



ELIZABETHAE SECUNDAE REGINAE

No. 88 of 1976

An Act to amend the Health Act 1937-1976 in certain particulars

[ASSENTED TO 17TH DECEMBER, 1976]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title and citation. (1) This Act may be cited as the *Health Act Amendment Act 1976 (No. 2)*.

(2) The *Health Act 1937-1974* as subsequently amended is in this Act referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Health Act 1937-1976*.

2. Amendment of s. 3. Section 3 of the Principal Act is amended by inserting after the words "Division IVB—Labelling of Drugs and Poisons (s. 131i)," the words "Division IVC—Pest Control Operators (ss. 131j-131w),".

3. Amendment of s. 5. Section 5 of the Principal Act is amended by—

(a) omitting the definition "Pharmaceutical chemist" and substituting the following definition:—

" "Pharmacist"—A pharmacist within the meaning of the *Pharmacy Act 1976*;"

(b) in the definition "Prohibited plant" inserting after the word "seeds" the words "(whether capable or incapable of germination)".

4. Amendment of s. 54. Section 54 of the Principal Act is amended by in the third paragraph of subsection (1)—

- (a) in subparagraph (a),
- (i) omitting the words “pharmaceutical chemist” and substituting the word “pharmacist”;
- (ii) omitting the words “such chemist” and substituting the words “the pharmacist”;
- (b) in subparagraph (b), omitting the words “pharmaceutical chemist” and substituting the word “pharmacist”.

5. Amendment of s. 130. Section 130 of the Principal Act is amended by—

- (a) in subsection (2) omitting the words “10 years or a fine of \$10,000” and substituting the words “life or a fine of \$100,000”;
- (b) inserting after subsection (2) the following subsection:—

“(2A) A person shall not have in his possession or at his order or disposition—

- (a) money, marketable securities or other thing; or
- (b) any acknowledgment, note or other thing purporting or intended to entitle the bearer or any other person to money or money's worth,

in any case had by him, whether directly or indirectly, by way of or for the purpose of the commission of an offence against a provision of subsection (2) of this section or as consideration for the commission of such an offence.

Penalty:—

- (a) upon conviction on indictment, imprisonment with hard labour for life or a fine of \$100,000 or both such imprisonment and such fine;
- (b) upon conviction in summary proceedings, imprisonment with hard labour for two years or a fine of \$2,000 or both such imprisonment and such fine.”;
- (c) adding at the end of the section the following subsection:—

“(4) This section does not apply to a State botanist who, in the course of his duties as such, has in his possession, at premises approved for the purpose by the Director-General, a prohibited plant for the purpose of identification, storage or cultivation.”.

6. Amendment of s. 130J. Section 130J of the Principal Act is amended by omitting subsection (1) and substituting the following subsection:—

“(1) In a proceeding brought for an offence in relation to possession of a dangerous drug, a person who, contrary to section 130 of this Act, has in his possession—

- (a) a quantity of that drug in excess of a quantity prescribed under this Act for the purposes of this paragraph (a) in respect of that drug; or
- (b) a quantity of any substance containing that drug, which quantity exceeds the quantity prescribed under this Act for the purposes of this paragraph (b) in respect of that drug,

shall be deemed to have possession of that drug for a purpose specified in paragraph (c) of subsection (2) of section 130 of this Act unless he shows the contrary.”.

7. Amendment of s. 130L. Section 130L of the Principal Act is amended by—

(a) inserting after subsection (2) the following subsection:—

“(2A) Where a person is convicted of an offence against subsection (2A) of section 130 of this Act the court before which he is convicted or a court of like jurisdiction shall, on application—

(a) in the case of a conviction on indictment, made on behalf of the Crown; or

(b) in the case of a conviction in summary proceedings, made by or on behalf of the complainant,

order that any money, security, acknowledgment, note or other thing in respect of which the offence was committed be forfeited to Her Majesty and upon the making of such order such forfeiture shall take effect.”;

(b) in subsection (3), inserting after the words “pursuant to” the words “subsection (1) or (2) of”;

