



Queensland

Health Legislation Amendment Act 2011

Act No. 41 of 2011



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Queensland

Health Legislation Amendment Act 2011

Act No. 41 of 2011

An Act to amend the Food Act 2006, the Health Act 1937, the Health Quality and Complaints Commission Act 2006, the Pest Management Act 2001, the Public Health Act 2005, the Public Health (Infection Control for Personal Appearance Services) Act 2003 and the Tobacco and Other Smoking Products Act 1998 for particular purposes

[Assented to 24 November 2011]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Health Legislation Amendment Act 2011*.

2 Commencement

The following sections commence on a day to be fixed by proclamation—

- (a) sections 5 and 14;
- (b) section 16, to the extent it inserts new section 303;
- (ba) section 18, to the extent it inserts new definitions *conduct*, *disallow*, *disallowance notice*, *food business rating scheme* and *prescribed requirements*;
- (c) sections 52 to 63;
- (d) sections 70 to 72.

Part 2 Amendment of Food Act 2006

3 Act amended

This part amends the *Food Act 2006*.

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

Section 14(2)(b), from ‘clause 9’ to ‘3.2.2’—

omit, insert—

‘standard 3.2.1, clause 4 of standard 3.2.2, standard 3.3.1’.

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

Section 22(1)—

insert—

‘(e) section 271H.’.

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

(1) Section 48(1)(b), examples, before ‘vending machine’—

insert—

‘food’.

(2) Section 48(2)(b)—

omit.

(3) Section 48(2)(c) to (l)—

renumber as section 48(2)(b) to (k).

(4) Section 48(3), definition *processing*—

omit.

7 Amendment of s 53 (What the application must state)

Section 53(1)(e)(i)—

omit, insert—

‘(i) a description of the premises that includes—

(A) if the premises are a vehicle that is required to be registered—the registration number of the vehicle; or

(B) if the premises are a food vending machine—the serial number or other unique

[s 8]

identifying number or mark of the food vending machine; and’.

8 Amendment of s 94 (Form of licence)

Section 94(b)(iii)—

omit, insert—

‘(iii) for mobile premises, a description of the premises that includes—

- (A) if the premises are a vehicle that is required to be registered—the registration number of the vehicle; or
- (B) if the premises are a food vending machine—the serial number or other unique identifying number or mark of the food vending machine;’.

9 Amendment of s 134 (Failure to decide application)

Section 134(1), after ‘and (3)’—

insert—

‘and section 134A’.

10 Insertion of new s 134A

Chapter 5, part 1—

insert—

‘134A Further consideration of application

- ‘(1) This section applies if the chief executive considers more time is needed to make a decision about the application because of the complexity of the matters that need to be considered in deciding the application.

Example of an application likely to raise complex matters—

an application requiring the chief executive to obtain and consider further information about the applicant from an entity administering a corresponding law

- ‘(2) The chief executive may at any time before the final consideration day give notice to the applicant that—
- (a) because of the complexity of the matters that need to be considered in deciding the application, the chief executive needs more time to decide the application; and
 - (b) the period within which the chief executive must decide the application is extended to a day (the *extended day*) that is 30 days after the final consideration day.
- ‘(3) Also, the applicant and chief executive may at any time before the final consideration day agree in writing on a day (the *agreed extended day*) by which the application must be decided.
- ‘(4) The chief executive is taken to have refused to grant the application if the chief executive does not decide the application by—
- (a) if the chief executive has given a notice to the applicant under subsection (2)—the extended day; or
 - (b) if there is an agreement between the applicant and the chief executive under subsection (3)—the agreed extended day; or
 - (c) if both subsections (2) and (3) apply—the later of the extended day and the agreed extended day.
- ‘(5) If the application is refused under subsection (4), the applicant is entitled to be given an information notice by the chief executive for the decision.
- ‘(6) In this section—
- final consideration day* means the later of the following days—
- (a) the day that is 30 days after receipt of the application;
 - (b) if the chief executive has, under section 132(1)(b), required the applicant to give the chief executive further

[s 11]

information or a document—the day that is 30 days after the chief executive receives the further information or document verified, if required, by statutory declaration.’.

11 Amendment of s 136 (Conditions of approval)

(1) Section 136(1)(a), ‘give the chief executive notice’—

omit, insert—

‘notify the chief executive’.

