

Medicines and Poisons (Pest Management Activities) Regulation 2021

Explanatory notes for SL 2021 No. 142

made under the

COVID-19 Emergency Response Act 2020

Medicines and Poisons Act 2019

Queensland Building and Construction Commission Act 1991

General Outline

Short title

Medicines and Poisons (Pest Management Activities) Regulation 2021

Authorising law

Section 13 of the *COVID-19 Emergency Response Act 2020*

Section 240 of the *Medicines and Poisons Act 2019*

Section 116 of the *Queensland Building and Construction Commission Act 1991*

Policy objectives and the reasons for them

Medicines, poisons and therapeutic goods are regulated in Queensland under the *Health Act 1937*, *Health (Drugs and Poisons) Regulation 1996* and *Health Regulation 1996*. The use of pesticides for pest management activities is regulated under the *Pest Management Act 2001* and *Pest Management Regulation 2003* (2003 Pest Management Regulation).

Following a review of the existing legislation, it was determined that the Health Act, Pest Management Act, Health (Drugs and Poisons) Regulation, Health Regulation and 2003 Pest Management Regulation would be repealed and replaced with a suite of legislation comprising the:

- *Medicines and Poisons Act 2019* (Act);
- *Therapeutic Goods Act 2019*;
- *Medicines and Poisons (Medicines) Regulation 2021*;
- *Medicines and Poisons (Poisons and Prohibited Substances) Regulation 2021*;
- *Medicines and Poisons (Pest Management Activities) Regulation 2021* (Pest Management Activities Regulation); and
- *Therapeutic Goods Regulation 2021*

The Act and Therapeutic Goods Act were passed by the Legislative Assembly on 17 September 2019 and received Royal Assent on 26 September 2019.

On 13 August 2020, a postponement regulation (SL 2020 No. 150) was made under section 15DA of the *Acts Interpretation Act 1954* postponing the automatic commencement of the Act by one year, until the end of the day on 26 September 2021. The scheme was originally planned to commence in mid-2020 but was delayed due to the impact of COVID-19.

The Act and Therapeutic Goods Act will automatically commence on 27 September 2021. Their supporting regulations will also commence on 27 September 2021. At this time, the Health Act, Pest Management Act, Health (Drugs and Poisons) Regulation, Health Regulation and 2003 Pest Management Regulation will be repealed.

Medicines and poisons are scheduled by the Therapeutic Goods Administration in the Commonwealth *Standard for the Uniform Scheduling of Medicines and Poisons* (Poisons Standard). Chemicals used for pest management activities, are registered or permitted for use as pesticides or fumigants by the Australian Pesticides and Veterinary Medicines Authority. Also, many pesticides and fumigants are scheduled poisons and listed in the Poisons Standard.

A key objective of the Act is to ensure substances, including medicines, poisons, pesticides and fumigants are used safely and effectively and do not cause harm to human health. The Act and Regulations cover activities that involve substances scheduled by the Therapeutic Goods Administration and substances registered or permitted by the Australian Pesticides and Veterinary Medicines Authority. Collectively, these substances will be referred to as ‘regulated substances’.

The Pest Management Activities Regulation regulates pest management and gives effect to the Act’s objectives. Key policy objectives of the Pest Management Activities Regulation include:

- protecting the public from the health risks associated with inappropriate access to, and use of, pesticides and fumigants;
- adopting a contemporary approach to regulating pesticides and fumigants in Queensland that introduces a more responsive and outcomes-focused regulatory framework;
- streamlining the regulatory controls governing pesticides and fumigants to reduce the associated regulatory costs for industry, consumers and government;
- improving security controls in the use and storage of pesticides and fumigants to prevent diversion for unlawful purposes; and
- ensuring legislation accords with modern drafting practices and has sufficient regard to fundamental legislative principles.

Achievement of policy objectives

Pest management

The Pest Management Activities Regulation regulates the pest management industry. Many of the terms and requirements under the 2003 Pest Management Regulation have been included, in some cases with slight modifications. However, some key changes have been made in the Pest Management Activities Regulation, including:

- clarifying the conditions under which a trainee can carry out pest management activities, and more clearly defining the responsibilities of the trainee's supervisor and employer;
- placing greater obligations on business owners to ensure pest management services are undertaken safely, rather than all obligations being placed on pest management technicians employed by a business;
- removing the requirements to use respiratory protective devices, as their use is covered by work health and safety laws;
- allowing a pest control advice notice to be given electronically to the occupant of premises. Also, when treating a multi-occupancy complex, the notice may be given to the managing entity of the complex who will be responsible for notifying the occupants of the complex; and
- requiring activity-based risk management plans to be completed prior to any fumigation and pest control activities being carried out in high risk or sensitive areas, such as food processing facilities and aged care facilities.

Approved persons

The Pest Management Activities Regulation provides for particular classes of persons to be authorised to carry out specific regulated activities with regulated substances because of their profession, qualifications or authorisation under relevant Queensland legislation. These persons are known as 'approved persons'.

Approved persons are not required to apply for a licence or general approval under the Act to carry out specific regulated activities. The Pest Management Activities Regulation prescribes persons who may carry out specific pest management activities without requiring them to have a pest management licence, provided they operate within the limitations prescribed in the regulation and have the appropriate qualification or authorisation.

The classes of approved persons prescribed to undertake regulated activities under the Pest Management Activities Regulation include:

- a person working under a biosecurity program under the *Biosecurity Act 2014* may undertake a pest control activity with a pesticide, other than an S7 substance, to treat pests under the biosecurity program;
- a veterinary surgeon may undertake a pest control activity with a pesticide to treat a pest on an animal; or
- a person operating, or employed by a person operating, a commercial business caring for domestic animals, such as pet groomers, may undertake a pest control activity with a pesticide, other than an S7 substance, to treat pests on a domestic animal.

The amendments achieve the policy objectives by ensuring the broad model provided in the 2003 Pest Management Regulation is retained, while being streamlined and improved.

Licensing

The new regulatory regime continues the licensing requirements for fumigants and pesticides. Under the Pest Management Activities Regulation, pest management technicians are required to hold a licence.

The Pest Management Activities Regulation supports traceability of substances used for pest management activities and recalls of substances that do not meet product specifications or other compliance requirements. Standard conditions have been prescribed in the Pest Management Activities Regulation, with additional conditions being prescribed on the authority instrument depending on the substance involved, the purpose of use and any other relevant criteria.

Offences

The Act introduces a simplified and consistent series of general offences, to replace the numerous offences in the Pest Management Act, Health (Drugs and Poisons) Regulation, Health Regulation, and the 2003 Pest Management Regulation.

The Act and Regulations provide that no offence is committed if a person holds the necessary authority, licence or approval to perform the activity in question.

The Act makes provision for authorities to have conditions which may be prescribed in a regulation or may be set out in the authority instrument. Failure to comply with a condition of an authority will constitute an offence under the Act.

While the Act broadly addresses offences associated with authorities or performing regulated activities with regulated substances, the Pest Management Activities Regulation provides for some offences that are not covered by the Act, such as the strengthening of offences for pest management businesses.

The Pest Management Activities Regulation inserts offence provisions for non-compliance with the following:

- pest management businesses who employ a trainee, but do not ensure the trainee is appropriately supervised;
- pest management businesses not providing adequate equipment, documents or vehicles suitable for carrying out a pest management activity;
- pest management businesses not ensuring a fumigant or pesticide is safely secured at the business premises or in an appropriately marked vehicle;
- interfering with fumigation barricades or warning signs; and
- recordkeeping and notification requirements.

Fees

A fee is payable for all licences granted under the Act. For existing licence holders, the amount paid will not change and there will be no changes to the classification or fee structure for pest management licences. No fees will continue to be payable for general approvals. The aim of the revised fee structure is to streamline and simplify the existing licence process, while ensuring no new fees or charges.

Under the medicines and poisons regulatory framework, licences are required for:

- manufacturing of S2, S3, S4 and/or S8 regulated substances;
- manufacturing of S7 regulated substances (including pesticides and fumigants) and prohibited substances;

- wholesale of S2, S3, S4 and/or S8 regulated substances;
- wholesale of S7 regulated substances and prohibited substances;
- retail of S2 medicines;
- retail of S7 regulated substances; and
- pest management technicians.

A person may apply for a pest management licence to carry out one or more pest management activities, if they meet the competencies outlined in the departmental standard titled *Competency requirements for licenced technicians undertaking pest management activities with pesticides and fumigants*. The person may also apply for a licence variation to include additional pest management activities subject to the payment of an amendment/variation fee and provided they meet the required competencies.

The pest management activities that require a licence include:

- pest control activity excluding timber pests;
- pest control activity including timber pests;
- pest control activity to treat urban pests, including bird pests; and
- fumigation.

Departmental standards

Many of the prescriptive requirements contained in the Health (Drugs and Poisons) Regulation, Health Regulation and 2003 Pest Management Regulation will be repealed, with the regime becoming more outcome-focused. Where possible, the Pest Management Activities Regulation prescribes particular outcomes that must be met in order to achieve compliance and will refer to standards for acceptable methods by which to achieve prescribed outcomes.

The Act empowers the chief executive to make standards relevant to the objectives and administration of the new regulatory framework. The Pest Management Activities Regulation will be amended to reflect the updated name and version number each time a new version of a standard is made. A copy of the updated standard will be tabled in Parliament as extrinsic material each time the regulation is amended, to reflect the revised standard. The Act provides that the standard does not take effect until it is approved by the regulation and published on the Queensland Health website.

The standard which supports the Pest Management Activities Regulation is the *Competency requirements for licensed technicians undertaking pest management activities with pesticides and fumigants* departmental standard.

Storage

Qualified persons must ensure that an area used for storage of fumigants and pesticides is secure and unauthorised access is prevented. This includes access to a vehicle that stores pesticides and/or fumigants. An approved person is a person mentioned in schedule 1 of the Pest Management

Activities Regulation carrying out pest management activities prescribed for the person or a licensed technician carrying out pest management activities under a pest management licence.

Fumigants and pesticides must be stored in the area in a way that prevents:

- damage to the packaging of the fumigant or pesticide;
- leakage or escape of the fumigant or pesticide; and
- access to the fumigant or pesticide by another person who is not authorised.

Any storage of fumigants and pesticides at a workplace (other than at a residence) must comply with workplace health and safety requirements.

Label and container requirements

If a fumigant or pesticide is stored in a container that is not its original container, the container and its label must comply with the Pest Management Activities Regulation.

Qualified persons must ensure a container used in carrying out a pest management activity:

- is impervious to the fumigant or pesticide it contains;
- does not react chemically or physically with the pesticide or fumigant;
- can be securely closed at all times unless a fumigant or pesticide is being put into, or taken from the container; and
- is sufficiently durable to prevent it from breaking, or its contents from leaking or otherwise escaping.

The Pest Management Activities Regulation also requires containers of fumigants and pesticides to not be a container that is a food or drink container and not be a container that is similar in colour, shape or appearance to a food or drink container.

An approved label is a label approved under part 2 of the *Agricultural and Veterinary Chemicals (Queensland) Act 1994*. If a qualified person puts a fumigant or pesticide into a container that does not have an approved label attached to it and then stores the container for future use, the qualified person must ensure the container is suitably labelled with a durable label that includes the active constituent(s) of the fumigant or pesticide and the strength of each active constituent.

