

Queensland



**CO-OPERATIVE SCHEMES
(ADMINISTRATIVE ACTIONS)
ACT 2001**

Act No. 96 of 2001

Queensland



CO-OPERATIVE SCHEMES (ADMINISTRATIVE ACTIONS) ACT 2001

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Queensland



**Co-operative Schemes (Administrative
Actions) Act 2001**

Act No. 96 of 2001

**An Act relating to administrative actions by Commonwealth
authorities or officers of the Commonwealth under State co-operative
scheme laws, and for other purposes**

[Assented to 19 December 2001]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Co-operative Schemes (Administrative Actions) Act 2001*.

2 Main purpose of Act and its achievement

(1) The main purpose of this Act is to validate certain invalid administrative actions taken by Commonwealth authorities or officers of the Commonwealth under certain State co-operative scheme laws.

(2) The purpose is achieved primarily by giving the actions the effect they would have had if they had been taken by State authorities or officers of the State duly authorised to take the actions.

3 Definitions

The dictionary in the schedule defines particular words used in this Act.

4 Co-operative schemes to which Act applies—relevant State Acts

(1) A “**relevant State Act**” means the following—

- (a) the *Agricultural and Veterinary Chemicals (Queensland) Act 1994*;
- (b) the *National Crime Authority (State Provisions) Act 1985*;
- (c) another Act declared by an Act to be a relevant State Act;
- (d) a law applying as a law of the State by force of any Act mentioned in paragraph (a), (b) or (c).

(2) A regulation may declare the commencement time for a relevant State Act is a stated time of a stated day no later than the day the regulation is gazetted.

(3) This Act has effect for a commencement time declared under subsection (2) whether or not it has already had effect for an earlier commencement time.

(4) Subsections (2) and (3) apply despite the *Statutory Instruments Act 1992*, section 34.¹

5 Act binds all persons

This Act binds all persons, including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.

6 Administrative functions and powers conferred on Commonwealth authorities and officers

(1) A relevant State Act does not purport to confer a duty on a Commonwealth authority or an officer of the Commonwealth to perform a function, or to exercise a power, in relation to a matter arising under the relevant State Act if the conferral of the duty would be beyond the legislative power of the Parliament of the State.

(2) This section does not limit the operation of the *Acts Interpretation Act 1954*, section 9.²

PART 2—VALIDATION OF INVALID ADMINISTRATIVE ACTIONS

7 Invalid administrative actions to which pt 2 applies

This part applies to invalid administrative actions that have been taken, or have purportedly been taken, under a relevant State Act at or before the commencement time in relation to that Act.

1 *Statutory Instruments Act 1992*, section 34 (Beneficial retrospective commencement)

2 *Acts Interpretation Act 1954*, section 9 (Act to be interpreted not to exceed Parliament's legislative power)

8 Operation of pt 2

(1) This part extends to rights or liabilities arising between parties to a proceeding started at or before the commencement time in relation to a relevant State Act if an allegedly invalid administrative action is or was the subject of or relevant to the proceedings.

(2) However, this part does not affect rights or liabilities arising between parties to a proceeding heard and finally decided at or before the commencement time in relation to a relevant State Act to the extent to which the rights or liabilities arise from, or are affected by, an invalid administrative action.

(3) This part extends to administrative actions as affected by the operation of the *Agricultural and Veterinary Chemicals (Queensland) Act 1994*, section 28B.³

9 Effect of invalid administrative actions

Every invalid administrative action has, and is taken always to have had, the same effect for all purposes as it would have had if—

- (a) it had been taken, or purportedly taken, by a State authority or officer of the State; and
- (b) the relevant function or power had been duly conferred on that authority or officer.

10 Rights and liabilities declared in certain cases

(1) Without limiting section 9, the rights and liabilities of all persons are declared to be, and always to have been, for all purposes the same as if—

- (a) every invalid administrative action had been taken, or purportedly taken, by a State authority or officer of the State; and
- (b) the relevant function or power had been duly conferred on the authority or officer.

(2) A right or liability conferred or affected by subsection (1)—

- (a) is exercisable or enforceable; and

³ *Agricultural and Veterinary Chemicals (Queensland) Act 1994*, section 28B (Validation of actions of inspectors and analysts)

- (b) is taken to have been and to have always been exercisable or enforceable;

as if it were a right or liability conferred or affected by, or arising from, an administrative action of a State authority or officer of the State on which or whom the relevant function or power had been duly conferred.

