

Health Legislation Amendment Bill 2015

Report No. 11, 55th Parliament
Health and Ambulance Services Committee

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Health and Ambulance Services Committee

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Abbreviations

ABMDR	Australian Bone Marrow Donor Registry
AMAQ	Australian Medical Association Queensland
COAG	Council of Australian Governments
FLP	fundamental legislative principle
HHB	Hospital and Health Board
HHS	Hospital and Health Services
HO Act	<i>Health Ombudsman Act 2013</i>
NRA	National Retail Association
OHO	Office of Health Ombudsman
OQPC	Office of Parliamentary Counsel
QCAT	Queensland Civil and Administrative Tribunal
QLS	Queensland Law Society
RACS	Royal Australasian College of Surgeons
SLC	Scrutiny of Legislation Committee
TA Act	<i>Transplantation and Anatomy Act 1979</i>
the Bill	<i>Health Legislation Amendment Bill 2015</i>
the Committee	Health and Ambulance Services Committee
the Department	Department of Health
the Minister	Minister for Health and Minister for Ambulance Services
the Regulation	<i>Food Regulation 2006</i>

Chair's foreword

This Report details the examination by the Health and Ambulance Services Committee of the Health Legislation Amendment Bill 2015.

The Committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles – that is, to consider whether the Bill had sufficient regard to the rights and liberties of individuals, and to the institution of Parliament in accordance with section 4 of the *Legislative Standards Act 1991*.

The Committee was unable to reach agreement on whether the Bill be passed. Whilst, the Committee agreed on the proposed provisions relating to the *Food Act 2006*, the *Pest Management Act 2001*, the *Public Health Act 2005* and the *Transplantation and Anatomy Act 1979*, the Committee could not reach agreement on the provisions relating to the *Health Ombudsman Act 2013* and the *Hospital and Health Boards Act 2011*.

The Committee has included two recommendations in the report relating to the education strategy for the changes to the Food Act and relating to notification on temporary appointments under the Health Ombudsman Act and the Hospital and Health Boards Act.

On behalf of the Committee, I thank those who lodged written submissions on this Bill and participated in the committee's hearings and meetings. I also thank the Department of Health for the support provided to the Committee during this inquiry.

I would also like to thank my fellow Members on the Committee, Hansard and Committee Office staff for the support they have provided us.



Leanne Linard MP
Chair

Recommendations

Recommendation 1

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That the Minister for Health and Minister for Ambulance Services outline to the House the education strategy proposed by the Department.

Recommendation 2

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The Committee recommends that amendments be included to require the relevant Minister to provide notification, by way of gazette notice, of temporary appointments to the public panel of assessors and the professional panel of assessors as soon as practicable after appointment.

1. Introduction

1.1 Role of the committee

The Health and Ambulance Services Committee (the Committee) is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.¹

The committee's primary areas of responsibility are health and ambulance services.²

Section 93(1) of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for examining each bill and item of subordinate legislation in its portfolio areas to consider:

- the policy to be given effect by the legislation;
- the application of fundamental legislative principles; and
- for subordinate legislation – its lawfulness.

1.2 Referral

On 12 November 2015, the Minister for Health and Minister for Ambulance Services introduced the *Health Legislation Amendment Bill 2015* (the Bill) into the Legislative Assembly.

In accordance with Standing Order 131, the House referred the Bill to the Health and Ambulance Services Committee (the Committee) to consider. The Committee must report to the Legislative Assembly by 15 February 2016.

1.3 Inquiry process

The Committee's consideration of the Bill included calling for public submissions, a public departmental briefing and a public hearing. The Committee also sought additional written advice from the Department of Health (the Department).

The Committee considered expert advice on the Bill's conformance with fundamental legislative principles (FLP) listed in Section 4 of the *Legislative Standards Act 1992*.

1.4 Submissions

On 20 November 2015 the Committee wrote to stakeholders and subscribers to inform them of the inquiry and invite written submissions.

The closing date for submissions was Friday 11 December 2015. Nine submissions were received. A list of those who made submissions is contained in Appendix A. Submissions authorised by the Committee have been published on the Committee's website and are available from the Committee secretariat.

¹ *Parliament of Queensland Act 2001*, section 88 and Standing Order 194

² Standing Rules and Orders of the Legislative Assembly, Schedule 6

1.5 Public departmental briefing

On 16 November 2015 the Committee wrote to the Department seeking advice on the Bill. The Committee received this written advice on 27 November 2015.

The Committee held a public departmental briefing on the Bill with offers from the Department on Wednesday 2 December 2015. A list of officers who gave evidence at the public departmental briefing is contained in Appendix B. The transcript of the briefing has been published on the Committee's website and is available from the committee secretariat.

Subsequent to the briefing, the Committee sought further written advice from the department in response to matters raised during the hearing. This response was received on 19 January 2016.

1.6 Public hearing

On 15 December 2015 the Committee held a public hearing, to hear further evidence from invited witnesses. A list of witnesses appearing before the Committee during the public briefing and hearing is contained in Appendix C. A transcript of the briefing has been published on the Committee's website and is available from the committee secretariat.

1.7 Policy objectives

The Bill amends six health portfolio Acts to:

*...support policy initiatives of the Government, and to improve the effective operation of the Acts.*³

The Bill amends:

- the *Food Act 2006*, to require fast-food chains, snack-food and drinks chains, bakery chains, café chains, and supermarkets, to display nutritional information, and to authorise disclosure of confidential information for limited public health and safety reasons;
- the *Health Ombudsman Act 2013* and the *Hospital and Health Boards Act 2011*, 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*, 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*, to streamline the process for enabling registered midwives to access the Queensland Pap Smear Register; and
- the *Transplantation and Anatomy Act 1979*, 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.⁴

The proposed amendments to each of the six Acts are discussed in detail in Chapters 2 to 7 of this report.

³ *Health Legislation Amendment Bill 2015*, Explanatory Notes: 1

⁴ *Health Legislation Amendment Bill 2015*, Explanatory Notes: 1

1.8 Consultation on the Bill

The Explanatory Notes provide information on consultation in relation to the proposed amendments to the *Food Act 2006*. This is discussed in detail in section 2.3 of this report.

In relation to the other proposed amendments, the Explanatory Notes state:

*There was no consultation external to government on the other amendments in the Bill as they are procedural or corrective in nature.*⁵

1.9 Outcome of committee considerations

Standing Order 132(1)(a) requires that the Committee after examining the Bill determine whether to recommend that the Bill be passed.

The Committee was unable to reach agreement on whether to recommend whether the Bill be passed. The Committee supports the provisions in the Bill in relation to the *Food Act 2006*, the *Pest Management Act 2013*, the *Public Health Act 2005* and the *Transplantation and Anatomy Act 1979*.

The non-government Members do not support the changes to the *Health Ombudsman Act 2013* and the *Hospital and Health Boards Act 2011*. The government Members of the Committee support the provisions in relation to these Acts.

2. Amendments to the *Food Act 2006*

This chapter discusses the Committee's examination of the proposed amendments to the *Food Act 2006* (the Food Act).

2.1 Background

The Food Act provides for matters relating to handling and selling food, securing the safety and suitability of food and fixing standards for food.⁶ The main purposes of the Food Act are to:

- ensure food for sale is safe and suitable for human consumption
- prevent misleading conduct relating to the sale of food, and
- apply the food standards code.

2.2 Overview of proposed amendments

The amendments to the Food Act will:

*require fast-food chains, snack-food and drinks chains, bakery chains, café chains, and supermarkets to display nutritional information, and to authorise disclosure of confidential information for limited public health and safety reasons.*⁷

The rationale for the amendments, as outlined in the explanatory notes, include that the widespread availability, marketing and consumption of unhealthy food are key factors in developing obesity. The explanatory notes identify that studies have shown that consumers greatly underestimate the amount of energy, saturated fat, sugar and salt contained in unhealthy foods.⁸

⁵ *Health Legislation Amendment Bill 2015*, Explanatory Notes: 12

⁶ *Food Act 2006* (see long title)

⁷ *Health Legislation Amendment Bill 2015*, Explanatory Notes: 1

⁸ *Health Legislation Amendment Bill 2015*, Explanatory Notes: 2

The Bill will amend the Food Act to:

...establish a statewide menu labelling scheme to assist consumers to make informed and healthier fast-food choices by providing them with easily understood nutrition information at the point-of-sale, whether that is in a queue in-store, at home ordering over the phone or internet, or when on-the-go and ordering via a mobile application.⁹

The amendments implement the Government's 2015 election commitment to introduce fast-food menu labelling.¹⁰

2.3 Government consultation

As part of the consultation on these proposed amendments, the Government provided a discussion paper on fast food menu labelling to over 120 organisations, including food businesses within the proposed scope of the scheme, peak food industry bodies, consumer and public health organisations, and applicable food regulation and public health government departments.¹¹

The government received seventeen submissions – two from food businesses, two from national food industry peak bodies, four from government agencies, eight from public health and consumer organisations and one from a consultancy business. The Explanatory Notes state the submissions largely indicated support for the menu labelling scheme and that there was strong support for a nationally consistent scheme and a community education campaign to support the introduction of the legislation. The Department directly approached 12 food businesses that it considered will be captured by the proposed Queensland legislation but that are not currently captured by other jurisdictions' schemes or which may be captured in the near future with minor expansion of outlet numbers.¹²

The Department was able to contact eight of the 12 businesses outlined above. Of those eight businesses, one considered the proposed amendments will not apply to it, and the remaining seven businesses advised that they were aware of the proposal, had no concerns and had either already rolled out the requirements nationally or were preparing to roll out.¹³

2.4 Consistency with other jurisdictions

The Explanatory Notes also provide information on the emergence of food labelling in Australia. This includes:

- The Council of Australian Governments (COAG) and the Forum on Food Regulation agreeing in 2009 to undertake a review of food labelling law and policy, and the release of the review report (*Labelling Logic: Review of food labelling law and policy*) in January 2011.¹⁴
- Recommendations from the *Labelling Logic* report regarding the mandatory display of the energy content of standardised food items on menus in chain food service outlets and on vending machines.¹⁵

⁹ *Health Legislation Amendment Bill 2015*, Explanatory Notes: 2

¹⁰ Hon CR Dick MP, Minister for Health and Minister for Ambulance Services, Ministerial Media Statement, Mandatory food labelling for healthier choices, 12 November 2015: 1

¹¹ *Health Legislation Amendment Bill 2015*, Explanatory Notes: 11

¹² *Health Legislation Amendment Bill 2015*, Explanatory Notes: 11

¹³ *Health Legislation Amendment Bill 2015*, Explanatory Notes: 11

¹⁴ Food Labelling Law and Policy Review Panel, *Labelling Logic – Review of Food Labelling Law and Policy*, January 2011

[http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/content/48c0548d80e715bcca257825001e5dc0/\\$file/labelling%20logic_2011.pdf](http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/content/48c0548d80e715bcca257825001e5dc0/$file/labelling%20logic_2011.pdf)

¹⁵ Food Labelling Law and Policy Review Panel, *Labelling Logic – Review of Food Labelling Law and Policy*, January 2011

[http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/content/48c0548d80e715bcca257825001e5dc0/\\$file/labelling%20logic_2011.pdf](http://www.foodlabellingreview.gov.au/internet/foodlabelling/publishing.nsf/content/48c0548d80e715bcca257825001e5dc0/$file/labelling%20logic_2011.pdf)

- The former Ministerial Council agreed in 2011 to endorse National Principles to facilitate national consistency if jurisdictions elect to introduce legislation for the display of point-of-sale nutrition information in standard food outlets.¹⁶

The Explanatory Notes identify that the amendments proposed in the Bill are consistent with the NSW legislation and the National Principles and broadly consistent with SA and ACT legislation.¹⁷

2.4.1 National Principles

NSW, SA and the ACT have introduced legislation consistent with the National Principles.¹⁸ The National Principles require that any change to the existing approach in a jurisdiction for point-of-sale nutrition information should:

- *recognise that any change should contribute to improving public health outcomes;*
- *be consistent with the nationally agreed approach regarding definitions and explanations of terms, requirements for the display of nutrition information, and the provision of a minimum 12-month transition/compliance period for industry;*
- *be supported by a communication strategy that engages and informs appropriate stakeholders;*
- *include an evaluation strategy to assess the impact of any point-of-sale approach introduced; and*
- *not preclude jurisdictions from expanding point-of-sale nutrition information at a later date to also include disclosure of other information such as sugar, sodium and fat content.*¹⁹

2.5 New purpose in the Act

Section 9 of the Food Act sets out how the main purposes of the Act are to be achieved.

Clause 3 of the Bill amends section 9 by inserting a new section 9(d), to provide for the display of nutritional information for food.