Disposal

Disposal requirements are largely unchanged from those in the 2003 Pest Management Regulation. A qualified person must dispose of a fumigant or a pesticide in a way that is not likely to:

- endanger the safety of a person or animal;
- pollute a watercourse or water supply;
- contaminate land; or
- adversely affect air quality.

A qualified person must dispose of containers used to contain a fumigant or pesticide by:

- rinsing the empty container several times with water, then rendering it unusable (that is, crushing or piercing it);
- securely sealing the container and returning it to the supplier if the container was used for a fumigant; or
- disposing of the container in another lawful way.

Record keeping

Qualified persons must make a record of each pest management activity undertaken. The record must be made as soon as practicable, but no later than 24 hours after carrying out a pest management activity. Records must be kept for five years.

For termite treatments, the qualified person is deemed to have complied with the need to make a record of a pest management activity if they complete and issue a Certificate of Installation in accordance with Australian Standard 3660.1 or a Certificate of Termite Treatment in accordance with Australian Standard 3660.2.

Pest control advice

A licensed pest management technician must give a customer a written pre-treatment pest control advice before starting any pest control activity. This provides the customer with information about the pest control activity and enables them to request additional information from the pest management technician before the treatment takes place.

On completion of a pest control activity, a licensed pest management technician must give a customer a written post-treatment pest control advice. This enables the customer to make a decision about management of their exposure and take any necessary precautions to avoid an adverse health response.

Pre and post-treatment pest control advice notices may be handed directly to the person, posted or emailed.

Activity risk management plans

The Pest Management Activities Regulation requires an activity risk management plan to be made by a licensed pest management technician before undertaking a pest control activity in a high-risk or sensitive place or before any fumigation activity.

An activity risk management plan is different to a substance management plan. It is a risk assessment of the activity to be carried out for a specific site. The activity risk management plan includes the identification, analysis and mitigation of risks associated with undertaking a pest control activity at a particular place, for example a school or aged care facility.

Fumigation requirements

Fumigation requirements are largely unchanged from those in the 2003 Pest Management Regulation. The major difference is a requirement to have an activity risk management plan before starting a fumigation activity.

Under the Pest Management Activities Regulation, actions to be taken before undertaking a fumigation include:

- preparing an activity risk management plan for the fumigation site;
- giving a fumigation notice in writing to an occupier of the premises unless the pest management technician is employed by the occupier;
- establishing the extent of the risk area;
- assessing the risk area adjacent to the fumigation space to determine if there is a risk to persons from any escape of fumigant;
- ensuring barricades are in place for the fumigation space and risk area to restrict access; and
- ensuring a sufficient number of warning signs are in place for the fumigation space and risk area. Signs must be easily seen by a person approaching the risk area or fumigation site and must be kept in place for the entire exposure period of the activity.

Actions and precautions to be undertaken during the fumigation activity include:

- ensuring at least one other person is physically present during the fumigation activity. The person must be at least 17 years, suitably trained and able to assist for the fumigation activity; and
- regular inspection and testing for leaks in the equipment or in the fumigation space. If a leak or escape is detected, it must be stopped, and the source sealed. Fumigation at some grain storage facilities do not require inspection and testing.

Actions and precautions required at the end of the fumigation activity include:

- releasing the fumigant safely so as not to endanger a person;
- venting the fumigation space so that the space has a concentration of fumigant that is no more than the safe exposure concentration;
- deciding if the fumigant space and risk area are safe to enter; and
- denying access to unauthorised persons until a pest management technician is satisfied that the space or risk area is safe to enter.

When a licensed pest management technician believes the fumigation space is safe to enter, the technician must give the person who requested the fumigation activity a clearance certificate for the activity. The clearance certificate is a certificate signed and dated by a licensed pest management technician and includes a statement that the fumigation space is safe for entry.

Incident notification

Qualified persons are required to notify the chief executive of Queensland Health about any incidents that occur when carrying out or supervising a pest management activity that are likely to require medical treatment, as well as notifying about any suspicious products. Notice must be given as soon as practicable, but no later than one business day after an incident occurring. If notice is given orally, the qualified person must give the chief executive written notice within seven days of the incident occurring.

A suspicious product may include a fumigant or pesticide that has been incorrectly labelled or does not have an approved label attached, or there is reasonable belief that a fumigant or pesticide is contaminated or has a manufacturing fault. If a qualified person believes a fumigant or pesticide is a suspicious product, they must notify the chief executive as soon as practicable after becoming aware of the suspicious product. If notice is given orally, the qualified person must give the chief executive written notice within seven days of becoming aware of the product.

Pest Management business obligations

Under the Pest Management Activities Regulation, the operator of a pest management business holds a number of responsibilities, regardless of whether they are a licensed pest management technician themselves. If a business operator is a pest management technician working as a sole trader or a business operator employs other pest management technicians to work with them, the operator is accountable for the following responsibilities.

- Obligations in relation to trainees – It is the business operator’s responsibility to ensure that a trainee they employ is appropriately supervised by a licensed pest management technician when they undertake any pest management activities. The business operator also needs to ensure that the trainee receives appropriate training for their work and level of competency.
- Equipping employees – It is the business operator’s responsibility to ensure any equipment, documents and vehicles used or provided in order to carry out pest management activities are suitable and comply with the Regulation.
- Vehicle storage – It is the business operator’s responsibility to ensure all vehicles used for the purpose of pest control, including the storage, transport or preparation of a fumigant or pesticide meet the following requirements:
 - the part of a vehicle where a fumigant or pesticide is located, all floors and walls must be impervious to the fumigant or pesticide and must be able to contain a leak or escape;
 - the part of a vehicle where a fumigant is located must be separate from the driving compartment of the vehicle by a barrier that is impervious to gas and able to be secured when the vehicle is unattended;
 - the part of a vehicle where a cylinder of gaseous fumigant or pesticide is located must be open to the air with unrestricted ventilation or have a vapour tight cabinet to enclose the cylinder.
- Vehicle signage – It is the business operator’s responsibility to ensure a vehicle used to store or transport fumigants or pesticides is clearly identified as a pest management vehicle with appropriate sized signage detailing the business name or business operator’s name and the business operator’s contact phone number. If the business name does not indicate that it is a pest management business, the words ‘pest management vehicle’ or similar must be clearly printed on the vehicle.
- Storage of pesticides and fumigants – It is the business operator’s responsibility to ensure that fumigants and pesticides used for their business are stored appropriately. The fumigant or pesticide must be stored in an area that is lockable, has a floor and other surfaces that are impervious to the fumigants and pesticides, is built in a way that a leak or escape would not be likely to cause harm or nuisance to a person or the environment and must be adequately ventilated.
- Keeping records – Pest management technician employees are responsible for making

records for pest management activities, however, it is the business operator's responsibility to keep the records for the required five years, as well as ensuring the records are readily retrievable and cannot be altered, obliterated, deleted or removed without detection.

Savings and transitional arrangements

Existing licences will be recognised under the Pest Management Activities Regulation and will continue to be valid until the licence is renewed. Any application under consideration at the time of commencement of the Regulation will be issued under the new Regulation.

A person authorised to carry out a pest management activity immediately before the repeal of the *Pest Management Act 2001* without a licence, is taken to be an approved person authorised to carry out the same activity if the person holds a relevant qualification from the commencement of the Pest Management Activities Regulation or until one year after commencement. The approved person authorisation for an approved person in schedule 1, parts 3, 5 or 8, of the Pest Management Activities Regulation is only valid, if a person does not hold the relevant qualification on commencement, until the day the person obtains the relevant statement of attainment or training or the period is no longer than one year after commencement of this regulation. For example, an employee of a business operating a commercial cattle dip facility has 12 months from commencement of the Act, to obtain the relevant qualifications identified for that class of person in schedule 1.

A pest control advice given to a person for a pest control activity under section 13 of the 2003 Pest Management Regulation, and in effect immediately before the commencement of the Pest Management Activities Regulation, is taken to be a pest control advice for the same type of pest control activity under the Medicines and Poisons Act. For example, if a pest management technician gives a customer a pest control advice after treating a residence for urban pests before the Pest Management Activities Regulation commences, the pest control advice is taken to be a post-treatment pest control advice under the Medicines and Poisons Act.

Consistency with policy objectives of authorising law

The Pest Management Activities Regulation is consistent with the policy objectives of the Act.

Inconsistency with policy objectives of other legislation

No inconsistencies with the policy objectives of other legislation have been identified.

Alternative ways of achieving policy objectives

The Pest Management Activities Regulation is the only effective means of achieving the policy objectives.

Benefits and costs of implementation

The cost of implementing the new regulatory framework will be met within existing budget allocations, and the resources used to manage the existing regulatory framework will continue to be utilised to administer the new framework.

There are no new or increased fees under the proposed legislation. The Queensland Treasury Principles for Fees and Charges (January 2018) requires agencies to set fees and charges to accurately reflect the full cost of providing their services. Agencies are also required to have

processes in place to ensure the fees and charges maintain their value over time. Therefore, the proposed fees will be subject to annual indexation in line with the Government indexation policy as advised by Queensland Treasury.

The new regime introduces a more streamlined outcomes-focused regulatory approach and improves clarity and consistency. It is also expected to reduce administrative costs for Queensland Health.

Consistency with fundamental legislative principles

The Pest Management Activities Regulation is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

Rights and liberties of individuals

Does the legislation make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review?

Section 4(3)(a) of the *Legislative Standards Act 1992* states that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

Clauses 18 and 23 (Activity risk management plan required) require that before starting a pest control activity or a fumigation activity for a customer at a high-risk or sensitive place or a fumigation site, a licensed technician must ensure an activity risk management plan complying with sections 19 or 24 is prepared for the activity.

An activity risk management plan is different to a substance management plan as it is a risk assessment of the activity to be carried out for a specific site. The activity risk management plan includes the identification, analysis and mitigation of risks associated with undertaking a pest management activity at a particular place, for example a school or aged care facility.

This provision is justified as, much like a substance management plan, an activity risk management plan serves as a risk mitigation tool for foreseeable risks associated with a particular location where risks may have a significant impact on health. High-risk places, such as a food processing site, require an activity risk management plan, as improper application of a pesticide or fumigant has the potential to impact health on a large scale. Sensitive locations, such as a childcare centre or aged care facility, require an activity risk management plan, as people generally at sensitive places (such as young children and elderly residents) are more susceptible to negative health impacts caused by exposure to a pesticide or fumigant.

Institution of Parliament

Does the subordinate legislation allow for the subdelegation to appropriate persons or in appropriate cases?

Section 4(5)(e) of the *Legislative Standards Act* states that whether legislation has sufficient regard to the institution of Parliament depends on whether the subordinate legislation allows

the subdelegation of a power delegated by an Act, only in appropriate case and to appropriate persons, and if authorised by an Act.

Standards

Section 233 (Making departmental standards) of the Act empowers the chief executive to make standards about carrying out regulated activities with regulated substances and other matters relating to purposes and administration of the Act. A standard may include procedures for carrying out regulated activities, procedures for keeping, storing and managing regulated substances, training and competency requirements for persons carrying out regulated activities with regulated substances, procedures to ensure products containing regulated activities with regulated substances are safe and suitable for their intended use of the products and requirements for tracing the movement of a regulated substance from its manufacture to final disposal, including requirements about documentation and electronic transmission.