(2) Section 136(2)—

omit, insert—

‘(2) For subsection (1)(a), the auditor must, unless the auditor has a reasonable excuse, after becoming aware of the interest—

(a) orally notify the chief executive about the interest immediately; and

(b) give the chief executive notice about the interest in the approved form within 24 hours after becoming aware of the interest.’.

12 Amendment of s 265 (Content of registers)

Section 265(2)(e)—

omit, insert—

‘(e) a description of the premises that includes—

(i) if the premises are a vehicle that is required to be registered—the registration number of the vehicle; or

(ii) if the premises are a food vending machine—the serial number or other unique identifying number or mark of the food vending machine;’.

13 Amendment of s 271D (Chief executive may give direction)

(1) Section 271D(3)(a)—

insert—

‘(iii) food to prevent a recurrence of contamination of food; or’.

(2) Section 271D(3)(b), ‘paragraph (a)’—

omit, insert—

‘paragraph (a)(i) or (ii)’.

14 Insertion of new ch 11, pt 3B

Chapter 11—

insert—

‘Part 3B Food business rating schemes

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

‘(1) The purpose of this part is to ensure consistency of information provided to consumers about—

(a) compliance by food businesses with this Act and the food standards code; and

(b) food hygiene in premises from which food businesses are carried on.

‘(2) The purpose is to be achieved by regulating local governments in relation to the conduct of rating schemes that provide information mentioned in subsection (1).

‘271F Definitions for pt 3B

‘In this part—

conduct, in relation to a food business rating scheme, includes each of the following—

[s 14]

- (a) advertise or promote the scheme;
- (b) seek participation by a food business in the scheme;
- (c) enter an agreement for a food business to participate in the scheme;
- (d) enter an agreement about the scheme with an entity that represents, or whose membership includes, entities carrying on food businesses.

disallow, in relation to a food business rating scheme conducted by a local government, means disallow under section 271L.

disallowance notice see section 271L(2).

food business rating scheme means a scheme in which a local government—

- (a) assesses, for each food business participating in the scheme, the level of—
 - (i) compliance with this Act and the food standards code; or
 - (ii) food hygiene in premises from which the food business is carried on; and
- (b) assigns a rating to the food business according to the assessed level.

prescribed requirements, for food business rating schemes, means the requirements prescribed under section 271G(1).

‘271G Prescribed requirements for food business rating schemes

- ‘(1) A regulation may prescribe requirements applying to food business rating schemes.
- ‘(2) A local government that conducts a food business rating scheme must ensure the scheme complies with the prescribed requirements for food business rating schemes.

‘271H Notices to be given by local government before a food business rating scheme is conducted

- ‘(1) If a local government intends to start conducting a food business rating scheme, it must give the chief executive notice of its intention to conduct a food business rating scheme.
- ‘(2) Before starting to conduct a food business rating scheme, a local government must give the chief executive a notice stating—
 - (a) details of the scheme proposed to be conducted sufficient to enable the chief executive to assess the compliance of the proposed scheme with the prescribed requirements for food business rating schemes; and
 - (b) the date from which the scheme is proposed to be conducted.
- ‘(3) Without limiting subsections (1) and (2), this section applies if a food business rating scheme is disallowed and the local government intends to change the scheme and start conducting it again.

‘271I Chief executive to assess compliance of proposed food business rating scheme with prescribed requirements

‘On receiving a notice from a local government under section 271H(2), the chief executive must—

- (a) assess whether the proposed food business rating scheme complies with the prescribed requirements for food business rating schemes; and
- (b) advise the local government and the Minister whether the proposed scheme complies with the prescribed requirements.

‘271J Notice of proposed disallowance of food business rating scheme

- ‘(1) This section applies if the Minister reasonably suspects a food business rating scheme—

[s 14]

- (a) is being conducted by a local government; and
 - (b) does not comply with the prescribed requirements for food business rating schemes.
- ‘(2) The Minister may give the local government a notice (a *show cause notice*) stating each of the following—
- (a) the Minister proposes to give the local government a disallowance notice in relation to the food business rating scheme;
 - (b) the reasons the Minister reasonably suspects the scheme does not comply with the prescribed requirements for food business rating schemes;
 - (c) the local government may, within the period stated in the notice, make a submission to the Minister against the proposed disallowance;
 - (d) 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;
 - (e) how to make the submission.
- ‘(3) For subsection (2)(c), the period must be at least 30 days after the local government receives the show cause notice.