¹⁶ Legislative and Governance Forum on Food Regulation (convening as the Australia New Zealand Ministerial Council), *Policy Guideline on Food Safety Management for General Food Service and Closely Related Retail Sectors*, December 2011
[http://www.health.gov.au/internet/main/publishing.nsf/Content/4DCF744789D1AF64CA257BF0001C9622/\\$File/FoodSafetyManagement%202011%20Policy%20Guideline%20Dec%202011.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/4DCF744789D1AF64CA257BF0001C9622/$File/FoodSafetyManagement%202011%20Policy%20Guideline%20Dec%202011.pdf)

¹⁷ *Health Legislation Amendment Bill 2015*, Explanatory Notes: 12

¹⁸ See *Food Act 2003* (NSW), *Food Act 2001* (SA) and *Food Act 2001* (ACT)

¹⁹ Australia and New Zealand Food Regulation Ministerial Council, *Principles For Introducing Point-Of-Sale Nutrition Information At Standard Food Outlets*, October 2011
[http://www.health.gov.au/internet/main/publishing.nsf/Content/7661BA4989A0A206CA257BF0001C10FE/\\$File/Principles%20for%20Introducing%20Point%20of%20Sale%20Nutrition%20Information%20in%20Standard%20Food%20Outlets-accessible.pdf](http://www.health.gov.au/internet/main/publishing.nsf/Content/7661BA4989A0A206CA257BF0001C10FE/$File/Principles%20for%20Introducing%20Point%20of%20Sale%20Nutrition%20Information%20in%20Standard%20Food%20Outlets-accessible.pdf)

The current and proposed new provisions are outlined as follows:

Current definition	Proposed new definition
<p>9 How main purposes are primarily achieved <i>The main purposes are to be achieved primarily by—</i></p> <p>(a) <i>providing for the licensing of particular food businesses;</i> <i>and</i> (b) <i>requiring particular licensees to have an accredited food safety program; and</i> (c) <i>providing for the accreditation and auditing of food safety programs; and</i> (d) <i>providing for the monitoring and enforcement of compliance with this Act and the food standards code.</i></p>	<p>9 How main purposes are primarily achieved <i>The main purposes are to be achieved primarily by—</i></p> <p>(a) <i>providing for the licensing of particular food businesses;</i> <i>and</i> (b) <i>requiring particular licensees to have an accredited food safety program; and</i> (c) <i>providing for the accreditation and auditing of food safety programs;</i> (d) <i>providing for the display of nutritional information for food; and</i> (e) <i>providing for the monitoring and enforcement of compliance with this Act and the food standards code.</i></p>

2.6 Provisions administered by State

Section 22 of the Food Act sets out the provisions of the Act that are administered by the State, and not by local governments. Clause 4 of the Bill amends section 22 to renumber the section and insert a new section 22(1)e which provides that the new chapter 6A will be administered by the State.

2.7 New chapter for display of nutritional information

Clause 5 inserts a new chapter 6A into the Food Act. The chapter provides for the display of nutritional information on food.

In his introductory speech on the Bill the Minister described the social and economic impact of weight gain on the Queensland population and outlined how the menu labelling scheme introduced through this chapter will help Queenslanders make healthier fast food choices. The Minister stated:

Population-wide weight gain causes significant health problems for individual Queenslanders, their families, their employers and the community. Around 2.5 million Queensland adults and children are overweight or obese. In 2008, the estimated financial impact of obesity on the Queensland economy was \$11.6 billion in health system costs, lost productivity and lost wellbeing. This equates to \$4,644 for each overweight or obese person in Queensland

The food menu labelling scheme will help Queenslanders make healthier fast food choices by providing easily understood nutritional information at the point of sale where purchasing decisions are made. The scheme will help Queenslanders make informed and healthier fast food choices at the point of sale, whether that is in a queue in-store, at home ordering over the phone or internet, or when on the go and ordering via a mobile application.²⁰

Key provisions in the new chapter 6A are discussed below:

- section 164A provides that the chapter applies to the sale of food by retail;
- section 164B defines menu and ready-to-eat food;

²⁰ Queensland Legislative Assembly, Hon CR Dick MP, Minister for Health and Minister for Ambulance Services, *Parliamentary Debates (Hansard)*, 12 November 2015: 2889

- section 164C defines a standard food item;
- section 164D defines a standard food outlet;
- section 164E sets out the requirements for certain food outlets to display nutritional information, and section 164F sets out the display requirements for food outlets which are not covered by 164E; and
- section 164G provides that a regulation may make provisions about the display or distribution by a standard food outlet of explanatory material or other material about the nutritional information of food.

2.7.1 *New definitions for Chapter 6A*

The new definitions included in proposed new Chapter 6A are as follows:

Term	Definition
Menu (s.164B)	A menu, in printed or electronic form, that lists or otherwise shows 1 or more items of food and is either – <ul style="list-style-type: none"> (i) on a board, poster, leaflet or similar thing at the premises from which the items of food shown on the menu are sold; or (ii) distributed or available outside of the premises from which the items of food shown on the menu are sold.
Ready-to-eat food (s.164B)	Food in a state in which it is ordinarily consumed, but does not include nuts in the shell or raw fruit or vegetables that are intended to be hulled, peeled or washed by the consumer.
Standard food item (s.164C)	An item of ready-to-eat food that is sold in servings that are standardised for portion and content and is either— <ul style="list-style-type: none"> (i) listed or otherwise shown on a menu; or (ii) displayed for sale with a price tag or label or an identifying tag or label. <p>A standard food item includes any item of ready-to-eat food prescribed by regulation.</p> <p>If a number of standard food items are shown or displayed for sale as a combination, the combination is to be treated as a single standard food item.</p> <p>If a standard food item is shown or displayed for sale in different standard sizes or portions, each standard size or portion of the item of food is to be treated as a separate standard food item.</p> <p>A standard food item does not include an item of ready-to-eat food that is pre-packaged in a way prescribed by regulation.</p>
Standard food outlet (s.164D)	Premises at which standard food items are sold by the food business if <ul style="list-style-type: none"> (a) the business sells standard food items at other premises or while operating in a chain of food businesses that sell standard food items; and (b) at least 1 of the standard food items sold at the premises has been standardised for portion and content so as to be substantially the same as standard food items of that type sold at the other premises or by the other businesses in the chain. <p>(2) For subsection (1)(a), a food business is operating in a chain of food businesses that sell standard food items if—</p> <ul style="list-style-type: none"> (a) the business is operating as one of a group of food businesses that sell standard food items under franchise arrangements with a parent business or under common ownership or control; or (b) the business sells standard food items under the same trading name as a group of other food businesses that sell standard food items.

2.7.2 *Display of nutritional information - standard food outlet*

Subsections 164E(1) and 164E(2) provide that proprietors of a standard food outlet of a prescribed licensable food business must ensure that:

- nutritional information, which includes the average energy content of the standard food items, expressed in kilojoules, an average energy intake statement and other nutritional information prescribed by regulation, is displayed for standard food items sold at the outlet;
- the nutritional information is worked out in the way prescribed by regulation; and
- the nutritional information is displayed in the way and at the places prescribed by regulation.

Subsections 164E(3) states a person must not intentionally contravene these requirements, and prescribes a maximum penalty of 500 penalty units. Similarly, subsection 164E (4) states a person must not contravene these requirements and prescribe a lower maximum penalty of 100 penalty units. The Department provided the rationale for this two-tiered offence structure. They advised:

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.²¹

Subsection 164E(5) provides that a regulation may prescribe the way in which nutritional information is worked out by applying, adopting or incorporating a provision of the food standards code.

Subsection 164E(6) includes the following definitions for the section:

- average energy intake statement means a statement about the average adult daily energy intake prescribed by regulation.
- prescribed licensable food business means a licensable food business prescribed by regulation.

2.7.3 Stakeholder views: industry perspectives on a menu labelling scheme

The National Retail Association (NRA) broadly supports the amendments in the Bill as it is consistent with New South Wales and there will be a government-led education scheme.²²

However, the NRA advised that there is some reluctance in some areas of the industry. Concerns expressed include compliance costs, consistency with NSW, doubts around whether the schemes in other jurisdictions have achieved results and a lack of competitive neutrality, given some outlets will be exempt. The NRA also raised its members' concerns around the cost and cumulative burden generally on retail businesses.²³

The Heart Foundation Queensland advised the Committee that they see two major outcomes from the introduction of the legislation as follows:

Firstly, Queenslanders will now be able to make informed and healthier choices when ordering foods and drinks in outlets that are covered by the legislation. Secondly, perhaps more importantly, food outlets and businesses will now be incentivised to reformulate their menu items to offer healthier and less kilojoule dense options.²⁴

²¹ Correspondence to HASC from Director-General, Queensland Health dated 27 November 2015: 2

²² National Retail Association, Submission 8: 3

²³ National Retail Association, Submission 8: 4

²⁴ Ms Wooden, Heart Foundation Queensland, Public Hearing transcript 15 December 2015: 1

2.7.4 Stakeholder views: prescription by regulation

The Queensland Law Society (QLS) states proposed section 164E(6) appears to have an 'opt in' approach, with prescribed licensable food business prescribed by regulation, presumably at a later date. The QLS submits that there are:

*...significant implications for a person who contravenes this section' (namely, a maximum penalty of 500 penalty units), and that regulations are subordinate legislation, which 'is not subject to the same level of public examination as a Bill.'*²⁵

The QLS recommends:

*That proposed section 164E clearly set out and define which entities (eg "service stations, convenience stores, cinemas, dine-in restaurants, catering services, not-for profit home deliver (Meals on Wheels), patient food services in health facilities and canteens in schools, sporting clubs and workplaces") are to be excluded from the mandatory requirement.*²⁶

The QLS also proposes an alternative approach, which would involve:

*...ensuring key stakeholders have the opportunity to provide feedback on the draft Regulations.*²⁷

While generally supportive of the menu labelling scheme, Logan City Council states many smaller, independent food businesses would find it cost prohibitive or require significant support if the scheme is expanded to smaller businesses in the future.²⁸

2.7.5 Stakeholder views: penalties and compliance

The Heart Foundation Queensland supports the maximum penalty of 500 penalty units for intentional contravention as it consistent with other penalties in the Food Act, and emphasised the importance of developing a monitoring and compliance schedule, so that compliance is not relegated to the non-urgent and therefore not enforced. The Heart Foundation Queensland considers it is critical that this is prioritised by the state and local governments and suggests local government could be incentivised by the ability to retain any fines collected.²⁹

The Heart Foundation Queensland also recommends an increased investment in environmental health officers, who will be tasked with enforcing the legislation.³⁰

2.7.6 Display of nutritional information – other food outlets

Proposed section 164F provides that proprietors of a standard food outlet of a food business, other than a standard food outlet to which section 164E applies, must not display the nutritional information mentioned in section 164E for standard food items sold at the outlet unless the nutritional information is:

- worked out in the way prescribed by regulation, and
- displayed in the way and at the places prescribed by regulation.

A maximum penalty of 100 penalty units is also prescribed.

²⁵ Queensland Law Society, Submission 2: 2

²⁶ Queensland Law Society, Submission 2: 2

²⁷ Queensland Law Society, Submission 2: 2

²⁸ Logan City Council, Submission 7: 1

²⁹ Heart Foundation Queensland, Submission 4: 4

³⁰ Heart Foundation Queensland, Submission 4: 4

2.7.7 Explanatory material about nutritional information

Section 164G provides that a regulation may make provision about the display or distribution by a standard food outlet of explanatory material or any other material about nutritional information for food.

2.8 Alternative verdicts for particular food offences

Clause 6 of the Bill amends section 252 of the Food Act, which provides for alternative verdicts for certain offences under the Food Act, by inserting a new section 252(3).

Proposed new section 252(3) provides for an alternative verdict in a trial of a person charged with the offence, under 164E(3), of intentionally contravening the mandatory menu labelling display requirements. If the trier of fact is not satisfied the person committed the offence intentionally, but is satisfied the person contravened the mandatory display requirements, the trier of fact may find the person not guilty of the offence against section 164E(3), but guilty of the offence against section 164E(4), which carries a lesser maximum penalty of 100 penalty units.

2.9 Dictionary definitions

Clause 7 of the Bill omits the definition of confidential information in section 272(4) of the Food Act. Clause 11 inserts this definition into schedule 3 (the dictionary), along with definitions for chief health officer, menu, ready-to-eat food, standard food item and standard food outlet.

2.10 Disclosure of information

Clause 8 of the Bill inserts a new section 272A into the Food Act, which provides for the chief executive to authorise a relevant person to disclose confidential information relating to a food business. The chief executive must have reasonable grounds to believe disclosing the information is necessary to prevent or reduce the possibility of a serious danger to public health, or to mitigate the adverse consequences of a serious danger to public health.³¹

Proposed new subsection 272A(3) provides examples of the types of information the chief executive may disclose. The Explanatory Notes state this list is non-exhaustive.³²

Proposed new subsection 272A(4) provides that a relevant person includes the chief health officer or an appropriately qualified public service officer or employee of the department, or health service employee.