Clause 8 (Approval of departmental standard—Act, s 233) provides that for section 233(4) of the Act, the departmental standard called *Competency requirements for licensed technicians undertaking pest management activities with pesticides and fumigants, version 1* is approved.

Clause 10 (Competency condition) provides that a licensed technician must satisfy, and continue to satisfy, the competency requirements that relate to the type of pest management licence held by the technician. The competency requirements are stated in version 1 of the departmental standard called *Competency requirements for licensed technicians undertaking pest management activities with pesticides and fumigants*.

The competencies prescribed in the *Competency requirements for licensed technicians undertaking pest management activities with pesticides and fumigants* departmental standard are nationally agreed and set out under various state or Commonwealth laws, such as the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*. Representatives from each jurisdiction are members of the committee responsible for determining these competencies. Queensland is represented on the Committee by the Department of Agriculture and Fisheries, with a Queensland Health representative as an observer. In some cases, competencies are endorsed by industry, for example, the pest management industry or agriculture industry via consultation. These competencies may be revised and remade as industry practices change. It is considered that the rigour surrounding the development of the competency standard and the need to be responsive to changes in national training requirements justifies the need to sub-delegate by referring to an external document.

The standard is outcomes focused and lists options to achieve the desired outcome which would not be suitable for inclusion in a prescriptive requirement in a regulation. For example, to ensure fumigation activities are performed safely and effectively, licenced technicians undertaking fumigation activities are required to have completed the unit of competency CPPUPM3011 – Manage organisms by applying fumigants to commodities and environments.

Prescribing requirements by reference to an external document may be seen to breach section 4(5)(e) of the Legislative Standards Act. A standard is a document certified by the chief executive of Queensland Health that is relevant to the object and administration of the new legislative regime and provides guidance, allows flexibility on activities and applies to individuals and entities. The standards will be monitored and updated when necessary, align

with industry best practice and will be published on the Queensland Health website (www.health.qld.gov.au). When making or amending a standard, relevant individuals and organisations with expertise in, or experience of, the matters under consideration will be consulted.

The Pest Management Activities Regulation will be amended to reflect the updated version number each time a new version of the standard is made. A copy of the updated standard will be tabled as extrinsic material each time the regulation is amended, to reflect the changed standard.

The inclusion of the name of each departmental standard and its version number in the regulation creates certainty for professionals and the public about the status of standards published on Queensland Health's website and the date they took effect.

It is considered that the rigour surrounding the development of the standards, their use in ensuring industry best practice and the detailed nature of the documents, justifies the need to sub-delegate by referring to external documents.

External Standards and Guidelines

In some cases, it is necessary to adopt or require compliance with standards that have been developed by relevant industry bodies (such as Australian Standards or standards made by Safe Work Australia).

Clause 46 (Records of use of fumigants or pesticides) provides that a qualified person who conducts pest management activities using a fumigant or pesticide for termite management must make a record of the pest management activity in accordance with the termite management certificate. A termite management certificate means a certificate of installation, or certificate of termite treatment, issued under a termite management standard, such as AS 3660.1 (Termite management: New building work); AS 3660.2 (Termite management: In and around existing buildings and structures); and AS 3660.3 (Termite management: Assessment criteria for termite management systems). The termite management certificate will meet the record keeping requirements of the regulation without duplicating the information already required under Australian Standard AS 3660 series.

The Building Code of Australia requires a pest management technician to work under AS 3660 series. Most pest management technicians would already have a copy of AS 3660 series or could purchase it online from <https://infostore.saiglobal.com>. Preparing a certificate of installation or certificate of termite treatment under AS 3660 series, as the record of the pest control activity, saves the technician from duplicating this information in the record required to be kept under the Pest Management Activities Regulation. The information required in the certificate of installation or certificate of termite treatment also covers all content required to be recorded under the Pest Management Activities Regulation.

The AS 3660 series are published by Standards Australia. This body is the nation's peak non-government, not-for-profit standards organisation and is the Australian representative of the International Organization for Standardization and International Electrotechnical Commission. Standards Australia develops internationally aligned Australian Standards in the national interest through a process of consensus. Standards Australia is responsible for ensuring Australia's viewpoint is heard and considered in the development of International Standards, and their subsequent adoption as Australian Standards. The standards development process is

based on three internationally recognised principles, openness and transparency; consensus and balance of representation.

The definition of *safe exposure concentration* for a fumigant in schedule 3 of the Regulation is the concentration of the fumigant in the air that is stated on the approved label for the fumigant or in accordance with the *Workplace exposure standards for airborne contaminants* published by Safe Work Australia if no exposure standard is stated on the approved label.

Safe Work Australia is an Australian government statutory body established to develop national policy relating to work health and safety and workers' compensation. This body is an inclusive, tripartite body that works in partnership with governments, employers and employees to drive national policy development on work health and safety and workers' compensation matters. They work to develop and evaluate national policy and strategies; develop and evaluate the model work health and safety legislative framework; undertake research; and collect, analyse and report data.

Prescribing an external standard that is not subject to parliamentary scrutiny may breach section 4(5)(e) of the Legislative Standards Act.

Australian Standards and standards developed by Safe Work Australia are recognised and accepted industry standards and developed by technical experts with industry and government consultation. The standards are accredited by Standards Australia and Safe Work Australia, which are nationally recognised peak bodies for standards. The prescribed standards in clause 46 and the definition of *safe exposure concentration* deal with termite treatment and safe exposure to fumigants. The content is technical and detailed in nature. It is considered that the rigour surrounding the development of Australian Standards and standards by Safe Work Australia and the need to be responsive to changes in the standards justify the need to sub-delegate by referring to an external document, rather than set out the requirements in the Pest Management Activities Regulation.

Fundamental legislative principles not contained in Legislative Standards Act

Imposition of presumed responsibility must be justified

The Scrutiny of Legislation Committee has considered that imposition of responsibility on a person for a matter is an interference with the rights and liberties of the person and requires sufficient justification.

Clause 53 (Equipping employees) provides that a business operator must ensure that any equipment, document or vehicle used, or provided to the employee for carrying out a pest management activity are suitable to carry out the activity, comply with any requirements of the Regulation and allow the employee to comply with any requirements of the Regulation. This provision carries a maximum penalty of 20 penalty units.

The pest management business operator has a responsibility to provide suitable equipment, including appropriately signed vehicles, pesticides and fumigants in appropriate containers, and necessary registers and logs, to their employees so that they can undertake the activities required by the employer and in compliance with the Pest Management Activities Regulation. Pest management business operators should have policies and procedures in place and made available to ensure their employees comply with the Pest Management Activities Regulation.

This is a new provision that was not covered by the Pest Management Act and places responsibility on the business operator rather than the pest management technician. The pest management industry has been evolving from sole owner businesses to large pest management businesses employing significant numbers of pest management technicians. This change in the industry has necessitated a change in regulatory approach, by placing additional obligations and responsibilities on the business operator. For example, if a pest management business operator ensures employees are properly equipped to undertake pest management activities, this will assist in the services provided by that company complying with public health requirements. If the onus was placed on the employee, there would be a risk that some technicians would not have the resources required to perform services safely, which would negatively impact the health of their customers and the public. The business is best placed to provide training and development of procedures to be followed by their employees.

Offences

The offences and penalty amounts contained in the Pest Management Activities Regulation are generally consistent with similar offences and penalty amounts contained in the Health (Drugs and Poisons) Regulation, Health Regulation and the 2003 Pest Management Regulation.

Clause 52 (Pest management trainees) provides it is an offence if a business operator fails to take all reasonable steps to ensure each pest management trainee is supervised by a licensed technician while carrying out any pest management activity and receives appropriate training for the activities and the trainee's level of competency. The offence carries a maximum penalty of 20 penalty units. While the Pest Management Act requires employers to ensure trainees are supervised it does not require trainees to have received appropriate training for the activities undertaken and level of competency.

It is important that a pest management business operator ensures that a trainee is appropriately supervised and trained while undertaking pest management activities to prevent harm to themselves, clients and other people. The business operator needs procedures in place to ensure adequate and appropriate supervision. A trainee remains a trainee for the period that they are developing the required competencies and until their pest management licence is approved. The business operator must ensure a trainee is supervised by assigning another licensed technician employed by the business to an activity with the trainee. The level of supervision and the activities a trainee undertakes would be dependent on their level of experience. The trainee is also required to keep a record of activities undertaken, which is retained by the business.

The offence is equivalent to section 52 of the Pest Management Act, which has a maximum penalty of 200 penalty units. The maximum penalty has been reduced to 20 penalty units to align with all other offences in the Regulation related to pest management businesses. The offences include those in clauses 53 (Equipping employees), 55 (Containment of fumigants and pesticides), 56 (Signage), 57 (Secure storage), 58 (Business records) and 59 (Employee requirements about records). Serious or continuing offences would be subject to section 46 (Offence to require or permit unauthorised persons to carry out pest management activities) of the Medicines and Poisons Act, which has a penalty of 200 penalty units.

Clause 53 (Equipping employees) provides it is an offence if a business operator fails to take all reasonable steps to ensure that any equipment (such as containers, hoses, measuring tools, spray packs and spill kits), document or vehicle is suitable for carrying out the pest management activity. The offence carries a maximum penalty of 20 penalty units.

The pest management business operator has a responsibility to ensure equipment used by their employees complies with the Pest Management Activities Regulation and is maintained to minimise public health risks. The business owner can do this by ensuring company policies and procedures align with the requirements of the Pest Management Activities Regulation and by providing adequate training to employees.

In the 2003 Pest Management Regulation, the onus of compliance is on the individual pest management technician. In the Pest Management Activities Regulation, the onus of compliance has shifted to the pest management business rather than the individual. As the business operator is the entity that receives the benefits of their employees' activity, the responsibility for complying with the Medicines and Poisons Act should be with the business.

Additionally, the pest management industry has evolved over the last 20 years from being predominantly self-employed individuals to larger businesses employing significant numbers of employees. The maximum penalty of 20 penalty units is the same as for all other offences for pest management business owners in the Pest Management Activities Regulation.

Clause 55 (Containment of fumigants and pesticides) provides that it is an offence if a business operator fails to take all reasonable steps to ensure that the pest management vehicle used to store or transport a fumigant or pesticide, meets the following requirements:

- the pest management vehicle where a solid or liquid fumigant or pesticide is located, has a floor and walls that are impervious to the fumigant or pesticide and can contain a leakage or escape of the fumigant or pesticide;
- the pest management vehicle where a cylinder of gaseous fumigant or pesticide is located is open to the air with unrestricted ventilation, has a vapour tight cabinet to enclose the cylinder that is vented to the outside of the vehicle, or is separated from the driving compartment of the vehicle by a barrier that is impervious to gas; and
- the pest management vehicle is able to be locked when the vehicle is unattended.

The offence carries a maximum penalty of 20 penalty units.

