



# **Chemical Usage (Agricultural and Veterinary) Control Act 1988**

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Queensland

# Chemical Usage (Agricultural and Veterinary) Control Act 1988

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title . . . . .	5
2	Commencement . . . . .	5
4	Definitions . . . . .	5
4A	Words and expressions used in Agvet Code and this Act . . . . .	6
4B	Appointment of standards officers . . . . .	6
4C	Powers and functions of standards officers . . . . .	6
4D	Delegation by standards officer . . . . .	6
5	Appointment of inspectors and analysts . . . . .	6
5A	Limitation of inspector's powers . . . . .	7
5B	Inspector's identity card . . . . .	7
5C	Production or display of inspector's identity card . . . . .	7
6	Maximum residue limit . . . . .	8
<b>Part 2</b>	<b>Use of chemicals and substances having chemical residues</b>	
<b>Division 1</b>	<b>Chemicals generally</b>	
7	Use of registered agricultural and veterinary chemical products taken from unlabelled containers . . . . .	8
8	Use of controlled chemicals . . . . .	9
9	Person not to possess or use proscribed chemical . . . . .	9
10	Person not to dispose of package or chemical in improper manner . . . . .	10
11	Claims inconsistent with labels . . . . .	10
11A	Claims about unregistered chemicals . . . . .	10
11B	Use of package that contained chemical . . . . .	11
11C	Governor in Council may proscribe chemicals . . . . .	12
<b>Division 2</b>	<b>Veterinary chemical products</b>	
<b>Subdivision 1</b>	<b>Registered veterinary chemical products</b>	

Contents

---

12	Use of registered veterinary chemical products . . . . .	12
12A	Use by veterinary surgeon on animals other than major trade species 13	
12B	Use by veterinary surgeon on major trade species animals . . . .	13
12C	Supply by veterinary surgeon to others . . . . .	14
12D	Use by other persons in way stated in veterinary surgeon's instructions 14	
<b>Subdivision 2</b>	<b>Unregistered veterinary chemical products</b>	
12E	Use of unregistered veterinary chemical products . . . . .	15
12F	Use by veterinary surgeon . . . . .	16
12G	Supply by veterinary surgeon to others . . . . .	16
12H	Use by other persons in way stated in veterinary surgeon's instructions 17	
<b>Subdivision 3</b>	<b>Compounded veterinary chemical products</b>	
12I	Use of compounded veterinary chemical products . . . . .	17
12J	Use by veterinary surgeon . . . . .	18
12K	Supply by pharmacist . . . . .	18
12L	Use by other persons in way stated in written instructions . . . .	18
<b>Subdivision 4</b>	<b>Information to be given by veterinary surgeon or pharmacist about the treatment of an animal</b>	
12M	Information to be given by veterinary surgeon or pharmacist . . .	19
12N	Information to be included in instructions . . . . .	20
12O	Instructions must be kept . . . . .	21
<b>Subdivision 5</b>	<b>Information to be given by person other than veterinary surgeon or pharmacist</b>	
12P	Information to be given to person in charge of animal . . . . .	21
12Q	Information to be included in written advice . . . . .	22
<b>Subdivision 6</b>	<b>Records to be kept</b>	
12R	Records to be kept by veterinary surgeon . . . . .	23
<b>Subdivision 7</b>	<b>Withholding period</b>	
12S	Meaning of withholding period . . . . .	25
12T	Identification of animals to which withholding period applies . . .	25
12U	Notice of treatment on supply of trade species animal . . . . .	26
12V	Observance of withholding period . . . . .	27
<b>Division 3</b>	<b>Agricultural chemical products</b>	
<b>Subdivision 1</b>	<b>Preliminary</b>	
12W	Definitions for div 3 . . . . .	27

<b>Subdivision 2</b>	<b>General provisions</b>	
13	Use of registered agricultural chemical products in contravention of labels . . . . .	28
13A	Use of unregistered agricultural chemical products . . . . .	28
13B	Compliance with instructions . . . . .	29
<b>Subdivision 3</b>	<b>Great Barrier Reef protection measures</b>	
13C	Prescribed agricultural ERA products and conditions . . . . .	30
13D	Compliance with prescribed agricultural ERA condition . . . . .	31
13E	Use etc. of registered agricultural ERA products for agricultural ERAs 32	
<b>Division 4</b>	<b>Chemical residues</b>	
14	Recall of chemicals etc. . . . .	32
15	General requirement to report chemical residues in relevant thing	33
15A	Requirement for particular persons to report chemical residues in relation to trade species animals . . . . .	34
16	Agricultural produce etc. containing chemical residues not to be used etc. . . . .	35
17	Approval to use etc. agricultural produce etc. or cultivate plants, or graze or keep trade species animals, on land . . . . .	38
18	Destruction of agricultural produce etc. at direction of chief executive	39
19	Standards officer may cause notice under section 18 to be complied with 40	
<b>Part 3</b>	<b>Miscellaneous</b>	
20	Powers of inspectors . . . . .	41
21	Warrants . . . . .	45
21A	Review of particular decisions . . . . .	46
22	Right of appeal to Magistrates Court for decision to seize . . . . .	46
22A	How to start appeal . . . . .	46
22B	Stay of operation of decisions . . . . .	47
22C	Hearing procedures . . . . .	47
22D	Powers of court on appeal . . . . .	47
22E	Appeal to District Court . . . . .	48
24	Production of records . . . . .	48
25	Obstruction of inspector . . . . .	48
26	Tampering with seals, samples, etc. . . . .	49
27	Analyst's report . . . . .	49
28	Prosecutions generally . . . . .	50
28A	Application of Justices Act 1886, s 76, not limited . . . . .	51

# Chemical Usage (Agricultural and Veterinary) Control Act 1988

## Contents

---

28B	Not an offence to act under direct supervision . . . . .	51
29	Expenses of analysis to be paid by offenders on conviction . . . .	51
30	Responsibility for acts or omissions of representatives . . . . .	51
30A	Liability of executive officer—particular offences committed by corporation . . . . .	52
31	Executive officer may be taken to have committed offence . . . .	53
32	Forfeiture to Crown . . . . .	54
33	Supervision by inspector . . . . .	55
34	Evidence, etc. . . . .	55
38	Regulation-making power . . . . .	57
<b>Part 4</b>	<b>Transitional provision for Agricultural and Veterinary Chemicals Legislation Amendment Act 2002</b>	
39	Exemptions revoked . . . . .	59
<b>Schedule</b>	<b>Dictionary . . . . .</b>	<b>60</b>

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# Chemical Usage (Agricultural and Veterinary) Control Act 1988

**An Act to control the use of certain chemicals and the use of substances in or on which is the residue of certain chemicals and for related purposes**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*.

### **2 Commencement**

- (1) This section and section 1 shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.
- (2) Except as provided by subsection (1), this Act or the provisions thereof specified in the proclamation shall commence on the day or days appointed by proclamation for the commencement of this Act or, as the case may be, those provisions.

### **4 Definitions**

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

#### **4A Words and expressions used in Agvet Code and this Act**

- (1) Words and expressions used in the Agvet Code and this Act have the same meanings in this Act as they have in the Agvet Code.
- (2) Words and expressions mentioned in subsection (1) that are expressly defined in section 3 of the Agvet Code are also signposted in the dictionary.

#### **4B Appointment of standards officers**

A standards officer and deputy standards officers may be employed under the *Public Service Act 2008*.

#### **4C Powers and functions of standards officers**

- (1) The standards officer has the functions and powers given to the officer under this or another Act.
- (2) A deputy standards officer has the functions and powers given to the officer under this Act or by the standards officer.

#### **4D Delegation by standards officer**

The standards officer may delegate to a deputy standards officer or another officer of the department the standards officer's powers under this or another Act, including any powers delegated to the standards officer under this or another Act.

#### **5 Appointment of inspectors and analysts**

- (1) The chief executive may appoint a person to be an inspector or analyst.
- (2) The chief executive may appoint a person as an inspector or analyst only if the chief executive is satisfied that the person has the necessary expertise or experience.
- (3) In this section—



*inspector* does not include the standards officer or a deputy standards officer.

## **5A Limitation of inspector's powers**

The powers of an inspector may be limited—

- (a) under a regulation; or
- (b) under a condition of appointment; or
- (c) by written notice of the chief executive given to the inspector.

## **5B Inspector's identity card**

- (1) The chief executive must give each inspector an identity card.
- (2) The identity card must—
  - (a) contain a recent photograph of the inspector; and
  - (b) be signed by the inspector; and
  - (c) identify the person as an inspector under this Act.
- (3) A person who ceases to be an inspector must return the person's identity card to the chief executive as soon as practicable (but within 21 days) after the person ceases to be an inspector, unless the person has a reasonable excuse for not returning it.

Maximum penalty—10 penalty units.

- (4) This section does not prevent the giving of a single identity card to a person under this Act and for other Acts or purposes.

## **5C Production or display of inspector's identity card**

- (1) An inspector may exercise a power under this Act in relation to someone else only if the inspector—
  - (a) first produces his or her identity card for the person's inspection; or

[s 6]

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- (b) has the identity card displayed so it is clearly visible to the person.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must produce the identity card for the person's inspection at the first reasonable opportunity.

## **6 Maximum residue limit**

The maximum residue limit prescribed under this Act for any of the following may be zero—

- (a) agricultural produce;
- (b) manufactured stock food;
- (c) the tissue of a trade species animal;
- (d) a product derived from a trade species animal.