The Explanatory Notes state the chief executive may exercise the new disclosure power under section 272A independently of, or concurrently with, the chief executive's emergency powers under chapter 7, part 4 of the Food Act. The Explanatory Notes state that it is for this reason that the disclosure power is not located in chapter 7, part 4.³³

2.10.1 Stakeholder views

The Australian Medical Association Queensland (AMAQ) and the Logan City Council support the disclosure of information provisions. AMAQ states it:

...is confident that the parameters outlined are an appropriate protection to ensure the provision is not used inappropriately.³⁴

³¹ Health Legislation Amendment Bill 2015, Explanatory Notes: 16

³² Health Legislation Amendment Bill 2015, Explanatory Notes: 16

³³ Health Legislation Amendment Bill 2015, Explanatory Notes: 16

³⁴ Australian Medical Association of Queensland, Submission 1: 2

2.11 Delegation by chief executive

Clause 9 of the Bill amends section 276 of the Food Act, which provides for the chief executive's powers under the Act to be delegated. These amendments provide that the chief executive's power to authorise a relevant person to disclose information in section 272A may only be delegated to the chief health officer.

Clause 9 also omits and replaces existing section 276(2), which defines the term appropriately qualified. The Explanatory Notes state this is because appropriately qualified is now defined in the section 36 and schedule 1 of the *Acts Interpretation Act 1954* (Acts Interpretation Act).³⁵

2.11.1 Stakeholder views

AMA Queensland considers the power to disclose information should only be delegated to the Chief Health Officer given the effect that its operation can have on an individual business.³⁶

2.12 Transitional provisions

Clause 10 inserts a new part 4 into chapter 12 of the Food Act, comprised solely of proposed new section 303, which provides that chapter 6A does not apply to the proprietor of a food business until 12 months after the commencement.

The Explanatory Notes state:

*This to allow impacted businesses a 12 month transition period to comply with the food labelling scheme.*³⁷

It also aligns with the National Principle regarding a minimum 12 month transition/compliance period for industry.

2.12.1 Stakeholder views

The Heart Foundation Queensland submits the proposed 12 months transition is consistent with NSW and emphasises the importance of not extending the timeframe on the basis that many businesses have had exposure in other jurisdictions.³⁸

2.13 Draft Food Amendment Regulation

While the new chapter 6A will establish the framework for the menu labelling scheme, much of the detail will be prescribed in the *Food Regulation 2006*. A draft Food Amendment Regulation (the Amendment Regulation) and related Explanatory Notes were tabled during the introduction of the Bill, to enable consideration of the scheme as a whole.³⁹

2.13.1 Preliminary provisions

Clauses 1 and 2 of the Amendment Regulation provide a short title and amend the existing regulation.

2.13.2 Amendments to ready to eat food business provisions

Clause 3 of the Amendment Regulation amends section 4B, which prescribes certain types of ready-to-eat food businesses for the purposes of chapter 4 of the Food Act.

³⁵ *Health Legislation Amendment Bill 2015*, Explanatory Notes: 17

³⁶ Australian Medical Association of Queensland, Submission 1: 2

³⁷ *Health Legislation Amendment Bill 2015*, Explanatory Notes: 17

³⁸ Heart Foundation Queensland, Submission 4: 7

³⁹ Correspondence to HASC from Director-General, Queensland Health dated 27 November 2015: 2

Clause 3 omits:

- the term *ready-to-eat* in sections 4B(1)(c) and (d) replaces it with the term *ready-for-consumption*, and
- the definition of *ready-to-eat food business* in section 4B(2) and replaces it with a definition of *ready-for-consumption food business*.

Similarly, clause 5 of the Amendment Regulation omits the definitions of *ready-to-eat food* and *ready-to-eat food business* in the schedule 2, dictionary and inserts definitions for *ready-for-consumption food* and *ready-for consumption food business*.

The Draft Explanatory Notes for the Draft Amendment Regulation state there is no change to the meaning of the terms, or the application of the requirements of chapter 4 of the Food Act, and that the changes are to differentiate the term *ready-for-consumption food* for chapter 4 from the term *ready-to-eat food* as used in chapter 6A.⁴⁰ Proposed chapter 6A is considered in section 2.7.1 of this report.

2.13.3 New menu labelling provisions

Clause 4 inserts new sections 4C to 4H, which prescribe the operational details of the menu labelling scheme introduced in the new chapter 6A.

2.13.3.1 Prepackaged food

Proposed section 4C prescribes, for the purposes of section 164C(5) of the Food Act, items of prepackaged ready-to-eat food that are not a standard food item. Ready-to-eat food is currently defined in the regulation as:

*...food that is ready for consumption, including food that may be reheated, portioned or garnished, or food that undergoes similar finishing prior to service.*⁴¹

It is proposed that the above definition will apply to ready-for-consumption food.

Broadly speaking, an item of *ready-to-eat food* is prepackaged if it arrives at the premises where it is sold in a container or wrapper, it is not removed from its container or wrapper before it is sold, and it has a nutritional information panel on it that is easily visible to the purchaser.

2.13.3.2 Calculating nutritional information

Proposed section 4D(1) provides that the average energy content of a standard food item must be worked out in accordance with the way the average energy content under the Food Standards Code is calculated. Where the average energy content must be worked out for the whole of the item, necessary changes must be made to ensure the working out is for the whole food item, rather than per 100 grams of the food item.

The Heart Foundation Queensland supports calculating the average energy content of a standard food item in accordance with the Food Standards Code.⁴²

Proposed section 4D (2) provides that the number of kilojoules may be rounded to the nearest 10 kilojoules.

⁴⁰ Draft Food Amendment Regulation, Explanatory Notes: 4 and 6

⁴¹ *Food Regulation 2006*, schedule 2

⁴² Heart Foundation Queensland, Submission 4: 3

2.13.3.3 Displaying nutritional information in standard food outlets

Proposed sections 4E and 4F contain the provisions relating to the display of nutritional information in standard food outlets that are supermarkets, and standard food outlets that are not supermarkets.

Supermarket is defined by clause 5 of the Amendment Regulation as:

*...a premise in which more than 1000m² of floor area is used for the retail sale of grocery items which include all of the following items – (a) bread; (b) breakfast cereal; (c) butter; (d) eggs; (e) flour; (f) fresh fruit and vegetables; (g) fresh milk; (h) meat; (i) rice; (j) sugar; (k) other packaged food.*⁴³

The Explanatory Notes for the Amendment Regulation state this definition is consistent with the corresponding definition in NSW legislation.⁴⁴

Provisions differ in some places. A comparative summary is provided in the table below.

<i>Standard food outlets that are supermarkets</i>	<i>Other standard food outlets</i>
Can display the average energy content of the item on either a per whole item basis or a per 100 grams basis. ⁴⁵	
Must display the average energy content of the item in the same font and colour, and in at least the same font size, as the price or unit price displayed for the item. The unit price means the price for a unit of measurement of the item, for example, the price per 100 grams for the item. ⁴⁶	Must display the average energy content for the whole of the item, and in the same font, font size and colour as the price displayed for the item, or if no price is displayed, as the name displayed for the item. ⁴⁷
Nutritional information be clearly legible and the abbreviation kJ must be used for kilojoules. ⁴⁸	
The average energy content for standard food items must be displayed at the same time and for the same period as the name and/or price for the item and the average energy intake statement. The Explanatory notes for the Amendment Regulation state this is to '... to address the use of 'rolling' menus to display the name and price without the nutritional information, then the nutritional information without the name or price.' ⁴⁹	
Nutritional information be clearly legible and in specified font, font size and colour based on other information on the menu or display. ⁵⁰	
Nutritional information must be displayed on all menus and/or each price or identifying tag and label, and drive-through menus where applicable. ⁵¹	

2.13.3.4 Average energy intake statement

In relation to proposed section 4G the Explanatory Notes state:

*...for the purposes of section 164E(4) of the Food Act the average energy intake statement is 'The average adult daily energy intake is 8700kJ'. This is a reference to guide consumers' choices, rather than a recommended daily energy intake for individuals.*⁵²

⁴³ Draft Food Amendment Regulation, schedule 2

⁴⁴ Draft Food Amendment Regulation, Explanatory Notes: 8

⁴⁵ Draft Food Amendment Regulation, section 4E(1)(a)(i)

⁴⁶ Draft Food Amendment Regulation, section 4E(1)(a)(ii)

⁴⁷ Draft Food Amendment Regulation, section 4E(1)(b)

⁴⁸ Draft Food Amendment Regulation, section 4E(1)(c) and (d)

⁴⁹ Draft Food Amendment Regulation, section 4E(1)(e) and Draft Food Amendment Regulation, Explanatory Notes: 7

⁵⁰ Draft Food Amendment Regulation, section 4E(2)

⁵¹ Draft Food Amendment Regulation, section 4F

⁵² Draft Food Amendment Regulation, Explanatory Notes: 7

2.13.4 Stakeholder views: exemptions for supermarkets with less than 1000m² retail floor space

The Heart Foundation Queensland does not support supermarkets with less than 1000m² retail floor area being exempt from the legislation. They advised:

The number of outlets selling fast foods continues to increase over time. Queenslanders now have more places to buy and eat food which is cheaper, perceived as more convenient, served in larger portion sizes and promoted more heavily than ever before. That is why it is important that we have strategies like kilojoule menu labelling that aim to improve the food environments in which we live.

The Heart Foundation believes that the coverage of this legislation should be as wide-ranging and far-reaching and effective as possible. This is why exemption should not be made for convenience stores, cinemas and service stations. This is also why all supermarkets should be required to comply, not just those with retail space less than 1,000 square metres.

We know that consumers do not understand kilojoules well. Therefore, so as not to further confuse consumers, all outlets should be required to display the kilojoule content of the whole menu item rather than the per 100 grams as proposed in the legislation for supermarkets.⁵³

The Heart Foundation Queensland states that while this cut off has been used in menu labelling legislation in NSW, the delineation is not supported by the National Principles and therefore they consider that there is no justifiable reason for this exemption in the Queensland context.⁵⁴

The Heart Foundation Queensland submission provides the example of supermarkets in regional and rural areas, which are often the primary supplier of ready-to-eat food and often have less than 1000m² of retail floor area. They consider that consumers in these areas deserve the same information as city dwellers.⁵⁵

They stated that increases in city-based populations is resulting in major supermarkets opening smaller stores, in some cases measuring 200 – 400m², which are designed to compete with convenience stores and sell a greater proportion of convenience, ready-to-eat standard food items. They reiterated their argument that customers of these stores deserve the same information on the same foods.⁵⁶

2.13.5 Stakeholder views: displaying energy content on 100gram basis

The Heart Foundation Queensland does not support the proposal that supermarkets be permitted to display kilojoules per 100g of a standard food item and recommends that the average kilojoule content for the whole item is displayed. They submit that allowing supermarkets to label foods with kilojoules per 100g rather than the whole food item adds an extra layer of complexity for the consumer and will not assist consumers to compare the kilojoules between different food and drinks, or provide transparency, consistency and accuracy of nutritional information. They state that consumers do not understand kilojoule labelling well and will need to make their own calculations, based on the weight of products, to compare the total kilojoules contained in one food item to another.⁵⁷

⁵³ Ms Wooden, Heart Foundation Queensland, Public Hearing transcript 15 December 2015: 1

⁵⁴ Heart Foundation Queensland, Submission 4: 3

⁵⁵ Heart Foundation Queensland, Submission 4: 3

⁵⁶ Heart Foundation Queensland, Submission 4: 3

⁵⁷ Heart Foundation Queensland, Submission 4: 3

2.13.6 Stakeholder views: nutritional information on and average energy intake menus

The Heart Foundation Queensland agrees that the average kilojoule content of each standard food item should be displayed on each menu, along with a statement advising of the average daily kilojoule intake for adults. They advocate for expanding point-of-sale nutrition information to include other information once the initiative has gained traction.⁵⁸

With regard to other information to be included, the Heart Foundation Queensland noted that whilst the National Principles suggest sugar, sodium and fat content, they recommend:

...more unequivocal wording in the Food Regulation 2006 of the nutrients proven to have a negative (or positive) effect on health, as follows:

- *saturated fat and trans fat*
- *sodium/salt*
- *added sugars*
- *dietary fibre*⁵⁹

2.13.6.1 Prescribed licensable food business

Proposed new section 4H(1) provides, for the purpose of section 164E(4) of the Food Act, that a prescribed licensable food business is a food business that either:

- sells standard food items at 20 or more places in Queensland, or at 50 or more places in Australia, or
- operates in a chain of food businesses that sell standard food items if together the businesses sell standard food items by retail at 20 or more places in Queensland or at 50 or more places in Australia.⁶⁰

Section 4H(2) provides that a prescribed licensable food business does not include a cinema, convenience store or service station, or a licensable food business that:

- primarily involves off-site catering or on-site catering
- carries out business from a mobile premises that is a vehicle
- is carried on by non-profit organisations, such as Meals on Wheels or a school, sporting or work canteen or social club
- primarily provides food to patients of a health service facility, or
- only sells food that is intended to be consumed on the premises at which it is sold.⁶¹

Section 4H(3) provides that a licensable food business is not a prescribed licensable business when a standard food item is being sold, on a trial basis, for not more than 60 days at not more than 5 outlets.⁶²

2.13.7 Stakeholder views

The Heart Foundation supports the businesses currently included in the legislation and recommends that exemptions should not be made for convenience stores, cinemas or service stations. The Foundation states:

⁵⁸ Heart Foundation Queensland, Submission 4: 5

⁵⁹ Heart Foundation Queensland, Submission 4: 5

⁶⁰ Draft Food Amendment Regulation, Explanatory Notes: 7

⁶¹ Draft Food Amendment Regulation, Explanatory Notes: 7

⁶² Draft Food Amendment Regulation, section 4H(3)

Given that the purpose of this legislation is to give consumers information on the meals and snacks most frequently purchased out of home, it needs to focus on the food, not the outlet. There is no justifiable reason why these types of businesses should be made exempt from this legislation, notwithstanding exemption in the NSW legislation. The Heart Foundation supports consistency of legislation according to the National Principles, and exemptions for these businesses are not declared in these principles.

