



# Pharmacy Business Ownership Act 2001

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Queensland

# Pharmacy Business Ownership Act 2001

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# Pharmacy Business Ownership Act 2001

**An Act to provide for the regulation of pharmacy business ownership, and for other purposes**

## **Part 1 Preliminary**

### **Division 1 Introduction**

#### **1 Short title**

This Act may be cited as the *Pharmacy Business Ownership Act 2001*.

#### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

### **Division 2 Operation of Act**

#### **3 Act binds all persons**

- (1) This Act binds all persons, including the State.
- (2) Nothing in this Act makes the State liable to be prosecuted for an offence.

#### **6 Application of Act**

This Act does not limit the application of the *Medicines and Poisons Act 2019*.

## **Division 3                      Objects**

### **8                      Objects of Act**

- (1) The objects of the Act are—
  - (a) to promote the professional, safe and competent provision of pharmacy services; and
  - (b) to maintain public confidence in the pharmacy profession.
- (2) The objects are to be achieved mainly by—
  - (a) limiting who may own a pharmacy business; and
  - (b) limiting the number of pharmacy businesses that may be owned by a person; and
  - (c) providing for compliance with this Act to be monitored and enforced.

## **Division 4                      Interpretation**

### **9                      Definitions**

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

## **Part 2                                      Ownership of pharmacy business**

### **139A      Definitions**

In this part—

*friendly society* means a company—

- (a) that is registered under the Corporations Act under a name that includes the words ‘friendly society’; and



- 
- (b) that is not carrying on business for the dominant purpose of securing a profit or pecuniary gain for its members; and
  - (c) for which any object or intention of providing a dividend to its shareholders or members is a limited and not a dominant purpose; and
  - (d) that applies its property and income towards the objects of the company.

*own*, a pharmacy business, includes having a proprietary interest in the pharmacy business, but does not include having an interest in the pharmacy business arising under a bill of sale, mortgage, or other form of security, for the pharmacy business.

*relative*, of a pharmacist, means—

- (a) the pharmacist's spouse; or
- (b) a child of the pharmacist who is at least 18 years of age.

### **139B Restriction on who may own pharmacy business**

A person must not own a pharmacy business unless the person is—

- (a) a pharmacist; or
- (b) a corporation whose directors and shareholders are all pharmacists; or

*Note*—

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 197, to have also committed the offence.

- (ba) a corporation—
  - (i) whose directors and shareholders are a combination of pharmacists and relatives of the pharmacists; and
  - (ii) in which the majority of shares are held by pharmacists; and

- (iii) in which only pharmacists hold voting shares; or
- (c) a friendly society that, at the commencement of this section, operates a pharmacy business in the State or another State; or
- (d) a friendly society that is an amalgamation of 2 or more friendly societies mentioned in paragraph (c); or
- (e) Mater Misericordiae Health Services Brisbane Limited ACN 096 708 922.

Maximum penalty—200 penalty units.

### **139C Pharmacist whose registration is suspended or cancelled may own pharmacy business for limited period**

- (1) This section applies if—
  - (a) an individual who is a pharmacist—
    - (i) owns a pharmacy business; or
    - (ii) is a director of or a shareholder in a corporation that owns a pharmacy business; and
  - (b) the individual's registration is suspended or cancelled under the Health Practitioner Regulation National Law.
- (2) Despite section 139B, the individual or corporation may continue to own the pharmacy business for the period or periods approved by the chief executive.
- (3) In deciding whether to grant an approval under subsection (2), the chief executive must have regard to—
  - (a) the objects of this Act; and
  - (b) the financial circumstances of the pharmacy business.
- (4) Each period approved by the chief executive under subsection (2) must not be more than 3 months.
- (5) An individual or corporation who owns a pharmacy business under an approval granted under this section—
  - (a) must give the chief executive notice of the name of the pharmacist under whose personal supervision and

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management the pharmacy business will be carried on under section 141; and

- (b) if the person is an individual—must not personally provide a pharmacy service; and
- (c) must comply with any other condition the chief executive reasonably believes is necessary to give effect to this Act and included in the approval.

Maximum penalty for subsection (5)—200 penalty units.