# **Part 2 Use of chemicals and substances having chemical residues**

## **Division 1 Chemicals generally**

### **7 Use of registered agricultural and veterinary chemical products taken from unlabelled containers**

- (1) A person must not use a registered agricultural or veterinary chemical product taken from a container that does not have attached to it an approved label for containers for the product.
- Maximum penalty—300 penalty units.
- (2) Subsection (1) does not apply if the product was taken from a container with a label for which the APVMA issued a permit.
- (3) It is a defence to a prosecution for an offence against subsection (1) to prove—

- (a) the product was put in the container ready for use after being taken from another container having attached to it an approved label for containers for the product; or
  - (b) the product was supplied by a veterinary surgeon in the container and the person uses the product in the way stated in the written instructions or dispensing label supplied with the product.
- (4) This section is an eligible law for the definition ‘permit’ under section 109 of the Agvet Code.

## **8 Use of controlled chemicals**

- (1) A regulation may—
- (a) declare an unregistered chemical to be a controlled chemical (the *controlled chemical*); and
  - (b) set conditions for use of the chemical.
- (2) A person must not use a controlled chemical in a way that contravenes a condition for use of the chemical.

Maximum penalty for subsection (2)—600 penalty units.

## **9 Person not to possess or use proscribed chemical**

A person shall not have in his or her possession or use a proscribed chemical unless the person has the written permission of the Minister to do so and the person’s possession or, as the case may be, use of the chemical is in accordance with the terms and conditions of the permit.

Maximum penalty—800 penalty units.

*Note—*

This provision is an executive liability provision—see section 30A.

## **10 Person not to dispose of package or chemical in improper manner**

A person shall not dispose of or discard a chemical, or a package that contains or has contained a chemical, in a manner—

- (a) such that harm is caused or is likely to be caused to the property of any other person, any human or animal life, the environment or the State's trade with any other State or a Territory or another country; or
- (b) that is contrary to the manner (if any) prescribed.

## **11 Claims inconsistent with labels**

- (1) This section applies to a claim—
  - (a) about a registered chemical product, or a chemical product containing a registered chemical product; and
  - (b) inconsistent with an instruction on an approved label for containers for the registered chemical product.
- (2) For the purposes of section 84(2) of the Agvet Code—
  - (a) the standards officer or a deputy standards officer, or a person acting under the direction of either officer, may make a claim under this Act; and
  - (b) an officer of the public service or another employee of the State may make a claim in the course of the person's employment by the State; and
  - (c) a person prescribed by regulation may make a claim in the circumstances prescribed by regulation.
- (3) Subsection (2) applies only if the claim is made honestly and without negligence.

## **11A Claims about unregistered chemicals**

- (1) A person must not make a claim about the use of an unregistered chemical.

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Maximum penalty—300 penalty units.

- (2) Subsection (1) does not apply if use of the unregistered chemical is authorised by a permit.
- (3) Subsection (1) also does not apply to the making or reporting of a statement about the unregistered chemical if the statement—
  - (a) is made—
    - (i) in a scientific paper or other scientific literature; or
    - (ii) in a scientific report or presentation; or
    - (iii) at a conference or seminar, or in an address, meeting or discussion, about chemical products;  
and is based on data published in a reputable scientific refereed journal or of a standard publishable in a reputable scientific refereed journal; or
  - (b) is made on radio or television, or in a newspaper, journal or newsletter, as fair comment on any material—
    - (i) published for the purposes of a conference or seminar; and
    - (ii) based on data mentioned in paragraph (a); or
  - (c) is made by a veterinary surgeon about a use under section 12F.

### **11B Use of package that contained chemical**

- (1) A person shall not use a package to contain any substance if the package has at any time contained a chemical.

Maximum penalty—300 penalty units.

- (2) A person shall not be convicted of an offence defined in subsection (1) if—
  - (a) the person uses the package to contain a chemical and the chemical was in the package at the time at which the person acquired the package; or

[s 11C]

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- (b) all trace of the chemical previously contained in the package is removed and the person uses the package to contain a chemical.

### **11C Governor in Council may proscribe chemicals**

- (1) This section applies if the chief executive is satisfied, on reasonable grounds, that it is in the public interest to proscribe a chemical having regard to the harm that may be caused by the use of the chemical to any property, human or animal life, the environment or the State's trade whether within Australia or overseas.
- (2) If this section applies, a regulation may proscribe a chemical.

## **Division 2 Veterinary chemical products**

### **Subdivision 1 Registered veterinary chemical products**

#### **12 Use of registered veterinary chemical products**

- (1) A veterinary surgeon must not use, or prescribe, supply or recommend a registered veterinary chemical product for use to treat an animal other than in a way stated in the instructions on the approved label for containers for the product.  
Maximum penalty for subsection (1)—600 penalty units.
- (2) Subsection (1) does not apply if the product is used, or prescribed, supplied or recommended for use in a way authorised by a permit or prescribed under a regulation.
- (3) It is a defence to a prosecution for an offence against subsection (1) to prove the product was used, or prescribed, supplied or recommended for use in a way authorised under section 12A, 12B or 12C.
- (4) A person, other than a veterinary surgeon, must not use a registered veterinary chemical product other than in a way

stated in the instructions on the approved label for containers for the product.

Maximum penalty for subsection (4)—600 penalty units.

*Note—*

This subsection is an executive liability provision—see section 30A.

- (5) Subsection (4) does not apply if the product is used in a way authorised by a permit or prescribed under a regulation.
- (6) It is a defence to a prosecution for an offence against subsection (4) to prove the product was used in a way authorised under section 12D.
- (7) This section is an eligible law for the definition ‘permit’ under section 109 of the Agvet Code.

## **12A Use by veterinary surgeon on animals other than major trade species**

- (1) A veterinary surgeon may use, or prescribe, supply or recommend a registered veterinary chemical product for use other than in a way stated in the instructions on the approved label for containers for the product, to treat animals under the care of the veterinary surgeon other than major trade species animals.
- (2) However, subsection (1) does not allow a use—
  - (a) contrary to a restraint statement on the label other than to treat a single animal; or
  - (b) by injection unless the label gives instructions for use by injection.

## **12B Use by veterinary surgeon on major trade species animals**

- (1) A veterinary surgeon may use, or prescribe, supply or recommend a registered veterinary chemical product for use other than in a way stated in the instructions on the approved label for containers for the product, to treat—

[s 12C]

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- (a) if instructions for use on a major trade species animal are mentioned on the label—any major trade species animals; or
  - (b) if there are no instructions for use on a major trade species animal mentioned on the label—a single major trade species animal.
- (2) Subsection (1) applies only to animals under the care of the veterinary surgeon.
- (3) However, subsection (1) does not allow a use—
- (a) contrary to a restraint statement on the label other than to treat a single animal; or
  - (b) by injection unless the label gives instructions for use by injection.

## **12C Supply by veterinary surgeon to others**

- (1) A veterinary surgeon may supply a registered veterinary chemical product that is not packed and labelled in the way stated in the Agvet Code—
- (a) for an animal under the care of the veterinary surgeon; or
  - (b) to another veterinary surgeon in the same veterinary practice.
- (2) However, subsection (1)(b) applies only if a pharmacologically equivalent registered veterinary chemical product with instructions for use for the particular animal species being treated is not reasonably available in the particular circumstances.

## **12D Use by other persons in way stated in veterinary surgeon's instructions**

- (1) A person, other than a veterinary surgeon, may use a registered veterinary chemical product, other than in a way stated in the instructions on the approved label for containers for the product if the person uses the product in the way stated



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in written instructions given by the veterinary surgeon who prescribed, supplied or recommended the product.

- (2) However, subsection (1) does not allow a use—
- (a) contrary to a restraint statement on the label other than to treat a single animal; or
  - (b) by injection unless the label gives instructions for use by injection.

## **Subdivision 2      Unregistered veterinary chemical products**

### **12E      Use of unregistered veterinary chemical products**

- (1) A veterinary surgeon must not use, or prescribe, supply or recommend an unregistered veterinary chemical product for use to treat an animal.

Maximum penalty for subsection (1)—600 penalty units.

- (2) Subsection (1) does not apply if the product is used, or prescribed, supplied or recommended for use in a way authorised by a permit or prescribed under a regulation.
- (3) It is a defence to a prosecution for an offence against subsection (1) to prove the product was used, or prescribed, supplied or recommended for use in a way authorised under section 12F or 12G.
- (4) A person, other than a veterinary surgeon, must not use an unregistered veterinary chemical product to treat an animal.

Maximum penalty for subsection (4)—600 penalty units.

*Note—*

This subsection is an executive liability provision—see section 30A.

- (5) Subsection (4) does not apply if the product is used in a way authorised by a permit or prescribed under a regulation.

[s 12F]

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- (6) It is a defence to a prosecution for an offence against subsection (4) to prove the product was used in a way authorised under section 12H.
- (7) It is also a defence to a prosecution for an offence against subsection (1) or (4) to prove—
  - (a) the product was a registered veterinary chemical product at some time in the 2 years immediately before its use by the defendant; and
  - (b) the product's registration ended under section 47(2) or (3) of the Agvet Code; and
  - (c) the defendant's use of the product did not contravene an instruction that appeared on the approved label for containers for the product immediately before the product's registration ended; and
  - (d) the label was attached to the product's container immediately before the product was taken from the container.
- (8) This section is an eligible law for the definition 'permit' under section 109 of the Agvet Code.

## **12F Use by veterinary surgeon**

- (1) A veterinary surgeon may use, or prescribe, supply or recommend an unregistered veterinary chemical product for use to treat—
  - (a) animals other than trade species animals; or
  - (b) a single trade species animal.
- (2) Subsection (1) applies only to animals under the care of the veterinary surgeon.