Although foodservice may not be the major business activity of convenience stores, cinemas and service stations, these businesses serve an increasing number of meals, drinks and snacks daily.

Queenslanders deserve to have access to the equivalent nutrition information from all chain outlets from where they are sourcing ready-to-eat standard food and drink items, particularly as the items commonly sold by these types of outlets tend to be energy-dense and nutrient-poor (or 'junk' foods).

Including these outlets would also provide a level playing field for all large businesses serving ready-to-eat food and drinks to the Queensland population.⁶³

2.13.8 Consultation

The Explanatory Notes on the Amendment Regulation refer to the consultation described in the Explanatory Notes on the Bill. The Explanatory Notes also state that the Office of Best Practice Regulation was consulted in relation to the food menu labelling scheme meeting the requirements of the Regulatory Impact Statement (RIS) System and advised that a RIS is not required.⁶⁴

2.14 Implementation and evaluation

During the inquiry the Department provided the Committee with information on proposed implementation and evaluation arrangements for the food menu labeling scheme. The Department advised that it anticipates that monitoring and enforcement of compliance with the new menu labelling provisions will commence in the first half of 2017 and that it will develop and implement a communication strategy and an evaluation plan.⁶⁵

2.14.1 Stakeholder views

The Heart Foundation Queensland submits that the legislation should be supported by a reference group or steering committee. They suggest that this group should include, but not be limited to, representatives from Queensland Health, the non-government public health sector, the food industry, local government and consumer health organisations. They advised that the principal activities of this group would be:

...to coordinate and facilitate the planning, implementation, compliance monitoring and evaluation, and communication of the initiative to all relevant stakeholders.⁶⁶

⁶³ Heart Foundation Queensland, Submission 4: 2

⁶⁴ Draft Food Amendment Regulation, Explanatory Notes: 5

⁶⁵ Correspondence to HASC from Director-General, Queensland Health dated 27 November 2015: 5

⁶⁶ Heart Foundation Queensland, Submission 4: 1

The Heart Foundation Queensland advised the Committee that:

An example of this in practice is the Fast Choices and Nutrition Labelling Reference Group in NSW, which has provided feedback and advice on compliance, development of the consumer education campaign, evaluation and policy developments. Even after two years, this working group continues to be vital in dealing with emerging issues not specifically covered in the legislation, for example, the arrival of digital menu boards.⁶⁷

2.15 Industry communication strategy

The Department states 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; and*
- *showcasing retailers and suppliers that have re-formulated menu items and introduced healthier choices during transition period.⁶⁸*

2.15.1 Stakeholder views

The NRA supports the 12-month timeframe for the commencement of these changes.⁶⁹ It recommends that the Government use this time to collaborate with the broader industry, including smaller owner-operators, as well as the large franchisors. The NRA estimates that there are 3,650 outlets throughout Queensland that should be contacted as part of the industry awareness activities undertaken by the Government. They consider that education should include detailed resource materials and tools provided to outlets and available online, hotline support, forums and direct engagement workshops which can be recorded and available online, a social media campaign. The education campaign should also provide resources aimed at those business who do not meet the threshold but may do so in the future.⁷⁰

2.16 Evaluation

The Department provided some information on an evaluation of the food menu labelling scheme, which it stated would include

...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.⁷¹

2.16.1 Stakeholder views

The Heart Foundation Queensland supports a comprehensive evaluation of the scheme to measure whether the aims and objectives have been met and recommends:

- the NSW Food Authority rationale for evaluating the initiative;

⁶⁷ Heart Foundation Queensland, Submission 4: 1

⁶⁸ Correspondence to HASC from Director-General, Queensland Health dated 27 November 2015: 5

⁶⁹ National Retail Association, Submission 9: 7

⁷⁰ National Retail Association, Submission 9: 6-7

⁷¹ Correspondence to HASC from Director-General, Queensland Health dated 27 November 2015: 5

- the collection of baseline data on consumer knowledge, attitudes and behaviour, including through intercept survey; and
- the collection of information on the current nutritional profile of menu items prior to the introduction of the legislation, which would be re-measured after two years of implementation.⁷²

The Heart Foundation states it would welcome working in partnership with the Department in the planning and implementation of the evaluation and suggests the following evaluation measures

- *Level of compliance by premises captured in the legislation;*
- *Level of knowledge and understanding of consumers about the nutritional content of the foods purchased at fast food outlets;*
- *Level of knowledge and understanding of consumers about their own energy requirements;*
- *Food purchasing behaviour at fast food outlets; and*
- *Changes in the nutritional profile of menu items sold in fast food outlets.*⁷³

The Foundation also recommends that:

*...the legislation includes a required review to commence 12 months after the legislation comes into effect and be tabled in Parliament within 12 months after this date.*⁷⁴

2.17 Consumer education strategy

The Department states it will commission consumer research and develop a consumer education strategy in early 2016, with implementation to occur between March 2016 and June 2017. With regard to evaluation, the Department advised that it intends to conduct baseline, midpoint and final evaluations between January 2016 and September 2018.⁷⁵

2.17.1 Stakeholder views

While supportive of the food menu labelling provisions generally, AMAQ submit that more must be done, prior to the point of sale, to address obesity in Queensland.⁷⁶

The AMAQ submission makes reference to their policy framework document, *AMA Queensland's Health Vision Part One: Public Health and Generational Disadvantage*, which calls for:

- a whole of government public health plan, to coordinate all Government department responses to conditions such as obesity;
- supported supplementary responses such as improved public transport, green spaces and education; and

⁷² Heart Foundation Queensland, Submission 4: 6-7

⁷³ Heart Foundation Queensland, Submission 4: 6-7

⁷⁴ Heart Foundation Queensland, Submission 4: 7

⁷⁵ Correspondence to HASC from Director-General, Queensland Health dated 27 November 2015: 5

⁷⁶ Australian Medical Association of Queensland, Submission 1: 1

- setting a target for Queensland Government responses that would allow overweight and obese Queenslanders to be 5% slimmer by 2020 through a series of escalating interventions, which include banning fast-food outlets within 1km of schools, piloting a program to subsidise fruit and vegetables for 'at-risk' communities, expanding the use of telehealth to fight obesity, and publicly funding bariatric surgery.⁷⁷

The QLS endorses AMAQ's submission.⁷⁸ The Royal Australasian College of Surgeons (RACS), Diabetes Queensland and the Heart Foundation Queensland also express similar views.⁷⁹

The RACS submits:

...a combination of preventative measures and an increase in the availability of treatment options for those who are already obese is the most effective way to address obesity.⁸⁰

They consider that better labelling on food packaging and public education campaigns as examples of preventative measures and refer to a 2010 National Health and Medical Research Council study, which found that a 10 per cent tax on unhealthy non-core foods would lead to substantial health gain and considerable future cost savings by averting treatment of obesity-related diseases.⁸¹

Diabetes Queensland submits that:

Lifestyle factors, not least of which is the increasing consumption of unhealthy food, are fuelling the epidemic of type 2 diabetes. Type 2 diabetes is the fastest growing burden on our health system. The prevalence of diabetes is forecast to grow by 207 per cent between the years 2003 and 2033. Additionally, the impost on the health system is forecast to increase significantly, with the cost of treatment of type 2 diabetes set to rise in the same period by 436 per cent.⁸²

Diabetes Queensland emphasises the need for increased consumer knowledge and the importance of an education campaign which targets the widest possible audience in order to influence the behaviour of those least likely to change but most in need of the change. They suggest pictures and or symbols, such as a star rating system or traffic lights, and colour-coding the kilojoule number could be effective.⁸³

Diabetes Queensland also believes the scheme should be gradually rolled out to other outlets, which cater to impulse or quick consumption, such as convenience stores, sports venues, cinemas and service stations. They also highlighted the importance of promoting consumer confidence and encouraging outlets to create healthy options. They consider that a decrease in kilojoule consumption could also be achieved through changes to menus as well as changes of consumer behaviour.⁸⁴

The Heart Foundation Queensland submission cites surveys in Queensland and South Australia where more than 90 per cent of survey participants supported the introduction of a kilojoule menu labelling system in fast food and snack chains. In addition, the South Australian survey found that around 80 per cent of survey participants believed that this information should be displayed on the menu.⁸⁵

⁷⁷ Australian Medical Association of Queensland, Submission 1: 1-2

⁷⁸ Queensland Law Society, Submission 2: 1

⁷⁹ Royal Australasian College of Surgeons, Submission 6, Diabetes Queensland, Submission 5 and Heart Foundation Queensland, Submission 4

⁸⁰ Royal Australasian College of Surgeons, Submission 6: 1

⁸¹ Royal Australasian College of Surgeons, Submission 6: 1

⁸² Diabetes Queensland, Submission 5: 1

⁸³ Diabetes Queensland, Submission 5: 2

⁸⁴ Diabetes Queensland, Submission 5: 3

⁸⁵ Heart Foundation Queensland, Submission 4: 5

The Heart Foundation Queensland believes that a well-funded, ongoing consumer education campaign is vital to enhance and support a menu labelling scheme and recommends this include:

- a strong multi-media strategy which incorporates the latest in digital and social media, including twitter streams, mobile apps, selected online advertising and Facebook;
- targeting high users of fast food chains;
- focusing on establishing healthy habits in younger people/adolescents;
- linking with current social marketing healthy living campaigns and programs;
- using contemporary channels such as digital tools and social media to add value to traditional channels such as posters and radio advertising; and
- leveraging any value-add information and communication methods that industry can provide as part of the implementation of Fast Choices.⁸⁶

The Heart Foundation Queensland recommends:

...a greater investment of \$7.5 million over three years would be more commensurate to the issue than the \$525,000 currently allocated for both consumer education and evaluation.⁸⁷

2.18 Committee comments

The Committee supports the proposed amendments.

The Committee considers that the proposed amendments align with the intent of the National Principles to assist consumers to make informed choices about food purchases.

The scheme to be introduced is consistent with the New South Wales scheme. The Committee found that there was general support in the submissions received by the Committee, along with general support provided during the Government consultation prior to the Bill being introduced.

The Committee considers that it is important that the Government use the 12 months prior to the commencement of the provisions to conduct a wide ranging and effective education campaign in order to reach the businesses impacted by the proposed changes. The Committee expects that the education campaign will include, but not be limited to, effective online resources and tools available to businesses to access when needed.

Recommendation 1

That the Minister for Health and Minister for Ambulance Services outline to the House the education strategy proposed by the Department.

3. Amendments to the *Health Ombudsman Act 2013*

This chapter discusses the Committee's examination of the proposed amendments to the *Health Ombudsman Act 2013* (the HO Act).

⁸⁶ Heart Foundation Queensland, Submission 4: 5-6

⁸⁷ Heart Foundation Queensland, Submission 4: 6

3.1 Background

The Health Ombudsman establishes the Office of the Health Ombudsman (OHO) as an independent statutory body to manage the health service complaints management system in Queensland. The main objects of the HO Act are to:

- protect the health and safety of the public;
- promote professional, safe and competent practice by health practitioners and high standards of service delivery by health service organisations; and
- maintain public confidence in the management of complaints and other matters relating to the provision of health services.⁸⁸

The Act states the objects are to be achieved:

*...mainly by establishing a transparent, accountable and fair system for effectively and expeditiously dealing with complaints and other matters relating to the provision of health services.*⁸⁹

Queensland's health service complaints management system includes the Health Ombudsman; the Australian Health Practitioner Regulation Agency (AHPRA), in relation to the management of health, conduct or performance of registered health practitioners in Queensland; and the 14 national health practitioner registration boards, in relation to the health, conduct and performance of registered health practitioners in Queensland.

3.2 Overview of proposed amendments

The amendments proposed in the Bill relate to the appointment of individuals to the public panel of assessors on a temporary basis.⁹⁰

3.3 Current provisions – panel of assessors

Divisions 5 and 6 of Part 10 of the HO Act provide for the appointment of a public panel of assessors and sixteen professional panels of assessors and a process for assessors on these panels to assist the Queensland Civil and Administrative Tribunal (QCAT) with a hearing of a disciplinary proceeding relating to a registered health practitioner.