(c) adding at the end of the section the following subsections:—

“(4) All marketable securities forfeited pursuant to subsection (2A) of this section and all rights arising in connexion with the same and all rights conferred by any acknowledgment, note or other thing forfeited pursuant to that subsection shall by virtue of such forfeiture and without any transfer or assignment whatever vest in The Treasurer of Queensland who, for the purpose of taking, holding and dealing with the same, shall be by that name a corporation sole with power to sell, call in and convert into money any of the same and to exercise rights of every description in connexion therewith or in connexion with further securities acquired by him by reason of his holding the securities so vested in him.

(5) All moneys forfeited to Her Majesty pursuant to subsection (2A) of this section and all moneys that from time to time vest in The Treasurer of Queensland as a result of a forfeiture pursuant to that subsection shall be paid to the credit of the Consolidated Revenue Fund.

(6) All moneys and marketable securities forfeited pursuant to subsection (2A) of this section and all rights vested in The Treasurer of Queensland pursuant to subsection (4) of this section by virtue of a forfeiture pursuant to subsection (2A) of this section and all moneys, securities and rights acquired by The Treasurer of Queensland as a result of a forfeiture pursuant to subsection (2A) of this section shall be held by the Crown or, as the case may be, The Treasurer of Queensland subject to the rights with respect thereto of any person who within 6 months of the date of the relevant forfeiture pursuant to subsection (2A) of this section satisfies the Treasurer that—

(a) he is the lawful owner of the moneys, marketable securities, acknowledgment, note or other thing so forfeited or has a proprietary interest or a charge in or in respect of the same; and

(b) he was not privy to the commission of the offence against subsection (2A) of section 130 of this Act consequent on the conviction for which the moneys, marketable securities, acknowledgment, note or other thing were ordered to be forfeited to Her Majesty.

Save as is provided by this subsection, no person shall have a claim for compensation or otherwise on account of the seizure, forfeiture, retention or dealing with any moneys, marketable securities, acknowledgment, note or other thing referred to in subsection (2A) of section 130 of this Act.

(7) A person charged with keeping any register or record required or authorized by law to be kept in which is recorded a registration or notification concerning any person in respect of any marketable securities, acknowledgment, note or other thing specified in subsection (4) of this section shall, upon being notified in writing by The Treasurer of Queensland of the forfeiture of such securities or the rights conferred by such acknowledgment, note or other thing and without payment of any fee, alter that registration or notification by substituting therein reference to The Treasurer of Queensland for a reference to the person registered or recorded therein.”

8. Amendment of s. 130M. Section 130M of the Principal Act is amended by—

(a) omitting paragraph (a) of subsection (1) and substituting the following paragraph:—

“(a) detain any person whom he reasonably suspects—

- (i) to have in his possession or on any premises any dangerous drug, prohibited plant, or pipe, needle, syringe or other utensil for use in connexion with the preparation, smoking, administration or consumption of any dangerous drug;
- (ii) to have in his possession or at his order or disposition any money, security, acknowledgment, note or other thing, in contravention of any provision of section 130 of this Act;”;

(b) adding at the end of the section the following subsection:—

“(3) Any thing seized and retained pursuant to paragraph (c) of subsection (1) of this section may be retained for a period of 12 months, unless—

- (a) it is sooner established to the satisfaction of the Attorney-General of the State that at the time of seizure and retention no offence against any provision of this Act in relation to that thing had been committed, in which case that thing shall be returned to the person from whom it was seized; or
- (b) within that period—
 - (i) proceedings for an offence against this Act in relation to that thing; or
 - (ii) proceedings for an offence against this Act in which that thing may be used as evidence, have been instituted, in which case that thing shall be retained until the final determination or other disposal of those proceedings (including all appeals therein duly instituted) if that period exceeds 12 months.”

9. Amendment of s. 131B. Section 131B of the Principal Act is amended by inserting after the word “ utensil ” the words “ or any money, security, acknowledgment, note or other thing ”.