### **139D Person who stops being pharmacist's spouse may continue as director or shareholder for limited period**

- (1) This section applies if—
  - (a) a person is a director or shareholder of a corporation that owns a pharmacy business because of being the spouse of a pharmacist; and
  - (b) the person stops being the pharmacist's spouse.
- (2) Despite section 139B, the corporation may continue to own the pharmacy business—
  - (a) during the period starting on the day the person stops being the pharmacist's spouse and ending 1 year after that day; or
  - (b) during the longer period decided by the chief executive having regard to—
    - (i) the objects of the Act; and
    - (ii) the financial circumstances of the pharmacy business.

### **139E Executor, administrator or trustee of pharmacist's estate may own pharmacy business for limited period**

- (1) This section applies if, immediately before his or her death, a pharmacist owned a pharmacy business.

[s 139F]

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- (2) Despite section 139B, the executor, administrator or trustee of the estate of the deceased pharmacist may continue to operate the business—
  - (a) during the period starting on the day the pharmacist dies and ending 1 year after that day; or
  - (b) during the longer period decided by the chief executive having regard to—
    - (i) the objects of the Act; and
    - (ii) the financial circumstances of the pharmacy business.

### **139F Friendly society that demutualises may own pharmacy business for limited period**

- (1) This section applies if—
  - (a) a company that is a friendly society owns a pharmacy business; and
  - (b) the company demutualises.
- (2) Despite section 139B, the company may own the pharmacy business for 6 months after the day of the demutualisation.
- (3) In this section—

*demutualisation*, of a company, means a modification of the constitution of the company, or an issue of shares—

  - (a) that will result in or allow a modification of the mutual structure of the company; and
  - (b) to which the Corporations Act, schedule 4, part 5, applies.

### **139G Trustee, liquidator, receiver or administrator does not commit offence against s 139B**

- (1) Subsection (2) applies if—
  - (a) a pharmacist who owns, or is the director of or a shareholder in a corporation that owns, a pharmacy

- 
- business becomes an insolvent under administration;  
and
- (b) the property of the pharmacist vests in, or comes under the control of, a trustee because of the pharmacist becoming an insolvent under administration.
- (2) The trustee does not commit an offence against section 139B because of the trusteeship.
  - (3) Subsection (4) applies if a corporation that owns a pharmacy business is—
    - (a) in liquidation or receivership; or
    - (b) under administration.
  - (4) The liquidator, receiver or administrator does not commit an offence against section 139B because of being the corporation's liquidator, receiver or administrator.

### **139H Restriction on number of pharmacy businesses in which a person may have beneficial interest**

- (1) A pharmacist must not have a beneficial interest in more than 5 pharmacy businesses at the same time.  
Maximum penalty—200 penalty units.
- (2) For subsection (1), a pharmacist has a beneficial interest in a pharmacy business if the pharmacist—
  - (a) owns the pharmacy business; or
  - (b) is a director of, or shareholder in, a corporation that owns the pharmacy business.
- (3) A corporation must not own more than 5 pharmacy businesses at the same time.

Maximum penalty—200 penalty units.

*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 197, to have also committed the offence.

[s 139I]

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- (4) A friendly society must not own more than 6 pharmacy businesses at the same time.

Maximum penalty—200 penalty units.

*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 197, to have also committed the offence.

- (5) Mater Misericordiae Health Services Brisbane Limited ACN 096 708 922 must not own more than 6 pharmacy businesses at the same time.

Maximum penalty—200 penalty units.

*Note—*

If a corporation commits an offence against this provision, an executive officer of the corporation may be taken, under section 197, to have also committed the offence.

### **139I Certain arrangements about control of pharmacy business void**

- (1) A bill of sale, mortgage, lease, franchise, agency or other service or commercial arrangement for a pharmacy business is void to the extent it—
- (a) gives to a person, other than the owner of the business—
    - (i) the right to control in whole or part the way in which the business is carried on; or
    - (ii) the right to receive any consideration that varies according to the profits or takings of the business; or
  - (b) requires goods or services for the business to be obtained from a stated person or body.
- (2) However, subsection (1) does not apply to a bill of sale, mortgage or other form of security to the extent it gives rights to an administrator, receiver, or receiver and manager.

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**141 Pharmacy business to be carried on under supervision of pharmacist**

- (1) A person who owns a pharmacy business that is not carried on under the personal supervision and management of a pharmacist commits an offence against this Act.

Maximum penalty—50 penalty units.

