

PEST MANAGEMENT BILL 2001

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives of the Bill

The main policy objective of this Bill is to protect the Queensland public from:

- the health risks associated with pest control activities and fumigation activities; and
- the adverse results of the ineffective control of pests.

Pest control operators and fumigators (collectively referred to as “pest management technicians”) are currently regulated, by way of a licensing system, under Part 4, Division 7 of the *Health Act 1937* and Parts 10 and 12 of the *Health Regulation 1996*.

The Bill is the result of a comprehensive legislative review which was undertaken with the objective of developing a more efficient and effective system for the regulation of pest management activities taking into account:

- changes within the pest management industry including the development of new training programs based on nationally recognised competency standards;
- contemporary legislative standards including consistency with fundamental legislative principles; and
- regulatory reform principles including regulatory efficiency, National Competition Policy and the desirability of minimising red tape and costs to business.

Means of Achieving Objectives

The objectives of the Bill will be achieved mainly by:

- establishing a licensing regime to regulate pest management activities and ensure the activities are carried out by pest management technicians in a safe and competent way; and
- providing for compliance with the Bill to be monitored and enforced.

Application of the Bill

The Bill regulates pest management activities. A pest management activity is either a pest control activity or a fumigation activity.

A pest control activity means preparing a pesticide for use (including measuring, mixing or weighing the pesticide) or using a pesticide to:

- kill, stupefy or repel a pest; or
- inhibit the feeding of a pest; or
- modify the physiology of a pest to alter its natural development or reproductive capacity.

A fumigation activity means preparing a fumigant for use (including measuring, mixing or weighing the fumigant) or using a fumigant to kill a pest, sterilise grain or seed to prevent germination or perform another function prescribed under a regulation.

Pest management activities in respect of which the legislation does not apply are:

- pest control activities carried out by aerial distribution of an agricultural chemical product or the use of approved timber preservative treatments (these activities are regulated under other State legislation);
- pest control activities used in the production, or preparation for marketing or export, of agricultural or horticultural products (in their unprocessed form);
- fumigation activities carried out on farming properties in the production, or preparation for marketing or export, of agricultural or horticultural products;
- pest control activities being used in relation to processing grain or seed for use as food for animals;
- pest control activities relating to the caring for, or growing of, plants at a place that is primarily used for recreational or sporting activities;

- pest control activities being used to control a pest on an animal;
- pest control activities at residential premises carried out by the occupier (whether or not the owner of the premises) or the owner (if the premises are unoccupied); and
- pest control activities involving only pesticides ordinarily used for household use and packaged in a way they could ordinarily be bought from retail grocery stores.

In addition, a Regulation may exempt a pest management activity, or use of a type of pesticide or fumigant (or a form or concentration of same), from the application of the Bill, provided the activity could reasonably be expected to pose no, or only a negligible, health risk to any person.

Licensing of pest management technicians

The Bill makes it an offence for a person to carry out a pest management activity unless the person is a pest management technician who holds a licence for the activity, or a trainee who is being properly supervised by a technician licensed for the activity.

Unlike the existing legislation under which separate licences for pest control activities and fumigation activities are required, the Bill provides for a single licence which may be issued to an individual for any of the following classes of pest management activities:

- pest control activities (including activities for timber pests)
- pest control activities (excluding activities for timber pests)
- fumigation activities.

A person may only be granted a licence if the chief executive is satisfied that the person:

- is at least 17 years;
- is a suitable person to hold the licence applied for; and
- holds a pest management qualification relevant to the activity the person intends to carry out under the licence.

The pest management qualifications required for a licence will involve the attainment of recently developed national competency standards for pest management. The relevant competency standards for each of the above classes of pest management activities are to be prescribed by regulation.

In relation to the criteria for deciding whether a person is a suitable person to hold a licence, the Bill replaces outdated and subjective concepts in the existing licensing system (eg. fit and proper person) with more objective indicators such as:

- the person's skills and competency to carry out a pest management activity under the licence;
- whether the person held a licence under the legislation, or legislation in another jurisdiction, that was suspended or cancelled; and
- if the person has been convicted of a relevant offence (eg. an indictable offence or an offence against the legislation or corresponding legislation in another jurisdiction) - the nature of the offence and the circumstances of its commission.

The Bill imposes obligations on pest management technicians and other persons by providing for significant offences which:

- prohibit persons from advertising or holding out that they carry out a pest management activity unless they are licensed to carry out the activity (this does not apply to a person who carries on a business which provides a pest management activity which is carried out by a pest management technician licensed to carry out the activity);
- prohibit employers from permitting or requiring employees to carry out a pest management activity unless the employee is a pest management technician or a trainee who is properly supervised in relation to the carrying out of the activity;
- require persons who employ a trainee to ensure the trainee is properly supervised; and
- require pest management technicians to:
 - comply with the conditions of their licence; and
 - notify the chief executive of the occurrence of a notifiable incident ie. an exposure, spillage or other release of a pesticide or fumigant that adversely affects, or is likely to adversely affect, a person's health.

