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Ms Leanne Linard MP
Chair
Health and Ambulance Services Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Ms Linard

Thank you for your letter dated 20 November 2015, regarding the Health and Ambulance Services Committee's inquiry into the Health Legislation Amendment Bill 2015.

Please find enclosed, as requested, the Department of Health's written briefing to the Committee on the Bill.

Should you require further information, the Department of Health's contact for the inquiry is Mr David Noon, Manager, Cabinet and Parliamentary Services, on telephone [REDACTED]

Yours sincerely

[REDACTED]

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Queensland Parliamentary Health and Ambulance Services Committee
Departmental Briefing on the Health Legislation Amendment Bill 2015

November 2015

OVERVIEW OF THE BILL

Summary

The Health Legislation Amendment Bill 2015 (the Bill) amends six Health portfolio Acts to support policy initiatives of the Government, and to improve the effective operation of the Acts.

The most significant amendments are to the *Food Act 2006* (the Food Act) to establish a statewide menu labelling scheme. These amendments implement an election commitment in *A Healthier Queensland: Labor's action plan for a healthier Queensland* to introduce legislation requiring fast-food chains to display the kilojoule content of their food and drinks.

The Bill also amends:

- the Food Act to enable the Chief Executive of the Department to authorise disclosure of confidential information for limited public health and safety reasons
- the *Health Ombudsman Act 2013* (the Health Ombudsman Act) and the *Hospital and Health Boards Act 2011* (the Hospital and Health Boards Act) to enable the Minister to temporarily appoint persons to the public panel of assessors and Hospital and Health Boards respectively
- the *Pest Management Act 2001* (the Pest Management Act) to enable the Chief Executive to delegate the Chief Executive's powers to appropriately qualified employees of the Hospital and Health Services
- the *Public Health Act 2005* (the Public Health Act) to streamline the process for enabling registered midwives to access the Queensland Pap Smear Register (the Pap Smear Register), and
- the *Transplantation and Anatomy Act 1979* (the Transplantation and Anatomy Act) to make clear that the definition of blood products under section 42AB does not include cord blood, that is, blood obtained from the placenta via the umbilical cord for the collection of stem cells (*Haematopoietic Progenitor Cells* or *HPCs*).

Context

In 2011, the former Australia and New Zealand Food Regulation Ministerial Council endorsed the *Principles for Introducing Point-of-Sale Nutrition Information in Standard Food Outlets* (the National Principles), designed to facilitate national consistency if jurisdictions elect to introduce legislation for the display of point-of-sale nutrition information in standard food outlets. To date, New South Wales (NSW), South Australia (SA) and the Australian Capital Territory (ACT) have introduced legislation consistent with the National Principles, with some jurisdictional variations relating primarily to the scope of businesses to which the requirements apply.

During the 2015 election, the Queensland Government committed to introducing legislation requiring fast-food chains to display the kilojoule content of their food and drinks, and to undertake a community and industry awareness campaign to help Queenslanders use the kilojoule menu labelling information to make healthier choices.

In addition to the requirement for legislation to support implementation of a fast-food menu labelling scheme, the Department of Health (the Department) has identified a range of

legislative amendments necessary to support policy initiatives to protect and improve the health of Queenslanders, and to improve the operation of certain Health portfolio Acts.

Summary of key provisions

Commencement

The Act will commence on Assent.

However, new section 303 of the Food Act (inserted by clause 10) provides that the menu labelling provisions, including related offences, do not apply to a proprietor of a food business until 12 months after commencement. This will allow food businesses a transitional period in which to comply with the menu labelling requirements. During the transition period, Queensland Health will work with business to achieve compliance and to ensure that food outlets displaying nutritional information understand their obligations.

Menu labelling scheme (cl 5, new chapter 6A)

New chapter 6A of the Food Act will establish the framework for the menu labelling scheme. However, much of the detail of the scheme will be prescribed in the *Food Regulation 2006*. The draft Food Amendment Regulation and related explanatory notes were tabled during introduction, to enable consideration of the scheme as a whole.

The menu labelling scheme will mandate that standard food outlets of prescribed food businesses must display on their menus the average energy content (in kilojoules) for each standard food item and a statement that the average adult daily energy intake is 8,700 kJ.