- (2) For the purposes of subsection (1), a pharmacy business is not carried on under the personal supervision and management of a pharmacist unless the pharmacist is personally present in the premises at which the business is carried out at all times when the premises are open for business, other than for a period of not more than 1 hour in a day or another period approved by the chief executive.
- (3) In deciding under subsection (2) whether to approve another period, the chief executive must have regard to the needs of users of the professional services provided by the pharmacy business.

**141A Notification of change of ownership of a pharmacy business**

- (1) Within 21 days after a change of ownership of a pharmacy business, each relevant person must give to the chief executive a notice of the change in the approved form and accompanied by the prescribed fee.

Maximum penalty—50 penalty units.

- (2) In this section—

*relevant person*, for a change of ownership of a pharmacy business, means—

- (a) a person who starts to own the business; and  
(b) a person who ceases to own the business.

### **141B Notification of change of ownership particulars of a pharmacy business**

- (1) Within 21 days after a change of ownership particulars of a pharmacy business, a person who owns the pharmacy business must give to the chief executive a notice of the change in the approved form and accompanied by the prescribed fee.

Maximum penalty—50 penalty units.

- (2) In this section—

*ownership particulars* includes—

- (a) the name or location of the pharmacy business; or
- (b) if the person is a corporation, other than a corporation mentioned in section 139B(c) to (e)—
- (i) the directors or shareholders of the corporation; or
- (ii) the shareholdings of the shareholder of the corporation; or
- (c) if the person owns a pharmacy in a partnership—the share held by the partner.

## **Part 3 Investigation and enforcement**

### **Division 1 Inspectors**

#### **142 Functions of inspectors**

An inspector has the function of conducting investigations and inspections to enforce compliance with this Act.

#### **143 Powers of inspectors**

For this Act, an inspector has the powers given to the person under this Act.



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## 144 Limitation on powers of inspectors

The powers of an inspector may be limited under a condition of appointment.

## Division 2 Appointment of inspectors and other matters

### 145 Appointment and qualifications

- (1) The chief executive may appoint any of the following persons as an inspector—
  - (a) an officer of the department;
  - (b) a health service employee.
- (2) However, the chief executive may appoint a person as an inspector only if the chief executive is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

### 146 Appointment conditions

- (1) An inspector holds office on the conditions stated in the instrument of appointment.
- (2) An inspector ceases holding office—
  - (a) if the appointment provides for a term of appointment—at the end of the term; or
  - (b) if the conditions of appointment provide—on ceasing to hold another office (the *main office*) stated in the appointment conditions.
- (3) An inspector may resign by signed notice of resignation given to the chief executive.
- (4) However, an inspector may not resign from the office of inspector (the *secondary office*) if a condition of the inspector's employment to the main office requires the inspector to hold the secondary office.

### **147 Identity cards**

- (1) The chief executive must give an identity card to each inspector.
- (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 for this Act; and
  - (d) include an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other Acts.

### **148 Failure to return identity card**

A person who ceases to be an inspector must return the person's identity card to the chief executive within 7 days after the person ceases to be an inspector, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

### **149 Production or display of inspector's identity card**

- (1) An inspector may exercise a power in relation to someone else (the *other person*) only if the inspector—
  - (a) first produces the inspector's identity card for the other person's inspection; or
  - (b) has the identity card displayed so it is clearly visible to the other person.
- (2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the inspector must produce the identity card for the other person's inspection at the first reasonable opportunity.

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## **Division 3            Powers of inspectors**

### **Subdivision 1        Entry of places**

#### **150    Power to enter places**

- (1) An inspector may enter a place if—
  - (a) its occupier consents to the entry; or
  - (b) it is a public place and the entry is made when the place is open to the public; or
  - (c) the entry is authorised by a warrant.
- (2) For the purpose of asking the occupier of a place for consent to enter, an inspector may, without the occupier's consent or a warrant—
  - (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
  - (b) enter part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

### **Subdivision 2        Procedure for entry**

#### **151    Entry with consent**

- (1) This section applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place under section 150(1)(a).
- (2) Before asking for the consent, the inspector must tell the occupier—
  - (a) the purpose of the entry; and
  - (b) that the occupier is not required to consent.
- (3) If the consent is given, the inspector may ask the occupier to sign an acknowledgement of the consent.