## **12G Supply by veterinary surgeon to others**

- (1) A veterinary surgeon may supply an unregistered veterinary chemical product to another veterinary surgeon in the same veterinary practice.

- (2) However, subsection (1) applies only if a pharmacologically equivalent registered veterinary chemical product with instructions for use for the particular animal species being treated is not reasonably available in the particular circumstances.

### **12H Use by other persons in way stated in veterinary surgeon's instructions**

A person, other than a veterinary surgeon, may use an unregistered veterinary chemical product to treat an animal in the way stated in written instructions given by the veterinary surgeon who prescribed, supplied or recommended the product.

## **Subdivision 3 Compounded veterinary chemical products**

### **12I Use of compounded veterinary chemical products**

- (1) A veterinary surgeon must not use, or prescribe, supply or recommend a compounded veterinary chemical product for use to treat an animal.

Maximum penalty for subsection (1)—600 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) to prove the product was used, or prescribed, supplied or recommended for use in a way authorised under section 12J.

- (3) A pharmacist must not supply a compounded veterinary chemical product for use to treat an animal.

Maximum penalty for subsection (3)—600 penalty units.

- (4) It is a defence to a prosecution for an offence against subsection (3) to prove the supply of the product was authorised under section 12K.

[s 12J]

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- (5) A person, other than a veterinary surgeon, must not use a compounded veterinary chemical product to treat an animal.

Maximum penalty for subsection (5)—600 penalty units.

*Note—*

This subsection is a deemed executive liability provision—see section 31.

- (6) It is a defence to a prosecution for an offence against subsection (5) to prove the product was used in a way authorised under section 12L.

### **12J Use by veterinary surgeon**

- (1) A veterinary surgeon may use, or prescribe, supply or recommend for use a compounded veterinary chemical product in a quantity needed for a single course of treatment of—
- (a) animals other than trade species animals; or
  - (b) a single trade species animal.
- (2) Subsection (1) applies only to animals under the care of the veterinary surgeon.

### **12K Supply by pharmacist**

A pharmacist may supply a compounded veterinary chemical product in a quantity needed for a single course of treatment.

### **12L Use by other persons in way stated in written instructions**

A person, other than a veterinary surgeon, may use a compounded veterinary chemical product to treat an animal in the way stated in written instructions given by—

- (a) the veterinary surgeon who prescribed, supplied or recommended the product; or
- (b) the pharmacist who supplied the product.

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## **Subdivision 4 Information to be given by veterinary surgeon or pharmacist about the treatment of an animal**

### **12M Information to be given by veterinary surgeon or pharmacist**

- (1) This section applies to—
  - (a) a veterinary surgeon who uses, or prescribes, supplies or recommends a veterinary chemical product or compounded veterinary chemical product for use to treat an animal under the care of the veterinary surgeon; or
  - (b) a pharmacist who supplies a compounded veterinary chemical product under a prescription given by a veterinary surgeon to treat an animal.
- (2) The veterinary surgeon or pharmacist must give to the person in charge of the animal at the time of the treatment full and appropriate instructions about the treatment including the instructions mentioned in section 12N.

Maximum penalty for subsection (2)—300 penalty units.

- (3) For subsection (2), the instructions—
  - (a) must be in writing, which may include the instructions on the approved label for containers for the product (the *label instructions*); and
  - (b) must explain whether or not the label instructions form part of the instructions; and
  - (c) must include an explanation of the meaning of the instructions including the meaning of the label instructions that are equivalent to the matters mentioned in section 12N; and
  - (d) for a registered veterinary chemical product to be used other than in a way stated in the label instructions—must include an explanation of the extent to which the label instructions do not form part of the instructions.

[s 12N]

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- (4) Subsection (2) applies to the treatment of an animal other than a trade species animal only if the treatment involves the use of—
- (a) a registered veterinary chemical product other than in a way stated in the label instructions; or
  - (b) a veterinary chemical product that is a prescription animal remedy; or
  - (c) an unregistered veterinary chemical product; or
  - (d) a compounded veterinary chemical product.
- (5) If the person who receives the instructions mentioned in subsection (2) is not usually in charge of the animal, the person must give the instructions to the person usually in charge of the animal when that person again becomes in charge of the animal.

Maximum penalty for subsection (5)—100 penalty units.

## **12N Information to be included in instructions**

- (1) For treatment of a trade species animal, the instructions mentioned in section 12M must include—
- (a) whether there is a withholding period for use of the product and the length of the period; and
  - (b) for a registered veterinary chemical product—particulars to identify the product and, if the product has a distinguishing number, the number; and
  - (c) for a product other than a registered veterinary chemical product—particulars to identify the product; and
  - (d) the name of the product's active constituent; and
  - (e) the dosage; and
  - (f) the frequency of the dosage; and
  - (g) the treatment period; and
  - (h) how the product is to be used to treat the animal; and
  - (i) the species of animal to be treated; and

- (j) details to identify the particular animal; and
  - (k) the date the product was used, prescribed, supplied or recommended for use; and
  - (l) the expiry date of the product; and
  - (m) the name and address of the veterinary surgeon or pharmacist who gave the instructions; and
  - (n) the name and address of the person to whom the product is supplied; and
  - (o) for a recommendation, the period the recommendation is to apply; and
  - (p) other information prescribed under a regulation.
- (2) For treatment of an animal other than a trade species animal, the instructions mentioned in section 12M must include the matters mentioned in subsection (1)(b) to (p).

## **12O Instructions must be kept**

A person given instructions under section 12M, for treatment of trade species animals, must keep the instructions for—

- (a) the period prescribed under a regulation; or
- (b) if no period is prescribed—2 years.

Maximum penalty—100 penalty units.

## **Subdivision 5 Information to be given by person other than veterinary surgeon or pharmacist**

### **12P Information to be given to person in charge of animal**

- (1) This section applies to a person, other than a person mentioned in subsection (4), who uses a veterinary chemical product or compounded veterinary chemical product to treat a trade species animal.

[s 12Q]

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- (2) The person must give the person in charge of the animal at the time of the treatment, full and appropriate written advice about the treatment including any written instructions given by a veterinary surgeon or pharmacist.

Maximum penalty for subsection (2)—300 penalty units.

- (3) If the person who receives the advice is not usually in charge of the animal, the person must give the advice to the person usually in charge of the animal when that person again becomes in charge of the animal.

Maximum penalty for subsection (3)—100 penalty units.

- (4) This section does not apply to—
- (a) a veterinary surgeon; or
  - (b) the person usually in charge of the animal; or
  - (c) an employee of the person usually in charge of the animal who uses the product in the course of the employment.

## **12Q Information to be included in written advice**

- (1) The written advice mentioned in section 12P must include—
- (a) whether there is a withholding period for use of the product and the length of the period; and
  - (b) for a registered veterinary chemical product—particulars to identify the product and, if the product has a distinguishing number, the number; and
  - (c) for a product other than a registered veterinary chemical product—particulars to identify the product; and
  - (d) the name of the product's active constituent; and
  - (e) the dosage; and
  - (f) the frequency of the dosage; and
  - (g) the treatment period; and
  - (h) how the product was used to treat the animal; and



- (i) the species of animal treated; and
  - (j) details to identify the particular animal; and
  - (k) the date the product was used; and
  - (l) the name and address of the person using the product; and
  - (m) the name and address of the person usually in charge of the animal; and
  - (n) any other information prescribed under a regulation.
- (2) Subsection (3) applies to—
- (a) a person mentioned in section 12P(1); and
  - (b) a person usually in charge of an animal, who receives written advice under section 12P(2) or (3).
- (3) Each person mentioned in subsection (2) must keep a copy of the advice for—
- (a) the period prescribed under a regulation; or
  - (b) if no period is prescribed—2 years.
- Maximum penalty for subsection (3)—100 penalty units.

## **Subdivision 6      Records to be kept**

### **12R      Records to be kept by veterinary surgeon**

- (1) This section applies to a veterinary surgeon who uses, or prescribes, supplies or recommends for use, to treat a trade species animal any of the following—
- (a) a registered veterinary chemical product to be used other than in a way stated in the instructions on the approved label for containers for the product;
  - (b) a veterinary chemical product that is a prescription animal remedy;
  - (c) an unregistered veterinary chemical product;

- (d) a compounded veterinary chemical product.
- (2) The veterinary surgeon must keep a record of the treatment including—
- (a) whether there is a withholding period for use of the product and the length of the period; and
  - (b) for a registered veterinary chemical product—particulars to identify the product and, if the product has a distinguishing number, the number; and
  - (c) for a product other than a registered veterinary chemical product—particulars to identify the product; and
  - (d) the name of the product's active constituent; and
  - (e) the dosage; and
  - (f) the frequency of the dosage; and
  - (g) the treatment period; and
  - (h) how the product was used to treat the animal; and
  - (i) the species of animal treated; and
  - (j) details to identify the particular animal; and
  - (k) the date the product was used or prescribed, supplied or recommended for use; and
  - (l) the expiry date of the product; and
  - (m) the name and address of the person using, prescribing, supplying or recommending the product; and
  - (n) the name and address of the person to whom the product is supplied; and
  - (o) for a recommendation—the period the recommendation is to apply; and
  - (p) other information prescribed under a regulation.
- Maximum penalty for subsection (2)—200 penalty units.
- (3) The veterinary surgeon must keep a copy of the record for—
- (a) the period prescribed under a regulation; or

(b) if no period is prescribed—2 years.