The mandatory display requirements will apply only to food businesses that are required to be licensed under the Food Act, and that have more than 20 outlets in Queensland or 50 outlets Australia-wide. This will include fast-food chains, snack-food and drinks chains, bakery chains, café chains, and supermarkets. Exemptions are provided for non-profit organisations, health service facilities, cinemas, convenience stores, service stations, dine-in only food businesses, catering businesses and mobile food businesses.

Contraventions of the mandatory display requirements may range from minor and inadvertent to serious, ongoing and deliberate. Accordingly, a two-tiered offence structure is provided to enable a proportionate enforcement response. The Bill provides that it is an offence to intentionally contravene the requirement to display nutritional information. The maximum penalty for intentionally contravening the mandatory menu labelling provisions is 500 penalty units: new section 164E(3). Otherwise contravening the mandatory menu labelling provisions will carry a maximum penalty of 100 penalty units: new section 164E(4).

Standard food outlets that are not captured by the scheme, but that voluntarily display nutritional information will be required to comply with the nutritional information display requirements in the Act in doing so. This is to ensure standard food outlets provide consistent nutritional information to consumers. The maximum penalty for failing to comply is 100 penalty units: new section 164F.

In accordance with the *Penalties and Sentences Act 1992*, the maximum penalty for a corporation is five times higher than the penalty unit amount stated for an individual.

Disclosure of confidential information (cl 8 and 9, new section 272A)

The Bill provides the Chief Executive of the Department with the power to authorise, in writing, a *relevant person* to disclose information relating to a food business, including confidential information. A relevant person means the Chief Health Officer or an appropriately qualified employee of the Department of Health or a Hospital and Health Service.

The Chief Executive may authorise the disclosure only if he or she has reasonable grounds to believe disclosing the information is necessary to prevent or reduce the possibility of, or to mitigate the adverse consequences of, a serious danger to public health. It is intended that the power will be used only where the food business has refused to voluntarily disclose the information.

The Chief Executive may delegate the power to authorise disclosure of the information, but only to the Chief Health Officer. The authorisation must be in writing.

The types of information that may be disclosed include information that identifies:

- food sold in connection with the food business
- actions a person who has consumed the food may take
- the food business and location that supplied the food, and
- the nature of the serious danger to public health.

Examples of disclosure may include advising the public, generally or in a particular area:

- not to consume a specified food, voluntarily recalled by a business, that may be contaminated with bacteria, glass or an undeclared allergen
- that people who ate at a particular restaurant on a particular date may have been exposed to Hepatitis A by eating food unsafely handled by a person infected with the Hepatitis A virus
- to safely dispose of a particular class of product, such as a brand of biscuits, that may have been intentionally contaminated
- to seek emergency medical care if they become unwell after consuming a particular food.

Temporary appointments to public panels of assessors (cl 13, new section 118A)

The Bill will amend the Health Ombudsman Act to enable the Minister to temporarily appoint persons to the public panel of assessors. These panels are established under the Act to provide expert advice to a judicial member of the Queensland Civil and Administrative Tribunal (QCAT) during disciplinary hearings for registered health practitioners. Panel members are appointed by the Governor in Council.

The ability to make temporary appointments will help ensure a sufficient number of public assessors will be available at all times. Temporary appointments may be required if, for example, a number of public assessors become temporarily unavailable, there is a significant increase in matters referred to QCAT, a public assessor of a particular gender is required but not available, or the Governor in Council cannot make new appointments before expiry of current appointments.

Temporary appointments to Hospital and Health Boards (cl 18, new section 24A)

The Bill will amend the Hospital and Health Boards Act to enable the Minister to temporarily appoint persons to Hospital and Health Boards. Board members are generally appointed by the Governor in Council on the recommendation of the Minister for Health.

This increased flexibility will ensure that in the event that one or more Board members resign, take unexpected leave or are suspended or removed, temporary appointments can be made so that a Board has the appropriate number of members for a quorum and/or the appropriate skills mix to continue to conduct its business.