Estimated Cost for Government Implementation

As the Bill will replace the existing licensing system for pest control operators and fumigators under the *Health Act 1937* and the *Health Regulation 1996*, the Bill will not have any significant financial impact. Costs of approximately \$75,000, associated with public education and promotion activities in relation to the new legislation and the introduction of photo licences, are expected and will be met by Queensland Health.

Consistency with Fundamental Legislative Principles

Aspects of the Bill which raise possible fundamental legislative principles issues are outlined below.

Exemptions

Clause 10 enables a regulation to be made exempting a type of pest management activity, or use of a type of pesticide or fumigant (or a form or concentration of same), from the application of the Bill or a provision of the Bill. However, the clause prohibits any exemption of an activity that could reasonably be expected to pose more than a negligible health risk to any person.

This regulation-making power is necessary to deal with pest management activities to which the Bill would otherwise apply but do not involve any significant health risks. It would not be justifiable for licensing requirements to apply to persons performing those activities.

Notification of certain events

Clause 53 requires pest management technicians to notify the chief executive of certain events that may affect the technician's suitability to continue to hold a licence. It could be argued that the requirement compromises the technician's rights as this information could be used to take action against the technician.

However, the requirement is appropriate given the main object of the Bill is to protect the Queensland public from health risks associated with pest management activities and the adverse results of the ineffective control of pests. The notification of these matters will enable the chief executive to promptly identify whether circumstances exist requiring action to be taken to protect the public eg. by suspending or cancelling the technician's licence.

Powers of Entry

Clause 62 allows an inspector to enter, without the occupier's consent or a warrant, a building site or a place where the inspector reasonably believes that a pest management activity is being performed by a pest management technician, or where a pest management technician operates a business, and the place is open for carrying on business or otherwise open for entry. This power may not be exercised if the building site or place is a residential dwelling.

Given the potential health risks associated with the use and storage of pesticides and fumigants, the power to enter business premises and building sites is warranted to ensure that the requirements of the legislation are being complied with by licensed pest management technicians.

Reasonable excuse for failure to comply with document production requirement

Clause 86 makes it an offence for a person to fail to provide a document to an inspector unless the person has a reasonable excuse. The provision specifies that non-compliance on the basis of a tendency to incriminate the person is not a reasonable excuse. This provision may be regarded as compromising the person's protection against self-incrimination.

An inspector's power to require a person to produce a document or make a document available for inspection is limited to documents issued to, or required to be kept by, the person under the Bill, for example, a licence. Given the limited extent of this provision and the importance of such documents in achieving the objectives of the legislation, it is reasonable to require a person to comply with the requirement even if to do so might tend to incriminate the person.

Reversal of Onus of Proof

Clause 121 effectively provides that an act or omission of a person's representative (relating to a proceeding for an offence against the provisions of the Bill) is taken to have been done by the person, if the representative was acting within the scope of the representative's authority. The person will therefore be taken to have committed the relevant offence unless the person can prove that they could not, by the exercise of reasonable diligence, have prevented the act or omission.

Clause 122 provides that, if a corporation is convicted of an offence, each executive officer of the corporation is taken to have committed the offence of failing to ensure that the corporation complies with that provision. This clause therefore presumes an executive officer of the

corporation to be guilty until the officer can prove that the officer took all reasonable steps to ensure the corporation complied with the provision; or the officer was not in a position to influence the conduct of the corporation in relation to the offence.

These provisions effectively provide for the reversal of the onus of proof. However, given that the controls placed on the carrying out of pest management activities under the Bill are aimed at protecting the health of the public, it is appropriate that:

- persons be required to oversee the conduct of their representatives and, in doing so, make reasonable efforts to ensure that their employees and agents comply with the requirements of the legislation;
- an executive officer, who is in a position to influence the conduct of a corporate licensee, be required to ensure that the corporation complies with the legislation; and
- an executive officer, who is responsible for a contravention of the legislation, be accountable for his or her actions and not able to 'hide' behind the corporation.

The provisions are therefore warranted to ensure that there is effective accountability at a corporate level.

Immunity from Civil Liability

Clause 124 specifies that the chief executive, a State analyst, an inspector or a person acting under the direction of an inspector is not civilly liable for an act done, or omission made, honestly and without negligence under the Bill.

It is not considered appropriate that an individual be made personally liable as a consequence of that individual carrying out his or her responsibilities under the legislation in good faith. The clause prevents civil liability from being attached to the individual and in these circumstances the liability instead attaches to the State. The proposed immunity under this clause does not extend to an official who has been negligent, even though the official may have acted in good faith.

Consultation

Extensive consultation has been undertaken in relation to the Bill.

In 1998, a draft proposal for the policy framework for the new legislation was provided to the Australian Environmental Pest Managers' Association (AEPMA) (the peak industry body).

In 1999, public consultation on the proposed regulatory model for pest management technicians occurred as part of the Public Benefit Test undertaken in relation to the proposed legislation under the requirements of National Competition Policy.