Section 117 requires that there be a public panel of assessors and 16 professional panels of assessors. The appointment of individuals to panels of assessors is set out in section 118. The Act stipulates that the Governor-in-Council may, by gazette notice, appoint an individual as a member of the public panel of assessors or a professional panel of assessors.⁹¹ These appointments may be for a period of up to five years.⁹²

3.3.1 Panel appointments

Section 118 (3) of the HO Act provides that the Minister may recommend an appointment to the public panel if satisfied that the person has sufficient experience, knowledge, skills and standing in the community having regard to the functions of assessors.⁹³

⁸⁸ *Health Ombudsman Act 2013*, section 3(1)

⁸⁹ *Health Ombudsman Act 2013*, section 3(2)

⁹⁰ *Health Legislation Amendment Bill 2015*, Explanatory Notes: 1

⁹¹ *Health Ombudsman Act 2013*, section 118

⁹² *Health Ombudsman Act 2013*, section 122

⁹³ *Health Ombudsman Act 2013*, section 118

Section 118 (4) provides that the Minister may recommend appointment to a professional panel if the person is registered with the National Board for the profession for which the panel is established and the Minister is satisfied they have sufficient experience, knowledge, skills and standing in the profession having regard to the functions of assessors.⁹⁴

3.3.2 Temporary appointment

The HO Act currently allows for the temporary appointment of an assessor to a professional panel. Section 119 provides⁹⁵:

119 Temporary appointment of panel of assessors

- (1) This section applies if the Minister reasonably believes that it is necessary to urgently appoint an individual as a member of a professional panel of assessors because—
- (a) the principal registrar considers a disciplinary proceeding is likely to raise issues of a specialist or technical nature, whether on the basis of advice received under section 131 or otherwise; and
 - (b) the principal registrar has advised the Minister that—
 - (i) none of the panel members has the desirable professional background or skills; or
 - (ii) panel members who do have the desirable professional background or skills will not be available to hear the matter.
- (2) Despite section 118(1), the Minister may appoint an individual to a professional panel of assessors for a period of not more than 6 months.
- (3) An individual is qualified for appointment to a panel under this section only if the individual is qualified for appointment to the panel under section 118(4).

Currently no provision is made in the Act for the temporary appointment of an assessor to the public panel.

3.3.3 Process for recommending assessor appointments

Section 121 of the Health Ombudsman Act prescribes a process for recommendations of appointment to the public and professional panels.

Recommendations of appointment to the public panel require the Minister to invite nominations from community groups and other entities considered to have an interest in consumer health issues, and to also invite the general public to nominate individuals who are qualified, through press or on-line advertising.⁹⁶

Recommendations of appointment to a professional panel require the Minister to invite nominations from a number of parties, including the National Board for the profession for which the panel is established, Queensland universities and training institutions involved in educating the students for the profession for which the panel is established and relevant professional colleges and associations.⁹⁷

3.3.4 Assessors to assist Queensland Civil and Administrative Tribunal (QCAT)

The HO Act provides that when conducting a hearing of a disciplinary proceeding relating to a registered health practitioner, QCAT must be assisted by one assessor from the public panel and two assessors from the relevant professional panel or, if the practitioner is registered in more than one profession, the panel of assessors for the profession to which the disciplinary proceeding relates.⁹⁸

⁹⁴ *Health Ombudsman Act 2013*, section 118

⁹⁵ *Health Ombudsman Act 2013*, section 119

⁹⁶ *Health Ombudsman Act 2013*, section 121(1)

⁹⁷ *Health Ombudsman Act 2013*, section 121(2)

⁹⁸ *Health Ombudsman Act 2013*, section 126

However, QCAT may conduct a hearing of a disciplinary proceeding without an assessor if satisfied it is necessary because of the urgency of the matter.⁹⁹ Assessors are chosen by QCAT's principal registrar.¹⁰⁰

The Act also requires QCAT to ensure at least one of the assessors is the same gender as the person to whom the health service was provided where the disciplinary proceeding relates to a complaint about the provision of a health service.¹⁰¹

3.4 Temporary appointments to public panel – proposed provisions

Clause 13 of the Bill proposes to insert a new section 118A into the HO Act, which will enable the Minister to temporarily appoint an individual to the public panel of assessors, for a period of not more than six months.

The proposed amendment allows that an appointment may be made if the Minister reasonably believes it is necessary to urgently appoint an individual because the principal register has advised that:

- none of the panel members will be available for the hearing of a disciplinary proceeding; or
- a panel member of a particular gender is required and either none of the panel members are of that gender, or the panel members of that gender will not be available to hear the matter.¹⁰²

An individual is only qualified for appointment if they meet the same requirements for permanent appointment outlined in existing section 118(3). The Act stipulates that an individual is qualified to be recommended by the Minister for appointment only if the Minister is satisfied the person has sufficient experience, knowledge, skills and standing in the community having regard to the functions of assessors.¹⁰³

The Explanatory Notes state the requirement to advertise and invite nominations will not apply as the Minister is making the appointment, rather than making a recommendation to the Governor in Council that an appointment be made.¹⁰⁴

The Explanatory Notes also specify that the existing disqualification provisions in section 120 would also apply to persons temporarily appointed under proposed new section 118A.¹⁰⁵

With regard to reappointments of temporary appointees, the Explanatory notes state:

Section 25(1)(c) of the Acts Interpretation Act 1954 (the Acts Interpretation Act) will apply to temporary appointments to the public panel. This section provides that, if an Act authorises a person to appoint a person to an office, the power includes power to reappoint a person to the office if the person is eligible to be appointed to the office. Accordingly, the appointment power may be exercised as required. However, this is limited by the condition in new section 118A(1), which provides that the Minister may only make a temporary appointment following advice from the principal registrar of QCAT.¹⁰⁶

⁹⁹ Health Ombudsman Act 2013, section 126

¹⁰⁰ Health Ombudsman Act 2013, section 126

¹⁰¹ Health Ombudsman Act 2013, section 126

¹⁰² Health Legislation Amendment Bill 2015, Explanatory Notes: 17-18

¹⁰³ Health Ombudsman Act 2013, section 118(3)

¹⁰⁴ Health Legislation Amendment Bill 2015, Explanatory Notes: 17-18

¹⁰⁵ Health Legislation Amendment Bill 2015, Explanatory Notes: 7

¹⁰⁶ Health Legislation Amendment Bill 2015, Explanatory Notes: 7

3.4.1 Rationale for amendment

The Department provided the following rationale for the temporary appointment provisions in its written briefing to the Committee:

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.¹⁰⁷

3.4.2 Stakeholder views

Whilst acknowledging the importance of the public panel of assessors and the need to prevent delays by ensuring the panel is appropriately staffed, the AMAQ advised that they reserves judgement on the proposed provisions. They advised of their concern that the proposed provisions, as currently drafted, would allow the Minister, where no other assessor is available, to appoint a specific individual to assess a specific matter.¹⁰⁸

AMAQ advised:

AMA Queensland strongly believes the independence of the medical regulatory system is one of its most important features. Allowing the Health Minister to select a specific assessor would contravene this principle and undermine the independence required by the community and the profession. Such drafting could open the provision to abuse in highly political matters and should be avoided. This could be accomplished through redrafting the provision to ensure that assessors are appointed to a pool that is then selected by the Chief Registrar.¹⁰⁹

The RACS supports the amendments. In their The RACS suggested the following:

- *Those appointments should be for a period of no more than 12 months;*
- *These temporary appointments should not be 'rolling 12 month appointments'. Once the initial 12 month period is exhausted a permanent appointee should have been arranged; and*
- *The appointment process to the public panel of assessors, in regard to the relevant RACS surgical disciplines, could be filtered through the College's Executive Director of Surgical Affairs (in the case of being a Queensland Fellow) or the Queensland Regional Office who would be able to provide advice and assistance.¹¹⁰*

3.5 Consequential amendments

The Bill proposes two consequential amendments:

- Clause 14 amends the heading of section 119 of the HO Act to make clear that this section relates to temporary appointments to the professional panel.

¹⁰⁷ Correspondence to HASC from Director-General, Queensland Health dated 27 November 2015: 3

¹⁰⁸ Australian Medical Association of Queensland, Submission 1: 2

¹⁰⁹ Australian Medical Association of Queensland, Submission 1: 2

¹¹⁰ Royal Australasian College of Surgeons, Submission 6: 2

- Clause 15 amends section 122 of the HO Act, by omitting the existing note and inserting a new note that refers to the two sections under which panel members may be temporarily appointed.

3.6 Committee Comments

The Committee could not agree on the proposed amendments to the HO Act.

The Committee notes the proposed provisions allow for a six month appointment only and are consistent with the existing temporary appointment provisions for the professional panel of assessors. However, the non-government Members remain unconvinced that the process will not be open to abuse.

The Committee also noted that the *Acts Interpretation Act 1954* (section 24B(5)) which provides that where an Act provides for an acting appointment, the appointee must not act for more than one year during a vacancy in the office.

The Committee identified that whilst the legislation requires that notification of permanent appointments to both the public panel and the professional panel of assessors is by way of gazette notice, no notification of permanent appointments, no notification provisions are included for temporary appointments.

The Committee considers that appropriate notification should occur as soon as practicable after a temporary appointment.

Recommendation 2

The Committee recommends that amendments be included to require the relevant Minister to provide notification, by way of gazette notice, of temporary appointments to the public panel of assessors and the professional panel of assessors as soon as practicable after appointment.

4. Amendments to the *Hospital and Health Boards Act 2011*

This chapter discusses the Committee's examination of the proposed amendments to the *Hospital and Health Boards Act 2011* (HHB Act).

4.1 Background

The HHB Act establishes Hospital and Health Services (HHS) as statutory bodies with responsibility for providing public sector health services in Queensland. The Act requires that each HHS is independently and locally controlled by a HHS Board.¹¹¹

The object of the Act is to :

*...establish a public sector health system that delivers high quality hospital and other health services to persons in Queensland having regard to the principles and objectives of the national health system.*¹¹²

The Act states the object is to be achieved by:

- strengthening local decision-making and accountability, local consumer and community engagement, and local clinician engagement;

¹¹¹ *Hospital and Health Boards Act 2011*, section 7

¹¹² *Hospital and Health Boards Act 2011*, section 7

- providing for Statewide health system management, including planning, coordination and standard setting; and
- balancing the benefits of the local and system-wide approaches.¹¹³

4.2 Overview of proposed amendments

The amendments proposed in the Bill relate to the appointment of individuals to the HHBs on a temporary basis.¹¹⁴

The Explanatory Notes identify that, currently, the HHB Act does not enable the Minister to temporarily appoint Board members and the process of appointing members by Governor-in-Council can take several months.¹¹⁵

The Explanatory Notes state:

*The amendments will allow the Minister to temporarily appoint a Board member where, for example, a Board member takes unexpected leave or is suspended. Enabling temporary appointments to the Board will ensure the Board has the appropriate number of members for a quorum and/or the appropriate skills mix to continue to conduct its business.*¹¹⁶

4.3 Current provisions – HHS Boards

Division 2 of Part 2 of the HHB Act provides for the appointment of members to HHBs. Board members are appointed by the Governor in Council for not more than four years, following a recommendation from the Minister, and are entitled to the fees and allowances fixed by the Governor in Council. Boards consists of five or more members, at least one whom must be a clinician.¹¹⁷

4.3.1 Recommendation for appointment

Section 23(2) of the HHB Act provides that the Minister is to recommend persons the Minister considers have the skills, knowledge and experience required for a service to perform its functions effectively and efficiently. This includes persons:

- with expertise in health management, business management, financial management and human, resource management;
- with clinical and legal expertise;
- with skills, knowledge and experience in primary healthcare;
- with knowledge of health consumer and community issues relevant to the operations of the Service;
- from universities, clinical schools or research centres with expertise relevant to the operations of the Service; and
- from other areas of expertise the Minister considers relevant to a Service performing its functions.¹¹⁸

¹¹³ *Hospital and Health Boards Act 2011*, section 7

¹¹⁴ *Health Legislation Amendment Bill 2015*, Explanatory Notes: 1

¹¹⁵ *Health Legislation Amendment Bill 2015*, Explanatory Notes: 4

¹¹⁶ *Health Legislation Amendment Bill 2015*, Explanatory Notes: 4

¹¹⁷ *Hospital and Health Boards Act 2011*, section 7

¹¹⁸ *Hospital and Health Boards Act 2011*, section 23

Section 23(4) defines a clinician as a health professional registered under the Health Practitioner Regulation National Law, who is not a student, and who is currently directly or indirectly providing care or treatment to persons in a profession that provides care or treatment to persons in public sector health services.¹¹⁹

4.3.2 Process for recommending appointment

The HHB Act (section 24) requires the Minister to advertise for expressions of interest from suitably qualified persons interested in being members of a board and to consider the expressions received before making a recommendation for appointment. The requirement to advertise does not apply if a board member resigns or is removed from office. Suitably qualified is defined as having the skills, knowledge and experience mentioned in section 23(2).¹²⁰

4.3.3 Process for removal of board members

The Act currently includes a formal process for the removal of board members, which provides that board members may only be removed from office by Governor in Council. It is not proposed to alter these provisions. Sections 27, 27A and 28 relate to the vacation of office of board members as follows:

27 Vacation of office of board member

The office of a member of a board becomes vacant if the member—

- (a) resigns office by signed notice of resignation given to the Minister; or
- (b) is removed from office as a member under section 28.