- (4) The acknowledgement must state—
  - (a) the occupier has been told—
    - (i) the purpose of the entry; and
    - (ii) that the occupier is not required to consent; and
  - (b) the purpose of the entry; and
  - (c) the occupier gives the inspector consent to enter the place and exercise powers under this part; and
  - (d) the time and date the consent was given.
- (5) If the occupier signs the acknowledgement, the inspector must immediately give a copy to the occupier.
- (6) A court must find the occupier of a place did not consent to an inspector entering the place under this part if—
  - (a) an issue arises in a proceeding before the court whether the occupier of the place consented to the entry under section 150(1)(a); and
  - (b) an acknowledgement mentioned in subsection (4) is not produced in evidence for the entry; and
  - (c) it is not proved by the person relying on the lawfulness of the entry that the occupier consented to the entry.

## **152 Application for warrant**

- (1) An inspector may apply to a magistrate for a warrant for a place.
- (2) The application must be sworn and state the grounds on which the warrant is sought.
- (3) The magistrate may refuse to consider the application until the inspector gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

### *Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

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## 153 Issue of warrant

- (1) The magistrate may issue a warrant only if the magistrate is satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity (the *evidence*) that may provide evidence of an offence against this Act; and
  - (b) the evidence is at the place, or may be at the place within the next 7 days.
- (2) The warrant must state—
  - (a) that a stated inspector may, with necessary and reasonable help and force—
    - (i) enter the place and any other place necessary for entry; and
    - (ii) exercise the inspector's powers under this part; and
  - (b) the offence for which the warrant is sought; and
  - (c) the evidence that may be seized under the warrant; and
  - (d) the hours of the day or night when the place may be entered; and
  - (e) the date, within 14 days after the warrant's issue, the warrant ends.

## 154 Special warrants

- (1) An inspector may apply for a warrant (a *special warrant*) by phone, fax, radio or another form of communication if the inspector considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the inspector's remote location.
- (2) Before applying for the special warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.
- (3) The inspector may apply for the special warrant before the application is sworn.

- (4) After issuing the special warrant, the magistrate must immediately fax a copy (the *facsimile warrant*) to the inspector if it is reasonably practicable to fax the copy.
- (5) If it is not reasonably practicable to fax a copy to the inspector—
  - (a) the magistrate must tell the inspector—
    - (i) what the terms of the special warrant are; and
    - (ii) the date and time the special warrant was issued; and
  - (b) the inspector must complete a form of warrant (a *warrant form*) and write on it—
    - (i) the magistrate's name; and
    - (ii) the date and time the magistrate issued the special warrant; and
    - (iii) the terms of the special warrant.
- (6) The facsimile warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the other powers stated in the special warrant issued.
- (7) The inspector must, at the first reasonable opportunity, send to the magistrate—
  - (a) the sworn application; and
  - (b) if the inspector completed a warrant form, the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the special warrant.
- (9) A court must find the exercise of the power by an inspector was not authorised by a special warrant if—
  - (a) an issue arises in a proceeding before the court whether the exercise of the power was authorised by a special warrant mentioned in subsection (1); and
  - (b) the special warrant is not produced in evidence; and

- (c) it is not proved by the person relying on the lawfulness of the entry that the inspector obtained the special warrant.

### **155 Warrants—procedure before entry**

- (1) This section applies if an inspector named in a warrant issued under this part for a place is intending to enter the place under the warrant.
- (2) Before entering the place, the inspector must do or make a reasonable attempt to do the following things—
  - (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the inspector's identity card or other document evidencing the inspector's appointment;
  - (b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form mentioned in section 154(6), a copy of the facsimile warrant or warrant form;
  - (c) tell the person the inspector is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the inspector immediate entry to the place without using force.
- (3) However, the inspector need not comply with subsection (2) if the inspector believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

## **Subdivision 3 Powers after entry**

### **156 General powers after entering places**

- (1) This section applies to an inspector who enters a place.
- (2) However, if an inspector enters a place to get the occupier's consent to enter premises, this section applies to the inspector

only if the consent is given or the entry is otherwise authorised.