In 2001, consultation on an exposure draft of the Bill was undertaken with key stakeholders including AEPMA, the 14 largest pest management businesses in Queensland, pesticide manufacturers/distributors, operators of commercial grain storage facilities, seed and grain merchants, stockfeed manufacturers and State and Local Government agencies.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 sets out the short title of the Act.

Clause 2 provides for the Act to commence on a day fixed by proclamation.

Clause 3 specifies that all persons, including the State, are bound by the Act but nothing in the Act makes the State liable to be prosecuted for an offence.

Clause 4 outlines the main object of the Act, which is to protect the Queensland public from health risks associated with pest control activities and fumigation activities and from the adverse results of the ineffective control of pests. This clause also sets out how the main object is to be achieved.

Clause 5 provides for a dictionary of certain terms used in the Act to be included as a schedule to the Act (Schedule 3).

Clause 6 contains definitions of terms used in Part 1, Division 2.

Clause 7 specifies the pest management activities to which the Act does not apply.

Clause 8 specifies that, without limiting clause 7(b), pest control activities being used in primary production mean activities in relation to unprocessed products before they are transported to a place where they are processed in another form. The purpose of the provision is to clarify that clause 7(b) does not extend to pest control activities carried out in facilities such as flour mills and sugar refineries where agricultural or horticultural products are processed from their original form into another form.

Clause 9 specifies that, despite pest control activities involving the use of household pesticides being excluded from the application of the Act under clause 7(i), the Act does apply to pest control activities carried out by persons using household pesticides as part of a pest control business. The purpose of this clause is to ensure that a person could not conduct a pest control business, using only household pesticides, without needing to hold a licence under the Act.

Clause 10 permits a regulation to be made exempting a type of pest management activity, or the use, or method of use, of a fumigant or pesticide, but only if the activity, method or use could be reasonably expected to pose no, or a negligible, health risk to any person.

PART 2—LICENCES

Clause 11 makes it an offence for a person to carry out a pest management activity unless the person is a pest management technician who holds a licence for the activity or a trainee who is being properly supervised by a pest management technician who holds a licence for the activity.

Clause 12 specifies that only an individual may apply for a licence.

Clause 13 specifies that a licence may not be transferred.

Clause 14 specifies the criteria that the chief executive may consider when deciding if a person is suitable to hold, or to continue to hold, a licence.

Clause 15 gives the chief executive power to require a person to undergo a health assessment by a doctor if the chief executive reasonably believes this is necessary when deciding if the person is a suitable person to hold, or to continue to hold, a licence, or to hold a licence proposed to be varied under clause 34(1). The term ‘health assessment’ means an assessment of

the person's physical and mental capacity to carry out a pest management activity under the licence.

Clause 15(3) requires the chief executive to give the person a notice stating specified details about the assessment.

Clauses 15(4) and (5) require the doctor who conducts the assessment to give the chief executive a written assessment report including the doctor's findings about the person's mental and physical capacity to carry out a pest management activity under the licence.

Clause 16 specifies that if an applicant is required to undergo a health assessment and fails to do so, without reasonable excuse, the person's application is taken to have been withdrawn. It should be noted that the failure of a pest management technician, who is not an applicant, to undergo an assessment, is a ground for suspension or cancellation of the technician's licence under clause 43.

Clause 17 prevents an assessment report from being used in any proceedings, other than a review or appeal started under Part 4. This is to ensure that assessment reports are used only for the purpose for which they were created and not for any other kind of action.

Clause 18 creates an entitlement for doctors who conduct health assessments and prepare assessment reports to be paid by the chief executive.

Clause 19 sets out the requirements for an application for a licence.

Clause 20 enables the chief executive to require an applicant for a licence to provide further information or documentation the chief executive reasonably requires to decide the application. If an applicant fails to comply with the requirement, the application is taken to have been withdrawn.

Clause 21 specifies that the chief executive must consider an application for a licence and either grant or refuse the application. Clause 21(2) specifies that the chief executive may grant the application only if the applicant is at least 17 years, is a suitable person to hold the licence and holds a pest management qualification relevant to a pest management activity the applicant intends to carry out under the licence. The term 'pest management qualification' is defined in the dictionary in Schedule 3 of the Bill.

Clauses 21(3) and (4) set out the notification requirements in relation to decisions about applications for a licence.

Clause 22 sets out the timeframes within which the chief executive must decide an application for a licence and specifies that if the application is not decided within these timeframes, the application is taken to have been refused. These timeframes may be extended under clause 23.

Clause 23 enables the chief executive to extend the timeframes specified in clause 22 because of the complexity of the issues that need to be considered in deciding the application. The chief executive is required to notify the applicant that the timeframe for deciding the application has been extended.

Clause 24 specifies that a licence must be in the approved form, which must include at least the information specified in clause 24(2). There is nothing to prevent the inclusion of additional information in the approved form.

Clause 25 specifies that a licence may be issued for a period of up to 5 years.

Clause 26 specifies the standard conditions on which a licence must be issued. Clause 26(2) enables the chief executive to impose additional conditions on a licence if the chief executive reasonably considers the conditions are necessary or desirable to protect persons from health risks associated with a pest management activity.