‘271K Submission against proposed disallowance

- ‘(1) The local government may make a submission against the proposed disallowance of the food business rating scheme in the way stated in the show cause notice given to the local government under section 271J.
- ‘(2) The submission must be made—
- (a) within the period stated in the show cause notice; or
 - (b) if the Minister gives the local government a notice allowing a longer period for making the submission—within the longer period.

‘271L Disallowance of food business rating scheme by Minister

- ‘(1) This section applies if—
- (a) the period within which the local government may make a submission against the proposed disallowance under section 271K has ended; and
 - (b) the Minister has considered any submission made by the local government; and
 - (c) the Minister is reasonably satisfied—
 - (i) a food business rating scheme is being conducted by the local government; and
 - (ii) the scheme does not comply with the prescribed requirements for food business rating schemes; and
 - (iii) disallowance of the scheme is unlikely to cause significant financial detriment to any food businesses participating in the scheme.
- ‘(2) The Minister may disallow the food business rating scheme by giving the local government notice (a *disallowance notice*) stating—
- (a) the local government—
 - (i) must immediately stop conducting the scheme; and
 - (ii) must not start conducting the scheme again unless the scheme has been changed so it complies with the prescribed requirements for food business rating schemes; and
 - (b) the reasons for the disallowance; and
 - (c) the local government must give notice of the disallowance as required under section 271M(1)(c).
- ‘(3) A decision of the Minister to give a disallowance notice is not subject to review or appeal.

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‘271M Compliance with disallowance notice by local government

- ‘(1) A local government that receives a disallowance notice in relation to a food business rating scheme must—
- (a) immediately stop conducting the scheme; and
 - (b) must not start conducting the scheme again unless the scheme has been changed so it complies with the prescribed requirements for food business rating schemes; and
 - (c) within 14 days after receiving the disallowance notice—
 - (i) send a notice that complies with subsection (2) to all food businesses participating in the scheme; and
 - (ii) publish a notice that complies with subsection (2) in a newspaper circulating generally in the local government’s area.
- ‘(2) For subsection (1)(c), the notice must—
- (a) be in the approved form; and
 - (b) state—
 - (i) the food business rating scheme conducted by the local government has been disallowed; and
 - (ii) under this Act, the local government must immediately stop conducting the scheme and must not start conducting the scheme again unless the scheme has been changed so it complies with the prescribed requirements for food business rating schemes; and
 - (iii) the action the local government proposes to take in relation to the scheme.’

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

Chapter 12, part 2, heading, after ‘provisions’—

insert—

‘for Act No. 3 of 2006’.

16 Insertion of new ch 12, pt 3

Chapter 12—

insert—

**‘Part 3 Transitional provisions for
Health Legislation Amendment
Act 2011**

‘299 Definitions for pt 3

‘In this part—

commencement means the commencement of this part.

relevant licence means a licence for a food business carried on from fixed premises or temporary premises that are a food vending machine within the meaning of this Act as in force on the commencement.

‘300 Existing relevant licence

‘(1) This section applies to a relevant licence that was in force immediately before the commencement.

‘(2) On and from the commencement—

(a) the licence is taken to be a licence for a food business carried on from mobile premises that are the food vending machine, subject to the conditions to which the licence was subject immediately before the commencement; and

(b) the licence is taken to comply with section 94(b)(iii)(B); and

(c) the register of food businesses need not contain the particulars mentioned in section 265(2)(e)(ii) for the food business.

[s 16]

- ‘(3) Subsection (2) stops applying when the licence is first renewed after the commencement.

‘301 Pending applications for relevant licence

- ‘(1) This section applies to an application for a relevant licence that was made under chapter 3, part 3, but not decided, before the commencement.
- ‘(2) On and from the commencement, the application is taken to be an application for a licence for a food business carried on from mobile premises that are the food vending machine.
- ‘(3) An application to which this section applies is not invalid only because it does not comply with section 53(1)(e) as in force on the commencement.

Note—

The local government may, under section 59, require the applicant to give the local government the serial number or other identifying mark of the food vending machine.