Maximum penalty for subsection (3)—200 penalty units.

## **Subdivision 7      Withholding period**

### **12S      Meaning of *withholding period***

The *withholding period*, for use of a chemical product or compounded veterinary chemical product, is the minimum period that must elapse between the last use of the product and—

- (a) for a use in relation to a crop or pasture—the harvesting or cutting of, or the grazing of animals on, the crop or pasture; or
- (b) for a use in relation to an animal, including the feeding of an animal on feed treated with the product—the shearing or slaughtering of the animal, or the collection of milk or eggs from the animal for human consumption.

### **12T      Identification of animals to which withholding period applies**

- (1) This section applies to a person in charge of a trade species animal if—
  - (a) a veterinary chemical product or compounded veterinary chemical product is used to treat the animal; and
  - (b) a withholding period applies to the use of the product.
- (2) The person must take reasonable steps to ensure the animal is identifiable as an animal mentioned in subsection (1) during—
  - (a) the treatment period; and
  - (b) the withholding period.

*Examples for subsection (2)—*

- 1 tagging
- 2 physical segregation
- 3 written records

Maximum penalty for subsection (2)—300 penalty units.

## **12U Notice of treatment on supply of trade species animal**

- (1) This section applies to a person who supplies a trade species animal to another person if—
  - (a) a veterinary chemical product or compounded veterinary chemical product was used to treat the animal; and
  - (b) a withholding period applies to the use of the product and the period has not elapsed.
- (2) The person must give the other person written notice of the treatment including—
  - (a) the withholding period for use of the product or the date the withholding period elapses; and
  - (b) the name of—
    - (i) the product used; or
    - (ii) if the product does not have a name—the product's active constituent; and
  - (c) details to identify the particular animal; and
  - (d) the date of the treatment; and
  - (e) other information prescribed under a regulation.

Maximum penalty for subsection (2)—300 penalty units.

- (3) Subsection (4) applies to—
  - (a) a person mentioned in subsection (1); and
  - (b) a person who receives written notice under subsection (2).

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- (4) Each person mentioned in subsection (3) must keep a copy of the notice for—
- (a) the period prescribed under a regulation; or
  - (b) if no period is prescribed—2 years.

Maximum penalty for subsection (4)—100 penalty units.

## 12V Observance of withholding period

- (1) This section applies to a person in charge of a trade species animal if—
- (a) a veterinary chemical product or compounded veterinary chemical product has been used to treat the animal; and
  - (b) a withholding period applies to the use of the product.
- (2) The person must not, within the withholding period, allow the animal to be shorn or slaughtered or milk or eggs to be collected from the animal, for human consumption.

Maximum penalty for subsection (2)—600 penalty units.

*Note—*

This subsection is an executive liability provision—see section 30A.

## Division 3 Agricultural chemical products

### Subdivision 1 Preliminary

#### 12W Definitions for div 3

In this division—

***agricultural ERA*** see the *Environmental Protection Act 1994*, section 75.

***carrying out***, an agricultural ERA, has the same meaning as carrying out an agricultural ERA under the *Environmental Protection Act 1994*.

[s 13]

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***preparing***, for a prescribed agricultural ERA product, means mixing the product or using it for testing.

***prescribed agricultural ERA conditions***, for a prescribed agricultural ERA product, means the conditions prescribed for using, preparing, storing or possessing the product under section 13C(1)(b).

***prescribed agricultural ERA product*** means an agricultural chemical product prescribed under section 13C(1)(a).

## **Subdivision 2      General provisions**

### **13      Use of registered agricultural chemical products in contravention of labels**

- (1) A person must not use a registered agricultural chemical product other than in a way stated in the instructions on the approved label for containers for the product.

Maximum penalty for subsection (1)—600 penalty units.

*Note—*

This subsection is an executive liability provision—see section 30A.

- (2) Subsection (1) does not apply if the product is used in a way authorised by a permit or prescribed under a regulation.
- (3) It is a defence to a prosecution for an offence against subsection (1) to prove the product was used in a way authorised under section 13B.
- (4) This section is an eligible law for the definition ‘permit’ under section 109 of the Agvet Code.

### **13A      Use of unregistered agricultural chemical products**

- (1) A person must not use an agricultural chemical product unless it is a registered agricultural chemical product.

Maximum penalty for subsection (1)—600 penalty units.

*Note—*

This subsection is an executive liability provision—see section 30A.

- (2) Subsection (1) does not apply if—
  - (a) the product is used in a way authorised by a permit; or
  - (b) the product is prescribed for this subsection under a regulation.
- (3) It is a defence to a prosecution for an offence against subsection (1) to prove—
  - (a) the product was a registered agricultural chemical product at some time in the 2 years immediately before its use by the defendant; and
  - (b) the product's registration ended under section 47(2) or (3) of the Agvet Code; and
  - (c) the defendant's use of the product did not contravene an instruction that appeared on the approved label for containers for the product immediately before the product's registration ended; and
  - (d) the label was attached to the product's container immediately before the product was taken from the container; and
  - (e) if the offence relates to the use of a prescribed agricultural ERA product for carrying out an agricultural ERA—the defendant's use of the product complied with the prescribed agricultural ERA conditions for the product.
- (4) This section is an eligible law for the definition 'permit' under section 109 of the Agvet Code.

### **13B Compliance with instructions**

- (1) A person does not contravene an instruction by using an agricultural chemical product at a concentration less than the concentration stated, unless the instruction states the product must be used at a stated concentration or a concentration not less than the concentration stated.

[s 13C]

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- (2) A person does not contravene an instruction by using an agricultural chemical product (whether or not diluted) at a rate lower than the rate stated, unless the instruction states the product must be used at a rate not lower than the rate stated.
- (3) A person does not contravene an instruction by using an agricultural chemical product more than once for the same plant, with the period between a use and the next being longer than the period stated, unless the instruction states that the period must not be longer than the period stated.
- (4) A person does not contravene an instruction about using an agricultural chemical product to control a pest if the person uses the product to control another pest, unless the instruction states the product must not be used to control the other pest.
- (5) A person does not contravene an instruction about a method of using an agricultural chemical product if the method used by the person (the *alternative method*) is different from the instruction, unless the instruction states the alternative method must not be used.
- (6) A person does not contravene an instruction by mixing an agricultural chemical product with another agricultural chemical product or a fertiliser or other substance, unless the instruction states the product must not be mixed with—
  - (a) the other agricultural chemical product or the fertiliser or other substance; or
  - (b) another agricultural chemical product or any fertiliser or other substance.

### **Subdivision 3      Great Barrier Reef protection measures**

#### **13C    Prescribed agricultural ERA products and conditions**

- (1) A regulation may—
  - (a) declare an agricultural chemical product to be a prescribed agricultural ERA product; and



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- (b) prescribe conditions for using, preparing, storing and possessing the product for carrying out an agricultural ERA.
- (2) However, a regulation may be made under subsection (1) only if the Minister considers it is necessary or desirable to help achieve the purpose of the *Environmental Protection Act 1994*, chapter 4A.

*Editor's note—*

*Environmental Protection Act 1994*, chapter 4A (Great Barrier Reef protection measures), section 74 (Purpose of ch 4A)

- (3) To remove any doubt, it is declared that an agricultural chemical product may be declared as a prescribed agricultural ERA product under subsection (1)(a) and conditions may be prescribed for the product under subsection (1)(b) whether or not the product is a registered agricultural chemical product.

### 13D Compliance with prescribed agricultural ERA condition

- (1) A person uses, prepares, stores or possesses a prescribed agricultural ERA product for carrying out an agricultural ERA in compliance with a prescribed agricultural ERA condition for the product only if—
- (a) the use, preparation, storage or possession of the product complies with the condition; or
- (b) the person uses, prepares, stores or possesses the product in an alternative way and each of the following applies—
- (i) the person has an accredited ERMP for the agricultural ERA;
- (ii) the ERMP states the alternative way is an alternative to compliance with the condition for helping to achieve the purpose of the *Environmental Protection Act 1994*, chapter 4A.

- (2) In this section—

**accredited ERMP** means an ERMP that is accredited under the *Environmental Protection Act 1994*, chapter 4A, part 3.

[s 13E]

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**ERMP** means an environmental risk management plan under the *Environmental Protection Act 1994*, chapter 4A.

*Note—*

Noncompliance with an accredited ERMP is not, in itself, an offence. However, the non-compliance may be the subject of a direction notice under the *Environmental Protection Act 1994*, section 363B.

### **13E Use etc. of registered agricultural ERA products for agricultural ERAs**

- (1) A person must not use, prepare, store or possess a registered agricultural ERA product for carrying out an agricultural ERA other than in a way that complies with the prescribed agricultural ERA conditions for the product.

Maximum penalty—100 penalty units.

*Note—*

This subsection is a deemed executive liability provision—see section 31.

- (2) This section is an eligible law for the definition ‘*permit*’ under section 109 of the Agvet Code.
- (3) In this section—

**registered agricultural ERA product** means a registered agricultural chemical product that is a prescribed agricultural ERA product.

## **Division 4 Chemical residues**

### **14 Recall of chemicals etc.**

- (1) The chief executive may, where the chief executive is of the opinion that it is in the public interest to do so having regard to the harm that may be caused to any property, any human or animal life, the environment or the State’s trade with any other State or a Territory or another country by the use of a chemical or prescribed substance, give notice in writing to the primary dealer of the chemical or manufacturer or producer of

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the prescribed substance directing him or her, within the time specified in the notice, to take the steps and do the acts and things specified in the notice to recall the chemical or prescribed substance from other persons having it in their possession.