Clause 27 makes it an offence for a licensee to contravene a condition on which a licence is issued. Clause 27(2) clarifies that the penalty may be imposed whether or not the licence is cancelled or suspended because of the contravention.

Clause 28 requires the chief executive to give licensees at least 60 days notice of the expiry of their licence.

Clause 29 specifies the timeframes within which an application for renewal of a licence must be made by a pest management technician and sets out the procedural requirements for the application.

Clause 30 enables the chief executive to require an applicant for the renewal of a licence to provide further information or documentation the chief executive reasonably requires to decide the application. If the applicant fails to comply with the requirement, the application is taken to have been withdrawn.

Clause 31 specifies that the chief executive must consider an application for renewal of a licence and either grant or refuse the application. Clause 31(2) specifies that the chief executive may grant the application only if satisfied the applicant is a suitable person to continue to hold the licence.

This means that the chief executive may consider the matters set out in clause 14 but can not refuse to renew a licence on a ground related to the applicant's qualifications (referred to in clause 21(2)).

Clauses 31(3) to (5) set out what action the chief executive must take after deciding an application and specify that, if the chief executive decides to grant the application before the expiry of the licence, the new licence takes effect from immediately after the expiry of the expiring licence.

Clause 32 specifies that if a pest management technician applies for renewal under clause 31, the technician's licence remains in force until the end of the renewed term (if the application is granted), or the day the application is withdrawn, or the day the information notice is given (if the application is refused).

Clause 33 enables the chief executive to vary a licence, in relation to the pest management activity that may be carried out under the licence, or the conditions of the licence, if the chief executive considers the variation is necessary or desirable to protect persons from health risks associated with a pest management activity that may be carried out under the licence.

Clauses 33(3) to (5) set out the process which must be followed by the chief executive before making a variation and also require the chief executive to give the pest management technician an information notice if a decision is made to vary the licence.

Clause 34 specifies that a pest management technician may apply to the chief executive to vary the technician's licence, in relation to the pest management activity that may be carried out under the licence, or the conditions of a licence. Clause 34(2) sets out the requirements for an application to vary a licence.

Clause 35 enables the chief executive to require the applicant to provide further information or documentation the chief executive reasonably requires to decide the application. If the applicant fails to comply with the requirement, the application is taken to have been withdrawn.

Clause 36 specifies that the chief executive must consider an application for variation of a licence and either grant or refuse the application. Clause 36(2) specifies the criteria in respect of which the chief executive must be satisfied before deciding to grant an application for variation of a licence.

Clauses 36(3) to (5) set out the notification requirements in relation to decisions about variations to a licence and specify when a variation takes effect.

Clause 37 sets out the timeframes within which the chief executive must decide an application for variation of a licence and specifies that if the application is not decided within these timeframes, the application is taken to have been refused. These timeframes may be extended under clause 38.

Clause 38 enables the chief executive to extend the timeframes specified in clause 37 because of the complexity of the issues that need to be considered in deciding the application. The chief executive is required to notify the applicant that the timeframe for deciding the application has been extended.

Clause 39 makes it an offence for a pest management technician to fail to return the licence to the chief executive within 7 days after receiving a variation notice or an information notice, unless the technician has a reasonable excuse. Clause 39(2) requires the chief executive, upon receipt of the licence, to issue a new licence to the technician.

Clause 40 enables a pest management technician to apply to the chief executive for replacement of a licence that has been damaged, destroyed lost or stolen and outlines the procedural requirements for an application.

Clause 41 specifies that the chief executive must consider the application and either grant or refuse the application. Clauses 41(3) and (4) set out the notification requirements in relation to decisions about the replacement of a licence.

Clause 42 enables a pest management technician to surrender a licence and specifies when the surrender takes effect. Clause 42(3) makes it an offence for a technician who surrenders a licence to fail to return the licence to the chief executive within 7 days after the surrender takes effect.

Clause 43 sets out the grounds for suspending or cancelling a licence.

Clause 44 provides that the chief executive must give a show cause notice to a pest management technician if the chief executive believes a ground exists to suspend or cancel the licence. However, where the ground involves a contravention of the Act, the provision allows the chief executive to give a compliance notice to the technician under clause 89 to rectify the matter to which the ground relates, rather than giving a show cause notice. If the technician fails, without a reasonable excuse, to comply with the compliance notice, the chief executive must proceed to give a show cause notice.

Clause 44(3) sets out the particulars that a show cause notice must contain.

Clause 45 specifies that the pest management technician may make written representations about the action the chief executive proposes to take.

Clauses 46 and 47 outline the procedures to be followed after written representations (if any) are made by a pest management technician to the chief executive in response to a show cause notice. These clauses provide that, after considering such representations, the chief executive:

- must notify the technician where no further action is to be taken; or
- where the chief executive still believes there are grounds for suspending or cancelling the licence, may suspend or cancel the licence in accordance with the proposed action stated in the show cause notice and must immediately give an information notice about the decision to the technician.

