

# Health Legislation Amendment Bill 2011

## Explanatory Notes for amendments to be moved during consideration in detail by the Honourable Geoff Wilson MP

### Short Title

Health Legislation Amendment Bill 2011

### Objectives of the amendments

The main objectives of the amendments are to amend the Bill in response to issues raised by stakeholders and the Health and Disabilities Committee and to make consequential amendments to support the establishment of a national quality framework for services to children.

Amendments to the Bill include removing the penalty that may be imposed upon a local government for implementing a food business rating scheme that does not conform with a scheme prescribed by a regulation and instead inserting a power for the Minister to disallow such a scheme.

As recommended by the Health and Disabilities Committee, clause 26 of the Bill will be amended to clarify the intended operation of section 50 of the *Health Quality and Complaints Commission Act 2006*.

Amendments will also be made to the Bill to ensure that new terminology inserted into the *Public Health Act 2006* by the passage of the *Education and Care Services National Law (Queensland) Bill 2011* is captured in the provisions that deal with childhood contagious conditions. These amendments will support the national quality framework for the delivery of education and care services to children across Australia.

### Achievement of policy objectives

**The objective of the amendments will be achieved by making the amendments specified in the Notes on Provisions section of these Explanatory Notes.**

## **Estimated Cost for Government Implementation**

The cost of amendments to the Food Act in relation to the food business rating scheme will be met within current departmental resources. There are no costs associated with the other amendments.

## **Consistency with Fundamental Legislative Principles**

The amendments are consistent with Fundamental Legislative Principles.

The amendments to the Food Act 2005 which introduce a power of disallowance to not provide a right of appeal or review for a decision of the Minister to disallow a food business rating scheme. However affected local governments are provided with an opportunity to 'show cause' before the Minister may disallow a scheme, and any detriment to a business may be disclosed to the Minister at that time.

In addition a disallowance notice does not prevent a local government from amending or changing a scheme and reintroducing the scheme in accordance with the process prescribed in the amendments.

## **Consultation**

Submissions were invited on the Bill when it was tabled in Parliament. The amendments to the *Food Act 2006* respond to issues raised by stakeholders following introduction of the Bill.

The amendment to the *Health Quality and Complaints Commission Act 2006* was recommended by the Health and Disabilities Committee and supported by the Office of the Queensland Parliamentary Counsel.

## **Notes on Provisions**

### **Amendment of Clause 2 (Commencement)**

Amendment 1 consequentially amends clause 2 of the Bill to provide that the relevant amendments to the *Food Act 2006* will commence by proclamation.

### **Amendment of clause 14 (Insertion of new ch 11, pt 3B))**

Clause 14 of the Bill provides for the establishment of a state wide food business rating scheme which local governments may choose to implement in their local area, for voluntary participation by licensed food businesses. Clause 14 will be amended to remove the penalty that may be imposed upon a local government for implementing a food business rating scheme that does not conform with a scheme prescribed by a regulation and instead insert a power for the Minister to disallow a scheme that does not conform.

Amendment 2 amends the heading of the new section 271F to provide for the inclusion of other definitions relevant to the power to disallow a scheme.

Amendments 3 and 4 insert new definitions into section 271F to define key terms for the food business rating scheme.

Amendment 5 adds a new sub-clause to section 271G to provide that a local government that conducts a food business rating scheme must ensure the scheme complies with the prescribed requirements.

Amendment 6 inserts new sections 271H to 271M.

New section 271H requires a local government to give the chief executive notice of its intention to introduce a food business rating scheme.

New section 271I requires the chief executive to assess the notice to determine whether it complies with the prescribed requirements for a food business ratings scheme and advise the Minister of the outcome of this assessment.

New section 271J enables the Minister to instigate a show cause process if the Minister reasonably suspects that a food business rating scheme is being conducted by a local government and does not comply with the prescribed requirements. A show cause notice states:

- that the Minister proposes to give the local government a disallowance notice in relation to the food business rating scheme;
- the reasons why the Minister reasonably suspects the scheme does not comply with the prescribed requirements;
- that the local government may, within the period stated in the notice, make a submission to the Minister against the proposed disallowance;

- that the submission may include information about whether disallowance of the scheme would cause significant financial detriment to 1 or more food businesses participating in the scheme;
- how to make the submission.

New section 271K provides that the local government may make a submission against the proposed disallowance and that the submission must be made within the period stated in the show cause notice or a longer period decided by the Minister and stated in the notice.

New section 271L provides that after the period for making submissions has ceased and the Minister has considered the local government's submissions, the Minister may disallow a food business rating scheme if the Minister is reasonably satisfied that:

- a food business rating scheme conducted by a local government does not comply with the prescribed requirements for food business rating schemes; and
- disallowance of the scheme is unlikely to cause significant financial detriment to 1 or more food businesses participating in the scheme.

New section 271M requires that a local government that receives a disallowance notice immediately stop conducting the food business rating scheme and must not start conducting the scheme again. In addition, the local government must publish a notice in the approved form, in a newspaper circulating generally in the local government's area, stating that:

- the food business rating scheme conducted by the local government has been disallowed;
- under this Act, the local government must immediately stop conducting the scheme and must not start conducting the scheme again; and
- the action the local government proposes to take in relation to the scheme.

### **Amendment of clause 16 ((Insertion of new ch 12, pt 3)**

Amendment 7 inserts a transitional provision which applies to a local government that is conducting a food business rating scheme on commencement of these amendments. The amendment requires the local

government to give the chief executive a notice within 90 calendar days of the commencement of these amendments, which states the details of the food business rating scheme sufficient to enable the chief executive to assess the compliance of the scheme with the prescribed requirements. The chief executive must then assess whether the food business rating scheme complies with the prescribed requirements and advise the Minister of the outcome of this assessment. The Minister may then disallow the scheme.

### **Amendment of clause 18 ((Amendment of sch 3 (Dictionary))**

Amendments 8 and 9 are consequential to those concerning the disallowance power and insert new definitions related to the new provisions into the dictionary of the Food Act.

### **Amendment of Clause 26 ((Amendment of s 50 (How commission must deal with a health quality complaint))**

Following a recommendation by the Health and Disabilities Committee, Amendment 10 amends clause 26 of the Bill to clarify the intended operation of section 50 of the *Health Quality and Complaints Commission Act 2006*. The amendment will remove any doubt that should the Commission decide to either ‘take action’ or ‘not take action’ on a health quality complaint, the Commission will be required to give the complainant a written notice. The written notice will outline the Commission’s decisions and the reasons for this decision.

### **Amendment of Clauses 52, 53, 56-59, 62 and 63**

Amendments 11 - 20 make consequential amendments to the *Public Health Act 2005* that are required due to the passage of the Education and Care Services National Law (Queensland) Bill 2011 (‘the National Law’).

The National Law establishes a national education and care services quality framework for the delivery of education and care services to children across Australia.

The National Quality Framework will apply to long day care, family day care, outside school hours care and kindergarten services, which are referred to under the National Law as an “education and care service”.

The National Law consequentially amended the *Public Health Act 2005* to incorporate the new term “education and care service” into existing provisions.

The amendments to clauses 52, 53, 56-59, 62 and 63 of the Bill will ensure that education and care services under the National Law are captured in these provisions.

The amendments will not change the intent or application of these clauses.

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