- (2) A notice given under subsection (1) may direct the person to whom it is given to destroy, denature or otherwise deal with any of the chemical or prescribed substance in or coming into the possession of the person, within the time and in the manner specified in the notice.
- (3) A person must not contravene a notice under subsection (1), unless the person has a reasonable excuse for the contravention.

Maximum penalty—100 penalty units.

*Note—*

This subsection is a deemed executive liability provision—see section 31.

- (4) In this section—

***prescribed substance*** means—

- (a) any agricultural produce, manufactured stock food or fertiliser in or on which is the residue of a chemical; or
- (b) any substance in or on which is the residue of a chemical which substance is used in connection with any agricultural produce, manufactured stock food or fertiliser.

## 15 **General requirement to report chemical residues in relevant thing**

- (1) This section applies to a person, other than a person to whom section 15A applies, if the person becomes aware that the residue of a chemical in or on a relevant thing is more than the maximum residue limit prescribed for the thing.

*Examples of persons to whom this section may apply—*

- a person conducting an analysis of the relevant thing

[s 15A]

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- a veterinary surgeon who treats a trade species animal
- (2) The person must advise the standards officer of the following as soon as practicable, but not more than 24 hours, after becoming aware as mentioned in subsection (1)—
- (a) the presence of the residue of a chemical in or on the relevant thing is in an amount more than the maximum residue limit prescribed for the thing;
  - (b) the name and address of the person from whom the person obtained the relevant thing.

Maximum penalty—40 penalty units.

- (3) In this section—

*relevant thing* means any of the following—

- (a) agricultural produce;
- (b) manufactured stock food;
- (c) the tissue of a trade species animal;
- (d) a product derived from a trade species animal.

### **15A Requirement for particular persons to report chemical residues in relation to trade species animals**

- (1) This section applies to a person if the person becomes aware that—
- (a) a trade species animal or a product derived from a trade species animal is—
    - (i) at a place of which the person is an occupier; or
    - (ii) in the person's possession or under the person's control; and
  - (b) the residue of a chemical in or on the tissue of the trade species animal or the product derived from the trade species animal is in an amount more than the maximum residue limit prescribed for the tissue or product.
- (2) If the person is not aware that the standards officer has been advised, or has otherwise become aware, that the residue of

the chemical in or on the tissue or product is in an amount more than the maximum residue limit prescribed for the tissue or product, the person must advise the standards officer of the fact as soon as practicable, but not more than 24 hours, after becoming aware as mentioned in subsection (1).

Maximum penalty—40 penalty units.

- (3) However, the person is not required to advise the standards officer under subsection (2) if the person becomes aware, before the person would otherwise be required to advise the standards officer under the subsection, that advice of the residue of the chemical in or on the tissue or product in an amount more than the maximum residue limit prescribed for the tissue or product has been given to the standards officer by another person.

*Example—*

A person would not be required to advise the standards officer that the residue of a chemical in the tissue of 1 of the person's animals is in an amount more than the maximum residue limit prescribed for the tissue if the person who conducted an analysis of the tissue advised the standards officer about it as soon as the results of the analysis were known.

## **16 Agricultural produce etc. containing chemical residues not to be used etc.**

- (1) The standards officer or an inspector may, by notice in writing given to a prescribed person, direct that person not to use, destroy, dispose of or otherwise deal with any prescribed substance to which the notice relates otherwise than as permitted (if at all) by the notice.
- (1A) Subsection (2) applies if the standards officer or an inspector suspects or believes on reasonable grounds that the cultivation of a plant in or on land, or the grazing or keeping of a trade species animal on land, would be likely to result in the residue of a chemical being present in or on a relevant thing in an amount more than the maximum residue limit prescribed for the relevant thing.

[s 16]

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- (2) The standards officer or the inspector may, by notice in writing given to the owner or occupier of the land, direct the owner or occupier not to cultivate any plant or any class of plant in or on the land, or graze or keep a trade species animal on the land, other than as permitted under the notice.
- (3) A notice given by an inspector under subsection (1) or (2) shall have effect for the period specified therein but in no case exceeding 3 days.
- (4) Subject to subsection (5), a notice given by the standards officer under subsection (1) or (2) may be given without limit to time.
- (5) A notice given by the standards officer under subsection (1) or (2) shall specify a time after which it ceases to have effect unless the standards officer has received a report of an analysis conducted by an analyst that confirms the standards officer's suspicion or belief in respect of the matters to which the notice relates.
- (5A) This subsection shall not be construed to prevent the standards officer from giving successive notices under subsection (1) or (2).
- (5B) A notice given under this section must be accompanied by an information notice for the decision to give the direction.
- (6) A person must not contravene a notice under subsection (1) or (2), unless the person has a reasonable excuse for the contravention.

Maximum penalty for subsection (6)—800 penalty units.

*Note—*

This subsection is an executive liability provision—see section 30A.

- (7) In this section—

***prescribed person*** means a person having possession of any prescribed substance or, where the prescribed substance is in transit, the person into whose possession it is to be delivered.

***prescribed substance*** means—

- (a) a relevant thing in or on which the standards officer or an inspector suspects or believes on reasonable grounds there is the residue of a chemical in an amount more than the maximum residue limit prescribed for the relevant thing; or
- (b) plants from which agricultural produce may be derived in or on which the standards officer or inspector suspects or believes on reasonable grounds that there is the residue of a chemical in an amount such that agricultural produce derived from the plants is likely to have therein or thereon the residue of a chemical in an amount that exceeds the maximum residue limit prescribed for that produce; or
- (c) a trade species animal in which the standards officer or an inspector suspects or believes on reasonable grounds there is the residue of a chemical in an amount that a product derived from the animal is likely to have in it the residue of a chemical in an amount more than the maximum residue limit prescribed for the product; or
- (d) a substance in or on which the standards officer or inspector suspects or believes on reasonable grounds that there is the residue of a chemical in such an amount that the ordinary use of the substance is likely to result, directly or indirectly, in the residue of a chemical being in or on agricultural produce, manufactured stock food or a product derived from a trade species animal in an amount more than the maximum residue limit prescribed for the produce, stock food or product.

***relevant thing*** means any of the following—

- (a) agricultural produce;
- (b) manufactured stock food;
- (c) the tissue of a trade species animal;
- (d) a product derived from a trade species animal.

**17 Approval to use etc. agricultural produce etc. or cultivate plants, or graze or keep trade species animals, on land**

- (1) Where a person wishes to—
- (a) use, destroy, dispose of or otherwise deal with any prescribed substance; or
  - (b) cultivate a plant, or graze or keep a trade species animal, on land;

within a time or in a manner that is contrary to a direction contained in a notice under section 16, the person may apply in writing to the standards officer for approval to use, destroy, dispose of or otherwise deal with the prescribed substance or, as the case may be, cultivate the plant, or graze or keep the trade species animal, on the land, as specified in the application.

- (2) The standards officer may, whether pursuant to an application made under subsection (1) or otherwise, approve in writing—
- (a) the use, destruction or disposal of or other dealing with any prescribed substance; or
  - (b) the cultivation of a plant, or the grazing or keeping of a trade species animal, on land;

within a time or in a manner that is contrary to a direction contained in a notice under section 16 if the standards officer is satisfied that such use, destruction, disposal or other dealing or, as the case may be, cultivation, grazing or keeping—

- (c) is not a breach of any other Act or a law made under any other Act; and
  - (d) will not cause harm, that in the circumstances is unreasonable, to any property, any human or animal life, the environment or the State's trade with any other State or a Territory or another country.
- (3) An approval given under this section may be given subject to such terms and conditions as are specified therein.



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- (4) To the extent that a notice under section 16 is not consistent with an approval given under this section, that notice shall cease to be of force or effect.
- (4A) If the standards officer refuses an application made under subsection (1), the standards officer must, as soon as practicable after making the decision, give the person an information notice for the decision.
- (5) A person who uses, destroys or disposes of or otherwise deals with a prescribed substance or cultivates a plant, or grazes or keeps a trade species animal, on land contrary to an approval given under this section commits an offence.

Maximum penalty for subsection (5)—800 penalty units.

*Note—*

This subsection is an executive liability provision—see section 30A.

- (6) In this section—

***prescribed substance*** means agricultural produce, manufactured stock food, a plant, a trade species animal, a product derived from a trade species animal, or other substance.

## 18 **Destruction of agricultural produce etc. at direction of chief executive**

- (1) If the chief executive is notified by the standards officer that the residue of a chemical is in or on—
- (a) a portion or sample of any agricultural produce, manufactured stock food or a product derived from a trade species animal in an amount more than the maximum residue limit prescribed for the produce, stock food or product; or
- (b) a portion or sample of any plants from which agricultural produce may be derived and the chief executive forms the opinion that agricultural produce derived from the plants is likely to have therein or thereon the residue of a chemical in an amount more

[s 19]

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than the maximum residue limit prescribed for that produce; or

- (c) a portion or sample of a trade species animal from which a product may be derived and the chief executive forms the opinion that the product is likely to have in or on it the residue of a chemical in an amount more than the maximum residue limit prescribed for the product; or
- (d) a portion or sample of any other substance and the chief executive forms the opinion that the ordinary use of the substance is likely to result directly or indirectly in any agricultural produce, manufactured stock food or a product derived from a trade species animal having in or on it the residue of a chemical in an amount more than the maximum residue limit prescribed for the produce, stock food or product;

the chief executive may by notice in writing given to any person in possession of the agricultural produce, manufactured stock food, plants, a product derived from a trade species animal, or other substance from which the portion or sample was taken, direct the person to cause it or them to be destroyed, or otherwise disposed of, in the manner and within the time specified in the notice.