27A Suspension from office of Hospital and Health Board members

(1) This section applies if—

- (a) a matter has arisen in relation to a member of a board; and
- (b) the matter—
 - (i) is one which is, or may be, grounds for removing a member from office under section 28; or
 - (ii) is alleged misconduct by the member; and
- (c) the Minister considers that it is necessary in the public interest for the member to be suspended from office pending further consideration of the matter.

(2) The Minister may suspend the member from office for a period not exceeding 60 days by notice in writing to the member.

(3) If the Minister considers it is necessary in the circumstances, the Minister may extend the suspension from time to time by periods not exceeding 60 days, by notice in writing to the member.

(4) The Minister must advise the member by notice in writing if the Minister ends the member's suspension.

28 Removal from office of board members

The Governor in Council may remove a member from office if—

- (a) the member is or becomes an insolvent under administration under the Corporations Act, section 9; or
- (b) the member is disqualified from managing corporations under the Corporations Act, part 2D.6; or
- (c) the member has been, or is, convicted of an indictable offence; or
- (d) the member has been, or is, convicted of an offence against this Act; or
- (e) the Minister recommends the removal because the Minister is satisfied the member—
 - (i) has been guilty of misconduct; or
 - (ii) is incapable of performing the member's duties; or
 - (iii) has neglected the member's duties or performed the member's duties incompetently; or
 - (iv) has been absent without permission of the board from 3 consecutive meetings of which due notice was given.

¹¹⁹ *Hospital and Health Boards Act 2011*, section 23

¹²⁰ *Hospital and Health Boards Act 2011*, section 24

4.4 Temporary appointment to HHS Board – proposed provisions

Clause 18 of the Bill proposes to insert a new section 24A into the HHB Act which will enable the Minister to temporarily appoint an individual to a HHB for a period of up to six months and to extend a temporary appointment for up to a further six months, providing for a maximum temporary appointment of 12 months.¹²¹

At the Committee's public departmental briefing, the Department confirmed that the proposed amendment is designed to deal with a situation where there are unforeseen or unexpected vacancies on a board and not designed as a substitute for the existing appointment process already administered by the department.¹²²

They further confirmed:

*The legislation contemplates an appointment being made for a maximum of six months and then there is discretion for the minister to extend that person for a further six months. So the total length of time for which a temporary appointment of one individual could be made is 12 months. It is worth understanding that the department runs an appointment process each year. In May there is a selection process which the department works towards and ordinarily we would expect that all appointments for the board, except in unusual circumstances, will be made through the ordinary appointment process. It would only be where there is a vacancy that cannot be met by the existing appointment processes where you would expect that these provisions might be used by the minister.*¹²³

The appointment may be made if the Minister reasonably believes it is necessary to urgently appoint a person as a member of a board for the following reasons:

- the board does not have at least 5 members;
- the Minister considers the board does not have the skills, knowledge or experience to perform the board's functions effectively or efficiently; or
- none of the board members are clinicians.¹²⁴

The Explanatory notes state:

To ensure temporary appointments can be made in a timely manner, the Minister will not be required to invite nominations and advertise prior to making a temporary appointment. However, a person will only be qualified for temporary appointment if the person has the skills, knowledge or experience required to be recommended for appointment under the usual appointment processes in section 23. A person appointed as a clinician member must be a clinician within the meaning of section 23(4).

*The Acts Interpretation Act, section 25(1)(c) will not apply to temporary appointments to the Hospital and Health Boards. This mitigates any risk that ongoing temporary appointments will substituted for longer-term appointments by Governor in Council.*¹²⁵

¹²¹ Health Legislation Amendment Bill 2015, Explanatory Notes: 7

¹²² Mr Harmer, Queensland Health, Public departmental briefing transcript, 2 December 2015: 4

¹²³ Mr Harmer, Queensland Health, Public departmental briefing transcript, 2 December 2015: 4

¹²⁴ Health Legislation Amendment Bill 2015, Explanatory Notes: 7

¹²⁵ Health Legislation Amendment Bill 2015, Explanatory Notes: 7

4.4.1 Rationale for amendment

The Department provided the following rationale for the temporary appointment provisions in its written briefing to the Committee:

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.¹²⁶

4.4.2 Non-government Members' concerns

The non-government Members' of the Committee sought an explanation from the Department regarding the practical operation of the provisions. They identified their concern that, whilst the permanent appointments are required to go through a formal process, including expressions of interest, this process is not required for temporary appointments and therefore there is no transparency in the process and the Minister can appoint anybody. The non-government Members' also highlighted their concern that under the proposed provisions temporary appointments can be up to 12 months, ie six months plus a six month extension.

The Department confirmed that, with regard to temporary appointments, there would not be a significant appointment process leading to a Governor in Council consideration, as would ordinary occur, and that the minister can appoint anybody.¹²⁷

The non-government Members' considered:

Ms BATES: *My concern with the boards has been that in the past Queensland Health has had central control back in Charlotte Street and with the minister. I see this as an attempt to do that as well. My other concern is: is this part of the current government's union participation policy? You mentioned before that, if the minister is the one who decides that he does not believe the skill mix is there or people for whatever reason are not up to the task, he could feasibly under this legislation remove the entire board on a temporary basis. Under the legislation, it says that if the person does not have sufficient experience, knowledge, skills and standing in the community having regard to that function then the minister could summarily remove the entire board on this temporary arrangement with these powers under the legislation. Am I correct in assuming that?*

Mr Harmer: *It is quite a complex question. The legislation provides for the process by which the minister can remove people from a board. If all of the things fell into place, that hypothetical is possible. But in practice I do not think it would occur. Obviously members of the board would be able to review the minister's decision. In many respects the other aspects of your question are probably better asked of the minister.*

I think what I would say here is that this particular proposal was an initiative of the department. It recommended to the minister that there was a need for this capacity to make temporary appointments following its experience during the caretaker period at the last election where there was no mechanism to fill vacancies in the period during the caretaker period and immediately following it as the new parliament took form. This is an initiative which the department has recommended to the minister principally for reasons of ensuring that boards can operate and perform their governance roles at all times.

¹²⁶ Correspondence to HASC from Director-General, Queensland Health dated 27 November 2015: 3

¹²⁷ Mr Harmer, Queensland Health, Public departmental briefing transcript, 2 December 2015: 7

Ms BATES: *We have other departments where there still is no mechanism. We are still waiting for people to be on boards. I find it interesting that it was just from the HHS boards. My deep concern still is that we are going back to the minister deciding to remove people who are currently on boards based just on his summation and no-one else's, with no other transparency around the process. We are not going to know who has applied for these positions, whether they are better than the people who are currently there. Feasibly, he could remove the entire board just based on that.*¹²⁸

4.4.3 Stakeholder views

AMAQ supports the amendments. They advised:

*The vitality of the 16 Hospital and Health Services is heavily reliant on the strength and skills mix of their individual boards. We are strongly in favour of the amendment to ensure that HHSs are not compromised by the departure of board members. We are pleased that the Queensland Government has recognised the importance of clinicians in the amendment.*¹²⁹

The RACS also supports the amendments. They reiterated their concerns, as outlined in section 3.4.2 of this report, regarding rolling 12 month appointments.¹³⁰

The Department advised the Committee that the temporary appointment power is subject to limitations that ensure Governor-in-Council appointments are not replaced with rolling temporary appointments. They advised:

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.*¹³¹

4.5 Consequential amendments – conditions of appointment

Clause 19 of the Bill amends section 26, which provides for the conditions of appointment for board members, to:

- insert a note which refers to temporary appointments of board members made under the new section 24A; and
- note that all board members, including temporary appointees, are entitled to the fees and allowances fixed by the Governor in Council.¹³²

¹²⁸ Public departmental briefing transcript, 2 December 2015: 7

¹²⁹ Australian Medical Association of Queensland, Submission 1: 2-3

¹³⁰ Royal Australasian College of Surgeons, Submission 6: 2

¹³¹ Correspondence to HASC from Director-General, Queensland Health dated 27 November 2015: 3-4

¹³² *Health Legislation Amendment Bill 2015*, Explanatory Notes: 19

The Explanatory Notes state board members temporarily appointed under the new section 24A hold office under any other conditions of appointment fixed by the Minister, rather than the Governor in Council.¹³³

4.6 Committee Comments

The Committee could not agree on the proposed amendments to the *Hospital and Health Boards Act 2011*. The Committee considers that it is vital that HHS are able to function effectively with full membership.

The government Members of the Committee support the proposed amendments as a means to overcome issues associated with the sudden departure of HHS Board Members.

As discussed in section 3.6 of this report, the Committee notes the intent of these appointments are temporary. However, the non-government Members remain unconvinced that the process will not be open to abuse. The non-government Members were not satisfied with the responses given by the Department during the public departmental briefing and in the answers to the questions taken on notice on this issue.

It is the Committee's expectation that any temporary appointments will be combined with a concerted effort to recruit and appoint suitably qualified appointees in line with the provisions of the Act.'

5. Amendments to the *Pest Management Act 2001*

This chapter discusses the Committee's examination of the proposed amendments to the *Pest Management Act 2001* (Pest Management Act).

5.1 Background

The Pest Management Act provides for the registration of pest control and fumigation activities.¹³⁴ The main object of the Act is to protect the public from health risks associated with pest control activities and fumigation activities and the adverse results of the ineffective control of pests. The Act states the objects are to be achieved by:

- establishing a licensing regime to regulate pest control activities and fumigation activities and ensure the activities are carried out by pest management technicians in a safe and competent way, and
- providing for compliance with this Act to be monitored and enforced.¹³⁵

5.2 Overview of proposed amendments

The Explanatory Notes state the amendments to the Pest Management Act will enable the chief executive to delegate the chief executive's powers to appropriately qualified employees of the Hospital and Health Services.¹³⁶

¹³³ *Health Legislation Amendment Bill 2015*, Explanatory Notes: 19

¹³⁴ *Pest Management Act 2001*

¹³⁵ *Pest Management Act 2001*, section 4

¹³⁶ *Health Legislation Amendment Bill 2015*, Explanatory Notes: 1

The Explanatory Notes provide the following rationale for the amendment:

Amendments to the Hospital and Health Boards Act in 2011 replaced the existing Health Service Districts with separate statutory bodies, Hospital and Health Services. The Hospital and Health Boards Act also made provision for Hospital and Health Services to become employers in their own right.

Since the Pest Management Act came into force a number of delegations have been made to appropriately qualified Queensland Health officers. However, some of these Queensland Health employees have now been made employees of relevant Hospital and Health Services. An amendment is required to ensure that the chief executive is able to delegate powers under the Pest Management Act to employees of Hospital and Health Services.¹³⁷

5.3 Current provisions and proposed amendment

Section 128 of the Pest Management Act provides for the chief executive to delegate powers under the Act to an appropriately qualified officer of the department. The Act defines appropriately qualified as:

...having the qualifications, experience or standing appropriate to exercise the power.¹³⁸

Clause 21 of the Bill amends section 128 to include a reference to a health service employee. The current and proposed new definitions are as follows

Current definition	Proposed new definition
<p>128 Delegation by chief executive</p> <p>(1) The chief executive may delegate the chief executive's powers under this Act to an appropriately qualified officer of the department.</p> <p>(2) However, the chief executive may not delegate the power to review an original decision under part 4, division 1.</p> <p>(3) In this section—</p> <p>appropriately qualified includes having the qualifications, experience or standing appropriate to exercise the power.</p> <p>Example of standing—</p> <p>a person's classification level in the department</p>	<p>128 Delegation by chief executive</p> <p>(1) The chief executive may delegate the chief executive's powers under this Act to an appropriately qualified -</p> <p>(a) officer of the department</p> <p>(b) health service employee.</p> <p>(2) However, the chief executive may not delegate the power to review an original decision under part 4, division 1.</p>

In its written briefing to the Committee the Department provided the following examples of powers which may be delegated under this provision

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.¹³⁹

5.4 Committee Comments

The Committee considers that the proposed amendments is an appropriate, common-sense measure. The Committee received no submissions on this issue.

¹³⁷ Health Legislation Amendment Bill 2015, Explanatory Notes: 4

¹³⁸ Pest Management Act 2001, section 128

¹³⁹ Correspondence to HASC from Director-General, Queensland Health dated 27 November 2015: 4

6. Amendments to the *Public Health Act 2005*

This chapter discusses the Committee's examination of the proposed amendments to the *Public Health Act 2005* (PH Act).