As the pest management technician will be undertaking pest management activities on behalf of the pest management business, it is appropriate for the business operator to provide and maintain a vehicle that permits the pesticide or fumigant to be transported safely to prevent harm to the technician and the community. The business operator should have appropriate policies and procedures in place to ensure the vehicle is inspected for compliance on a regular basis, as well as undergo regular maintenance and daily pre-start checks. The maximum penalty of 20 penalty units is the same as all other offences for pest management business owners in the Pest Management Activities Regulation. The penalty is equivalent to the penalty in the corresponding provision in the 2003 Pest Management Regulation (section 16).

Clause 56 (Signage) provides it is an offence if a business operator fails to ensure that a pest management vehicle has the following information printed on the exterior of the vehicle in English in a way that can be easily read:

- the contact details of the operator's business;
- if the name on the vehicle does not clearly indicate the vehicle is used for pest management activities, the words 'pest management vehicle' or other words clearly indicating the vehicle is used for pest management activities.

The offence carries a maximum penalty of 20 penalty units.

Pesticides and fumigants may pose a serious risk to health due to leaking or spilt substances. The signage on the vehicle provides a warning to the public and advice to emergency responders if there is an incident. The maximum penalty of 20 penalty units is the same as all other offences for pest management business owners in the Pest Management Activities Regulation. The penalty is equivalent to the penalty in the corresponding provision in the 2003 Pest Management Regulation (section 16).

Clause 57 (Secure storage) provides it is an offence if the business operator fails to take all reasonable steps to ensure that the place has the following features:

- the place is kept locked when unattended;
- the place has a floor and other surfaces that are impervious to the fumigant or pesticide;
- the place is built in a way that any leakage or escape of the fumigant or pesticide is not likely to cause harm or nuisance to a person or the environment;
- the place is adequately ventilated;
- the place provides the fumigant or pesticide with protection from the weather;
- the place is located in an area that is separated from a residence or another work area that is not used for pest management activities.

The offence carries a maximum penalty of 20 penalty units.

Pesticides and fumigants pose a serious risk to health if they are not securely stored to prevent unauthorised access or in premises that are unsuitable. The storage area also needs to be separated from a residence or another work area that is not used for pest management activities to minimise human health risks in the event of an incident. The maximum penalty of 20 penalty units is the same as all other offences for pest management business owners in the Pest Management Activities Regulation. The penalty is equivalent to the penalty for the corresponding provision in the 2003 Pest Management Regulation (section 10(1)).

Clause 58 (Business records) provides it is an offence if a business operator fails to keep a record of the contact details of each of the operator's employees carrying out pest management activities and any notifiable incidents reported to the chief executive in relation to the operator's pest management business. The offence carries a maximum penalty of 20 penalty units.

The keeping of records by the pest management business operator is necessary to enable the business to respond to clients regarding the use of pesticides and fumigants on their properties and to respond to future concerns of employees regarding health impacts. Employees frequently work for multiple employers over their working life and clients expect a business to be able to respond to requests for information. The maximum penalty of 20 penalty units is the same as all other offences for pest management business owners.

Clause 59 (Employee requirements about records) provides it is an offence if a business operator fails to take all reasonable steps to ensure that an employee of the business operator makes records of particular matter or give a particular record to the operator. The offence carries a maximum penalty of 20 penalty units.

The keeping of records by the pest management business operator is necessary to enable the business to respond to clients regarding the use of pesticides and fumigants on their properties and to respond to future concerns of employees regarding health impacts. Employees frequently work for multiple employers over their working life and clients expect a business to be able to respond to requests for information. The maximum penalty of 20 penalty units is the same as other offences for pest management business operators. The penalty is equivalent to the penalty for the corresponding provision in the 2003 Pest Management Regulation (sections 14 and 15).

Clause 60(2) (Manager of place to notify attendees of advice) provides it is an offence if the manager of the place receives a pre-treatment pest control advice for a pest control activity to be carried out at the place and fails to give attendees a notice of the matters stated in the advice as soon as practicable after receiving it, or leave it in a conspicuous location at the place, before a pest control activity is carried out. The notice must advise when the pest control activity will be carried out, the precautions stated in the pre-treatment pest control advice for the activity and that the pest control advice for the activity may be inspected and where it may be inspected. The offence carries a maximum penalty of 20 penalty units.

The manager of a place is defined to mean a person responsible for controlling access to, or managing the place, including, for example, a supervisor of a business, the owner of a building, a body corporate manager or a letting agent.

Attendees of premises where pest management activities are planned have a right to be informed so they can take precautions for themselves and any pets. It is impracticable to require the pest management technician to personally inform each occupant of a premise with multiple occupiers of the planned pest management activity, for example, a nursing home. The manager of the premises is best placed to notify the occupiers, for example, by email or placing notices in common areas. The maximum penalty of 20 penalty units is the same as the penalty for other offences in the Regulation.

Clause 60(3) (Manager of place to notify attendees of advice) provides it is an offence if the manager of the place receives a post-treatment pest control advice for a pest control activity that has been carried out at the place and fails to give attendees of the matters stated in the advice as soon as practicable after receiving it, or leave it in a conspicuous location at the place, after the pest control activity was completed. The offence carries a maximum penalty of 20 penalty units.

Attendees of premises where pest management activities have been undertaken have a right to be informed that the pest management activity has been completed so that they can return to the premises. It is impracticable to require the pest management technician to personally inform each occupant of a premise with multiple occupiers, for example a nursing home, of the completion of the pest management activity. The manager of the premises is best placed to notify the occupiers, for example by email or placing notices in common areas. The maximum penalty of 20 penalty units is the same as the penalty for other offences in the Regulation.

Clause 61(2) (Recording information) provides that when recording information in writing to comply with the Pest Management Activities Regulation, it is an offence if a person fails to ensure the information is written in English and if recorded in hard copy, is marked legibly in ink on the document. The offence carries a maximum penalty of 20 penalty units.

The person does not commit an offence if they also write in a language other than English if it ensures another person can understand the information, or the person signs their name on the document.

Record keeping is an important control measure for minimising public health risk as it provides information regarding the supply of regulated substances and details of pest management activities. To be effective, the records must be written in English so they can be understood. Clause 61(3) also allows the information to be written in a language other than English if it is necessary for the information to be understood by non-English speaking people. The penalty is equivalent to the penalty in the corresponding provisions in the 2003 Pest Management Regulation (sections 14 and 15).

Clause 62(2) (Keeping records) provides it is an offence if a provision of this regulation states that a person is required to keep a record, if the person fails to take all reasonable steps to ensure the record is readily retrievable, cannot be altered, obliterated, deleted or removed without detection and is kept for five years after the day it is recorded. The offence carries a maximum penalty of 20 penalty units.

Records are an important control measure for minimising public health risk as they provide information regarding dealings with regulated substances and pest management activities. The value of the records is reduced if they can be changed without an indication of the change and the person responsible. Records are kept often electronically, and as electronic data technology advances some older records may not be retrievable unless the records are transferred to newer software and hardware. This clause requires that any records must be retrievable over the retention period. The penalty is equivalent to the penalty in the corresponding provisions in the 2003 Pest Management Regulation (sections 14 and 15).

Clause 63 (Interfering with fumigation barricades or warning signs) provides it is an offence for a person, without the permission of a qualified person carrying out a fumigation activity, to take down, remove or alter the position of a barricade erected by the person for the activity or deface, take down, remove or alter the positions of a warning sign displayed by the person for the activity. The offence carries a maximum penalty of 20 penalty units.

Barricades and warning signs are placed around a fumigation activity to prevent unauthorised people entering the area and being exposed to hazardous concentrations of fumigants. If an unauthorised person changes the position of a barricade or removes or defaces a warning sign there is a risk a person may suffer adverse health effects or die. The penalty is equivalent to the penalty in the corresponding provision in the 2003 Pest Management Regulation (section 23). Clause 64 (Smoking prohibited) provides it is an offence for a person to smoke tobacco or any other substance in the vicinity of a fumigation activity being carried out. The offence carries a maximum penalty of 20 penalty units.

Some fumigants and the enclosures around a fumigation area are flammable and damage to an enclosure would result in the release of the fumigant. Smoking may also increase the inhalation of a fumigant. The penalty is equivalent to the penalty for the corresponding provision in the 2003 Pest Management Regulation (section 29).

Consultation

A wide range of stakeholders were invited to comment on the Pest Management Activities Regulation, including:

- AgForce Queensland;
- GrainCorp;
- Growcom;
- Australian Environmental Pest Management Association;
- Garrards Pty Ltd;
- Local Government Association of Queensland;
- local governments;
- poison manufacturers, wholesalers and retailers;
- Queensland Farmers' Federation; and
- universities.

Eleven written submissions were received, including from local governments, agriculture sector representatives, peak bodies and pest management businesses.

Some stakeholders provided feedback on drafting matters. This feedback was incorporated into the Pest Management Activities Regulation where appropriate. Information sheets provided during consultation have also been updated to provide additional clarification. The updated factsheets and other resources will be provided to stakeholders to support the implementation of the new regulatory scheme.

Engagement and ongoing communication with external stakeholders continued after the conclusion of the consultation period with follow-up meetings, sharing of information and discussions occurring during the process of finalising the Pest Management Activities Regulation. Submissions received from stakeholders indicated support for the new regulatory scheme.

Stakeholders, including AgForce, acknowledged the years of continuous engagement with stakeholders which resulted in comprehensive and reasonably practical regulatory provisions for public safety. These include provisions relating to ‘approved persons’, licensing requirements and the use of departmental standards in the scheme. Stakeholders acknowledged that the new regime would reduce regulatory burden and improve compliance practices.

A number of recommendations and feedback on drafting matters were received from stakeholders to enhance the provisions of the Pest Management Activities Regulation. Where appropriate, these were incorporated into the Pest Management Activities Regulation.

The key issues raised by stakeholders were mainly associated with administrative matters; consistency, clarity and improvements to definitions; compliance measures outlined in the departmental standard (for example, competency requirements); broadening the list of ‘approved persons’ in the Pest Management Activities Regulation; and clarification regarding the transition of some arrangements from the Health (Drugs and Poisons) Regulation and the 2003 Pest Management Regulation to the new scheme.

The agriculture sector, represented by the Queensland Farmers’ Federation and AgForce, strongly advocated for greater clarity around licensing exemptions for agricultural producers, particularly with respect to contract spraying, with ‘fee for service’ undertaken by growers (for people other than their neighbours); and consistency and clarity of definitions (for example ‘authorised person’ and ‘authorised officer’). In addition, AgForce requested the inclusion of seasonal workers in the list of approved persons (as a class of exempt persons) to sustain the workforce surging demands during planting and harvest seasons.

Following consultation, relevant provisions in the Pest Management Activities Regulation were amended based on stakeholders’ recommendations where appropriate.

The Office of Best Practice Regulation assessed the entire medicines and poisons regulatory framework, in accordance with *The Queensland Government Guide to Better Regulation* and advised that no further regulatory impact analysis was required on the basis that the proposal is unlikely to lead to significant adverse impacts and should reduce overall regulatory requirements.

Notes on provisions

Part 1 Introduction

Division 1 Preliminary

Short title

Clause 1 states that the short title of the regulation is the *Medicines and Poisons (Pest Management Activities) Regulation 2021*.

Commencement

Clause 2 states that this regulation commences on 27 September 2021.