- (2) A person to whom a notice is given under subsection (1) shall not use, destroy, dispose of or otherwise deal with the substance to which the notice relates otherwise than as directed by the notice.

Maximum penalty for subsection (2)—600 penalty units.

*Note—*

This subsection is an executive liability provision—see section 30A.

## **19 Standards officer may cause notice under section 18 to be complied with**

- (1) If a person to whom a notice is given under section 18 fails to comply with any direction contained therein within the time

specified therein the standards officer may do or cause to be done anything required by the direction to be done.

- (2) The expenses incurred by the standards officer acting pursuant to subsection (1) shall be a debt due and owing to the standards officer by the person to whom the notice was given.
- (3) For the purpose of exercising his or her powers under subsection (1) the standards officer and any person authorised by the standards officer in that behalf may enter any place to which the direction relates together with such vehicles and equipment as the standards officer or other person considers necessary and there do that which is required by the direction to be done.

## **Part 3                      Miscellaneous**

### **20           Powers of inspectors**

- (1) An inspector may—
  - (a) enter any place (using such force as is necessary) in, at or on which the inspector has reasonable grounds for suspecting or believing that—
    - (i) any chemical is kept, stored, used, made, manufactured, mixed or prepared for use; or
    - (ii) there is or may be any equipment used or intended to be used in connection with the use of a chemical; or
    - (iii) any chemical has been, is being or will be used; or
    - (iv) any prescribed substance is kept, stored, used, made, cultivated, grazed, mixed or prepared for sale or sold; or
  - (b) enter any place (using such force as is necessary) if the inspector has reasonable grounds for suspecting or believing that his or her entry may assist the inspector to ascertain the cause of any prescribed substance having the residue of a chemical in or on it; or

- (c) investigate and inquire into any matter for the purpose of ascertaining whether or not this Act is being complied with; or
- (d) search for, inspect and examine any chemical or prescribed substance or any equipment (including an aircraft) used in connection with the preparation, mixing, loading or use of any chemical; or
- (e) open or break open any package containing or which the inspector believes on reasonable grounds to contain any chemical or prescribed substance; or
- (f) select, take and remove for analysis any chemical or prescribed substance or portions or samples of any chemical or prescribed substance; or
- (g) seize and detain—
  - (i) any prescribed substance that the inspector suspects or believes on reasonable grounds has been dealt with in a manner that is contrary to a direction contained in a notice under section 16 or not in accordance with an approval given under section 17; or
  - (ii) any agricultural produce or manufactured stock food derived from a plant, or product derived from a trade species animal, to which a notice under section 16 or an approval under section 17 relates if the inspector suspects or believes on reasonable grounds the plant or animal has been dealt with in a way that is contrary to a direction in the notice or not in compliance with the approval; or
  - (iii) any proscribed chemical in the possession of or being used by a person where the inspector suspects or believes on reasonable grounds that such possession or use constitutes an offence against this Act; or
  - (iv) any chemical or package that the inspector suspects or believes on reasonable grounds is being

or has been used, stored, disposed of or otherwise dealt with contrary to this Act; or

- (h) remove any chemical or prescribed substance seized by the inspector or allow all or part of the chemical or substance to remain at the place of seizure and, in that case, may fasten, secure, or seal and label, the chemical or substance or any package containing the chemical or substance or any door, gate or aperture affording access to the chemical, substance or package; or
- (i) weigh, count, measure, gauge, brand, label, mark or otherwise identify any chemical or prescribed substance; or
- (j) require a person to produce to the inspector any accounts, books, invoices, records or other documents relating to the sale, storage or use of any chemical or prescribed substance and may retain the same for the purpose of making a copy thereof or taking an extract therefrom and may make the copy or take the extract; or
- (k) require a person in possession of any chemical or prescribed substance to state the name and address (if known to the person) of or otherwise identify the person from whom he or she acquired the chemical or substance; or
- (l) in the exercise of the inspector's powers photograph or make such audio or visual recordings as the inspector considers necessary or desirable; or
- (m) require a person found by the inspector committing an offence against this Act or who the inspector has reasonable grounds for believing has committed an offence against this Act or whose name and address are in the inspector's opinion formed on reasonable grounds required for the purposes of this Act, to state the person's full name and the address of his or her usual place of business or residence and, if the inspector suspects on reasonable grounds that a name or address so stated is false, may require the person to produce evidence of the correctness thereof; or

- (n) stop, detain and search any vehicle—
    - (i) used or that the inspector suspects or believes on reasonable grounds is being or is likely to be used to convey any chemical or prescribed substance or to apply any chemical; or
    - (ii) in, on or from which the inspector suspects or believes on reasonable grounds any chemical or prescribed substance is sold or prepared for sale, packed, stored, handled, or supplied for sale or use; or
  - (o) call to his or her aid a person who the inspector thinks is competent to assist him or her in the exercise of his or her powers and authorities or the discharge of his or her functions and duties and a person while aiding an inspector shall have the powers and authorities of an inspector; or
  - (p) for the purpose of exercising the inspector's powers, require the owner or occupier of any place entered by the inspector for the purposes of this Act to provide the inspector with all reasonable assistance; or
  - (q) exercise such other powers or authorities and discharge such functions and duties as are prescribed.
- (2) A person shall comply with the requirement of an inspector made under subsection (1).

Maximum penalty for subsection (2)—100 penalty units.

- (3) In this section—

***prescribed substance*** means any of the following—

- (a) agricultural produce;
- (b) manufactured stock food;
- (c) a trade species animal;
- (d) a product derived from a trade species animal;
- (e) fertiliser;
- (f) a plant;

- (g) a substance used in connection with a thing mentioned in paragraphs (a) to (f).

## 21 Warrants

- (1) Before an inspector enters a part of any premises or other place which part is used exclusively as a dwelling house the inspector shall, save where the inspector has the permission of the occupier of that part to this entry, obtain from a Stipendiary Magistrate a warrant to enter.
- (2) A Stipendiary Magistrate who is satisfied upon the complaint of an inspector that there is reasonable cause to suspect—
  - (a) that in any premises or other place an offence against this Act has been, is being or is likely to be committed; or
  - (b) that there is in any premises or other place any thing in respect of which an offence against this Act has been, is being or is likely to be committed; or
  - (c) that there is in any premises or other place anything that will afford evidence of the commission of an offence against this Act;

may issue his or her warrant directed to an inspector to enter the premises or other place named in the warrant for the purpose of exercising therein the powers and authorities conferred upon an inspector by or under this Act.

- (3) A warrant shall be, for the period of 1 month from the date of its issue, sufficient authority for the inspector and all persons acting in aid of the inspector—
  - (a) to enter the premises or other place specified in the warrant; and
  - (b) to exercise therein the powers and authorities conferred upon an inspector by or under this Act.
- (4) For the purposes of this section, premises that are used as a dwelling house do not include the curtilage of those premises.

## **21A Review of particular decisions**

- (1) This section applies to the following decisions—
  - (a) a direction contained in a notice under section 16;
  - (b) a decision of an inspector to refuse an application under section 17.
- (2) A person who is dissatisfied with the decision may apply, as provided under the QCAT Act, to QCAT for a review of the decision.
- (3) A standards officer or inspector must give a person an information notice for a decision only if this Act so requires.

## **22 Right of appeal to Magistrates Court for decision to seize**

- (1) This section applies to a decision of an inspector to seize a thing under section 20.
- (2) A person who is dissatisfied with the decision may appeal against it.
- (3) The appeal may be made to the Magistrates Court nearest the place where the appellant resides, is employed or carries on business.

## **22A How to start appeal**

- (1) An appeal is started by filing a written notice of appeal with the clerk of the court of the Magistrates Court.
- (2) A copy of the notice must be served on the decision maker.
- (3) The notice of appeal must be filed within 28 days after the appellant receives notice of the decision appealed against.
- (4) However, the court may extend the period for filing the notice of appeal at any time.
- (5) The notice of appeal must state the grounds of the appeal.



## **22B Stay of operation of decisions**

- (1) The court may grant a stay of a decision appealed against to secure the effectiveness of the appeal.
- (2) A stay—
  - (a) may be granted on conditions the court considers appropriate; and
  - (b) operates for the period stated by the court; and
  - (c) may be revoked or amended by the court.
- (3) The period of a stay stated by the court must not extend past the time when the court decides the appeal.
- (4) An appeal against a decision affects the decision, or carrying out the decision, only if the decision is stayed.

## **22C Hearing procedures**

- (1) An appeal is to be by way of rehearing, unaffected by the decision maker's decision.
- (2) In deciding an appeal, the court—
  - (a) has the same powers as the decision maker; and
  - (b) is not bound by the rules of evidence; and
  - (c) must observe natural justice; and
  - (d) may hear the appeal in court or chambers.

## **22D Powers of court on appeal**

- (1) In deciding an appeal, the court may—
  - (a) confirm the decision appealed against; or
  - (b) set aside the decision and substitute another decision; or
  - (c) set aside the decision and return the issue to the decision maker with directions the court considers appropriate.

[s 22E]

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- (2) If the court substitutes another decision, the substituted decision is, for the purposes of this Act, taken to be the decision maker's decision.

## **22E Appeal to District Court**

A party dissatisfied by the decision of the court may appeal to the District Court, but only on a question of law.

## **24 Production of records**

- (1) An inspector may ask a person to produce for inspection a record made or kept by the person under this Act.
- (2) The person must immediately produce the record for inspection by the inspector, unless the person has a reasonable excuse.