6.1 Background

The object of the PH Act is to protect and promote the health of the Queensland public. The Act states this is to be achieved by:

- preventing, controlling and reducing risks to public health;
- providing for the identification of, and response to, notifiable conditions;
- imposing obligations on persons and particular health care facilities involved in the provision of declared health services to minimise infection risks;
- protecting children who have been harmed or are at risk of harm when the children present at health service facilities;
- restricting the performance of cosmetic procedures on children;
- collecting and managing particular health information, and establishing mechanisms for health information held by a health agency to be accessed for appropriate research;
- inquiring into serious public health matters;
- responding to public health emergencies; and
- providing for compliance with this Act to be monitored and enforced.¹⁴⁰

6.2 Overview of proposed amendments

The Explanatory Notes state the proposed amendments to the PH Act will streamline the process for enabling registered midwives, including midwives who are not registered as a nurse, to access the Queensland Pap Smear Register.¹⁴¹

6.3 Current provisions

Part 3 of Chapter 6 the Public Health Act provides for the establishment and administration of a pap smear register. Section 272 provides for the chief executive to give a requesting health practitioner a woman's registered screening history if satisfied that the woman is a patient of the practitioner and the history may help the practitioner make:

- a clinical diagnosis about the woman;
- decisions about clinical management for the woman; or
- decisions about the timing for performing a procedure for obtaining another Pap smear from the woman.¹⁴²

¹⁴⁰ *Public Health Act 2005*, section 6 and section 7

¹⁴¹ *Health Legislation Amendment Bill 2015*, Explanatory Notes: 1

¹⁴² *Public Health Act 2005*, section 272

The Explanatory Notes provide the following explanation.

Until recently, nursing and midwifery were considered to be part of the same health care profession. However, they are now recognised as related but discrete professions. Under the Health Practitioner Regulation National Law (National Law), there is a single registration and accreditation body for nurses and midwives (the Nursing and Midwifery Board of Australia), but two separate registers (the Register of Midwives and the Register of Nurses). Accordingly, a person no longer needs to be registered as a nurse in order to be registered as a midwife.

The Public Health Act establishes the Pap Smear Register. The Pap Smear Register ensures women with an abnormal Pap smear result are advised about appropriate medical investigation and interventions. Under the Public Health Act, the chief executive can forward information about a woman's abnormal test results to the woman's treating health practitioner.

Currently, a health practitioner, for the purposes of accessing the Pap Smear Register, includes a person who is registered under the National Law to practise in the nursing and midwifery professions as a nurse (other than a student) and in the registered nurses division of that profession. This definition does not capture those midwives who are not also registered nurses. Accordingly, to access the Pap Smear Register, those midwives must first be designated as health practitioners by the chief executive via a gazettal notice.¹⁴³

6.4 Proposed amendments – new definitions of registered nurse, midwife and health practitioner

Clauses 23 and 24 of the Bill omit the definitions of registered nurse and midwife from sections 158 and 214 of the PH Act. Clause 29 omits and replaces the definitions of registered nurse and midwife in schedule 2 (the dictionary) with the following:

- *midwife* means a person registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a midwife, other than as a student.
- *registered nurse* means a person registered under the Health Practitioner Regulation National Law— to practise in the nursing and midwifery profession as a nurse, other than as a student; and in the registered nurses division of that profession.¹⁴⁴

¹⁴³ Health Legislation Amendment Bill 2015, Explanatory Notes: 4

¹⁴⁴ Health Legislation Amendment Bill 2015, Explanatory Notes: 20

Clause 25 of the Bill amends the definition of health practitioner at section 251 of the Public Health Act, to include a registered nurse and a midwife. The current and proposed new definitions are provided below.

Current definition	Proposed new definition
<p>health practitioner means—</p> <p>(a) a doctor; or</p> <p>(b) a person registered under the Health Practitioner Regulation National Law—</p> <p style="padding-left: 40px;">(i) to practise in the nursing and midwifery profession as a nurse, other than as a student; and</p> <p style="padding-left: 40px;">(ii) in the registered nurses division of that profession; or</p> <p>(c) a person designated as a health practitioner for this part.</p> <p>Note—</p> <p>See section 279 (Chief executive may designate particular persons as health practitioners).</p>	<p>health practitioner means—</p> <p>(a) a doctor; or</p> <p>(b) a registered nurse; or</p> <p>(c) a midwife; or</p> <p>(d) a person designated as a health practitioner for this part.</p> <p>Note—</p> <p>See section 279 (Chief executive may designate particular persons as health practitioners).</p>

The Explanatory Notes state:

This amendment will ensure that registered midwives are able to access the Queensland Pap Smear Register without first being designated as a health practitioner by the chief executive of the department.¹⁴⁵

6.5 Consequential amendments

Clauses 26, 27 and 28 of the Bill amend various sections of the PH Act to correct the numbering of provisions and cross references to other sections.

6.6 Stakeholder views

The Australian College of Midwives is supportive of the revised definitions of registered nurse and midwife, which will allow midwives, who are not also a registered nurse to access the Queensland Pap Smear Register.¹⁴⁶

The Australian College of Midwives advised the Committee that:

Since the introduction of a separate professional register for nurses and midwives, the access to the pap smear database has been limited to only those midwives who have, in addition to their midwifery, a nursing registration. This bill will allow all midwives to access the database and will provide vital information regarding cervical screening and enable midwives to provide more relevant health education advice and support to women in their care. The evidence shows that women are more likely to act on health advice during pregnancy and childbirth. This places midwives in an ideal position to influence women's health and access to essential screening services.¹⁴⁷

¹⁴⁵ Health Legislation Amendment Bill 2015, Explanatory Notes: 20

¹⁴⁶ Ms Foyle, Australian College of Midwives, Public Hearing transcript 15 December 2015: 11

¹⁴⁷ Ms Foyle, Australian College of Midwives, Public Hearing transcript 15 December 2015: 11

They advised the Committee that more and more midwives are accessing the direct entry route to midwifery and as a consequence, without the amendments, will be limited by their inability to access to essential cervical screening information. They also noted that midwives are ideally placed to influence women's health and evidence has shown that women are more likely to act on health advice during pregnancy and childbirth.¹⁴⁸

6.7 Committee Comments

The Committee considers the proposed amendments to be a common-sense practical approach to improve access to the health system. Given the increase in midwives undertaking the direct entry route to midwifery, the Committee considered that it is important to allow access to this important resource to allow midwives to provide relevant and accurate information to patients.

7. Amendments to the *Transplantation and Anatomy Act 1979*

This chapter discusses the Committee's examination of the proposed amendments to the *Transplantation and Anatomy Act 1979* (TA Act).

7.1 Background

The TA Act provides for the removal of human tissues for transplantation, for post-mortem examinations, for the definition of death, for the regulation of schools of anatomy, and for related purposes.¹⁴⁹

7.2 Overview of proposed amendments

The Explanatory Notes state the amendments to the TA Act will:

... 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 of HOPCs).¹⁵⁰

7.3 Current provisions

Part 7 of the *Transplantation and Anatomy Act* provides for the trading of tissue. Tissue is defined, in the Act, as an organ, blood or part of a human body or a human foetus, or a substance extracted from an organ, blood or part of a human body or a human foetus. The definition expressly excludes immunoglobulins or laboratory reagents, or reference and control materials, derived wholly or in part from pooled human plasma.¹⁵¹

Trading of tissue is defined as including:

- buying, agreeing to buy, offering to buy, holding out as being willing to buy, or inquiring whether a person is willing to sell the tissue; and
- selling, agreeing to sell, offering to sell, holding out as being willing to sell, or inquiring whether a person is willing to buy the tissue.¹⁵²

¹⁴⁸ Ms Foyle, Australian College of Midwives, Public Hearing transcript 15 December 2015: 11

¹⁴⁹ *Transplantation and Anatomy Act 1979*

¹⁵⁰ *Health Legislation Amendment Bill 2015*, Explanatory Notes: 1

¹⁵¹ *Transplantation and Anatomy Act 1979*, section 4

¹⁵² *Transplantation and Anatomy Act 1979*, section 39

Part 7 also places restrictions on advertisements relating to the buying of the tissue.¹⁵³

The Explanatory Notes state that cord blood is captured by the definition of tissue and is therefore subject to trading conditions.¹⁵⁴

7.3.1 Exemptions

Section 42AB of the TA Act provides that certain entities are exempt from trading restrictions. An entity is exempt if, for tissue other than blood products, the entity is party to an agreement with the Commonwealth or the State for the buying or selling of tissue, and is prescribed by regulation.¹⁵⁵

7.3.2 Australian Bone Marrow Donor Registry

The Australian Bone Marrow Donor Registry (ABMDR) is a non-profit organisation that conducts searches for matching cord blood units. The Explanatory Notes state it was intended that the ABMDR be exempt under this provision for the purposes of trading in cord blood, however it is arguable that cord blood is a blood product.¹⁵⁶

7.4 Proposed amendment

Clause 31 of the Bill omits and replaces the definition of blood products at section 42AB(2) of the Transplantation and Anatomy Act, to exclude cord blood from the definition of blood products.

The current and proposed new definitions are provided below.

Current definition	Proposed new definition
<i>blood products see the National Blood Authority Act 2003 (Cwlth), section 3, definition blood products and services, paragraph (a).</i>	<i>blood products— (a) means blood products under the National Blood Authority Act 2003 (Cwlth), section 3, definition blood products and services, paragraph (a); and (b) does not include cord blood.</i>

The Explanatory Notes state the proposed amendment will enable the ABMDR to be exempted from the prohibitions on buying, advertising to buy and selling of human tissue under section 42AB(2)(b) of the Transplantation and Anatomy Act for the purpose of trading in stem cells contained in cord blood.¹⁵⁷

7.5 Committee Comments

The Committee supports the proposed amendment.

¹⁵³ *Transplantation and Anatomy Act 1979*, section 41

¹⁵⁴ *Health Legislation Amendment Bill 2015*, Explanatory Notes: 5

¹⁵⁵ *Transplantation and Anatomy Act 1979*, section 42AB

¹⁵⁶ *Health Legislation Amendment Bill 2015*, Explanatory Notes: 5

¹⁵⁷ *Health Legislation Amendment Bill 2015*, Explanatory Notes: 8

8. Compliance with the *Legislative Standards Act 1992*

8.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ (FLPs) are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of parliament.

This report makes reference to the former Scrutiny of Legislation Committee (SLC). By way of background, two reviews conducted by the Electoral and Administrative Review Commission in 1991 and 1992 recommended Queensland replace its then Committee of Subordinate Legislation with a Scrutiny of Legislation Committee with an expanded remit to allow it to review both primary legislation (Bills) and subordinate legislation (regulations and statutory instruments).

The *Legislative Standards Act 1992* saw Fundamental Legislative Principles (FLP) enshrined into law and the Committee of Subordinate Legislation then began scrutinising subordinate legislation to ensure there had been sufficient regard given to the newly enacted FLPs.

The *Parliamentary Committees Act 1995* established a Scrutiny of Legislation Committee (SLC) to:

...examine all Bills and subordinate legislation to consider the application of FLPs to particular Bills and subordinate legislation, and the lawfulness of particular subordinate legislation.

A review of Queensland’s Parliamentary committee system in 2010 led to the abolition of the dedicated SLC in favour of the current system of portfolio-based committees that have operated since mid-2011. Pursuant to section 93 of the *Parliament of Queensland Act 2001* it is now the role of each portfolio committee to consider any FLP issues contained in Bills and subordinate legislation within its portfolio area. The Committees are assisted in this work by the Technical Scrutiny Secretariat which performs a very similar role to the former SLC by examining bills and subordinate legislation for FLP compliance.

The considerable body of work generated by the former SLC and its predecessor Committee regarding FLP issues remains a valuable source of information for the current portfolio committees when considering bills and sub-ordinate legislation. Similarly, the Office of Parliamentary Counsel (OQPC) frequently references the findings of the former SLC in its work *Fundamental Legislative Principles: The OQPC Notebook*, a very detailed and evolving examination of FLP issues, available free of charge on the OQPC website.

8.2 Rights and liberties – rights and liberties of individuals

The Committee has identified a number of FLP issues in regard to the rights and liberties of individuals which are discussed below.

8.2.1 Privacy

Clause 8 inserts proposed new section 272A into the *Food Act 2006* (the Food Act), which will allow the chief executive to authorise a relevant person to disclose information, including confidential information, in certain limited circumstances. Confidential information includes information about a person’s personal affairs or reputation, or information that would be likely to damage the commercial activities of a person to whom the information relates.

This may be seen as breaching the principle that legislation must have sufficient regard to individual rights and liberties.