Dictionary

Clause 3 provides for the dictionary in schedule 3, which defines particular words used in this regulation.

Application of regulation

Clause 4 provides that this regulation applies in relation to a regulated activity that is a pest management activity or asking or directing another person to carry out a pest management activity.

See the *Medicines and Poisons (Poisons and Prohibited Substances) Regulation 2021* in relation to dealings with poisons and prohibited substances, including fumigants and pesticides.

Division 2 Fumigants and pests

Fumigants—Act, s 14

Clause 5 provides that for section 14(3) (Meaning of fumigant and pesticide) of the *Medicines and Poisons Act 2019*, ozone, carbon dioxide or nitrogen, or a combination of any of the substances, is prescribed to be a fumigant when prepared or used for an activity of type mentioned in section 19(2)(a), (b), (c) or (d) of the Medicines and Poisons Act.

Pests—Act, sch 1

Clause 6 provides that for the definition of *pest* in item 2 of schedule 1 (Dictionary) of the Medicines and Poisons Act, a plant parasitic nematode is prescribed to be a pest.

Clause 6(2) provides that an invasive animal is prescribed not to be a pest in the definition of *pest* in item 3 of schedule 1 (Dictionary) of the Medicines and Poisons Act.

Clause 6(3) provides that for this section, an invasive animal is defined in schedule 7 of the *Medicines and Poisons (Poisons and Prohibited Substances) Regulation 2021*.

Part 2 Authorisations and approval of departmental standard

Approved persons—Act, s 54

Clause 7 provides that for section 54(1) (Authorisation of prescribed classes of persons) of the Medicines and Poisons Act, a class of persons stated in schedule 1 is prescribed for the pest management activity with the fumigant or pesticide stated in the table in the schedule for the class of persons to the extent the activity is carried out by a person acting as a member of the class of persons and within the scope for the activity, if any.

Clause 7(2) provides for this section a definition of *scope*.

Approval of departmental standard—Act, s 233

Clause 8 provides that for section 233(4) (Making of departmental standards) of the Medicines and Poisons Act, version 1 of the *Competency requirements for licensed technicians undertaking pest management activities with pesticides and fumigants* departmental standard is approved.

Part 3 Standard conditions for pest management licences

Division 1 Preliminary

Application of part—Act, s 70

Clause 9 provides that for section 70(1)(a) (Conditions) of the Medicines and Poisons Act, this part prescribes standard conditions applying in relation to pest management licences.

Division 2 General competency condition

Competency condition

Clause 10 provides that a licensed technician must satisfy, and continue to satisfy, the competency requirements stated in the competency standard that relate to the type of pest management licence held by the technician.

Clause 10(2) provides that for this section competency standard means version 1 of the *Competency requirements for licensed technicians undertaking pest management activities with pesticides and fumigants* departmental standard.

Division 3 Pest control activities

Subdivision 1 Preliminary

Application of division

Clause 11 provides that this division applies to a licenced technician who is authorised under the technician's licence to carry out, or supervise a pest management trainee to carry out, a pest control activity. For example, the holder of a pest management licence for the treatment of urban pests is authorised to apply, or supervise a pest management trainee to apply, a pesticide to control urban pests (cockroaches, ants, spiders etc.) at a unit complex.

Subdivision 2 Controlling timber pests and urban pests generally

Application of subdivision

Clause 12 provides that this subdivision applies in relation to a pest control activity that involves controlling timber pests or urban pests carried out for a customer at any place. For example, the holder of a pest management licence for the treatment of urban pests is authorised to apply, or supervise a pest management trainee to apply, a pesticide to control urban pests (cockroaches, ants, spiders etc.) at a residential premises.

Giving pre-treatment pest control advice

Clause 13 provides that before starting a pest control activity at a place for a customer, a licensed technician must give the customer a notice (a *pre-treatment pest control advice*) for the activity.

Clause 13(2) provides that the pre-treatment pest control advice may be given to the customer personally, by mail or electronically. For example, the pre-treatment pest control activity can be posted in the mail, sent by email, handed to a person, or left in a letterbox.

Contents of pre-treatment pest control advice

Clause 14 provides that a licensed technician must ensure a pre-treatment pest control advice for a pest control activity given by the technician under section 13 states the following information:

- the contact details of the operator's business, if the technician is carrying out the activity for another person who is a business operator or otherwise, the contact details of the technician;
- the technician's licence number;
- a statement that, under the Medicines and Poisons Act, the technician must not use a pesticide for the activity unless the pesticide is a substance that is APVMA approved for use to carry out the activity;
- the precautions that should be taken by persons at the place to minimise exposure to any pesticide used for carrying out the activity. For example, removing or protecting people or animals while the pest control activity is carried out or cleaning items exposed to a pesticide before use;
- a statement of any warranties applying in relation to the activity;
- a statement of any limitations applying in relation to the activity.

Clause 14(2) provides that the pre-treatment pest control advice must be dated and signed by the licenced technician.

Clause 14(3) provides for this section a definition of *APVMA approved*.

Giving post-treatment pest control advice

Clause 15 provides that a licensed technician must give a customer for a pest control activity carried out at a place another notice (a *post-treatment pest control advice*) for the activity:

- prior to leaving the place after carrying out the activity, if the place is occupied; or
- within 24 hours after leaving the place, if the place is not occupied.

Clause 15(2) provides that the post-treatment pest control advice may be given personally, by mail or electronically. For example, the post-treatment pest control activity can be posted in the mail, sent by email, handed to a person, or left in a letterbox.

Contents of post-treatment pest control advice

Clause 16 provides that a licensed technician must ensure a post-treatment pest control advice for a pest control activity given by the technician under section 15 states the following information:

- the contact details of the operator's business, if the technician is carrying out the activity for another person who is a business operator or otherwise, the contact details of the technician;
- the technician's licence number;
- the name by which the pesticide is marketed or sold and the active constituent of the pesticide, for each pesticide used for the activity;
- the address of the place or details of the part of the place where the pesticide was used;
- when and for how long the activity was carried out.

Clause 16(2) provides that the post-treatment pest control advice must be dated and signed by the licenced technician.

Subdivision 3 Controlling urban pests at high-risk and sensitive places

Application of subdivision

Clause 17 provides that this subdivision applies in relation to a pest control activity that involves controlling urban pests carried out for a customer at a high-risk or sensitive place. For example, the holder of a pest management licence for the treatment of urban pests is authorised to apply, or supervise a pest management trainee applying, a pesticide to control urban pests (cockroaches, ants, spiders etc.) at a sensitive place such as childcare centre or nursing home.

Clause 17(2) provides that this subdivision applies in addition to, and does not limit, subdivision 2.

Activity risk management plan required

Clause 18 provides that before starting a pest control activity for a customer at a high-risk or sensitive place, a licensed technician must ensure a plan complying with section 19 is prepared for the activity (an *activity risk management plan*).

Contents of activity risk management plan

Clause 19 provides that an activity risk management plan for a pest control activity carried out for a customer at a high-risk or sensitive place must state the following information:

- name and licence number of the licensed technician carrying out the activity;
- if the technician did not prepare the plan, the name and phone number of the person who prepared the plan (the *preparer*);

- contact details of the customer;
- if the person is not the customer, the contact details of the person responsible for controlling access to the place;
- any procedures to be followed to obtain access to the place;
- day and time the activity is to be carried out;
- address of the place;
- details of the part of the place where the activity is to be carried out, including a diagram, if practicable;
- estimated amount of time for completing the activity;
- type of pests to be controlled;
- reason why the activity is to be carried out;
- type and concentration of the pesticide to be used for the activity, including the name and active constituent;
- how the pesticide is to be used;
- any special considerations or precautions to be implemented due to the nature of the place;
- hazards and risks associated with carrying out the activity;
- measures to be implemented to control the stated hazards and risks;
- roles and responsibility of all persons involved in carrying out the activity.

Clause 19(2) provides that the activity risk management plan must also include a statement by the preparer of the plan that the matters mentioned in this section have all been considered and must include the signature of the preparer.

Compliance with activity risk management plan

Clause 20 provides that a licensed technician must carry out a pest control activity at a high-risk or sensitive place in accordance with an activity risk management plan for the activity, to the extent reasonably practicable.

Division 4 Fumigation activities

Subdivision 1 Preliminary

Application of division

Clause 21 provides that this division applies to a licensed technician who is authorised under the technician's licence to carry out, or supervise a pest management trainee to carry out, the fumigation activity.

Compliance with Commonwealth law

Clause 22 provides that this section applies if a licensed technician carries out a fumigation activity under a law of the Commonwealth. For example, importers or exporters may be required to carry out fumigation activities and provide certificates under the *Biosecurity Act 2015* (Cwlth).

Clause 22(2) provides that the licensed technician is taken to comply with a requirement in a condition in this division in relation to giving a notice or certificate if the technician has complied with the same or a substantially similar requirement for the fumigation activity carried out under the law of the Commonwealth.

Subdivision 2 Before fumigation

Activity risk management plan required

Clause 23 provides that before starting a fumigation activity for a customer at a fumigation site, a licensed technician must ensure a plan complying with section 24 is prepared for the activity (an *activity risk management plan*).

Contents of activity risk management plan

Clause 24 provides that an activity risk management plan for a fumigation activity carried out for a customer at a fumigation site must state the following information:

- name and licence number of the licensed technician carrying out the activity;
- if the licensed technician did not prepare the plan, the name and phone number of the person who prepared the plan (the *preparer*);
- contact details of the customer;
- contact details of the person responsible for controlling access to the site, if that person is not the customer;
- details about access to the site, including any procedures to be followed to obtain access;
- day and time the activity is to be carried out;
- address of the site;
- details of the exposure area for the activity, including a diagram, if practicable;
- details about the availability of water and power at the site;
- how the fumigant is to be introduced into the fumigation space for the activity;
- how the fumigation space is to be ventilated;
- arrangements for securing or restricting access to the exposure area for the activity;
- method to be used to establish that the exposure area is safe for entry;
- estimated amount of time for completing the activity;
- reason why the activity is to be carried out;
- type of pests to be controlled;

- type and concentration of the fumigant to be used for the activity, including the name and active constituent, and how the fumigant is to be used;
- any special considerations or precautions to be implemented due to the nature of the site;
- hazards and risks associated with carrying out the activity and the measures to be implemented to control those hazards and risks;
- roles and responsibilities of all persons involved in carrying out the activity;
- procedures for dealing with an emergency situation that may arise during the activity.

Clause 24(2) provides that the activity risk management plan must also include a statement prepared by the preparer of the plan stating that the matters mentioned in this section have all been considered and include the signature of the preparer.

Giving fumigation notice

Clause 25 provides that before starting a fumigation activity for a customer at a fumigation site, a licensed technician must give a notice (a ***fumigation notice***) for the fumigation activity to either the customer or an owner or occupier of the site.

Clause 25(2) provides that the fumigation notice must be dated and signed by the licensed technician.

Clause 25(3) provides that subsection (1) does not apply if the licenced technician is carrying out the fumigation activity at the fumigation site in the course of the technician's employment by the owner or occupier of the site.

Clause 25(4) provides that the licensed technician must give a copy of the fumigation notice to the operator, if the technician is carrying out the fumigation activity for another person who is a business operator, or otherwise, keep a copy of the fumigation notice.