Clause 48 makes it an offence for a pest management technician not to return the licence to the chief executive within 7 days after receiving an information notice.

Clause 49 sets out the grounds and procedures for the immediate suspension or cancellation of a licence.

Clause 50 makes it an offence for a person to advertise or hold out that the person carries out a pest management activity, unless the person is licensed to carry out the activity. This is one of the key offence provisions in the Bill and its object is to ensure that the public is protected by preventing unlicensed (and potentially incompetent) persons from carrying on a pest management business.

Clauses 50(2) and (3) allow unlicensed persons to advertise or hold out that they carry on the business of providing a pest management activity if the activity is carried out by a pest management technician who is licensed to carry out the activity.

Clause 51 makes it an offence for a person to permit or require their employee to carry out a pest management activity unless the employee is:

- a pest management technician authorised to carry out the activity under the technician's licence; or
- a trainee who is properly supervised in relation to the carrying out of the activity.

The terms 'trainee' and 'properly supervised' are defined in the dictionary in Schedule 3 of the Bill.

Clause 52 makes it an offence for a person who employs a trainee to fail to ensure the trainee is properly supervised.

Clause 53 makes it an offence for pest management technician to fail to notify the chief executive within 21 days after the technician becomes aware of the happening of certain events ie. the technician is convicted of a relevant offence or a licence held by the technician under a corresponding law is suspended or cancelled.

The terms ‘relevant offence’ and ‘corresponding law’ are defined in the dictionary in Schedule 3 of the Bill.

Clause 54 makes it an offence for a pest management technician to fail to notify the chief executive within 21 days after the happening of a change in the technician’s circumstances prescribed under a regulation.

PART 3—MONITORING, INVESTIGATION AND ENFORCEMENT

Clause 55 authorises the chief executive to appoint an officer of the department (ie a public service employee) or a health service employee as an inspector provided that the chief executive considers the person has the necessary expertise or experience to be an inspector.

Clause 56 specifies that an inspector holds office on the conditions stated in the person’s instrument of appointment, a signed notice given to the person, or a regulation and that the instrument of appointment, signed notice or regulation may limit the inspector’s powers under the Act.

Clause 57 requires the chief executive to provide each inspector with an identity card containing a recent photo of the person and other relevant particulars.

Clause 58 requires an inspector to produce the inspector's identity card before exercising any power under the Act or display the card when exercising the power. However, if it is not practical to comply with this requirement, the inspector must produce the card at the first reasonable opportunity.

Clause 59 specifies the circumstances under which an inspector ceases to hold office.

Clause 60 specifies how an inspector may resign.

Clause 61 makes it an offence for a person who ceases to be an inspector, without a reasonable excuse, to fail to return the person's identity card to the chief executive within 21 days after ceasing to be an inspector.

Clause 62 sets out the circumstances in which an inspector may enter a place. In addition to the 'standard' power to enter public places or places if the entry is with the consent of the occupier or a warrant, an inspector may also enter a building site (as defined) and the following places (if open for business or otherwise open for entry):

- the pest management technician's place of business;
- a place where a person carries on business of providing a pest management activity by employing pest management technicians; and
- a place where the inspector believes a pest management activity is being carried on by a pest management technician.

Clauses 62(3) and (4) make it clear the entry powers, other than those that may be exercised only by consent or warrant, do not apply to places, or parts of places, where an individual resides.

Clause 63 outlines the procedures an inspector must follow when seeking consent to enter a place. Clauses 63(6) and (7) provide that, should the issue arise in a proceeding whether the occupier consented to the entry, the onus is on the person relying on the lawfulness of the entry to prove that the occupier consented to the entry.

Clause 64 makes provision for an inspector to apply to a Magistrate for a warrant to enter a place.

Clause 65 sets out the conditions under which a Magistrate may issue a warrant and specifies the information that must be stated in a warrant.

Clause 66 makes provision for an inspector to apply for a warrant by phone, fax, radio or another form of communication because of urgent or other special circumstances.

Clause 67 outlines the procedures that must be followed by an inspector prior to entering a place under a warrant.

Clause 68 authorises an inspector to ask or signal a person in charge of a motor vehicle to stop the vehicle if the inspector suspects on reasonable grounds that a thing in or on the vehicle may provide evidence of the commission of an offence against the Act. Clause 68(5) authorises an inspector to give directions that a stationary vehicle not be moved, or be moved and kept at a stated reasonable place. After stopping a vehicle, an

inspector would only be authorised to enter the vehicle with the consent of the occupier or a warrant.

Clause 69 specifies what powers are available to an inspector who has entered a place for the purposes of monitoring and enforcing compliance with the Act.

Clause 70 makes it an offence for a person to fail to help an inspector under clause 69(3)(f), unless the person has a reasonable excuse.

Clause 71 makes it an offence for a person to fail to provide an inspector with information asked for under clause 69(3)(g), unless the person has a reasonable excuse.

Clause 72 provides an inspector with the power to seize a thing at a place entered, without consent or a warrant, if the inspector reasonably believes that the thing is evidence of an offence against the Act.