Maximum penalty for subsection (2)—50 penalty units.

- (3) The inspector may keep the record to make a copy of it.
- (4) However, the inspector must return the record to the person as soon as practicable after making a copy of it.

## **25 Obstruction of inspector**

A person shall not—

- (a) obstruct any inspector in the exercise of the inspector's powers or in the discharge of the inspector's duties under this Act, or attempt so to do; or
- (b) refuse to allow to be taken, removed, seized or detained under this Act any chemical, agricultural produce, plant, manufactured stock food, trade species animal, product derived from a trade species animal, fertiliser or other substance, or any portion or sample thereof; or
- (c) take, retake, remove or otherwise deal with, or attempt to take, retake, remove or otherwise deal with, any chemical, agricultural produce, plant, manufactured stock food, trade species animal, product derived from a

trade species animal, fertiliser or other substance, or any portion or sample thereof taken, removed, seized, or detained under this Act.

Maximum penalty—500 penalty units.

## **26 Tampering with seals, samples, etc.**

A person shall not—

- (a) without the permission (the proof whereof shall lie upon the person) of the standards officer or an inspector to do so open, break, alter, remove, or erase any identifying mark or device, label, signature, seal, or fastening placed by an inspector in pursuance of this Act upon any chemical, agricultural produce, plant, manufactured stock food, trade species animal, product derived from a trade species animal, fertiliser or other substance, or upon any package, or portion or sample, or part of a portion or sample, or upon any door, gate or aperture affording access to the same; or
- (b) knowingly or fraudulently tamper with any chemical, agricultural produce, plant, manufactured stock food, trade species animal, product derived from a trade species animal, fertiliser or other substance or package containing the same so as to procure that any portion or sample taken under this Act does not correctly represent the chemical, agricultural produce, plant, manufactured stock food, trade species animal, product derived from a trade species animal, fertiliser or other substance or the contents of the package; or
- (c) tamper with any portion or sample or part of a portion or sample taken under this Act.

Maximum penalty—100 penalty units.

## **27 Analyst's report**

- (1) In any proceedings for an offence against this Act—

[s 28]

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- (a) a report of the result of an analysis purporting to be under the hand of the standards officer or an analyst shall, upon its production by or on behalf of the complainant, be evidence of the facts stated therein unless the defendant gives notice to the complainant at least 3 days prior to the date set down for the hearing of the proceedings that the defendant requires the person who made the report to be called to give evidence on behalf of the complainant;
  - (b) a report of the results of an analysis purporting to be under the hand of a person competent to make the analysis shall, upon its production by or on behalf of the defendant, be evidence of the facts stated therein unless the complainant informs the defendant that the complainant requires the person who made the report to be called to give evidence on behalf of the defendant.
- (2) A copy of a report referred to in subsection (1)(b) shall be given to the complainant at least 3 days prior to the date set down for the hearing of the proceedings and if not so given the court may adjourn the hearing on such terms as it thinks fit.

## **28 Prosecutions generally**

- (1) An offence against this Act is a summary offence.
- (2) A proceeding for an offence against this Act must start—
  - (a) within 1 year after the offence is committed; or
  - (b) within 1 year after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.
- (3) The summons in a proceeding in which a report of the result of an analysis is to be used for the complainant is not returnable for at least 7 days after it is served.
- (4) A copy of the report must be served with the summons.

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**28A Application of Justices Act 1886, s 76, not limited**

A provision of this Act that expresses something as a defence does not limit the application of the *Justices Act 1886*, section 76.

**28B Not an offence to act under direct supervision**

A provision of this Act defining an offence that is expressed to apply to a person other than a veterinary surgeon does not apply to a person who is acting under the direct supervision of a veterinary surgeon.

**29 Expenses of analysis to be paid by offenders on conviction**

In proceedings in which a person is convicted of an offence against this Act the court shall on application made by or on behalf of the complainant order that all fees, charges, costs, and other expenses incidental to the analysis of any chemical or other substance whatsoever in respect of which the conviction is obtained shall be paid by the person convicted, and all such fees, charges, costs and other expenses shall be deemed to be part of the costs in the proceedings.

**30 Responsibility for acts or omissions of representatives**

- (1) If, in a proceeding for an offence against this Act, it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
  - (a) the act or omission was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (2) An act or omission done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken, in a proceeding for an offence against this Act, to have been done

[s 30A]

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or omitted to be done also by the person, unless the person proves the person took all reasonable steps to prevent the act or omission.

- (3) If—
- (a) an individual is convicted of an offence against this Act; and
  - (b) the individual would not have been convicted of the offence if subsections (1) and (2) had not been enacted;
- the individual is not liable to be punished by imprisonment for the offence.

### **30A Liability of executive officer—particular offences committed by corporation**

- (1) An executive officer of a corporation commits an offence if—
- (a) the corporation commits an offence against an executive liability provision; and
  - (b) the officer did not take all reasonable steps to ensure the corporation did not engage in the conduct constituting the offence.

Maximum penalty—the penalty for a contravention of the executive liability provision by an individual.

- (2) In deciding whether things done or omitted to be done by the executive officer constitute reasonable steps for subsection (1)(b), a court must have regard to—
- (a) whether the officer knew, or ought reasonably to have known, of the corporation's conduct constituting the offence against the executive liability provision; and
  - (b) whether the officer was in a position to influence the corporation's conduct in relation to the offence against the executive liability provision; and
  - (c) any other relevant matter.
- (3) The executive officer may be proceeded against for, and convicted of, an offence against subsection (1) whether or not

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the corporation has been proceeded against for, or convicted of, the offence against the executive liability provision.

- (4) This section does not affect—
- (a) the liability of the corporation for the offence against the executive liability provision; or
  - (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence against the executive liability provision.

- (5) In this section—

*executive liability provision* means any of the following provisions—

- section 9
- section 12(4)
- section 12E(4)
- section 12V(2)
- section 13(1)
- section 13A(1)
- section 16(6)
- section 17(5)
- section 18(2).

### **31 Executive officer may be taken to have committed offence**

- (1) If a corporation commits an offence against a deemed executive liability provision, each executive officer of the corporation is taken to have also committed the offence if—
- (a) the officer authorised or permitted the corporation's conduct constituting the offence; or
  - (b) the officer was, directly or indirectly, knowingly concerned in the corporation's conduct.

[s 32]

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- (2) The executive officer may be proceeded against for, and convicted of, the offence against the deemed executive liability provision whether or not the corporation has been proceeded against for, or convicted of, the offence.
- (3) This section does not affect either of the following—
  - (a) the liability of the corporation for the offence against the deemed executive liability provision;
  - (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence against the deemed executive liability provision.
- (4) In this section—

*deemed executive liability provision* means any of the following provisions—

  - section 12I(5)
  - section 13E(1)
  - section 14(3).

## 32 Forfeiture to Crown

- (1) Anything seized under this Act shall—
  - (a) where no appeal is instituted under section 22 in respect of the seizure—upon the expiration of the time limited for such appeal, be forfeited to the Crown;
  - (b) where an appeal under section 22 is instituted in respect of the seizure and the appeal is dismissed or withdrawn—upon that dismissal or, as the case may be, upon the appeal being withdrawn, be forfeited to the Crown.
- (2) Anything forfeited to the Crown under this Act shall be disposed of as prescribed or, if the manner of disposal is not prescribed, as the Minister either generally or in a particular case directs.



### **33 Supervision by inspector**

A direction given under this Act that requires or allows anything to be done by a person may require that the thing be done under the supervision of an inspector.

### **34 Evidence, etc.**

In any proceedings under or for a purpose of this Act—

- (a) the appointment of a person to an office and the authority of an officer to do any act or give any direction shall be presumed in the absence of evidence to the contrary; or
- (b) a certificate purporting to be signed by the standards officer and stating any of the following matters is evidence of the matter—
  - (i) on a stated day, or during a stated period, a chemical product mentioned in the certificate was or was not a registered chemical product;
  - (ii) on a stated day, or during a stated period, a chemical mentioned in the certificate was a controlled or unregistered chemical;
  - (iii) on a stated day, or during a stated period, a label mentioned in the certificate was or was not an approved label for containers for a chemical product;
  - (iv) on a stated day, or during a stated period, a permit mentioned in the certificate was or was not in force;
  - (v) a statement mentioned in the certificate is identical to an instruction that appeared on an approved label mentioned in the certificate on a stated day, or during a stated period;
  - (vi) a notice mentioned in the certificate was given under this Act at a stated time to a stated person; or

[s 34]

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- (c) a document purporting to be a copy of a notice given under this Act shall be evidence of the matters contained in the original of which it purports to be a copy; or
- (d) a document purporting to be a copy or extract of any account, book, invoice, record or other document relating to the sale or use of any chemical, agricultural produce, manufactured stock food, plant, trade species animal, product derived from a trade species animal, fertiliser or other substance shall be evidence of the matters contained in the original of which it purports to be a copy or extract; or
- (e) any photograph, film or audio or visual recording purporting to record any things, words or actions in respect of the sale or use of any chemical, agricultural produce, manufactured stock food, plant, trade species animal, product derived from a trade species animal, fertiliser or other substance shall be evidence of the matters recorded; or
- (f) the allegation or averment in any complaint that—
  - (i) any chemical was used by or was in possession of a specified person; or
  - (ii) any substance is a chemical;shall be evidence of the matter alleged or averred; or
- (g) proof that a person has caused an advertisement to be inserted in a newspaper circulating in the State or in a circular, catalogue, leaflet, pamphlet or other document published or distributed in the State which advertisement contains any direction, claim or recommendation in respect of a chemical shall be evidence that the person caused the direction to be given or the claim or recommendation to be made; or
- (h) a direction, recommendation or claim in respect of the use of a chemical appearing on a label affixed to or inserted in a package containing a chemical shall be taken to have been given or made by the person who

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affixed the label to or inserted it in the package or who caused it to be so affixed or inserted; or

- (i) a certificate purporting to be signed by the standards officer that any costs, charges, or expenses of an amount stated have been incurred by the standards officer or an inspector under and for the purposes of this Act or are due for supervision by an inspector, shall be evidence that the costs, charges, or expenses were duly incurred or are so due and that the amount thereof so stated is the correct amount; or
- (j) evidence that agricultural produce, manufactured stock food, the tissue of a trade species animal or a product derived from a trade species animal (each a *relevant thing*), or a portion or sample of the relevant thing, has in or on it the residue of a registered chemical product in an amount more than the maximum residue limit prescribed for the relevant thing is evidence that the chemical product was used in a way that is not in accordance with the instructions on the approved label for containers for the chemical product.