The temporary appointment power is subject to limitations that ensure Governor-in-Council appointments are not replaced with rolling temporary appointments. First, before making a temporary appointment, the Minister must reasonably believe it is necessary to urgently appoint a person as a member for one of three reasons:

- that the Board does not consist of at least five members (as required under section 23(1))

- that the Minister considers the members of the board do not have the skills, knowledge or experience to perform the boards functions effectively or efficiently (as required under section 23(2)), or
- none of the members are clinicians (as required under section 23(3)).

Second, the Minister cannot temporarily appointment a person for more than 12 months in total.

Delegation of the chief executive's powers (cl 21, section 128)

The Bill will amend the Pest Management Act to enable the Chief Executive of the Department of Health to delegate powers under section 128 of that Act to appropriately qualified employees of the Hospital and Health Services.

The Chief Executive is currently able to delegate powers to an appropriately qualified employee of the Department of Health. However, with the creation of Hospital and Health Services as separate statutory bodies in 2012, this power does not extend to delegating functions to employees of the Hospital and Health Services. The new delegation power will enable functions to be delegated to appropriately qualified employees of those Services.

The amendment will allow, for example, the Chief Executive's powers to deal with forfeited items, such as pesticides that are seized or surrendered under the Act, to be delegated to Hospital and Health Service employees.

Access to the Queensland Pap Smear Register (cl 25, section 251)

The Bill will amend the Public Health Act to streamline the process for enabling registered midwives, who are not also registered nurses, to access the Queensland Pap Smear Register.

Presently, the Public Health Act enables the Chief Executive to forward information about a patient's abnormal Pap smear test results to her treating health practitioner. The definition of health practitioner includes a registered nurse, but does not include a registered midwife who is not also a registered nurse. To allow such midwives to access the Pap Smear Register, the Chief Executive must first designate them as health practitioners via a gazettal notice.

To streamline this process the Bill amends the definition of health practitioner to include a midwife, defined as a person registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a midwife.

Definition of blood products (cl 31, section 42AB)

The Bill amends the Transplantation and Anatomy Act to clarify that the definition of 'blood products' does not include cord blood.

The Transplantation and Anatomy Act prohibits the buying, advertising to buy, and selling of human tissue (trading restrictions). Cord blood is captured by the definition of tissue under the Transplantation and Anatomy Act and therefore is subject to trading restrictions. Cord blood is blood that is obtained from the placenta via the umbilical cord following birth for the main purpose of extracting stem cells, which are used in the treatment of a range of medical conditions including leukaemia, lymphoma and anaemia, as well as immune and metabolic disorders.

The *Health and Other Legislation Amendment Act 2014* amended the Transplantation and Anatomy Act to enable certain entities to be exempted from the trading restrictions. Section 42AB provides that an entity is exempt if, for tissue other than blood products, the entity is party to an agreement with the Commonwealth or with the State for the buying or selling of tissue, and is prescribed by regulation.

The Australian Bone Marrow Donor Registry (ABMDR) is a non-profit organisation that conducts searches for matching cord blood units. It was intended that the ABMDR be exempted under this provision for the purposes of trading in cord blood. However, it is arguable that cord blood is a blood product.

Therefore, it is necessary to amend section 42AB of the Transplantation and Anatomy Act to clarify that cord blood is not a blood product as defined under section 42AB(2). This will enable the ABMDR to be exempted from trading restrictions for the purposes of trading in cord blood, and so achieve the original policy intent of the *Health and Other Legislation Amendment Act 2014*.

Implementation

Menu labelling scheme

Subject to passage of the Bill through Parliament, amendments to the Food Act to implement the menu labelling scheme will commence on assent. The Food Amendment Regulation will be submitted to the Governor in Council following passage of the amendments to the Food Act and, subject to approval, will commence in mid-2016.

The Department of Health anticipates that monitoring and enforcement of compliance with the new menu labelling provisions will commence in the first half of 2017.

The Department of Health will develop and implement a communication strategy and an evaluation plan. The industry communication strategy will include:

- reviewing existing industry strategies to improve the nutritional value of food and drinks, and resources available to industry to guide the provision of healthier products, in early 2016
- developing industry guidance materials such as business factsheets and display guidelines in early 2016
- engaging with key stakeholders and businesses about commencement timeframes and compliance obligations during the transition period
- showcasing retailers and suppliers that have re-formulated menu items and introduced healthier choices during transition period.