Contents of fumigation notice

Clause 26 provides that a licensed technician must ensure a fumigation notice for a fumigation activity given by the technician under section 25 states the following information:

- contact details of the operator's business, if the technician is carrying out the activity for another person who is a business operator or otherwise, the contact details of the technician;
- technician's licence number;
- fumigant to be used for the activity;
- fumigation site and exposure area for the activity;
- day and time the fumigant is to be introduced into the fumigation space for the activity;
- an estimate of the length of the exposure period for the activity;
- the precautions that should be taken by persons at the fumigation site to minimise exposure to the fumigant. For example, removing or protecting people or animals while the pest control activity is carried out or cleaning items exposed to the fumigant before use.

Identifying risk area

Clause 27 provides that before carrying out a fumigation activity, a licensed technician must inspect the fumigation space for the activity and the area adjoining the space to identify each risk area for the activity, if any.

Inspecting before fumigating

Clause 28 provides that before introducing a fumigant into a fumigation space for a fumigation activity, a licensed technician must inspect the exposure area for the activity and take all reasonable steps to ensure the following:

- no one is in the area other than persons authorised by the technician to be in the area;
- every potential source of ignition in the area is extinguished or turned off;
- any food or liquid in the area that is not the subject of the activity is removed from the area;
- every opening in the space by which the fumigant could escape from the area is sealed in a way that prevents the escape. Example of openings include a crack or crevice in a building or an entry point to an underground service tunnel.

Clause 28(2) provides that subsection (1)(d) does not apply if the fumigation space is a grain storage facility and the fumigation activity is carried out using a method designed for use in a grain storage facility that is not sealed.

Erecting barricades

Clause 29 provides that before carrying out a fumigation activity, a licensed technician must erect barricades to restrict access to the exposure area for the activity period for the activity during the exposure period for the activity.

Displaying warning signs

Clause 30 provides that a licensed technician carrying out a fumigation activity must place warning signs on any barricades erected under section 29 around the exposure area for the activity.

Clause 30(2) provides that the warning signs must be:

- sufficient in number to warn a person approaching the exposure area;
- placed in a way that can easily be seen by a person approaching the exposure area;
- placed before the fumigation activity is started; and
- kept in place for the entire exposure period for the fumigation activity.

Clause 30(3) provides that each warning sign must be on a white background and state:

- contact details of the following, in print of a colour and size that is easy to read:
 - if the licensed technician is carrying out the activity for the operator of a pest management business;
 - otherwise, the technician; and
- the following words in red print and capital letters with a height of at least 50mm—
 - ‘danger’, ‘keep out’ and ‘fumigation in progress’;
 - after the words mentioned in subparagraph (i), ‘with’ followed by the name of the fumigant being used for the fumigation activity.

Subdivision 3 During fumigation

Compliance with activity risk management plan

Clause 31 provides that a licensed technician must carry out a fumigation activity at a fumigation site in accordance with an activity risk management plan for the activity, to the extent reasonably practicable.

Other person to be near licensed technician

Clause 32 provides that while a licensed technician is carrying out a fumigation activity at a fumigation site, the technician must take all reasonable steps to ensure at least one other person more than 17 years is physically present at the site.

Clause 32(2) provides that the licensed technician must advise the other person about how to suitably assist the technician, if necessary.

Inspecting and testing during fumigation

Clause 33 provides that a licenced technician carrying out a fumigation activity at a fumigation site must inspect the fumigation space for the activity and the equipment being used to introduce the fumigant into the space and test the fumigation space and equipment for leakage or escape of the fumigant outside the exposure area for the activity.

Clause 33(2) provides that the inspection and testing must be carried out during the introduction of the fumigant into the fumigation space, if practicable, and carried out regularly during the retention period of the fumigant introduced into the fumigation space.

Clause 33(3) provides that if the licenced technician detects an unsafe leak from the fumigation space or equipment, the technician must stop the unsafe leak and seal the space or equipment to prevent further unsafe leaks.

Clause 33(4) provides that this section does not apply if the fumigant space is a grain storage facility and the fumigation activity is carried out using a method designed for use in a grain storage facility that is not sealed.

Clause 33(5) provides for this section a definition of *unsafe leak*.

Subdivision 4 Finalising fumigation

Releasing fumigant and venting fumigation space

Clause 34 provides that this section applies at the end of the retention period of a fumigant introduced into a fumigation space for a fumigation activity.

Clause 34(2) provides that the licensed technician must release the fumigant from the fumigation space in a way that is unlikely to endanger a person and vent the fumigation space in a way that leaves the concentration of the fumigant in the space no more than the safe exposure concentration for the fumigant.

Re-entering exposure area

Clause 35 provides that this section applies after the release of a fumigant from, and venting of, a fumigation space for a fumigation activity carried out by a licensed technician.

Clause 35(2) provides that the licensed technician must check that the concentration of fumigant in the exposure area for the fumigation activity is no more than the safe exposure concentration for the fumigant.

Clause 35(3) provides that the licensed technician must take all reasonable steps to ensure no person enters the exposure area until the technician is satisfied the area is safe for entry.

Giving clearance certificate

Clause 36 provides that a licensed technician who has carried out a fumigation activity for a customer must, when satisfied the exposure area for the activity is safe for entry, give the customer a notice (a **clearance certificate**) for the activity.

Clause 36(2) provides that the clearance certificate must be dated and signed by the licensed technician.

Clause 36(3) provides that the licensed technician must give a copy of the clearance certificate to the operator, if the technician is carrying out the fumigation activity for another person who is a business operator or otherwise, keep a copy of the clearance certificate.

Contents of clearance certificate

Clause 37 provides that a licensed technician must ensure the following information is stated in a clearance certificate for a fumigation activity carried out by the technician for a customer at a fumigation site:

- contact details of the customer;
- contact details of the operator's business, if the technician is carrying out the activity for another person who is a business operator, or otherwise, the contact details of the technician;
- technician's license number;
- address of the site;
- details of the exposure area for the activity;
- details of what was fumigated;
- reason for the activity;
- type and concentration of fumigant used;
- day and time the fumigant was introduced into the fumigation space;
- method used to introduce the fumigant into the space for the activity;
- retention period for the fumigant introduced into the fumigation space;
- day and time the fumigant was released from the fumigation space;
- method used to establish that the exposure area was safe for entry;
- a statement that the exposure area is safe for entry.

Division 5 Other conditions

Obligations when supervising

Clause 38 provides that this section applies if a pest management trainee is carrying out a pest management activity for which the trainee is authorised under section 54(4) of the Medicines and Poisons Act and a licensed technician is, under the technician's licence, authorised to supervise the trainee.

Clause 38(2) provides that while the pest management trainee is carrying out the pest management activity, the licensed technician must either:

- directly supervise the trainee; or
- indirectly supervise the trainee if the technician is reasonably satisfied the trainee is competent enough to be indirectly supervised and the health and safety of the trainee, or another person, would not be endangered if the trainee were indirectly supervised.

Clause 38(3) provides that when supervising the pest management trainee carrying out the pest management activity, the licensed technician must also:

- provide directions, demonstrations, training and monitoring that are appropriate and relevant to the trainee; and
- take all reasonable steps to ensure the trainee complies with the Medicines and Poisons Act when carrying out the activity; and
- take remedial action if an emergency arises from the trainee carrying out the activity or the trainee has carried out the activity in a noncompliant way.

Clause 38(4) provides for this section definitions of *directly supervise* and *indirectly supervise*.

Changes affecting licence

Clause 39 provides that a licensed technician must notify the chief executive about any of the following changes as soon as practicable:

- a change in a matter disclosed to the chief executive in the health assessment, if the technician was required to undergo a health assessment under section 90 (Health assessment for pest management licences) of the Medicines and Poisons Act when applying for the technician's pest management licence,;
- change in the technician's contact details;
- change in the contact details of a pest management business operated by the technician or by another person by whom the technician is employed;
- contact details of the business, if the technician becomes an employee of an operator of a pest management business or changes employment to a different operator of a pest management business;
- change in the address of the place stated in the technician's licence to be the place where the technician stores fumigants or pesticides under the licence.

Part 4 Requirements for carrying out pest management activities

Division 1 Preliminary

Application of part—Act, s 91

Clause 40 provides that for section 91(1) (Requirements may be prescribed) of the Medicines and Poisons Act, this part prescribes requirements for a person (a *qualified person*) authorised under section 54(4) or 62 of the Medicines and Poisons Act to carry out a pest management activity with a fumigant or pesticide, in relation to carrying out the pest management activity.

Division 2 Using fumigants or pesticides

Compliance with approved label

Clause 41 provides that a qualified person must use a fumigant or pesticide for a pest management activity in accordance with the approved label of the fumigant or pesticide

Division 3 Labels, containers and storage

Using containers

Clause 42 provides that a qualified person must take all reasonable steps to ensure a container used by the person in relation to carrying out a pest management activity has the following characteristics:

- the container is impervious to the fumigant or pesticide it contains;
- the container does not react chemically with the fumigant or pesticide it contains;
- the container does not physically interact with the fumigant or pesticide it contains and cause deterioration of the container;
- the container can be securely closed;
- the container is sufficiently durable to prevent it from breaking, or its contents from leaking or otherwise escaping, during ordinary handling, storage or transport;
- the container is securely closed at all times unless a fumigant or pesticide is being put into, or taken from, the container;
- the container is not a food or drink container or similar in shape, colour or appearance to a food or drink container.

Clause 42(2) provides for the section a definition of *food or drink container*.

Labelling containers

Clause 43 provides that this section applies in relation to a container used by a qualified person in which a fumigant or pesticide is stored for future use and that does not have an approved label attached to it.

Clause 43(2) provides that the qualified person must take all reasonable steps to ensure a label showing the following is durably printed on, or securely attached to, the outside of the container:

- the name by which the fumigant or pesticide is marketed or sold;
- each active constituent of the fumigant or pesticide in the container
- strength of each active constituent expressed as:
 - the mass or volume of the active constituent in a stated volume of the preparation, for a liquid in a liquid preparation, or
 - the mass or volume of the active constituent in a stated mass of the preparation, for a liquid in a solid or semisolid preparation; or
 - the mass of the active constituent in a stated volume of the preparation, for a solid or semisolid in a liquid preparation; or
 - the mass of the active constituent in a stated mass of the preparation, for a solid or semisolid in a solid or semisolid preparation; or
 - the mass of the active constituent in a stated volume of the preparation, for a gas in a liquid preparation; or
 - the mass of the active constituent in a stated mass of the preparation, for a gas in a solid or semisolid preparation; or
 - the mass of the active constituent in a stated mass of the preparation, for a gas in a gaseous preparation.

Storage on vehicle

Clause 44 provides that a qualified person must pack or place a fumigant or pesticide stored or transported in a vehicle in a way that prevents, to the extent reasonably practicable, any damage to the packaging and any leakage or escape of the fumigant or pesticide.

Clause 44(2) provides that a qualified person must take all reasonable steps to prevent another person from accessing a vehicle in which a fumigant or pesticide is stored or transported by the qualified person unless the other person is an adult or an approved person mentioned in schedule 1, section 27 or 29 or the qualified person has given permission for the access.