### **38 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about the following—
  - (a) regulating the use, storage and possession of chemicals generally or having regard to—
    - (i) their location; or
    - (ii) the time of year; or
    - (iii) meteorological conditions; or
    - (iv) the equipment or method to be used to apply the chemicals; or
    - (v) the quantity of the chemicals to be used, stored or possessed; or

- (vi) the qualifications had by the person using, storing or having possession of the chemicals;
- (b) prescribing maximum residue limits for agricultural produce, manufactured stock food, the tissue of a trade species animal or a product derived from a trade species animal;
- (c) regulating the use, storage and possession of agricultural produce, manufactured stock food and products derived from trade species animals that contain the residue of a chemical in an amount more than the maximum residue limit prescribed for the produce, stock food or product;
- (d) the taking and dealing with of samples, the quantity or weight of samples and the marking or labelling of samples;
- (e) the analysis of samples;
- (f) the records to be made and kept for the purposes of this Act and the persons by whom they are to be made and kept;
- (g) prescribing matters and things in respect whereof fees, charges and expenses shall be payable, the amounts of such fees, charges or expenses, the persons liable to pay the same and time at which they become payable and providing for the manner of payment and the manner of recovering an amount not paid;
- (h) prescribing forms to be used for the purposes of this Act, the purposes for which they are to be used and the persons by whom they are to be completed;
- (i) providing for offences against the regulations and prescribing the amount of any penalty (not exceeding 40 penalty units) for an offence;
- (j) prescribing all matters and things that are required or permitted to be prescribed by this Act.

## **Part 4**

# **Transitional provision for Agricultural and Veterinary Chemicals Legislation Amendment Act 2002**

### **39 Exemptions revoked**

An exemption under repealed section 35 that was in force immediately before the commencement of the *Agricultural and Veterinary Chemicals Legislation Amendment Act 2002*, section 27, ceases to have effect on the commencement.

## Schedule Dictionary

sections 4 and 4A(2)

***active constituent*** see the Agvet Code, section 3.

***agricultural chemical product*** see the Agvet Code, section 3.

***agricultural ERA***, for part 2, division 3, see the *Environmental Protection Act 1994*, section 75.

***agricultural produce*** means any plant or part thereof, or the produce of a plant, whether processed or not, that is intended or normally used for human or animal consumption.

***Agvet Code*** means the provisions applying because of section 5 of the *Agricultural and Veterinary Chemicals (Queensland) Act 1994*.

***analysis*** means analysis or examination or analysis and examination and includes any test or determination relative to—

- (a) standard, quality, composition, physical property or any other particular of a chemical or other substance whatsoever; or
- (b) detection, identification or determination of the amount of the residue of a chemical in or on any substance.

***analyst*** means an analyst appointed for the purposes of this Act.

***animal*** see the Agvet Code, section 3.

***approved label*** see the Agvet Code, section 3.

***APVMA*** see the Agvet Code, section 3.

***carrying out***, an agricultural ERA, see section 12W.

***chemical***—

- 1 A chemical is—
  - (a) a chemical product; or

(b) another substance prescribed under a regulation to be a chemical.

2 For paragraph 1(b), a contaminant within the meaning of the *Biosecurity Act 2014* can not be prescribed under a regulation to be a chemical.

***chemical product*** see the Agvet Code, section 3.

***compounded veterinary chemical product*** means a product mentioned in section 5(4) of the Agvet Code.

***container*** see the Agvet Code, section 3.

***distinguishing number***, for a chemical product, means a number, together with 1 or more letters or symbols, given to the product on its registration by the APVMA.

***executive officer***, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

***expiry date***—

(a) for a compounded veterinary chemical product—means the date the product's treatment period ends; and

(b) otherwise—see the Agvet Code, section 3.

***fertiliser*** means any material used or intended as a fertiliser or manure, or for supplying nutriment for the use of plants, or for remedying or assisting to remedy any deficiency or excess in the soil and includes any substance prescribed to be a fertiliser for the purposes of this Act.

***food-producing species*** has the meaning given by the Agvet Code but does not include a horse.

***in charge***, of an animal—

1 A person is in charge of an animal if the person—

(a) owns or has a lease, licence or other proprietary interest in the animal; or

(b) has custody of the animal.

- 2 However, a person who holds a mortgage or other security interest in an animal becomes in charge of the animal only if the person takes a step to enforce the mortgage or other security.

**information notice** means a notice complying with the QCAT Act, section 157(2).

**inspector** means an inspector appointed under this Act, and includes the standards officer and a deputy standards officer.

**instruction** see the Agvet Code, section 3.

**label** see the Agvet Code, section 3.

**land** means land under the *Biosecurity Act 2014*.

**major trade species animal** means a trade species animal that is one of the following—

- (a) cattle, sheep, pigs or domestic fowl (*Gallus domesticus*);
- (b) another trade species animal declared under a regulation to be a major trade species animal.

**maximum residue limit** means the following—

- (a) for the residue of a chemical in or on agricultural produce or manufactured stock food—the maximum residue limit prescribed under a regulation;
- (b) for the residue of a chemical in a trade species animal or a product derived from a trade species animal—the maximum residue limit prescribed under a regulation for the tissue of the animal or the product derived from the animal.

**obstruct** includes hinder, resist and attempt to obstruct.

**occupier**, in relation to land, means the person in actual occupation of the land or, if there is no person in actual occupation, the person entitled to possession of the land.

**officer** means—

- (a) the standards officer or a deputy standards officer; or
- (b) an inspector; or
- (c) an analyst.



**owner**, in relation to land, means the person other than the Crown who for the time being is entitled to receive the rent of that land either of the person's own account or on account of some other person or who, if the same were let to a tenant at a rack rent, would be entitled to receive the rent thereof, and includes the holder of any lease or licence or permission from the Crown, or any person deriving title thereunder.

**package**, in relation to any chemical, or other substance whatsoever, means anything in or by which the chemical or substance is wholly or partly cased, covered, enclosed, contained or packed.

**permit** see the Agvet Code, section 3.

**pest** see the Agvet Code, section 3.

**pharmacist** means a person registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession, other than as a student.

**plant** see the Agvet Code, section 3.

**preparing**, for a prescribed agricultural ERA product, see section 12W.

**prescribed agricultural ERA conditions** see section 12W.

**prescribed agricultural ERA product** see section 12W.

**prescription animal remedy** means a chemical product that is an S4 poison under the *Health (Drugs and Poisons) Regulation 1996*.

**primary dealer** of a chemical means the person responsible for placing the chemical on the market in Queensland (whether as manufacturer, importer, distributor, seller, agent or in another capacity).

**proscribed chemical** means a chemical proscribed under section 11C.

**registered agricultural chemical product** means an agricultural chemical product that is a registered chemical product.

**registered chemical product** see the Agvet Code, section 3.

**registered veterinary chemical product** means a veterinary chemical product that is a registered chemical product.

**representative**, of a person, means—

- (a) if the person is a corporation—an executive officer, employee or agent of the corporation; or
- (b) if the person is an individual—an employee or agent of the individual.

**residue**, in relation to a chemical, includes, in addition to any of that chemical, any derivative or metabolite of the chemical.

**restraint statement** means a statement, on a product's label, usually under the heading 'restraints', about the situations in which use of the product is restricted.

*Examples of the starting words of a restraint statement—*

- 1 'For use only by or under'
- 2 'Do not use'
- 3 'Not to be used'
- 4 'Use only'

**single**, for treatment of an animal, means—

- (a) the animal is on its own; or
- (b) the animal is from a group of animals in which no other animal in the group, or on the same property, is treated in the same way.

**supply** see the Agvet Code, section 3.

**trade species animal** means—

- (a) a food-producing species; or
- (b) an animal, other than a food-producing species, kept or used for trading in products derived from the animal, for example wool, feathers, skin or bone.

**unregistered chemical** means a chemical that is not a registered chemical product.

**unregistered veterinary chemical product** means a veterinary chemical product that is not a registered veterinary chemical product, and includes, for example—

- (a) a human pharmaceutical product; and
- (b) a chemical product intended for use as an agricultural chemical product.

*use*, in relation to a chemical, means to administer, apply, disperse, inject, spray or spread the chemical or to use the chemical by similar means.

*veterinary chemical product* see the Agvet Code, section 3.

*veterinary surgeon* means a person registered as a veterinary surgeon under the *Veterinary Surgeons Act 1936*.

*withholding period* see section 12S.