10. **New Division IVC of Part IV.** The Principal Act is amended by inserting after section 131I the following heading and sections:—

“ **DIVISION IVC—PEST CONTROL OPERATORS** ”

131J. Interpretation. In this Division, unless the context otherwise indicates, the following terms have the meanings set against them respectively:—

“ **Licence** ”—A licence (including a renewal of a licence) granted under this Division and in force at any material time;

“ **Pest control operator** ”—A person who for payment or reward uses pesticides in or about premises for the purpose of controlling, destroying or preventing the growth or development of insects, mites or vermin;

“ **Pesticide** ”—Any substance for the time being declared by Order in Council to be a pesticide for the purposes of this Division: the term includes any admixture, preparation or solution that contains one or more of those substances.

131K. Uses of pesticides by unlicensed or immature persons.

(1) A person shall not hold himself out as a pest control operator unless he is a licensee.

(2) A person shall not use pesticides unless—

- (a) in using the same he is not a pest control operator; or
- (b) in using the same he is operating under the personal supervision and in the presence of a person who is a licensee.

(3) A licensee—

- (a) shall not permit a person who has not attained the age of 18 years to prepare pesticides for use by a pest control operator;
- (b) shall not permit a person to use pesticides as a pest control operator or to prepare pesticides for use by a pest control operator unless—
 - (i) that person is a licensee; or
 - (ii) the licensee is present during and personally supervises the use or preparation, as the case may be, of the pesticides.

131L. Application for licence. (1) An application for a licence shall be made to the Director-General in the prescribed form and shall be accompanied by the prescribed fee.

(2) If an applicant for a licence satisfies the Director-General that he is a fit and proper person to hold a licence and that—

- (a) he has attained the age of 18 years and is competent to use pesticides and to prepare them for use;
- (b) he has in respect of each pesticide demonstrated knowledge of—
 - (i) its degree of toxicity;
 - (ii) the effect it may have on the health of persons who use it or who are in premises where it is used;
 - (iii) adequate first aid measures to treat its effects;
- (c) he has a thorough knowledge of the regulations made for the purposes of this Division;

(d) he is medically fit to use pesticides and prepare them for use, and he satisfies the Director-General in respect of such other matters as the Director-General considers relevant, the Director-General may grant and issue to the applicant a licence.

131M. Licence. A licence—

- (a) shall be in the prescribed form;
- (b) may be renewed from time to time;
- (c) shall not be transferable;
- (d) shall authorize the licensee to operate as a pest control operator.

131N. Duration of licence. (1) Unless sooner cancelled, suspended or surrendered, a licence shall subsist for a period of 12 months from and including the date of its grant or, as the case may be, its last renewal, and for the purpose of calculating the period of its duration a licence shall be deemed to have subsisted throughout any period for which it has in fact been suspended or is of no force or effect.

131O. Renewal of licence. (1) An application for renewal of a licence shall be made to the Director-General in the prescribed form at least two weeks prior to the expiration of the period of duration of the licence and shall be accompanied by the prescribed fee.

(2) The Director-General shall renew a licence if he is satisfied—

- (a) that the licensee continues to be a fit and proper person to hold the licence; and
- (b) that the licensee has complied with the provisions of this Division and the conditions (if any) to which his licence is subject.

131P. Imposition of conditions of licence. The Director-General may upon the grant or renewal of a licence impose such conditions as he thinks fit by inserting in or affixing to the prescribed form of licence particulars of those conditions and may at any time and from time to time vary the conditions to which a licence is subject by written notice to the licensee.

131Q. Conditions of licence. Every licence shall be subject to the performance and observance by the licensee of the provisions of this Division and of the conditions particularized in the licence or affixed thereto.

131R. Cancellation or suspension of licences. (1) The Director-General may cancel or suspend a licence if—

- (a) the licence was issued in error or granted in consequence of any false or fraudulent document, statement or representation;
- (b) the licensee is convicted of a contravention of a provision of this Division;
- (c) the licensee fails to comply with any condition of the licence;

- (d) the Director-General is of opinion that by reason of the manner in which the licensee conducts himself as a pest control operator, or by reason of any other fact or circumstance the licensee is not a fit and proper person to hold the licence.