Storage generally

Clause 45 provides that a qualified person must, to the extent reasonably practicable, store a fumigant or pesticide not being used by the person at a place in a way that prevents damage to the packaging of the fumigant or pesticide, any leakage or escape of the fumigant or pesticide or access to the fumigant or pesticide by another person who is not a qualified person.

Division 4 Documentation

Records of use of fumigants or pesticides

Clause 46 provides that a qualified person must make a record stating each of the following matters for each pest management activity carried out by the person:

- date of the activity;
- address and description of the place where the activity was carried out;
- the contact details of the customer, if the activity was requested by a customer;
- the technician's licence number, if the person is a licensed technician, or the carrying out of the activity by the person was supervised by a licensed technician;
- the following information about the fumigant or pesticide used for the activity:
 - the name by which the fumigant or pesticide is marketed or sold;
 - each active constituent of the fumigant or pesticide and the strength and amount of each active constituent.
 - the rate of application for the fumigant or pesticide, for a fumigant or a pesticide used for timber pests.

Clause 46(2) provides that the qualified person must make the record as soon as practicable, but no later than 24 hours, after the pest management activity is carried out.

Clause 46(3) provides that the qualified person must give the record, or a copy of the record, to the operator, if the person is carrying out the pest management activity for another person who is a business operator, or otherwise, keep the record.

Clause 46(4) provides that a termite management certificate issued for a pest management activity is taken to be a record complying with subsection (1).

Clause 46(5) provides for this section definitions of *termite management certificate* and *termite management standard*.

Division 5 Incidents

Dealing with leakages or escapes

Clause 47 provides that this section applies if a fumigant or pesticide in the possession of a qualified person leaks or escapes.

Clause 47(2) provides that the qualified person must, as soon as practicable after becoming aware of the leakage or escape, take action to:

- stop the leakage or escape; and
- for a fumigant, clean and decontaminate the area in which the leakage or escape has occurred to a concentration of the fumigant that is no more than the safe exposure concentration for the fumigant; and
- for a pesticide, contain the pesticide and dispose of it lawfully.

Disposal of containers

Clause 48 provides that a qualified person must dispose of a container that has been, and is no longer being, used by the person for a fumigant or pesticide by:

- doing both of the following:
 - rinsing the container several times with water;
 - rendering it useless, for example, by making holes in it;
- securely sealing the container and returning it to the person who supplied the fumigant, if the container has been used for a fumigant; or
- disposing of the container in another lawful way.

Exposure, spillage or other release

Clause 49 provides that this section applies if a qualified person is carrying out a pest management activity and an incident happens involving the exposure, spillage or other release of pesticide or fumigant that is likely to cause a person to require medical treatment. For example, exposure of a member of the public to a fumigant or pesticide during application or spillage of a pesticide at a residence.

Clause 49(2) provides that the qualified person must notify the chief executive, orally or in writing, about the occurrence of the incident.

Clause 49(3) provides that the notification must be given to the chief executive as soon as practicable, and no later than one business day after the incident and include enough particulars to identify the incident, its nature and its location.

Clause 49(4) provides that if the notification is given orally, the qualified person must give the chief executive a written notice of the notification within seven days after the incident happened.

Suspicious products

Clause 50 provides that a qualified person must notify the chief executive, orally or in writing, if the person is supplied with a pesticide or fumigant to which either of the following circumstances apply (each a *suspicious product*):

- the fumigant or pesticide is incorrectly labelled or does not have an approved label attached; or
- the person reasonably believes the fumigant or pesticide is contaminated or has a manufacturing fault.

Clause 50(2) provides that the notification must be given as soon as practicable after the qualified person becomes aware of the suspicious product and includes enough particulars to identify the product and its location.

Clause 50(3) provides that if the notification is given orally, the qualified person must give the chief executive a written notice of the notification within seven days after becoming aware of the suspicious product.

Division 6 Pest management trainees

Record keeping

Clause 51 provides that this section applies to a qualified person who is a pest management trainee, in addition to section 46.

Clause 51(2) provides that the pest management trainee must make a record each time the trainee carries out a pest management activity that states:

- the date on which the activity is carried out; and
- a description of the activity carried out; and
- the name of the trainee's supervisor; and
- the contact details of the operator's business, if the trainee is carrying out the activity for a business operator who is not the trainee's supervisor.

Clause 51(3) provides that if the pest management trainee is carrying out the pest management activity for a business operator, the trainee must give the record to the operator.

Part 5 Offences

Division 1 Business operators

Subdivision 1 Obligations in relation to employees

Pest management trainees

Clause 52 provides it is an offence if a business operator fails to take all reasonable steps to ensure each pest management trainee employed by the operator:

- is supervised by a licensed technician while carrying out any pest management activity; and
- receives training that is appropriate for the pest management activities carried out by the trainee and the trainee's level of competency.

The offence carries a maximum penalty of 20 penalty units.

Equipping employees

Clause 53 provides that this section applies if a business operator provides any equipment, document or vehicle to an employee of the operator for carrying out a pest management activity.

Clause 53(2) provides it is an offence if a business operator fails to take all reasonable steps to ensure the equipment, document or vehicle is suitable for carrying out the pest management activity. The offence carries a maximum penalty of 20 penalty units.

Clause 53(2) defines *equipment* to include containers, hoses, measuring tools, spray packs and spill kits.

Subdivision 2 Vehicles

Application of subdivision

Clause 54 provides that this subdivision applies to a business operator in relation to a pest management vehicle used by the operator, or provided by the operator to an employee of the operator, for carrying out a pest management activity.

Containment of fumigants and pesticides

Clause 55 provides it is an offence if a business operator fails to take all reasonable steps to ensure a pest management vehicle used for a fumigant or pesticide that is a solid or liquid has a floor and walls that are impervious to the fumigant or pesticide and can contain a leakage or escape of the fumigant or pesticide. The offence carries a maximum penalty of 20 penalty units.

Clause 55(2) provides it is an offence if a business operator fails to take all reasonable steps to ensure that a pest management vehicle used for a fumigant or pesticide that is a gas in a cylinder:

- is open to the air with unrestricted ventilation; or
- has a vapour tight cabinet to enclose the cylinder that is vented to the outside of the vehicle; or
- is separated from the driving compartment of the vehicle by a barrier that is impervious to gas.

The offence carries a maximum penalty of 20 penalty units.

Clause 55(3) provides it is an offence if a business operator fails to take all reasonable steps to ensure that a pest management vehicle is able to be locked when the vehicle is unattended. The offence carries a maximum penalty of 20 penalty units.

Signage

Clause 56 provides it is an offence if a business operator fails to ensure the following information is printed on the exterior of a pest management vehicle in English in a way that can easily be read:

- the contact details of the operator's business;
- the words 'pest management vehicle' or other words to clearly indicate the vehicle is used for pest management activities, unless this is otherwise clearly indicated in the name of the operator's business.

The offence carries a maximum penalty of 20 penalty units.

Subdivision 3 Places

Secure storage

Clause 57 provides that this section applies to a business operator storing a fumigant or pesticide at a place for use for the operator's pest management business.

Clause 57(2) provides it is an offence if the business operator fails to take all reasonable steps to ensure the place that has the following features:

- the place is able to be locked when unattended;
- the place has a floor and other surfaces that are impervious to the fumigant or pesticide;
- the place is built in such a way that any leakage or escape of the fumigant or pesticide is not likely to cause harm or nuisance to a person or the environment;
- the place is adequately ventilated;
- the place provides the fumigant or pesticide with protection from the weather;
- the place is located in an area that is separated from a residence or another work area that is not used for pest management activities.

The offence carries a maximum penalty of 20 penalty units.

Subdivision 4 Documentation

Business records

Clause 58 provides it is an offence if a business operator fails to keep a record of:

- the contact details of each of the operator's employees carrying out pest management activities; and
- any notifiable incidents reported to the chief executive under section 49 in relation to the operator's pest management business.

The offence carries a maximum penalty of 20 penalty units.

Employee requirements about records

Clause 59 provides that this section applies if an employee of a business operator is required, under this regulation, to make a record about a particular matter or give a particular record to the operator.

Clause 59(2) provides it is an offence if the business operator fails to take all reasonable steps to ensure the employee complies with the requirement and the business operation fails to keep any record given to the operator in compliance with the requirement. The offence carries a maximum penalty of 20 penalty units.

Clause 59(3) provides for this section a definition of *record*.

Division 2 Managers

Manager of place to notify attendees of advice

Clause 60 provides that this section applies to the manager of a place occupied or accessible by other persons (*attendees*), whether they are residents, workers or visitors of the place.

Clause 60(2) provides it is an offence if the manager of the place receives a pre-treatment pest control advice for a pest control activity to be carried out at the place and the manager fails to give notice to the attendees of the matters stated in the advice as soon as practicable after receiving it. The offence carries a maximum penalty of 20 penalty units.

Clause 60(3) provides it is an offence if the manager of the place receives a post-treatment pest control advice for a pest control activity that has been carried out at the place and the manager fails, as soon as practicable after receiving the advice, to:

- give the attendees notice of the matters stated in the advice; or
- make the advice available for inspection at a place, and give the attendees notice of the place where, and the times when, the attendees may inspect the advice.

The offence carries a maximum penalty of 20 penalty units.

Clause 60(4) provides that for subsections (2) and (3), the manager of the place may give the notice by leaving a copy of the relevant advice in a conspicuous location at the place. For example, putting up a notice at the entrance to a building or in a lunch room.

Clause 60(5) provides for this section a definition of *manager*.

Division 3 Record keeping

Recording information

Clause 61 provides that this section applies to a person who records information in writing to comply with a requirement under this regulation. For example, writing a clearance certificate for a fumigation activity or a pre-treatment or post-treatment pest control advice for a pest control activity.

Clause 61(2) provides it is an offence if a person fails to ensure the information is written in English and if the information is recorded in hard copy, it is marked legibly in ink. The offence carries a maximum penalty of 20 penalty units.

Clause 61(3) provides that subsection (2)(a) does not prevent the person also writing the information in another language other than English to help someone understand the information and does not apply in relation to the person's signature.

Keeping records

Clause 62 provides that this section applies to a person if a provision of this regulation states the person is required to keep a record.

Clause 62(2) provides it is an offence if the person fails to take all reasonable steps to ensure the record is readily retrievable, can not be altered, obliterated, deleted or removed without detection and is kept for five years after the day it is recorded. The offence carries a maximum penalty of 20 penalty units.

Clause 62(3) provides for this section the definition of *record*.

Division 4 Miscellaneous

Interfering with fumigation barricades or warning signs

Clause 63 provides it is an offence for a person, without the permission of a qualified person carrying out a fumigation activity, to take down, remove or alter the position of a barricade erected by the person for the activity, or for a person to deface, take down, remove or alter the position of a warning sign displayed by a person for the activity. The offence carries a maximum penalty of 20 penalty units.

Smoking prohibited

Clause 64 provides it is an offence for a person to smoke tobacco or any other substance in the vicinity of a fumigation activity being carried out. The offence carries a maximum penalty of 20 penalty units.

Part 6 Administration

Division 1 Fees

Subdivision 1 General

Definition for division

Clause 65 provides for this division a definition of *licensing fee*.

Fees payable generally

Clause 66 provides that the fees payable under the Medicines and Poisons Act in relation to a pest management licence are stated in schedule 2.