Clause 73 provides an inspector with the power to seize a thing at a place if:

- the inspector obtained the necessary consent to enter the place; and the inspector reasonably believes that the thing is evidence of an offence against the Act; and seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent; or
- the inspector is authorised to enter the place under a warrant and the seizure is authorised by the warrant; or
- the inspector reasonably believes another thing at the place is evidence of an offence against the Act and needs to be seized to secure evidence or to prevent repeat offences; or has just been used in committing an offence against the Act.

Clause 74 specifies the steps an inspector may take in relation to a thing which has been seized ie. move the thing from the place where it was seized; leave the thing at the place of seizure but restrict access to it; or make any seized equipment inoperable.

Clause 75 makes it an offence for a person to interfere, or attempt to interfere, with action taken by an inspector to restrict access to seized things or make seized equipment inoperable, without an inspector's approval.

Clause 76 makes provision for an inspector to require the person in control of a thing which is to be seized, to take it to a stated reasonable

place by a stated reasonable time; and if necessary, to remain in control of it at the stated place for a reasonable time.

Clause 77 requires an inspector to issue a receipt for any seized thing and to give the receipt to the person from whom the thing was seized. However, if this is impractical, the inspector must leave the receipt at the place of seizure in a conspicuous position and in a secure way.

Clause 78 sets out the circumstances under which a seized thing is forfeited to the State, namely, if the inspector cannot find the owner after making reasonable inquiries, or cannot return the thing to its owner, after making reasonable efforts, or the inspector reasonably believes it is necessary to keep the thing to prevent it being used to commit an offence against the Act. In the latter situation, the inspector must give the owner an information notice in relation to the decision.

Clause 79 makes provision for a court to order, on convicting a person for an offence against the Act, the forfeiture to the State of anything that has been seized.

Clause 80 enables the chief executive to deal with a thing which has been forfeited to the State, as the chief executive considers appropriate, including the destruction or disposal of the thing. However, the chief executive must not deal with the thing in a way that could prejudice the outcome of a relevant appeal.

Clause 81 specifies when an inspector must return a seized thing to its owner, if the thing has not been forfeited.

Clause 82 provides for the owner of any seized thing to have access to it for inspection or copying (if a document) until it is forfeited or returned.

Clause 83 enables an inspector, if an offence has or appears to have been committed against the Act, to require a person to state the person's name and residential address, and to produce evidence of the correctness of the stated name or address. When making such a requirement, the inspector must warn the person it is an offence to fail to state the person's name or address, unless they have a reasonable excuse.

Clause 84 makes it an offence for a person, without a reasonable excuse, to fail to comply with a request made under clause 83, unless the person has a reasonable excuse. However, a person does not commit an offence by not complying with such a request if it is not proven that the person committed an offence against the Act.

Clause 85 makes provision for an inspector to:

- require a person to produce, for inspection, a document which has been issued to the person under the Act, or is required to be kept by the person under the Act; or
- require a person to certify that a copy of the document or an entry in a document is a true copy; or
- keep a document until such time as a copy of the document or an entry in a document is certified as a true copy.

Clause 86 makes it an offence for a person to fail to comply with a request made under section 85 to produce a document, unless the person has a reasonable excuse. *Clause 86(2)* provides that it is not a reasonable excuse for a person to fail to produce a document if doing so might tend to incriminate the person. The rationale for removing the protection against self-incrimination is discussed in the General Outline section of these Notes.

Clause 87 makes it an offence for a person to fail to comply with a request made under section 85 to certify a document, unless the person has a reasonable excuse.

Clause 88 enables an inspector to require a person, by written notice, to attend before the inspector to provide information about an offence against the Act. It is an offence for a person to fail to comply with such a request, unless the person has a reasonable excuse.

Clause 89 enables the chief executive or an inspector to issue a compliance notice to a person if:

- the chief executive or inspector reasonably believes that:
 - the person is contravening a provision of the Act or has contravened same in circumstances that make it likely that the contravention would continue or be repeated; and
 - the matter is reasonably capable of being rectified and it is appropriate to give the person an opportunity to rectify the matter; and
- if the matter relates to a ground to suspend or cancel a pest management technician's licence, the chief executive has not give a show cause notice to the technician under clause 44.

Clauses 89(3) and (4) specify the particulars that a compliance notice must contain and make it an offence for a person to fail to comply with a compliance notice, unless the person has a reasonable excuse.

Clause 90 requires an inspector to give written notice if the inspector, or a person acting under the direction or authority of the inspector, damages property when exercising or purporting to exercise a power. The notice must set out the particulars of the damage and be given to the person who appears to be the owner of the property. However, if this proves impractical, the inspector must leave the notice in a conspicuous position and in a secure way.

Clause 91 makes provision for a person to be compensated by the State, where the person has incurred loss or expense because of the exercise or purported exercise of a power by an inspector under the following subdivisions of Division 2 of Part 3:

- Subdivision 1 - Powers to enter places
- Subdivision 3 - Powers after entry
- Subdivision 4 - Power to seize evidence

Clause 92 makes it an offence for a person to state anything to an inspector that the person knows is false or misleading in a material particular.