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

- ‘(1) This section applies to an application for the renewal, restoration or amendment of a relevant licence made under chapter 3, part 5, but not decided, before the commencement.
- ‘(2) On and from the commencement, the application is taken to be an application for the renewal, restoration or amendment of a licence for a food business carried on from mobile premises that are the food vending machine.

Note—

The local government may, under section 75, require the applicant to give the local government the serial number or other identifying mark of the food vending machine.

‘303 Application of provisions about food business rating schemes to existing schemes

- ‘(1) This section applies to a local government that is, on the commencement of chapter 11, part 3B, conducting a food business rating scheme.
- ‘(2) Within 90 calendar days after the commencement of chapter 11, part 3B, the local government must give the chief executive a notice stating details of the food business rating scheme sufficient to enable the chief executive to assess the compliance of the scheme with the prescribed requirements for food business rating schemes.
- ‘(3) The chief executive must—
- (a) assess whether the food business rating scheme complies with the prescribed requirements for food business rating schemes; and
 - (b) advise the local government and the Minister whether the scheme complies with the prescribed requirements.
- ‘(4) The Minister may disallow the food business rating scheme under chapter 11, part 3B.’

17 Amendment of sch 2 (Changes to food standards code)

- (1) Schedule 2, item 2—
- insert—*
- ‘*Note—*
- See section 23 for provisions that are administered only by local governments.’
- (2) Schedule 2, item 3—
- omit, insert—*
- ‘3 In the definition ***food premises*** in clause 1 of standard 3.1.1, the words ‘any other place declared by the relevant authority to be premises under the Food Act’ are replaced with the words ‘food vending machines’, and the words ‘food vending machines or’ are omitted.’

[s 18]

18 Amendment of sch 3 (Dictionary)

- (1) Schedule 3, definitions *commencement* and *mobile premises*—

omit.

- (2) Schedule 3—

insert—

‘commencement—

(a) for chapter 12, part 2, see section 280; or

(b) for chapter 12, part 3, see section 299.

conduct, in relation to a food business rating scheme, see section 271F.

disallow, in relation to a food business rating scheme conducted by a local government, see section 271F.

disallowance notice see section 271F.

food business rating scheme see section 271F.

food vending machine means a machine or device operated by money, token, debit card or credit card and used, or intended for use, for the sale of food.

mobile premises, for a food business, means—

(a) premises that are a vehicle from which a person sells unpackaged food by retail; or

(b) premises that are a food vending machine.

prescribed requirements, for food business rating schemes, see section 271F.

relevant licence, for chapter 12, part 3, see section 299.’.

- (3) Schedule 3, definition *premises*—

insert—

‘(e) a food vending machine.’.

‘37A Dealing with notifications under Health Practitioner Regulation National Law

‘If the commission is notified under the Health Practitioner Regulation National Law (Queensland), section 150 that a national board has received a notification the subject matter of which provides a ground for a health complaint, subject to that section—

- (a) the commission may deal with the notification as if it were a health quality complaint or health service complaint made under this Act; and
- (b) a reference in this Act to a health quality complaint or health service complaint includes a reference to the notification.’

25 Insertion of new ch 5, pt 2A

Chapter 5—

insert—

‘Part 2A Preliminary assessment of particular health complaints

‘49A Application of pt 2A

‘This part applies to a health complaint about a registered provider registered by a national board.

‘49B Preliminary assessment

- ‘(1) The commission must immediately conduct a preliminary assessment of the health complaint.
- ‘(2) However, if the health complaint is a notification, the commission need not conduct the preliminary assessment until the commission has been given the information mentioned in the Health Practitioner Regulation National Law (Queensland), section 150(1)(b) for the health complaint.

[s 25]

- ‘(3) The commission must consider the following when conducting a preliminary assessment of a health complaint—
- (a) whether the health complaint is a health quality complaint or health service complaint;
 - (b) if the complaint is a health service complaint—whether the complaint may be resolved directly between the complainant and the provider;
 - (c) whether the health complaint may be resolved under section 49D;
 - (d) whether it is more appropriate for a registration board to deal with the health complaint;
 - (e) whether another entity may be able to investigate or take other appropriate action about the health complaint.
- ‘(4) Also, subsection (1) is subject to sections 49C and 66.