- (3) For enforcing compliance with this Act, the inspector may—
- (a) search any part of the place; or
  - (b) inspect, measure, test, photograph or film any part of the place or anything at the place; or
  - (c) take a thing, or a sample of or from a thing, for analysis or testing; or
  - (d) take an extract from, or copy, a document at the place; or
  - (e) take into or onto the place any person, equipment and materials the inspector reasonably requires for exercising a power under this part; or
  - (f) require the occupier of the place, or a person at the place, to give the inspector reasonable help to exercise the inspector's powers under paragraphs (a) to (e); or
  - (g) require the occupier of the place, or a person at the place, to give the inspector information to help the inspector ascertain whether this Act is being complied with.
- (4) When making a requirement mentioned in subsection (3)(f) or (g), the inspector must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

## **157 Failure to help inspector**

- (1) A person required to give reasonable help under section 156(3)(f) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) If an individual is required under section 156(3)(f) to give information, or produce a document, it is a reasonable excuse for the individual not to comply with the requirement that



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complying with the requirement might tend to incriminate the individual.

### **158 Failure to give information**

- (1) A person of whom a requirement is made under section 156(3)(g) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with the requirement that complying with the requirement might tend to incriminate the individual.

## **Subdivision 4 Power to seize evidence**

### **159 Seizing evidence at a place that may be entered without consent or warrant**

An inspector who enters a place that may be entered under this division without the consent of the occupier and without a warrant, may seize a thing at the place if the inspector reasonably believes the thing is evidence of an offence against this Act.

### **160 Seizing evidence at a place that may only be entered with consent or warrant**

- (1) This section applies if—
- (a) an inspector is authorised to enter a place under this division only with the consent of the occupier of the place or a warrant; and
  - (b) the inspector enters the place after obtaining the necessary consent or warrant.
- (2) If the inspector enters the place with the occupier's consent, the inspector may seize a thing at the place if—

- (a) the inspector reasonably believes the thing is evidence of an offence against this Act; and
  - (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.
- (3) If the inspector enters the place with a warrant, the inspector may seize the evidence for which the warrant was issued.
- (4) The inspector also may seize anything else at the place if the inspector reasonably believes—
- (a) the thing is evidence of an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing being—
    - (i) hidden, lost or destroyed; or
    - (ii) used to continue, or repeat, the offence.
- (5) Also, the inspector may seize a thing at the place if the inspector reasonably believes it has just been used in committing an offence against this Act.

## 161 Securing seized things

Having seized a thing, an inspector may—

- (a) move the thing from the place where it was seized (the *place of seizure*); or
- (b) leave the thing at the place of seizure but take reasonable action to restrict access to it.

*Examples of restricting access to a thing—*

- 1 sealing a thing and marking it to show access to it is restricted
- 2 sealing the entrance to a room where the seized thing is situated and marking the entrance to show access to the room is restricted

## 162 Tampering with seized things

If an inspector restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing, or something restricting access to the thing, without an inspector's approval.

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Maximum penalty—100 penalty units.

### **163 Powers to support seizure**

- (1) To enable a thing to be seized, an inspector may require the person in control of it—
  - (a) to take it to a stated reasonable place by a stated reasonable time; and
  - (b) if necessary, to remain in control of it at the stated place for a reasonable time.
- (2) The requirement—
  - (a) must be made by notice in the approved form; or
  - (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice in the approved form as soon as practicable.
- (3) A further requirement may be made under this section about the same thing if it is necessary and reasonable to make the further requirement.
- (4) A person of whom a requirement is made under subsection (1) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—50 penalty units.

### **164 Receipts for seized things**

- (1) As soon as practicable after an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.
- (3) The receipt must describe generally each thing seized and its condition.

- (4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt, given the thing's nature, condition and value.

## **165 Forfeiture of seized things**

- (1) A seized thing is forfeited to the State if the inspector who seized the thing—
- (a) can not find its owner, after making reasonable inquiries; or
  - (b) can not return it to its owner, after making reasonable efforts; or
  - (c) reasonably believes it is necessary to retain the thing to prevent it being used to commit an offence against this Act.
- (2) In applying subsection (1)—
- (a) subsection (1)(a) does not require the inspector to make inquiries if it would be unreasonable to make inquiries to find the owner; and
  - (b) subsection (1)(b) does not require the inspector to make efforts if it would be unreasonable to make efforts to return the thing to its owner.
- (3) If the inspector makes a decision under subsection (1)(c), resulting in the seized thing being forfeited to the State, the inspector must immediately give the owner an information notice for the decision.
- (4) Subsection (3) does not apply if—
- (a) the inspector can not find the owner, after making reasonable inquiries; or
  - (b) it is impracticable or would be unreasonable to give the information notice.
- (5) Regard must be had to a thing's nature, condition and value—
- (a) in deciding—

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- (i) whether it is reasonable to make inquiries or efforts; and
  - (ii) if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable; or
- (b) in deciding whether it would be unreasonable to give the information notice.

