boards Act 2011

Clause 8 specifies that this Part amends the *Hospital and Health Boards Act 2011.*

Clause 9 inserts a new division in Part 12 (Miscellaneous) of the Act to provide for the transfer of land and buildings between the Department of Health and Hospital and Health Services, or between Hospital and Health Services on an ongoing basis.

The new suite of transfer notice provisions (including new sections 273A to 273E) comprise division 1, whereas the existing provisions comprising Part 12 have been grouped under a new division 2 (General provisions).

The new section 273A provides that the Minister may transfer freehold land, a lease under the *Land Act 1994*, a reserve under the *Land Act 1994*, or any other interest in land. 'Interest' is defined in the *Acts Interpretation Act 1954* as a legal or equitable estate in land or other property, or a right, power or privilege over, or in relation to, the land or other property. This provision will enable the:

- transfer of an interest held by the State to a Service;
- transfer of an interest held by a Service to the State or another Service;
- transfer or grant of an associated interest to the State or a Service;
- vary an associated interest held by the State or another Service.

This section also empowers the Minister to transfer, vary or grant an interest held by the State to a Service, or to transfer, vary or grant an interest held by a Service to the State, or to another service.

The section goes on to provide that a transfer notice may amend an earlier transfer notice, or a further transfer notice may be made to correct an error in an earlier transfer notice. A transfer notice may also include conditions applying to something that was done, or is to be done under the notice.

The section also provides that the Minister may decide for a matter to be included in a transfer notice by reference to another document. The other document must be signed by the Minister, and be kept available at a place that is stated in the transfer notice and is available for inspection by people to whom the matter relates.

The section provides that a transfer notice has effect despite any other law or instrument. The new section 273A specifies that a transfer notice has effect on the day it is published in the gazette notice, or another day stated in the notice, or may apply retrospectively, but not before the section commenced. The section provides that no government fees or charges are payable for anything done under a transfer notice under section 273A.

A new section 273B is also inserted by clause 9. Section 273B provides that the registrar of titles, or another person required or authorised by law to register or record transactions affecting assets or liabilities, must register or record a transfer under this part in order to give effect to the transfer.

The clause inserts a new section 273C, which is modelled on section 308 of the Act. This section provides that a decision relating to a transfer notice is final and conclusive, and cannot be challenged, appealed, or called into question in any other way under the *Judicial Review Act 1991*, whether by the Supreme Court, or another court, a tribunal or another entity. A decision relating to a transfer notice is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

A new section 273D is also inserted by clause 9. This section is modelled on section 311 of the *Hospital and Health Boards Act 2011*, and provides protections for the State or an employee or agent of the State including, for example, that these entities are not liable for civil action including for breach of contract. For example, a contract entered into by the State with a particular person may include a requirement that a particular asset may not be transferred without the person's consent. The clause provides that if the asset is transferred under a transfer notice, the person is taken to have consented to the transfer, despite the condition requiring consent, and without the contract being renegotiated.

The clause inserts a new section 273E, which is modelled on section 312 of the *Hospital and Health Boards Act 2011*, which states that a thing is taken to be done under this part, even if it involves taking steps under another Act. This clarifies that the protections afforded in the previous section apply in these circumstances.

Clause 10 amends the definition of transfer notice in schedule 2 of the *Hospital and Health Boards Act 2011*, to include a reference to the new section 273A.

Part 4 Amendment of Public Health Act 2005

Clause 11 specifies that this Part amends the *Public Health Act 2005* (the Act).

Clause 12 inserts a new section 228A and 228B into chapter 6, part 1 of the Act. Part 1 provides for the establishment and maintenance of a Perinatal Statistics Collection. Because of the potential intersection of data that may arise between the Perinatal Statistics Collection and the Maternal Death Statistics Collection, two new exceptions to the duty of confidentiality for the Perinatal Statistics Collection are to be included in the Act. These exceptions mirror those inserted by sections 228R and 228S for the Maternal Death Statistics Collection.