‘49C Matters to consider before conducting preliminary assessment

- ‘(1) This section applies to a health complaint, other than a health complaint that is a notification.
- ‘(2) The commission must not start a preliminary assessment of the health complaint until—
- (a) if the health complaint is a health service complaint—the commission is satisfied the complainant is eligible to make the health complaint; and
 - (b) if the health complaint is made orally—the complainant confirms the health complaint in writing or the commission is satisfied there is good reason that the health complaint need not be confirmed in writing; and
 - (c) the complainant gives the commission the information required under section 47(1) or the commission decides to accept the health complaint under section 47(3); and
 - (d) if the commission asks for further information about the health complaint under section 48 or requires the health complaint or further information to be verified by oath

or statutory declaration under section 49—the complainant complies with the request or requirement.

‘49D Decision on preliminary assessment

- ‘(1) On conducting a preliminary assessment of a health complaint, the commission must comply with the Health Practitioner Regulation National Law (Queensland), section 150.
- ‘(2) In dealing with a health complaint as required under the Health Practitioner Regulation National Law (Queensland), section 150(3), the commission may—
- (a) attempt to resolve the health complaint under section 49E; or
 - (b) refer the complaint to another entity the commission considers is able to investigate or take other appropriate action about the complaint; or
 - (c) take action under part 3 or 4; or
 - (d) if the health complaint is a health quality complaint—decide not to take action about the health complaint if—
 - (i) the commission considers no action is warranted; or
 - (ii) the complaint is being dealt with by a national board; or
 - (e) if the health complaint is a health service complaint—decide to take no action on the health complaint under section 63, 64 or 65 despite the health service complaint not being assessed under part 4.
- ‘(3) If the commission makes a decision about a health complaint under subsection (2)(d) or (e), the commission must give notice of the commission’s decision, including reasons for the decision, to the complainant as soon as practicable after making the decision.

[s 26]

‘49E Early resolution

‘(1) This section applies if the commission considers there is a reasonable likelihood that it may be able to facilitate the early resolution of a health complaint and the complainant agrees to the commission acting under this section.

‘(2) The commission may take the action it considers reasonable to facilitate the resolution of the health complaint.

Example of action the commission may take—

The commission may arrange mediation between the complainant and the provider concerned.

‘(3) The commission must not continue to facilitate the early resolution of the health complaint if—

(a) the commission is satisfied it is unable to facilitate the early resolution of the complaint; or

(b) the complaint remains unresolved 30 days after its receipt by the commission.

‘(4) This section is subject to section 66.’.

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

Section 50—

insert—

‘(4) If the commission decides to take action, or not to take action, about a health quality complaint under this section, the commission must give notice of the commission’s decision to the complainant as soon as practicable after making the decision.

‘(5) If the commission decides not to take action about the health quality complaint, the notice under subsection (4) must state the reasons for the decision.’.

27 Amendment of s 52 (Early resolution)

Section 52(2), ‘section 53’—

omit, insert—
'section 53(1)'.

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

(1) Section 53, heading, 'immediately'—

omit.

(2) Section 53(1)—

omit, insert—

'(1) The commission must immediately assess a health service complaint, other than a health service complaint about a registered provider registered by a national board.

'(1A) Under section 49D(2)(c), the commission may decide to take action under this part to deal with a health service complaint about a registered provider registered by a national board.'

(3) Section 53(2), 'the assessment'—

omit, insert—

'an assessment of a health service complaint under subsection (1)'.

(4) Section 53(4), 'subsection (1) is'—

omit, insert—

'subsections (1) and (2) are'.

(5) Section 53(1A) to (4)—

renumber as section 53(2) to (5).

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

Section 54—

insert—

'(5) In this section—

[s 30]

registered provider means a person registered by a State board.’.

30 Amendment of s 57 (Consultation with registration board)

Section 57—

insert—

‘(6) In this section—

registered provider means a person registered by a State board.’.

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

Section 64—

insert—

‘(d) the complaint is being dealt with by a national board or an adjudication body under the Health Practitioner Regulation National Law (Queensland).

Note—

See the Health Practitioner Regulation National Law (Queensland), section 150.’.

32 Amendment of s 65 (Withdrawal of complaint)

(1) Section 65(3)(a) to (d)—

renumber as section 65(3)(b) to (e).