The consumer education strategy will include:

- commissioning consumer research and developing a consumer education strategy in early 2016
- implementing consumer education strategy between March 2016 and June 2017.

Evaluation will include:

- For industry - a baseline survey of the accuracy of nutritional information voluntarily displayed by food businesses and a statewide audit following the 12 months transition period to determine food business compliance with menu labelling requirements
- For consumers – conduct baseline, midpoint and final evaluations between January 2016 and September 2018.

Consultation

The Department of Health distributed a discussion paper on the proposed fast-food menu labelling scheme to over 120 stakeholders. Stakeholders generally supported the proposed scheme, emphasising the importance of consistency with other jurisdictions that have a menu labelling scheme. Stakeholders noted there will be implementation costs for impacted businesses and that these costs will be increased if the Queensland scheme is not consistent with other jurisdictions.

Stakeholders include:

- food businesses within the proposed scope of the scheme (or close to the proposed scope)
- peak food industry bodies
- consumer and public health organisations, and
- applicable food regulation and public health government departments.

Seventeen submissions were received in response to the discussion paper, from two food businesses, two national food industry peak bodies, four government agencies, eight public health and consumer organisations and one consultancy business. The responses largely indicated support for the menu labelling scheme. There was strong support for a nationally consistent scheme and for the delivery of a community education campaign to support the introduction of the legislation.

Changes were made to accommodate stakeholder feedback and to ensure greater consistency with the New South Wales (NSW) scheme. In particular, supermarkets have been given concessions regarding the display of nutritional information, to ensure an approach consistent with NSW and the Australian Capital Territory. Concessions are also provided for food items being sold on a trial basis.

Queensland Health has also directly approached those food businesses that will be captured by the proposed Queensland legislation but that are not currently captured by other jurisdictions' schemes or who may be captured in the near future with minor expansion of outlet numbers. Of these 12 businesses, four were unable to be contacted, one advised they did not believe they would be captured by the proposed legislation and the remaining seven either already rolled out the requirements nationally or were preparing to roll out.

There was no consultation external to Government on the other amendments in the Bill as they are procedural or corrective in nature.

Risk Management

Menu labelling scheme (Food Act)

A number of measures are intended to minimise risks, including compliance costs, for small business and not-for-profit organisations. The mandatory display requirements apply only to standard food outlets of fast-food chains, snack-food and drinks chains, bakery chains, café chains, and supermarkets that have 20 or more outlets in Queensland or 50 or more outlets nationally. Exemptions are provided for non-profit organisations, health service facilities, cinemas, convenience stores, service stations, dine-in only food businesses, catering businesses and mobile food businesses.

Also, a tiered offence structure provides for proportionate enforcement.

Disclosure of confidential information (Food Act)

Disclosure of information under the new power has the potential to damage a business. Accordingly, the Chief Executive may authorise the disclosure only if he or she has reasonable grounds to believe disclosing the information is necessary to prevent or reduce the possibility of, or to mitigate the adverse consequences of, a serious danger to public health. It is intended that the power will be used only where the food business has refused to voluntarily disclose the information.

Other safeguards are that the Chief Executive may delegate the disclosure power only to the Chief Health Officer, and that the authorisation to disclose must be in writing.

Temporary appointments to public panels of assessors (Health Ombudsman Act)

The Minister can make temporary appointments only on the advice of the principal registrar of QCAT. Accordingly, the risk that temporary appointments will be substituted for Governor-in-Council appointments is very low.

Temporary appointments to Hospital and Health Boards (Hospital and Health Boards Act)

The new temporary appointment power is subject to limitations that ensure Governor-in-Council appointments are not replaced with rolling temporary appointments. First, before making a temporary appointment, the Minister must reasonably believe it is necessary to urgently appoint a person as a member for one of three reasons:

- that the Board does not consist of at least five members (as required under section 23(1))
- that the Minister considers the members of the board do not have the skills, knowledge or experience to perform the boards functions effectively or efficiently (as required under section 23(2)), or
- none of the members are clinicians (as required under section 23(3)).

Second, the Minister cannot temporarily appointment a person for more than 12 months in total.

Other amendments

The remaining amendments do not present any significant risks.