Section 228A creates a new exemption to the duty of confidentiality regarding perinatal statistics, and enables the chief executive to give information from the Perinatal Statistics Collection to the coroner, or to a police officer helping the coroner to investigate a death associated with a perinatal notification. The section goes on to provide that the coroner or police officer may not use or disclose the information unless the use or disclosure is for the purpose of the investigation, or is required or permitted by another Act.

Section 228B authorises the chief executive to transfer information from the Perinatal Statistics Collection to the new Maternal Death Statistics Collection. The section goes on to provide that the sharing of information across the two statistical collections does not amount to a breach of the duty of confidentiality in section 220 of the Act.

Clause 13 inserts a new Part 1A (Maternal death statistics) into chapter 6. This part inserts new sections 228C to 228S into the Act.

Section 228C sets out the definitions for the new part, including the following:

- **collection** means the Maternal Death Statistics Collection.

- **health professional** means a registered health practitioner or another person who provides a health service. A **registered health practitioner** is defined as a person registered under the Health Practitioner Regulation National Law to practice a health profession, other than a student, or a person who holds non-practising registration under the Health Practitioner Regulation National Law in a health profession.

- **health service** is defined by reference to section 15 of the *Hospital and Health Boards Act 2011*, which defines a health service as a service for maintaining, improving, restoring or managing people's health and wellbeing, and includes care provided in a hospital, residential care facility, or community health facility. It also includes health prevention and promotion programs.

- **maternal death** means the death of a woman, from any cause, while she is pregnant, or within 365 days after the end of her pregnancy. This will include deaths directly linked to complications associated with the pregnancy, as well as indirect and incidental deaths which may result from pre-existing diseases, or diseases that develop during pregnancy and are aggravated by the physiological effects of pregnancy.

- **Maternal Death Statistics Collection** is defined by reference to the new section 228D, which provides for the establishment and maintenance of the collection by the chief executive.

- **notification** is defined by reference to the new section 228F which mandates that a report must be made about a maternal death to the chief executive.

Section 228D establishes the Maternal Death Statistics Collection. Responsibility for the establishment and maintenance of the collection is to reside with the chief executive, who may keep the collection in a form that he/she considers appropriate, including an electronic form.

Section 228E sets out the purposes for which the collection has been established. These purposes include collecting data to help in monitoring maternal mortality rates, increasing awareness of the incidence and causes of maternal death, monitoring and analysing maternity patterns and outcomes, and researching obstetric care. The collection will also help in the planning of obstetric health services and strategies to minimise maternal mortality.

Section 228F sets out the circumstances under which a health professional will be required to report a maternal death to the chief executive. A health professional will only be required to notify the chief executive if they had primary responsibility for the care of a woman while she was pregnant, or within 365 days after the end of her pregnancy, and they are aware of the maternal death of the woman. Should the chief executive become aware that a woman has died (for example, as a result of information obtained from the coroner or through the

registration of a death), then the chief executive may write to a health professional advising them of the death. This would then activate the obligation under section 228F. Given the very small number of maternal deaths in Queensland each year (estimated to be less than 25 based on available data), it is not envisaged that the reporting of maternal deaths will impose any significant additional reporting obligation on health professionals.

Section 228G provides that the chief executive may ask a person to give further information to the chief executive to ensure the accuracy, completeness or integrity of the collection. The section enables the chief executive to request the information from the person who gave the notification, a health professional involved in the care or treatment of the deceased woman, or another health professional who has information that may ensure the accuracy, completeness or integrity of the register. The section goes on to provide that a person who gives information in response to the request from the chief executive does not breach the duty of confidentiality, or any code of professional etiquette or ethics, or depart from accepted standards of professional conduct, by giving the information.

Sections 228H sets out definitions relating to the duty of confidentiality in relation to information in the Maternal Death Statistics Collection.

Section 228I provides that a relevant person (as defined in section 228H) must not disclose confidential information (also defined in section 228H). The duty of confidentiality is considered necessary given the sensitivity of the information that will be collected about maternal deaths (that is, information about the deceased woman, as well as health professionals involved in the woman's care). The duty applies to the chief executive as well as those persons involved in the administration and enforcement of the new provisions.