(2) Section 65(3)—

insert—

‘(a) conducting a preliminary assessment of the complaint;’.

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

(1) Section 68(1), ‘A registration board’—

omit, insert—

‘A State board’.

- (2) Section 68(1)(c) and (d)—

omit, insert—

‘(c) the executive officer of the Office of Health Practitioner Registration Boards appointed under the *Health Practitioner Registration Boards (Administration) Act 1999*; or

(d) with the executive officer’s agreement—another member of the staff of the Office of Health Practitioner Registration Boards.’.

- (3) Section 68(2), definition *State health law*—

omit.

34 Amendment of s 87 (Referral to another entity)

Section 87(3)—

insert—

‘*Note—*

If an investigation raises issues about the health, conduct or performance of a registered provider registered by a national board, the commission must give written notice of the issues. See the Health Practitioner Regulation National Law (Queensland), section 150(5).’.

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

- (1) Section 89, heading, after ‘reference’—

insert—

‘or written notice’.

- (2) Section 89, from ‘by the matter’—

omit, insert—

‘by—

[s 36]

- (a) the matter having been referred under section 87 to another entity; or
- (b) the giving of written notice under the Health Practitioner Regulation National Law (Queensland), section 150 to a national board.’.

36 Amendment of s 149 (Assistant commissioners)

Section 149(4), definition *health practitioner registration Act*—

omit, insert—

‘*health practitioner registration Act* means—

- (a) a State health law; or
- (b) the Health Practitioner Regulation National Law.’.

37 Amendment of s 164 (Other directions by Minister)

Section 164(1)(d)—

omit, insert—

‘(d) intervene in a disciplinary proceeding against a registered provider under section 190 or 190A; or’.

38 Amendment of s 176 (Status)

Section 176, ‘1992’—

omit, insert—

‘1982’.

39 Amendment of s 188 (Information from registration board)

Section 188(3), after ‘request’—

insert—

‘as soon as practicable’.

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

- (1) Section 189(2), ‘The’—
omit, insert—
‘Subject to subsection (3), the’.
- (2) Section 189—
insert—
- ‘(3) The commission’s obligation to comply with the request applies only to information in the possession of the commission.’.

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

Section 190—
omit, insert—

‘190 Commission may intervene in disciplinary proceeding under Health Practitioners (Professional Standards) Act 1999

- ‘(1) This section applies if a disciplinary proceeding is taken against a registered provider for a matter because of a health complaint or an inquiry matter and the proceeding is before a disciplinary body.
- ‘(2) The commission may intervene in the disciplinary proceeding at any time.
- ‘(3) On intervention, the commission becomes a party to the disciplinary proceeding.
- ‘(4) If the commission intervenes in a disciplinary proceeding before QCAT, the commission may be represented by a lawyer or another person.
- ‘(5) If the commission intervenes in a disciplinary proceeding before a State board or a professional conduct review panel, the commission may nominate a person, other than a lawyer,

[s 41]

to appear in the disciplinary proceeding on behalf of the commission.

- ‘(6) The commission may intervene in an appeal against a decision of a disciplinary body made in a disciplinary proceeding.
- ‘(7) On intervention in the appeal, the commission becomes a party to the appeal.
- ‘(8) In this section—

disciplinary proceeding means disciplinary proceedings under the *Health Practitioners (Professional Standards) Act 1999*.

registered provider means a person registered by a State board.

‘190A Commission may intervene in disciplinary proceeding under Health Practitioner Regulation National Law

- ‘(1) This section applies to a disciplinary proceeding taken against a registered provider if—
 - (a) the disciplinary proceeding is before a disciplinary body; and
 - (b) the disciplinary proceeding is in relation to a health complaint.
- ‘(2) The commission may intervene in the disciplinary proceeding at any time.
- ‘(3) On intervention, the commission becomes a party to the disciplinary proceeding.
- ‘(4) If the commission intervenes in a disciplinary proceeding before QCAT, the commission may be represented by a lawyer or another person.
- ‘(5) 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 only with the leave of the panel.