(2) Where a licence is cancelled or suspended, the person to whom the licence was issued shall deliver up the same to the Director-General—

- (a) within 28 days after written notice of the Director-General's decision has been given to him; or
- (b) where an appeal against the Director-General's decision is duly made and the Minister dismisses the appeal, within 28 days after written notice of the Minister's decision has been given to him.

131S. Appeal from Director-General. Any person—

- (a) whose application for a licence or renewal of a licence is refused by the Director-General;
- (b) who feels aggrieved by the imposition or variation of any conditions by the Director-General; or
- (c) who feels aggrieved by the cancellation or suspension of his licence by the Director-General,

may within 28 days after notification to him of the Director-General's decision appeal to the Minister whose decision shall be final.

131T. Notice of accidents. (1) A pest control operator shall give notice in writing to the Director-General of every accident that occurs—

- (a) in the use of pesticides by him or under his supervision; or
- (b) in the preparation by him or under his supervision of pesticides for use by a pest control operator,

which accident causes loss of life or serious bodily injury to any person.

(2) The notice shall—

- (a) be forwarded to the Director-General within 21 days after the occurrence of the accident;
- (b) specify—
 - (i) the cause of the accident, so far as is known;
 - (ii) the precise location where the accident occurred; and
 - (iii) the name of every person killed or injured in the accident.

131U. Immediate notice concerning loss of life. As soon as possible after the occurrence of an accident that causes loss of life arising out of the use of pesticides or their preparation for use the pest control operator concerned shall, in addition to the notice required to be given pursuant to section 131T, give the Director-General by the quickest means of communication available to him all information concerning the accident then available to him.

131V. Powers of inspectors. Without derogating from the powers of an inspector under any other provision of this Act an inspector—

- (a) may order a licensee to discontinue using any equipment or pesticide which, in the inspector's opinion, may prejudice the health of a person using the equipment or pesticide or within a building wherein the pesticide is used; and
- (b) may exercise such other powers as are prescribed by regulations made for the purpose of this Division.

131W. Regulations. (1) The Director-General may, in accordance with this Act, make regulations not inconsistent with this Act for or with respect to all matters required or permitted by this Division to be prescribed and all matters that, in his opinion, are necessary or convenient for the proper administration of this Division or to achieve the objects and purposes of this Division.

(2) Regulations made under this section may impose a penalty for any breach thereof not exceeding \$200."

11. Amendment of s. 146. Section 146 of the Principal Act is amended by—

(a) in the note appearing in and at the beginning of the section inserting after the word "Analyst's" the words "and State botanist's";

(b) adding at the end of the section the following subsection:—

"(5) This section applies to proceedings for an offence alleged to have been committed in respect of a prohibited plant and for that purpose—

- (a) the expression "analyst" herein shall be construed as including a State botanist; and
- (b) the expression "certificate of analysis" herein shall be construed as including a certificate of a State botanist as to the identification of the prohibited plant."

12. Amendment of s. 152. Section 152 of the Principal Act is amended by in subsection (1)—

(a) in subparagraph (xvii),

(i) inserting after the words "classes of persons to" the words "manufacture, pack, re-pack or";

(ii) omitting the words "the registration of the premises" and substituting the words "the siting, construction, lay-out, condition and registration of the premises";

(b) in subparagraph (xx), in provision (c), omitting the words "or drug by an analyst" and substituting the words ", drug or article by an analyst or the examination of an article by a State botanist".

13. Amendment of s. 154I. Section 154I of the Principal Act is amended by in paragraph (a) of subsection (2)—

(a) in subparagraph (vii) omitting the word "British" and substituting the word "Australian";

(b) in subparagraph (viii) inserting after the words "by the" the words "Royal Australian";

(c) in subparagraph (ix) omitting the words "British Association of Dermatologists, Queensland Branch" and substituting the words "Australasian College of Dermatologists (Queensland Faculty)".