Sections 228J to 228R set out a range of exemptions to this duty of confidentiality, and have been modelled on other similar exemptions in the Act and other health legislation. These exemptions include disclosure with consent, disclosure required under an Act or another law, disclosure in the public interest, disclosure for purposes relating to health services, and disclosure to the Commonwealth, another State, or a Commonwealth or State entity.

Section 228S provides that the chief executive may arrange for the transfer of information in the Maternal Death Statistics Collection for inclusion in the Perinatal Statistics Collection. The section goes on to provide that where someone does something in accordance with these transfer arrangements, they do not breach their duty of confidentiality.

Clause 14 inserts a transitional provision in the Act for the Maternal Death Statistics Collection. The transitional provision provides that data regarding maternal deaths currently held administratively by the Queensland Maternal and Perinatal Quality Council will form part of the per Death Statistics Collection. This data will form the basis of the collection and, as such, will also be subject to the confidentiality provisions outlined above.

Clause 15 amends the dictionary in schedule 2 of the *Public Health Act 2005* to insert or amend definitions for application throughout the Act.

Part 5 Amendment of Queensland Institute of Medical Research Act 1945

Clause 16 provides that this part amends the *Queensland Institute of Medical Research Act 1945*.

Clause 17 amends the terms of appointment of a member of the Queensland Institute of Medical Research Council (the Council) as detailed in section 5B of the Act. Currently, section 5B of the Act provides that a member is to be appointed for a term of three years.

In order to ensure the Council is comprised of persons who have the appropriate expertise and skills to meet the changes in the scientific, research and funding environments, clause 16 amends section 5B. The amendment provides that a member may be appointed for a term of up to four years, but must not be appointed for more than a total of 12 years – the equivalent of three consecutive terms. However, in recognition that there may be special circumstances warranting a member continuing to serve on the Council in excess of the maximum period of 12 years, the clause enables the Minister to waive the maximum period restriction in special circumstances.

Clause 18 amends sections 5C, 7, 8, 32 and 33 to replace the term 'chairperson' with the term 'chair'.

Clause 19 amends section 9, which empowers the Council to enter into and carry out agreements. As a statutory body, the Council is subject to the requirements of the *Statutory Bodies Financial Arrangements Act 1982* and the *Financial Accountability Act 2009.* These Acts respectively prescribe the basic financial arrangements for statutory bodies, and govern the financial management of departments and statutory bodies, including the requirement for annual audits to be undertaken and annual reports prepared and provided to Parliament.

Requiring the Council to also obtain the approval of the chief executive imposes an unnecessary burden given the obligations imposed on the Council by the *Statutory Bodies Financial Arrangements Act 1982* and the *Financial Accountability Act 2009*. As such, the clause amends section 9 to state that the Council is empowered to enter into and carry out agreements and arrangements within the purposes of the Act. The effect is that the Council will no longer be required to obtain the approval of the chief executive to enter into agreements and arrangements.

Clause 20 amends section 15 to correct the numbering of the subclauses. This drafting anomaly arose as a result of previous amendments to the *Queensland Institute of Medical Research Act 1945*.

Clause 21 inserts a new part 4, division 3 into the Act, which provides for a transitional provision arising out of the amendments to section 5B. The new section 34 provides that a person who was appointed as a member of the Council before the amendment to section 5B will continue to be appointed on the terms in their instrument of appointment, that is, their appointment will expire as specified in their original instrument of appointment.

Part 6 Amendment of Queensland Mental Health Commission Act 2013

Clause 22 specifies that this part amends the *Queensland Mental Health Commission Act 2013*.

Clause 23 amends sections 40, 41, 42 and 44 of the Act to replace the term ‘chairperson’ with the term ‘chair’.

Part 7 Amendment of Transplantation and Anatomy Act 1979

Clause 24 specifies that this part amends the *Transplantation and Anatomy Act 1979*.

Clause 25 amends section 4 to modernise the definition of ‘senior available next of kin’ to better represent contemporary domestic and family arrangements. The amendment removes ‘brother and sister’ from the definition and replaces the phrase with ‘sibling’. Sibling is defined to include a biological sibling, an adopted sibling, a sibling by surrogacy, a stepbrother or stepsister, a person who, under Aboriginal tradition or Torres Strait Island custom is regarded as a sibling, or a person who under the cultural traditions of their community is regarded as a sibling.