‘(6) In this section—

disciplinary proceeding means any of the following—

- (a) the hearing of a matter by a performance and professional standards panel;
- (b) a proceeding before QCAT for a matter referred to QCAT under the Health Practitioner Regulation National Law (Queensland), section 193;
- (c) an appeal before QCAT of an appellable decision under the Health Practitioner Regulation National Law (Queensland), section 199.

registered provider means a person registered by a national board.’.

42 Replacement of s 210 (Commission may provide information)

Section 210—

omit, insert—

‘210 Commission may provide information

‘(1) This section applies if the commission—

- (a) refers a health complaint to a registration board or other entity under chapter 5 or 7; or
- (b) notifies a registration board about a health complaint as required under the Health Practitioner Regulation National Law (Queensland), section 150.

‘(2) 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.

‘(3) However, subsection (2) does not apply to information obtained by the commission under chapter 6.’.

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

Chapter 15, part 2, heading, after ‘provisions’—

[s 44]

insert—

‘for Act No. 25 of 2006’.

44 Insertion of new ch 15, pt 3

Chapter 15—

insert—

‘Part 3 Transitional provisions for Health Legislation Amendment Act 2011

‘231 Definitions for pt 3

‘In this part—

amendment Act means the *Health Legislation Amendment Act 2011*.

commencement means the commencement of this part.

‘232 Existing health complaints not finally dealt with

- ‘(1) This section applies to a health complaint made to the commission but not finally dealt with before the commencement.
- ‘(2) This section also applies to a notification under the Health Practitioner Regulation National Law being dealt with by the commission if the notification is not finally dealt with before the commencement.
- ‘(3) The commission must continue to deal with the health complaint or notification under this Act as in force before the commencement as if the amendment Act had not been made.

‘233 Health complaints made after the commencement

‘This Act as amended by the amendment Act applies to all health complaints and notifications under the Health

Practitioner Regulation National Law (Queensland) made after the commencement whether or not the complaint or notification is about a matter that happened before the commencement.’.

45 Omission of sch 2 (Registration boards)

Schedule 2—

omit.

46 Amendment of sch 5 (Dictionary)

(1) Schedule 5, definition *registration board*—

omit.

(2) Schedule 5—

insert—

‘national board means a national board established under the Health Practitioner Regulation National Law.

notification see the Health Practitioner Regulation National Law (Queensland), section 5.

performance and professional standards panel see the Health Practitioner Regulation National Law (Queensland), section 5.

registration board means—

- (a) a State board; or
- (b) a national board.

Note—

See also the Health Practitioner Regulation National Law (Queensland), section 300.

State board means a board established under a State health law.

State health law means any 1 of the following Acts—

- (a) the *Dental Technicians Registration Act 2001*;

[s 46]

- (b) the *Medical Radiation Technologists Registration Act 2001*;
 - (c) the *Occupational Therapists Registration Act 2001*;
 - (d) the *Speech Pathologists Registration Act 2001*’.
- (3) Schedule 5, definition *completion notice*, paragraph (a), after ‘board’—
insert—
‘established under a State health law’.
- (4) Schedule 5, definition *disciplinary body*—
insert—
‘(e) a performance and professional standards panel’.
- (5) Schedule 5, definition *proposed action*, after ‘action’—
insert—
‘, for chapter 3,’.
- (6) Schedule 5, definition *seized thing*, after ‘thing’—
insert—
‘, for chapter 9, part 3,’.
- (7) Schedule 5, definition *show cause notice*, after ‘notice’—
insert—
‘, for chapter 3,’.
- (8) Schedule 5, definition *show cause period*, after ‘period’—
insert—
‘, for chapter 3,’.
- (9) Schedule 5, definition *witness requirement notice*, after ‘notice’—
insert—
‘, for chapter 8,’.

[s 49]

applicant is competent to carry out the fumigation activity in the site environment.’.

49 Amendment of sch 3 (Dictionary)

Schedule 3, definition *site environment*, ‘particular, or type, of place.’—

omit, insert—

‘particular place or type of place.’.

Part 6 Amendment of Public Health Act 2005

50 Act amended

This part amends the *Public Health Act 2005*.

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

Section 81(4)—

omit, insert—

‘(4) Despite section 455, the chief executive may delegate the chief executive’s powers under this section only to—

- (a) the chief health officer; or
- (b) another person who—
 - (i) is a public service officer or employee, or a health service employee; and
 - (ii) the chief executive is satisfied has the expertise or experience in public health issues necessary to exercise the powers.’.