(3) Any act or thing done or omitted to be done at or before the commencement time in relation to a relevant State Act under or in relation to a right or liability conferred or affected by subsection (1)—

- (a) has the same effect, and gives rise to the same consequences, for the purposes of any written or other law; and
- (b) is taken to have had and to have always had the same effect, and given rise to the same consequences, for any written or other law;

as if it were done, or omitted to be done, to give effect to, or under the authority of, or in reliance on, an administrative action of a State authority or officer of the State on which or whom the relevant function or power had been duly conferred.

11 Part applies to administrative actions as purportedly in force from time to time

(1) The purpose of this section is to ensure this part operates to give to an invalid administrative action that has subsequently been affected by another action or process no greater effect than it would have had if the administrative action, or any other relevant administrative action, had not been invalid on constitutional grounds (arising from the circumstances referred to in paragraphs (a) and (b) of the definition of “invalid administrative action” in the dictionary).

(2) If administrative action taken by a Commonwealth authority or an officer of the Commonwealth was affected, whether by way of modification, revocation or otherwise, at or before the commencement time in relation to a relevant State Act by any later administrative action or by any judicial process or by any administrative review process, this part applies to the administrative action as so affected from time to time.

(3) In this section, a reference to administrative action taken includes reference to administrative action purportedly taken, and a reference to administrative action affected in any way includes a reference to administrative action purportedly affected in that way.

PART 3—MISCELLANEOUS PROVISIONS

12 Corresponding authorities or officers

It is immaterial, for the purposes of this Act, that a Commonwealth authority or an officer of the Commonwealth does not have a counterpart in the State, or that the powers and functions of a counterpart State authority or a counterpart officer of the State do not correspond exactly or substantially with a Commonwealth authority or the officer of the Commonwealth.

13 Act not to give rise to liability against the State

(1) The State is not liable to any action, claim, demand or liability arising from the enactment, commencement or operation of this Act or the making, publication or operation of a regulation under section 4.

(2) Without limiting subsection (1), no proceeding lies against the State in relation to an administrative action affected by this Act, other than to the extent the proceeding would lie had this Act not been enacted or a regulation under section 4 not been made.

(3) In this section—

“**the State**” includes the following—

- (a) a State authority;
- (b) an officer of the State;
- (c) the Government of the State;
- (d) a Minister;
- (e) a statutory corporation, or other body, representing the State.

14 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may contain provisions of a savings or transitional nature consequent on the enactment of this Act or the making of a regulation under section 4.

(3) A regulation made under subsection (2)—

- (a) must declare it is a savings or transitional regulation; and
- (b) expires 1 year after it commences.

SCHEDULE

DICTIONARY

section 3

“administrative action” means an act or omission of an administrative or legislative nature, and includes any act or omission of an administrative nature that is done or omitted in the course of or ancillary to or preliminary to or subsequent to judicial proceedings, civil or criminal.

“commencement time” means, except as provided by section 4(2) and (3)—

- (a) for the *Agricultural and Veterinary Chemicals (Queensland) Act 1994* or the *National Crime Authority (State Provisions) Act 1985*—the time when section 4(1) commences; or
- (b) for another relevant State Act—the time when it becomes a relevant State Act under section 4(1).

“Commonwealth authority” means an authority or body, whether incorporated or not, established or continued in existence by or under an Act of the Commonwealth, but does not include the Federal Court of Australia, the Family Court of Australia or the Federal Magistrates Court.

“confer” includes impose.

“invalid administrative action” means an administrative action of a Commonwealth authority or an officer of the Commonwealth taken, or purportedly taken—

- (a) pursuant to a function or power conferred, or purportedly conferred, by or under a relevant State Act (the **“relevant function or power”**); and
- (b) in circumstances where the relevant function or power could not have been conferred on the authority or officer by a law of the Commonwealth the operation of which in the relevant respect was based on the legislative powers of the Parliament of the Commonwealth, including, for example, circumstances where

SCHEDULE (continued)

the authority or officer was, or purportedly was, under an express or implied duty to perform the function or exercise the power;

that was invalid because of the circumstances referred to in paragraphs (a) and (b), whether or not it was also invalid on any other ground.

“liability” includes a duty or obligation.

“officer of the Commonwealth” has the same meaning as in section 75(v) of the Constitution of the Commonwealth.

“relevant function or power” means a function or power referred to paragraph (a) of the definition “invalid administrative action”.

“relevant State Act” see section 4.

“right” includes an interest or status.