## **166 Forfeiture on conviction**

- (1) On the conviction of a person for an offence against this Act, the court may order the forfeiture to the State of—
  - (a) anything used to commit the offence; or
  - (b) anything else the subject of the offence.
- (2) The court may make the order—
  - (a) whether or not the thing has been seized; and
  - (b) if the thing has been seized, whether or not the thing has been returned to its owner.
- (3) The court may make any order to enforce the forfeiture it considers appropriate.
- (4) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

## **167 Dealing with forfeited things etc.**

- (1) On the forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the chief executive as the chief executive considers appropriate.
- (2) Without limiting subsection (1), the chief executive may destroy or dispose of the thing.
- (3) Despite subsection (1), the chief executive must not deal with the thing in a way that could prejudice the outcome of—
  - (a) a review by QCAT under section 181; or

- (b) an appeal, relevant to the thing, of which the chief executive is aware.

### **168 Return of seized things**

- (1) If a seized thing has not been forfeited, the inspector must return it to its owner—
  - (a) at the end of 6 months; or
  - (b) if a proceeding for an offence involving the thing is started within 6 months, at the end of the proceeding and any appeal from the proceeding.
- (2) Despite subsection (1), unless the thing has been forfeited, the inspector must immediately return a thing seized as evidence to its owner if the inspector stops being satisfied its continued retention as evidence is necessary.

### **169 Access to seized things**

- (1) Until a seized thing is forfeited or returned, an inspector must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

## **Subdivision 5 Power to obtain information**

### **170 Power to require name and address**

- (1) This section applies if—
  - (a) an inspector finds a person committing an offence against this Act; or
  - (b) an inspector finds a person in circumstances that lead, or has information that leads, the inspector to reasonably suspect the person has just committed an offence against this Act.

- (2) The inspector may require the person to state the person's name and residential address.
- (3) When making the requirement, the inspector must warn the person it is an offence to fail to state the person's name or residential address, unless the person has a reasonable excuse.
- (4) The inspector may require the person to give evidence of the correctness of the stated name or residential address if the inspector reasonably suspects the stated name or address is false.
- (5) A requirement under subsection (2) or (4) is called a *personal details requirement*.

#### **171 Failure to give name or address**

- (1) A person of whom a personal details requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) A person does not commit an offence against subsection (1) if—
  - (a) the person was required to state the person's name and residential address by an inspector who suspected the person had committed an offence against this Act; and
  - (b) the person is not proved to have committed the offence.

#### **172 Power to require production of documents**

- (1) An inspector may require a person to make available for inspection by an inspector, or produce to the inspector for inspection, at a reasonable time and place nominated by the inspector a document issued to the person under this Act.
- (2) The inspector may keep the document to copy it.
- (3) The inspector must return the document to the person as soon as practicable after copying it.

- (4) While the document is in the inspector's possession, the inspector must allow it to be inspected or copied, at a reasonable time, by a person who would be entitled to inspect or copy it were it not in the inspector's possession.
- (5) A requirement under subsection (1) is called a *document production requirement*.

### **173 Failure to produce document**

- (1) A person of whom a document production requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is not a reasonable excuse for an individual not to comply with a document production requirement if complying with the requirement might tend to incriminate the individual.

### **174 Power to require information**

- (1) This section applies if an inspector reasonably believes—
  - (a) an offence against this Act has been committed; and
  - (b) a person may be able to give information about the offence.
- (2) The inspector may, by notice given to the person, require the person to give information, including a document, about the offence to the inspector at a stated reasonable time and place.
- (3) The person must comply with a requirement under subsection (2), unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (4) For this section, it is a reasonable excuse for an individual to fail to give information that giving the information might tend to incriminate the individual.



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## Division 4                    General enforcement matters

### 175    Notice of damage

- (1) This section applies if—
  - (a) an inspector damages property when exercising or purporting to exercise a power; or
  - (b) a person (the *other person*) acting under the direction of an inspector damages property.
- (2) The inspector must immediately give notice of particulars of the damage to the person who appears to the inspector to be the owner of the property.
- (3) If the inspector believes the damage was caused by a latent defect in the property or circumstances beyond the inspector's or other person's control, the inspector may state the belief in the notice.
- (4) If, for any reason, it is impracticable to comply with subsection (2), the inspector must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.
- (5) This section does not apply to damage the inspector reasonably believes is trivial.
- (6) In this section—

*owner*, of property, includes the person in possession or control of it.