52 Amendment of s 160 (What is a *prescribed period* for a contagious condition)

Section 160(3)(b)(i) and (ii)—

omit, insert—

- ‘(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, education and care service or child care service.’.

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

Section 161(1)(a), after ‘has’—

insert—

‘, or may have.’.

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

Section 162(1), ‘may have’—

omit, insert—

‘has, or may have.’.

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

Section 163(1)(a), ‘may have’—

omit, insert—

‘has, or may have.’.

[s 56]

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

Section 164(1)(c), after ‘has’—

insert—

‘, or may have,’.

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

(1) Section 165(1)—

omit, insert—

‘(1) This section applies if the person in charge of a school, education and care service or child care service reasonably suspects that a child attending the school or service—

(a) has not been vaccinated for a vaccine preventable condition; and

(b) may be at risk of contracting the condition if the child continues to attend the school or service.’.

(2) Section 165(2), ‘second’—

omit.

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

Section 167(1)(a), ‘may have’—

omit, insert—

‘has, or may have,’.

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

(1) Section 169(1)(c), after ‘has’, first occurring—

insert—

‘, or may have.’.

(2) Section 169(1)(d)—

omit, insert—

‘(d) the chief executive reasonably suspects that a child attending a school, education and care service or child care service—

(i) has not been vaccinated for a vaccine preventable condition; and

(ii) will be at risk of contracting the condition if the child continues to attend the school or service.’.

(3) Section 169(2)—

omit, insert—

‘(2) The chief executive may direct the person in charge of the school, education and care service or child care service to direct the parent of the child to remove the child from, and not to send the child to, the school or service for the prescribed period for the condition.’.

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

Section 172(1)(a), after ‘has’—

insert—

‘, or may have.’.

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

Section 173(4)(a) to (c)—

omit, insert—

‘(a) a child attending the school or service is suspected of being at risk of contracting the vaccine preventable

[s 62]

condition if the child continues to attend the school or service; and

- (b) the information about the child is necessary to enable the person in charge to act under section 165 or 166.’.

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

Section 180(1)—

omit, insert—

- ‘(1) The chief executive may give a direction under subsection (3) to the person in charge of a school, education and care service or child care service if the chief executive is satisfied there is an outbreak of a contagious condition—
 - (a) at the school or service; or
 - (b) in the community and there is a risk of children and staff at the school or service contracting the condition.’.

63 Amendment of s 181 (Temporary closure of school, education and care service or child care service)

Section 181(1)(a)—

omit, insert—

- ‘(a) there is an outbreak of a contagious condition—
 - (i) at the school or service; or
 - (ii) in the community and there is a significant risk of children and staff at the school or service contracting the condition; and’.

insert—

- ‘(8) For subsection (7)(a), the height of a screen is to be measured as if the base of the screen were level with the highest point of the ground or floor within 1m on either side of the screen.’.

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

- (1) Section 26ZS, heading, ‘food or toys’—

omit, insert—

‘objects’.

- (2) Section 26ZS(1)—

omit, insert—

- ‘(1) A person must not, as part of a business activity, supply to a person an object, other than a tobacco product, that resembles a tobacco product.

Maximum penalty—140 penalty units.’.

- (3) Section 26ZS(2), ‘food or a toy’—

omit, insert—

‘an object’.

- (4) Section 26ZS(2), ‘food or toy’—

omit, insert—

‘object’.

72 Insertion of new s 26ZT

Part 2D—

insert—

‘26ZT Sale of confectionary-flavoured or fruit-flavoured cigarettes

- ‘(1) A person must not sell a cigarette that is confectionary-flavoured or fruit-flavoured.

[s 73]

Maximum penalty—140 penalty units.

- ‘(2) Subsection (1) does not apply to a menthol-flavoured cigarette.’.

73 Insertion of new s 42E

After section 42D—

insert—

‘42E Forfeiture of smoking product seized under s 40

- ‘(1) This section applies to a smoking product seized under section 40.
- ‘(2) The smoking product is forfeited to the State—
- (a) at the end of 6 months from the day it was seized; or
 - (b) if a proceeding involving the supply of the smoking product is started within 6 months from the day it was seized—at the end of the proceeding and any appeal from the proceeding.’.

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