With regard to public health matters generally the former SLC had considered comprehensive provisions under public health law that required disclosure of private health matters by a wide range of professional and other persons. The ultimate question for that Committee was whether an acceptable balance was struck between the obvious need to adequately protect and promote the health of the public on the one hand and the rights and liberties of the individual on the other.¹⁵⁸

Here, the amendments provide that confidential information can only be disclosed if the chief executive believes, on reasonable grounds, that disclosure is necessary to prevent or reduce the possibility of a serious danger to public health, or to mitigate the adverse consequences of a serious danger to public health.

The Explanatory Notes state:

*The chief executive must authorise the publication in writing. The amendments also limit delegation of the chief executive's powers to publish confidential information to the chief health officer only: clause 9. The information can only be disclosed by a relevant person, namely the chief health officer or an appropriately qualified public service officer or employee of the department or health service employee.*¹⁵⁹

It is noted that the Explanatory Notes state that the provision is consistent with the Privacy Principles in the *Information Privacy Act 2009 (Qld)*.

8.2.2 Committee Comments

The Committee considered that, on balance, it appears that the potential breach is justified in the circumstances. This is primarily due to the balance struck between the need to adequately protect the health of the public and the rights and liberties of others. The Committee noted the existence of safeguards such as the limit on the grounds on which a disclosure may be made and the limit on the delegation of power of the chief executive.

8.2.3 Penalties

Proposed new section 164E, inserted by clause 5, provides that a proprietor of a standard food outlet of a prescribed licensable food business must ensure that:

- required nutritional information is displayed in the way and places prescribed, and
- the nutritional information is worked out in the way prescribed by the regulation.

Section 164E provides penalties for contravention of these requirements. The nature of contraventions against section 164E may range from minor and inadvertent, to serious, ongoing and deliberate. To ensure the penalties are proportionate to the nature of the contravention, section 164E has a two-tiered offence structure, with a higher penalty applying for an intentional contravention than for a simple contravention.

The maximum penalty for intentionally contravening section 164E is 500 penalty units: section 164E(3). The maximum penalty for otherwise contravening section 164E is 100 penalty units: section 164E(4). Under new section 252(3) of the Food Act, inserted by clause 6 of the Bill, the offence under section 164E(4) is an alternative verdict for a charge under section 164E(3).

¹⁵⁸ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, p 115; Alert Digest 2005/4, pp 12-13, paras 10-19.

¹⁵⁹ Explanatory Notes, p 9.

Proposed new section 164F, also inserted by clause 5, provides that if a standard food outlet, not captured by the mandatory menu labelling scheme, chooses to display nutritional information of the kind required to be displayed under section 164E, the proprietor must not display the information unless it is worked out in the way, displayed in the way and places prescribed by regulation for the purposes of the mandatory provisions. The maximum penalty for contravening section 164F is 100 penalty units.

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.

Consequences imposed by legislation should be proportionate and relevant to the actions to which the consequences are applied by the legislation. The OQPC Notebook states:

*...the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.*¹⁶⁰

A penalty should be proportionate to the offence. The OQPC Notebook states:

*Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.*¹⁶¹

The Explanatory Notes indicate that the various offences are consistent with comparable legislation in other jurisdictions.¹⁶²

The Explanatory Notes also state:

*These new offences may infringe on the principle that an Act must have sufficient regard to the rights and liberties of individuals as they impose a penalty on the person for breach of the provisions. However, an offence provision is necessary to encourage compliance with the requirements of the menu labelling scheme and to ensure that consistent and accurate nutritional information is being provided to the consumer.*¹⁶³

8.2.4 Committee Comments

The Committee considered that, on balance, the potential breach is justified in the circumstances.

8.3 Institution of Parliament – Scrutiny of the Legislative Assembly and Delegation of legislative power

The amendments made by clause 5 would enable certain matters relating to the fast food menu labelling scheme to be prescribed in the *Food Regulation 2006* (the Food Regulation) including:

- items of ready-to-eat food that are, and are not, standard food items
- the way in which the average energy content of a standard food item must be worked out in compliance with the Australia New Zealand Food Standards Code as defined in the *Food Standards Australia New Zealand Act 1991* (Cwlth) (Food Standards Code)
- the way in which a standard food outlet must display nutritional information
- other nutritional information required to be displayed
- the content of the average energy intake statement

¹⁶⁰ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 120.

¹⁶¹ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 120.

¹⁶² Explanatory Notes, pp 10-11.

¹⁶³ Explanatory Notes, pp 10-11.

- the places nutritional information for a standard food item must be displayed
- the food businesses that will be captured by, and exempt from, the scheme, and
- provisions about the display or distribution of explanatory materials or other material about nutritional information for food.

Section 4(4)(a) of the *Legislative Standards Act 1992* (LSA) provides that a Bill should allow the delegation of legislative power only in appropriate cases and to appropriate persons. As noted in the OQPC FLP Notebook, this matter is concerned with the level at which delegated legislative power is used.

Generally, the greater the level of political interference with individual rights and liberties, or the Institution of Parliament, the greater the likelihood that the power should be prescribed in an Act of Parliament and not delegated below Parliament.

Here, matters are prescribed in regulation that may be seen to breach the principle that legislation must have sufficient regard to the institution of Parliament.

The Explanatory Notes state:

It is justified in this instance to put matters of detail in the Food Regulation as it will provide flexibility to ensure the scheme can be expanded in the future. It will also allow the Government to respond quickly to emerging issues that may impact on the integrity and effectiveness of the scheme, such as new products or ways of marketing and packaging products.

Prescribing these matters in regulation is also consistent with the Principles for Introducing Point-of-Sale Nutrition Information at Standard Food Outlets (the National Principles), which provide that jurisdictions that elect to adopt legislation for point-of-sale nutrition information should not preclude the jurisdiction from expanding point-of-sale nutrition information at a later date to also include disclosure of other information such as sugar, sodium and fat content.¹⁶⁴

Section 4(4)(b) of the Legislative Standards Act provides that a Bill should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.

Here, proposed new section 164E(5) provides that, for the purpose of prescribing how nutritional information is to be worked out, the regulation may prescribe this by applying, adopting or incorporating a provision of the Food Standards Code.

The OQPC Notebook identifies:

The issue of whether delegated legislative power is sufficiently subjected to the scrutiny of the Legislative Assembly often arises when the power to regulate an activity is contained in a guideline or similar instrument that is not subordinate legislation and therefore is not subject to parliamentary scrutiny.¹⁶⁵

¹⁶⁴ Explanatory Notes, pp 10-11

¹⁶⁵ Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, page 155.

The former SLC commented adversely on provisions allowing matters, which might reasonably be dealt with by regulation, to be processed through some alternative means that does not constitute subordinate legislation and therefore is not subject to parliamentary scrutiny. In considering the appropriateness of delegated matters being dealt with through an alternative process, the SLC considered:

- The importance of the subject dealt with;
- The practicality or otherwise of including those matters entirely in subordinate legislation;
- The commercial or technical nature of the subject matter;
- Whether the provisions were mandatory rules or merely to be had regard to.¹⁶⁶

The SLC also considered that despite an instrument not being subordinate legislation, if there was a provision requiring tabling and providing for disallowance then the Committee was less concerned.¹⁶⁷

The SLC also determined that if a document that was not subordinate legislation was intended to be incorporated into subordinate legislation, then an express provision should require the tabling of the document at the same time as the subordinate legislation.¹⁶⁸ Similar considerations applied when a non-legislative document was required to be approved by an instrument of subordinate legislation.¹⁶⁹

The Explanatory Notes state that:

It is appropriate to provide that the average energy content of food and drink must be worked out by applying the Food Standards Code. The Food Standards Code applies across Australia and New Zealand and, accordingly, its application will ensure consistent nutritional information across those jurisdictions with a menu labelling scheme.

Applying the Food Standards Code through the regulation will ensure that any changes to the Food Standards Code in the future can be adopted without requiring amendments to the Food Act.¹⁷⁰

8.3.1 Committee Comments

The Committee considered that, on balance, clause 5 has sufficient regard to the Institution of Parliament in relation to section 4(4)(a) of the Legislative Standards Act. While it is noted that it is likely that the Regulation covers significant matters, it will be subject to Parliamentary scrutiny and allow for the level of flexibility required to implement current and future changes.

In relation to section 4(4)(b) of the Legislative Standards Act, the Committee considered that, on balance, proposed new section 164E(5), within clause 5 of the Bill, may have sufficient regard to the Institution of Parliament. This is particularly the case, if in applying, adopting, or incorporating part of the food standards code, the regulation either repeats the section of the food standards code in full or tables that part of the food standards code at the same time as the subordinate legislation.

¹⁶⁶ Office of the Queensland Parliamentary Counsel, Fundamental Legislative Principles: *The OQPC Notebook*, page 155.

¹⁶⁷ Alert Digest 2004/3, pp 5-6, paras 30-40; Alert Digest 2000/9, pp 24-25, paras 47-56.

¹⁶⁸ Alert Digest 2001/8, p 16, para. 7; Alert Digest 1996/5, p 9, para 3.8.

¹⁶⁹ Alert Digest 2003/11, p 23, paras 33-40.

¹⁷⁰ Explanatory Notes, pp 9-10.

8.4 Proposed new or amended offence provisions

The following table sets out the proposed new or amended offence provisions.

Clause	Offence	Proposed maximum penalty
5	s164E(3) A person must not intentionally contravene subsection (2).	500 penalty units
	S164E(4) A person must not contravene subsection (2).	100 penalty units
	S164F(2) The proprietor of the standard food outlet must not display nutritional information mentioned in section 164E(2)(a) for standard food items sold at the outlet unless the nutritional information— (a) is worked out in the way prescribed by regulation; and (b) is displayed in the way and at the places prescribed by regulation.	100 penalty units

8.5 Explanatory notes

Part 4 of the Legislative Standards Act relates to Explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain. Section 23 of the Legislative Standards Act states:

- (1) An explanatory note for a Bill must include the following information about the Bill in clear and precise language—
 - (a) the Bill's short title;
 - (b) a brief statement of the policy objectives of the Bill and the reasons for them;
 - (c) a brief statement of the way the policy objectives will be achieved by the Bill and why this way of achieving the objectives is reasonable and appropriate;
 - (d) if appropriate, a brief statement of any reasonable alternative way of achieving the policy objectives and why the alternative was not adopted;
 - (e) a brief assessment of the administrative cost to government of implementing the Bill, including staffing and program costs but not the cost of developing the Bill;
 - (f) a brief assessment of the consistency of the Bill with fundamental legislative principles and, if it is inconsistent with fundamental legislative principles, the reasons for the inconsistency;
 - (g) a brief statement of the extent to which consultation was carried out in relation to the Bill;
 - (h) a simple explanation of the purpose and intended operation of each clause of the Bill;
 - (i) if the Bill is substantially uniform or complementary with legislation of the Commonwealth or another State—
 - (i) a statement to that effect; and
 - (ii) a brief explanation of the legislative scheme.
- (2) If the explanatory note does not include the information mentioned in subsection (1), it must state the reason for non-inclusion.

The Guidelines for the preparation of explanatory notes available on the website of the Department of Premier and Cabinet state explanatory notes need to be clear, precise and informative as they are used to:

- inform Cabinet decision making;
- contribute to informed debate in Parliament;
- ensure effective Parliamentary scrutiny of bills and subordinate legislation;
- assist in the interpretation of legislation, including by practitioners, lawyers and courts;
- make legislation more accessible by assisting people to understand the effect on their rights and obligations imposed by legislation; and
- inform public discussion about legislation, including whether the legislation has sufficient regard to rights and liberties of individuals and democratic principles

Explanatory Notes were tabled with the introduction of the Bill. The Notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

Appendix A – List of Submissions

Sub #	Submitter
001	Australian Medical Association of Queensland
002	Queensland Law Society
003	NAQ Nutrition
004	Heart Foundation Queensland
005	Diabetes Australia
006	Royal Australasian College of Surgeons
007	Logan City Council
008	Royal Australasian College of Physicians
009	National Retail Association

Appendix B – Officers appearing on behalf of the department at public departmental briefing– Wednesday 2 December 2015

Ms Sophie Dwyer, Executive Director, Health Protection Branch, Prevention Division, Department of Health
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Mr David Harmer, Director, Legislative Policy, Strategic Policy and legislation Branch, Strategy, Policy and Planning Division, Department of Health
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Ms Kirsten Law, Manager, Legislative Policy, Strategic Policy and Legislation Branch, Strategy, Policy and Planning Division, Department of Health
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Dr Jeannette Young, Chief Health Officer and Deputy Director-General, Prevention Division, Department of Health

Appendix C – Witnesses appearing at the public hearing – Tuesday 15 December 2015

Heart Foundation Queensland

- Ms Alison Durham, Advocacy Manager
- Ms Deanne Wooden, Nutrition Manager

NAQ Nutrition

- Ms Aloysa Hourigan, Senior Nutritionist and Nutrition Program Manager

National Retail Association (Queensland Office)

- Mr Cameron Meiklejohn

Australasian College of Midwives

- Ms Susan Foyle, Chair, QLD Branch Committee