### 176    Compensation

- (1) A person may claim from the chief executive the cost of repairing or replacing property damaged because of the exercise or purported exercise of a power under any of the following subdivisions of division 3—
  - subdivision 1 (Entry of places)
  - subdivision 3 (Powers after entry)

- subdivision 4 (Power to seize evidence).
- (2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under the subdivision.
  - (3) Compensation may be claimed and ordered to be paid in a proceeding—
    - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
    - (b) for an offence against this Act brought against the person claiming compensation.
  - (4) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

### **177 False or misleading information**

A person must not give information to an inspector the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

### **178 False or misleading documents**

- (1) A person must not give an inspector a document containing information the person knows is false or misleading in a material particular.  
Maximum penalty—50 penalty units.
- (2) Subsection (1) does not apply to a person if the person, when giving the document—
  - (a) tells the inspector, to the best of the person's ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information, gives the correct information.

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## **179 Obstructing inspectors**

- (1) A person must not obstruct an inspector in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed an inspector and the inspector decides to proceed with the exercise of the power, the inspector must warn the person that—

(a) it is an offence to obstruct the inspector, unless the person has a reasonable excuse; and

(b) the inspector considers the person's conduct is an obstruction.

- (3) In this section—

*obstruct* includes hinder and attempt to obstruct or hinder.

## **180 Impersonation of inspectors**

A person must not pretend to be an inspector.

Maximum penalty—50 penalty units.

## **181 Review of decision by QCAT**

An owner of a thing forfeited to the State under section 165(1)(c) who is dissatisfied with the decision resulting in the forfeiture may apply, as provided under the QCAT Act, to QCAT for a review of the decision.

# **Part 4 Legal proceedings**

## **Division 1 Evidence**

### **186 Application of division**

This division applies to a proceeding under this Act.

## **187 Appointments and authority**

It is not necessary to prove—

- (a) an inspector's appointment; or
- (b) the chief executive's appointment; or
- (c) the authority of an inspector or the chief executive to do anything under this Act.

## **188 Signatures**

A signature purporting to be the signature of an inspector or the chief executive is evidence of the signature it purports to be.

## **189 Evidentiary provisions**

A certificate purporting to be signed by the chief executive and stating any of the following matters is evidence of the matter—

- (a) a stated document is one of the following things made, given, issued or kept under this Act—
  - (i) an appointment, approval or decision;
  - (ii) a notice, direction or requirement;
- (b) on a stated day, or during a stated period, an appointment as an inspector was, or was not, in force for a stated person;
- (c) on a stated day, a stated person was given a stated notice or direction under this Act;
- (d) on a stated day, a stated requirement was made of a stated person.

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## **Division 2                      Proceedings**

### **190      Summary offences**

An offence against this Act is a summary offence.

### **193      Limitation on time for starting summary proceedings**

A proceeding for a summary offence against this Act by way of summary proceeding under the *Justices Act 1886* must start—

- (a) within 1 year after the commission of the offence; or
- (b) within 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.

### **194      Allegations of false or misleading information or documents**

In any proceeding for an offence against this Act defined as involving false or misleading information, or a false or misleading document, it is enough for a charge to state that the information or document was, without specifying which, 'false or misleading'.

### **196      Responsibility for acts or omissions of representatives**

- (1) This section applies in a proceeding for an offence against this Act.
- (2) If 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 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.

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- (3) An act 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 to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
- (4) In this section—
- representative* means—
- (a) for a corporation—an executive officer, employee or agent of the corporation; or
  - (b) for an individual—an employee or agent of the individual.
- state of mind* of a person includes—
- (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

## **197 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.
- (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 139B(b)
  - section 139H(3)
  - section 139H(4)
  - section 139H(5).

## Part 5                      Miscellaneous

### 198     Protecting officials from liability

- (1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.
- (3) In this section—

*official* means—

  - (a) the chief executive; or
  - (b) an inspector; or
  - (c) an officer of the department; or
  - (d) a health service employee; or
  - (e) a person acting under the direction of someone mentioned in paragraphs (a) to (d).

## 199 Approval of forms

The chief executive may approve forms for use under this Act.