Clause 93 makes it an offence to give an inspector a document containing information that the person knows is false or misleading in a material particular.

Clause 94 makes it an offence to obstruct an inspector in the exercise of a power, unless the person has a reasonable excuse.

Clause 95 makes it an offence to pretend to be an inspector.

Clause 96 sets out the steps that an inspector must take in relation to a thing which the inspector has taken or seized, and which must be analysed by a State analyst. The steps involve dividing the thing into 3 parts, sealing or fastening each part to prevent tampering, and labelling each part with specified details.

Clause 97 provides for the chief executive to appoint an officer of the department (ie a public service officer) or a health service employee as a State analyst provided the chief executive considers the person has the necessary expertise or experience to be a State analyst.

Clause 98 specifies that a State analyst holds office on the conditions stated in the person's instrument of appointment, a signed notice given to the person, or a regulation and that the instrument of appointment, signed notice or regulation may limit the State analyst's powers.

Clause 99 specifies the circumstances under which a State analyst ceases to hold office.

Clause 100 specifies that a State analyst may resign by signed notice given to the chief executive.

Clause 101 makes provision for a State analyst to issue a certificate of analysis for a thing taken or seized by an inspector.

Clause 102 specifies that a certificate of analysis must include information about the methodology used to conduct the analysis.

PART 4—REVIEWS AND APPEALS

Clause 103 specifies that persons who are given, or entitled to be given, an information notice for an original decision may appeal against the decision under Part 4 of the Act. For information purposes, Schedule 1 sets out the decisions for which information notices must be given. Clause 103(2) requires appeals against an original decision to be made, in the first instance, by way of an application for internal review.

Clause 104 specifies that the person may apply to the chief executive for a review of the original decision.

Clause 105 sets out the process and timeframes for the lodgement of an application for the review of an original decision.

Clause 106 enables the chief executive, after reviewing the original decision, to make a further decision to confirm the original decision, amend the original decision or substitute another decision for the original decision. Clauses 106(2) to (4) set out the chief executive's obligations in relation to the notification of the review decision.

Clause 107 makes provision for the District Court to stay the operation of an original decision, if an application has been lodged for the review of this decision.

Clause 108 enables a person to appeal to the District Court where the person is dissatisfied with a review decision made by the chief executive. Division 2 of Part 4 is to be read in conjunction with the provisions of the *Uniform Civil Procedure Rules 1999* which deal with appeals to the District Court.

Clause 109 specifies where an appeal may be started and the timeframes for filing the notice of appeal.

Clause 110 makes provision for the District Court to stay the operation of a review decision made by the chief executive, where an appeal has been made to the Court regarding that decision.

Clause 111 specifies the powers that the District Court has in deciding an appeal and provides that an appeal is by way of rehearing.

Clause 112 sets out what actions the District Court may take in deciding an appeal.

Clause 113 specifies that a person aggrieved by the District Court's decision may appeal to the Supreme Court, but only on a question of law.

PART 5—LEGAL PROCEEDINGS

Clause 114 specifies that Part 5 applies to a proceeding under the Act.

Clauses 115 to 117 specify those matters which do not have to be proved in a proceeding under the Act, or which are considered to be evidence of those matters.

Clause 118 provides for offences under the Act to be dealt with as summary offences and specifies the period within which proceedings for an offence can be commenced.

Clause 119 provides for the recovery of costs where a court convicts a person of an offence against the Act.

Clause 120 provides that an application under clause 119 is to be heard in the court's civil jurisdiction and is to be decided on the balance of probabilities.

Clause 121 specifies that an action or omission of a person's representative, in relation to an offence against the Act, is taken to have been done by the person, if the representative was acting within the scope of the representative's authority. However, the person can utilise the defence provided for under this provision and prove that they could not, by the exercise of reasonable diligence, have prevented the act or omission. The rationale for this provision is discussed in the General Outline section of these Notes.

Clause 122 places an obligation on the executive officers of a corporation to ensure that the corporation complies with the legislation. As such, this provision creates an offence on the part of each executive officer in situations where the corporation has committed an offence against this Act. However, it is a defence for an executive officer to prove that he or she exercised reasonable diligence to ensure the corporation complied with the provision, or were not in a position to influence the conduct of the corporation in relation to the offence. The rationale for this provision is discussed in the General Outline section of these Notes.

PART 6—MISCELLANEOUS

Clause 123 makes it an offence for a pest management technician to fail, without a reasonable excuse, to notify the chief executive about the occurrence of a notifiable incident (as defined in clause 123(5)). Clauses 123(2) and (3) specify the timeframes for giving of the notice and the particulars that must be included in the notice.

Clause 124 specifies that the persons referred to in clause 124(3) who have a role in the administration of the Act are not civilly liable for an act or omission, made honestly and without negligence, under the Act. Instead, such liability attaches to the State.