Similarly, the clause removes the reference to ‘son or daughter’ and replaces it with the term ‘child’. A child is defined to include a biological child, an adopted child, a stepchild, a foster child, a child through surrogacy, a person who, under Aboriginal tradition or Torres Strait Island custom is regarded as a child, or a person who, under the cultural traditions of their community is regarded as a child.

The clause also includes a definition of ‘parent’. A parent is defined to include a step-parent, a person who, under Aboriginal tradition or Torres Strait Island custom is regarded as a parent, or a person who, under the cultural traditions of their community is regarded as a parent. The definition of parent also includes another person having or exercising parental responsibility for the child, whether or not the person is the legal guardian of the child. This paragraph is intended to capture grandparents, or aunts or uncles who may be exercising parental responsibility in the absence of a biological parent.

Clause 26 amends section 22 of the Act to clarify a person’s intention to donate their tissue or organs. If a person had previously objected to the prospect of being an organ donor, but subsequently withdrew that objection, then they are considered to have consented to the removal of tissue after their death. The designated officer or senior available next of kin must believe the withdrawal of the objection is the most recent and reliable indication of the deceased person’s wishes.

Clause 27 updates section 30 of the Act to provide greater clarity about the circumstances under which a post-mortem examination may be carried out. As it is currently drafted, it is questionable whether the practice of post-mortems being conducted at a hospital other than the hospital where the person died is contemplated by section 30. This creates an operational

difficulty, as not all hospitals in Queensland are equipped with a mortuary suitable to conduct post-mortem examinations. Clause 26 amends section 30 to provide that a post-mortem may be undertaken in the mortuary of a hospital (other than the hospital in which the person died) if the mortuary of that hospital is unsuitable for making the post-mortem examination.

Clause 27 also simplifies the drafting of section 30 to take into account current drafting standards, and assist in interpretation.

Clause 28 replaces the reference to 'Governor in Council' in sections 37 and 38 of the Act with 'chief executive'. These sections relate to the establishment and inspection of schools of anatomy. Currently, the Governor in Council is authorised to establish schools of anatomy, and to appoint inspectors to inspect these schools. Given the administrative nature of the matters contained in these sections, it is considered that this responsibility more appropriately rests with the chief executive. The amendment will help to streamline the administration of the legislation, and reduce the regulatory burden on the government and schools of anatomy.

Clause 29 amends section 42A(6) of the Act. Section 42A provides that a person who owns a tissue bank prescribed under a regulation may charge an amount to recover their reasonable costs associated with removing, evaluating, processing, storing and distributing donated tissue. Section 42A(6) defines terms used within the section. 'Donated tissue' is currently defined to mean tissue removed under consent or an authority under the Act. This clause amends the definition of 'donated tissue' to provide that tissue may be removed under the authority of the *Transplantation and Anatomy Act 1979*, a corresponding law of another State, or a corresponding law of a country outside Australia.

The majority of donated tissue that is retrieved by Queensland's prescribed tissue banks comes from donors in Queensland. However, the amendment will ensure that prescribed tissue banks are able to meet the growing demand for donated tissue by being able to recover their costs for tissue sourced from donors outside of Queensland, as well as provide donated tissue to recipients outside of Queensland.

Clause 30 amends the heading for part 10 of the Act, to take account of the transitional provisions required for the amendments made by this Bill.

Clause 31 inserts a new part 10, division 2 into the Act, which provides for the transitional provisions arising from the amendments enabling the chief executive to establish schools of anatomy, and appoint inspectors to inspect the schools. The section inserts a new section 54 and 55 into the Act.

The new section 54 provides that where a school of anatomy was established as such by the Governor in Council under section 37 of the Act, it will be taken to be established by the chief executive under the amended section.

The new section 55 provides that where an inspector of a school of anatomy was appointed by the Governor in Council under section 38 of the Act, the inspector will be taken to have been appointed by the chief executive under the amended section.

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