## 200 Delegation by chief executive

(1) The chief executive may delegate the chief executive's functions under this Act to an appropriately qualified officer of the department or employee of the department.

(2) In this section—

*appropriately qualified*, for an officer or employee to whom a function may be delegated, includes having the qualifications, experience or standing appropriate for the function.

*Example of standing for an officer or employee—*

the officer or employee's classification or level in the department

*functions* includes powers.

## 201 Disclosure of documents or information to the Pharmacy Board of Australia

(1) The chief executive may disclose documents or information obtained under this Act to a relevant entity.

(2) However, the chief executive may disclose documents or information under subsection (1) only if the chief executive is satisfied—

(a) the documents or information will be collected, stored and used by the relevant entity to which it is disclosed in a way that ensures the privacy of the persons to whom it relates is protected; and

(b) the provision of the documents or information to the relevant entity is necessary for the relevant entity to perform its functions.

(3) In this section—

*Pharmacy Board of Australia* means the Pharmacy Board of Australia established under the Health Practitioner Regulation National Law.



*relevant entity* means—

- (a) the Pharmacy Board of Australia; and
- (b) an entity established under the *National Health Act 1953* (Cwlth).

## 202 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) Without limiting subsection (1), a regulation may—
  - (a) prescribe fees payable under the Act; and
  - (b) provide for a maximum penalty of 20 penalty units for a contravention of a regulation.

# Part 6 Transitional provisions for the Health Legislation (Health Practitioner Regulation National Law) Amendment Act 2010

## 203 Definitions

In this part—

*amending law* means the *Health Legislation (Health Practitioner Regulation National Law) Amendment Act 2010*, part 9.

*board* means the board established under the pre-amended Act, section 10.

*commencement* means the commencement of this section.

*pre-amended Act* means this Act as in force before the commencement.

## **204 Records relating to pharmacy businesses**

- (1) This section applies to a record held by the board under the pre-amended Act, part 4, division 6A or 7 immediately before the commencement.
- (2) The record is taken to be a record of the department.

## **205 Offences**

- (1) From the commencement, a proceeding for an offence under the pre-amended Act, part 4, division 6A or 7, may be continued and finished by the chief executive.
- (2) For this section, the *Acts Interpretation Act 1954*, section 20 applies, but does not limit the section.

## **206 Inspectors appointed under pre-amended Act**

- (1) From the commencement, a person who was appointed as an inspector under the pre-amended Act, section 145 stops being an inspector.
- (2) The person must comply with section 148.

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# Schedule Dictionary

## section 9

*amending law*, for part 6, see section 203.

*board*, for part 6, see section 203.

*commencement*, for part 6, see section 203.

*convicted*, of an offence, means being found guilty of the offence, on a plea of guilty or otherwise, whether or not a conviction is recorded.

*document production requirement* see section 172(5).

*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.

*facsimile warrant* see section 154(4).

*friendly society*, for part 2, see section 139A.

*health service employee* see the *Hospital and Health Boards Act 2011*, schedule 2.

*information notice*, for a decision of the board or an inspector, is a notice stating the following—

- (a) the decision;
- (b) the reasons for the decision;
- (c) that the person to whom the notice is given has a right to have the decision reviewed by QCAT;
- (d) how, and the period within which, the person may apply for the review;
- (e) the right the person has to have the operation of the decision stayed under the QCAT Act, section 22.

*inspector* means a person who is appointed as an inspector under section 145.

**notice** means written notice.

**occupier**, of a place, includes a person who reasonably appears to be an occupier, or in charge, of the place.

**own**, for part 2, see section 139A.

**personal details requirement** see section 170(5).

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

**pharmacy business** means—

- (a) a business providing pharmacy services; but
- (b) does not include—
  - (i) a business operated by the State at a public sector hospital; or
  - (ii) another business at a hospital that provides pharmacy services only to patients at the hospital.

**place** includes premises, vacant land and a vehicle.

**place of seizure** see section 161.

**pre-amended Act**, for part 6, see section 203.

**premises** includes—

- (a) a building or other structure; and
- (b) a part of a building or other structure; and
- (c) land where a building or other structure is situated.

**public place** means a place that the public is entitled to use, is open to the public or is used by the public, whether or not on payment of money.

**relative**, for part 2, see section 139A.

**user**, of a pharmacist's services, includes a person who used the services.

**warrant form** see section 154(5)(b).