Clause 125 empowers the chief executive to disclose to a foreign regulatory (as defined in Schedule 3) information obtained about a person who is, or was, a pest management technician or an applicant for a licence. The information (eg. that a pest management technician's licence was cancelled or suspended) may only be disclosed if the disclosure is necessary for the foreign regulatory authority to perform its functions.

Clause 126 makes it an offence for a relevant person (referred in clause 126(1)) to disclose information about a person's health obtained by the relevant person in the course of performing the relevant person's functions under the Act (eg. information obtained as a result of a health assessment carried out under clause 15). Clause 126(3) specifies the circumstances under which the above information may be disclosed.

Clause 127 authorises the chief executive to disclose whether or not an individual is a pest management technician as well as specified information about a technician's licence and the technician's employment or business.

The purpose of this clause is to enable the relevant information to be disclosed in response to inquiries made by the public.

Clause 128 authorises the chief executive to delegate the chief executive's powers under the Act to an appropriately qualified employee of the department, with the exception of the power to review decisions under Division 1 of Part 4.

Clause 129 authorises the chief executive to approve forms for use under the Act.

Clause 130 provides that the Governor in Council may make regulations under the Act and specifies the matters about which a regulation may be made.

PART 7—SAVING AND TRANSITIONAL PROVISIONS

Clause 131 defines certain terms used in Part 7.

Clause 132 specifies that references to a repealed provision (Division 7 of Part 4 of the *Health Act 1937* and Parts 10 and 12 of the *Health Regulation 1996*) or a provision of repealed provision may, if the context permits, be taken as a reference to the Act or a provision of the Act.

Clause 133 provides that existing pest control operator's licences and fumigator's licences are taken to be licences under the Act to carry out a pest control activity (including an activity for timber pests) and a fumigation activity respectively. *Clause 133(2)* specifies that the licences are taken to have been issued on the same conditions to which they were subject prior to the Act commencing and to the 'standard' conditions under *clause 26(1)*.

Clauses 134 and 135 set out the renewal arrangements that will apply to existing restricted pest control operator's licences (ie. those which restrict the licensee to the use of specified pesticides) and fumigator's licences which are taken to be licences under the Act under *clause 133*.

The effect of these clauses is that when such licences are first renewed after the Act commences, they will expire 2 years after the date the Act commences and will not be able to be renewed for the next licence term unless the applicant holds a relevant pest management qualification (ie. the same qualification required by under *clause 21(2)* for a new licence). This

will give licensees sufficient time to undertake any additional training necessary to attain the new qualifications.

As these licences will fall due for first renewal on various dates but will be renewed to expire on the same date, clause 134(3) makes provision for the application fee for the renewal of the licences to be calculated on a pro rata basis.

Clauses 136 and 137 apply to licences under clause 133(1) that are not restricted licences. The effect of the provisions is that, as from the day 2 years after the Act commences ('the determining day'), holders of these licences will not be permitted to carry out a pest management activity for timber pests unless they hold a pest management qualification that includes the competency standard prescribed in a regulation for a pest management activity for timber pests.

Clause 136(3) makes it an offence for a technician who does not hold the relevant qualification to fail to return the technician's licence to the chief executive within 7 days after the determining day. Clause 136(4) requires the chief executive, upon receipt of the licence, to issue a new licence.

Clause 137 sets out the notification obligation that applies to the chief executive if it appears to the chief executive that a licence will be affected by clause 136(2).

Clause 138 provides that a pending application for a licence under a repealed provision is taken to be an application for a licence under the Act. Clause 138(2) specifies that an application for renewal of a licence under a repealed provision is taken to be a first renewal application (in the case of a restricted licence or a licence under clause 133(2)) or an application under clause 29 (in the case of a licence under clause 133(1) that is not a restricted licence).

Clause 139 provides for the continuation of show cause proceedings commenced under the *Health Regulation 1996* for the suspension or cancellation of an existing licence.

Clause 140 provides for the continuation of a suspension of a licence under a repealed provision.

Clause 141 provides for the commencement or continuation of proceedings for an offence against a repealed provision, as if the Act had not been commenced.

Clause 142 clarifies that a thing seized as evidence under a repealed provision is taken to have been properly seized under the Act.

Clause 143 specifies that an appeal that was commenced, or could have been commenced, under a repealed provision, may be commenced and decided by the Minister as if the Act had not commenced.

Clause 144 clarifies that the amendment of the *Health Regulation 1996* by Part 8 and Schedule 2 does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

PART 8—AMENDMENT OF ACTS AND REGULATIONS

Clause 145 provides that Schedule 2 amends the legislation mentioned in it.

SCHEDULE 1

Schedule 1 lists those decisions made under the Act for which information notices must be given and which therefore may be subject to internal review or appeal.

SCHEDULE 2

Schedule 2 corrects a minor error in the *Dental Practitioners Registration Act 2001* and provides for the repeal of Part 4, Divisions 7 and 8 the *Health Act 1937* and Parts 10 and 12 of the *Health Regulation 1996*.

SCHEDULE 3

Schedule 3 defines certain terms used in the Act.