Clause 66(2) provides that a licensing fee for a pest management licence is payable for each year of the term of the licence.

Clause 66(3) provides that for any part of the term of a pest management licence that is not a full year, the licensing fee payable in relation to that part of the term is the proportion of the licensing fee attributable to the number of months, rounded up to whole months, of that year that are in the term.

Subdivision 2 Refunds

Rejected or withdrawn application

Clause 67 provides that this section applies if an applicant has paid the licensing fee for an application for a pest management licence and the application is refused by the chief executive or withdrawn by the applicant.

Clause 67(2) provides that the chief executive must refund the applicant the licensing fee for the application.

Licence granted for shorter term

Clause 68 provides that this section applies if an applicant has paid the licensing fee for an application for a pest management licence for a particular term (the ***proposed term***) and the application is granted for a period (the ***granted term***) that is shorter than the proposed term.

Clause 68(2) provides that the chief executive must refund the applicant the amount that is the proportion of the paid licensing fee attributable to the number of months, rounded up to whole months, that is the difference between the proposed term and granted term.

Clause 68(3) provides that no refund is payable if the amount under subsection (2) is zero or less than zero.

Surrender of licence

Clause 69 provides that this section applies if the holder of a pest management licence paid the licensing fee for an application for the licence for a particular term (the ***granted term***) and the pest management licence is surrendered before the end of the granted term.

Clause 69(2) provides that the chief executive must refund the applicant the amount that is the proportion of the paid licensing fee attributable to the number of months, rounded up to whole months, remaining in the granted term after the surrender.

Clause 69(3) provides that no refund is payable if the amount under subsection (2) is zero or less than zero.

Division 2 Miscellaneous

Replacing lost, stolen or damaged licences

Clause 70 provides that this section applies if the chief executive has given a person a hard copy document evidencing a pest management licence.

Clause 70(2) provides that the person may apply to the chief executive for a replacement of the document if the document is lost, stolen or damaged.

Clause 70(3) provides that the application must be made in the approved form and be accompanied by the fee stated in schedule 2.

Part 7 Savings and transitional provisions

Particular persons approved for 1 year

Clause 71 provides that this section applies to a person in relation to a pest management activity if:

- the *Pest Management Act 2001*, immediately before its repeal, did not apply to the person carrying out the activity because of a former relevant provision; and
- from the commencement, the person would be a member of a relevant class of person but for the person not having a statement of attainment or the training mentioned in the description of the relevant class.

Clause 71(2) provides that despite not having the statement of attainment or training, the person is taken to be a member of the relevant class of person until the day that is one year after the commencement.

Clause 71(3) provides for this section definitions of *former relevant provision*, *Pest Management Act* and *relevant class of person*.

Existing pest control advices

Clause 72 provides that this section applies in relation to a pest control advice under section 13 of the repealed *Pest Management Regulation 2003*, if the advice was given by a licensed technician to a person for a pest control activity before the commencement and the pest control activity was not completed immediately before the commencement.

Clause 72(2) provides that the licensed technician is taken to have satisfied both of the following conditions in relation to carrying out the pest control activity:

- the condition mentioned in section 13 for giving a pre-treatment pest control advice; and
- the condition mentioned in section 15 for giving a post-treatment pest control advice.

Part 8 Amendment of other regulations

Division 1 Amendment of Health Legislation (COVID-19 Emergency Response) Regulation 2020

Regulation amended

Clause 73 provides that this division amends the *Health Legislation (COVID-19 Emergency Response) Regulation 2020*.

Omission of pt 3 (Modification of Pest Management Act 2001)

Clause 74 omits the part 3 modification of the *Pest Management Act 2001*.

Division 2 Amendment of Queensland Building and Construction Regulation 2018

Regulation amended

Clause 75 provides that this division amends the *Queensland Building and Construction Regulation 2018*.

Amendment of s 6B (Meaning of occupational licence—Act, sch 2, definition occupational licence)

Clause 76 omits the reference to the *Pest Management Act 2001* and replaces with a reference to the *Medicines and Poisons Act 2019*.

Schedule 1 Approved persons

Part 1 Aerial distributors

Division 1 Commercial pilots

Class of person

Clause 1 provides that this division applies to a person (a **commercial pilot**) who:

- holds a commercial pilot licence issued by CASA that is endorsed with an aerial application rating; and
- holds, or is employed by the holder of, an air operator's certificate issued by CASA that is endorsed with an aerial application rating; and
- has spraysafe accreditation issued by the Aerial Application Association of Australia Limited; and
- is employed to aerially distribute a pesticide.

Pest management activity authorised

Clause 2 provides that a commercial pilot to which this division applies, can perform a pest control activity with a pesticide, if the pest control activity is carried out by aerial distribution.

Division 2 Operators of remotely operated aircraft

Class of person

Clause 3 provides that this division applies to a person (an **operator of remotely operated aircraft**) who:

- holds a remote pilot licence issued by CASA; and
- holds, or is employed by the holder of, a remotely piloted aircraft operator's certificate issued by CASA; and
- has either a statement of attainment stating the person has successfully completed the core pesticide competencies or spraysafe accreditation issued by the Aerial Application Association of Australia Limited; and
- is employed to aerially distribute a pesticide.

Pest management activity authorised

Clause 4 provides that an operator of remotely operated aircraft to which this division applies, can perform a pest control activity with a pesticide, if the pest control activity is carried out by aerial distribution.

Part 2 Ground distributors

Class of person

Clause 5 provides that this part applies to a person (a **ground distributor**) who:

- holds a commercial operator's licence granted under the *Agricultural Chemicals Distribution Control Act 1966*; and
- holds, or is employed by the holder of:

- an aerial distribution contractor licence granted under the *Agricultural Chemicals Distribution Control Act 1966*; or
- a ground distribution contractor’s licence granted under the *Agricultural Chemicals Distribution Control Act 1966*; and
- is employed to distribute a pesticide with ground equipment on land used for agricultural or horticultural purposes.

Pest management activity authorised

Clause 6 provides that a ground distributor to which this part applies, can perform a pest control activity with a pesticide, if the pest control activity is carried out by ground distribution on land used for agricultural or horticultural purposes.

Part 3 Commercial animal business operators and employees

Division 1 Business operators

Class of person

Clause 7 provides that this division applies to a person (a *business operator*) who:

- has:
 - a statement of attainment stating the person has successfully completed the core pesticide competencies; or
 - a statement of attainment stating the person has successfully completed the supervised pesticide competency; or
 - successfully completed training, approved by the chief executive, that is substantially equivalent to the competencies mentioned in subparagraph (i) or (ii); and
- is operating a business to treat pests on commercial animals.

Pest management activity authorised

Clause 8 provides that a business operator to which this division applies, can perform the following pest management activities:

- a pest control activity with a pesticide, if:
 - the pest control activity is carried out to treat pests on a commercial animal; and
 - the pest control activity is carried out under the supervision of a licensed technician, if the person is in the class because of the supervised pesticide competency or equivalent training. For example, applying tick treatment to cattle at a dip or applying flea treatment to an animal at a zoo.

Division 2 Employees

Class of person

Clause 9 provides that this division applies to a person (an *employee*) who:

- has:
 - a statement of attainment stating the person has successfully completed the core pesticide competencies; or
 - a statement of attainment stating the person has successfully completed the supervised pesticide competency; or
 - successfully completed training, approved by the chief executive, that is substantially equivalent to the competencies mentioned in subparagraph (i) or (ii); and
- is employed by another person operating a business to treat pests on commercial animals.

Pest management activity authorised

Clause 10 provides that an employee to which this division applies, can perform the following pest management activities:

- a pest control activity with a pesticide, if:
 - the pest control activity is carried out to treat pests on a commercial animal; and
 - the pest control activity is carried out under the supervision of a licensed technician, if the person is in the class because of supervised pesticide competency or equivalent training. For example, applying tick treatment to cattle at a dip or applying flea treatment to an animal at a zoo.

Part 4 Domestic animal business operators and employees

Division 1 Business operators

Class of person

Clause 11 provides that this division applies to a person (a *business operator*) who is operating a business to care for domestic animals.

Pest management activity authorised

Clause 12 provides that a business operator to which this division applies, can perform a pest control activity with a pesticide, other than an S7 substance, if the pest control activity is carried out to treat pests on a domestic animal.

Division 2 Employees

Class of person

Clause 13 provides that this division applies to a person (an *employee*) who is employed by another person operating a business to care for domestic animals.

Pest management activity authorised

Clause 14 provides that an employee to which this division applies, can perform a pest control activity with a pesticide, other than an S7 substance, if the pest control activity is carried out to treat pests on a domestic animal.

Part 5 Food product treatment business operators and employees

Division 1 Business operators

Class of person

Clause 15 provides that this division applies to a person (a *business operator*) who:

- has:
 - a statement of attainment stating the person has successfully completed the core pesticide competencies; or
 - a statement of attainment stating the person has successfully completed the supervised pesticide competency; or
 - successfully completed training, approved by the chief executive, that is substantially equivalent to competencies mentioned in subparagraph (i) or (ii); and
- is operating a business to treat pests on food products.

Pest management activity authorised

Clause 16 provides that a business operator to which this division applies, can perform the following pest management activities:

- a pest control activity with a pesticide, if:
 - the pest control activity is carried out to treat a food product after the product has been harvested, before the product is moved to another place for further processing or storage and if the person is in the class because of the supervised pesticide competency or equivalent training, under the supervision of a licensed technician. For example, applying a pesticide to fruit in a packing shed;
 - the pest control activity is carried out to treat grains or seeds at the place where the grains or seeds are used for the manufacture of food intended for consumption by animals and if the person is in the class because of the supervised pesticide competency or equivalent training, under the supervision of a licensed technician.

Division 2 Employees

Class of person

Clause 17 provides that this division applies to a person (an *employee*) who:

- has:
 - a statement of attainment stating the person has successfully completed the core pesticide competencies; or
 - a statement of attainment stating the person has successfully completed the supervised pesticide competency; or

- successfully completed training, approved by the chief executive, that is substantially equivalent to competencies mentioned in subparagraph (i) or (ii); and
- is employed by another person operating a business to treat pests on food products.

Pest management activity authorised

Clause 18 provides that the employee to which this division applies, can perform the following pest management activities:

- a pest control activity with a pesticide, if:
 - the pest control activity is carried out to treat a food product after the product has been harvested. before the product is moved to another place for further processing or storage and if the person is in the class because of the supervised pesticide competency or equivalent training, under the supervision of a licensed technician. For example, applying a pesticide to fruit in a packing shed;
 - the pest control activity is carried out to treat grains or seeds at the place where the grains or seeds are used for the manufacture of food intended for consumption by animals and if the person is in the class because of the supervised competency or equivalent training, under the supervision of a licensed technician.

Part 6 Persons delivering State programs

Division 1 Biosecurity programs

Class of person

Clause 19 provides that this division applies to a person who is authorised or directed to take a measure in relation to biosecurity matter to which a biosecurity program under the *Biosecurity Act 2014* relates.

Pest management activity authorised

Clause 20 provides that a person to which this provision applies, can perform a pest control activity with a pesticide, other than an S7 substance, if the pest control activity is carried out under the biosecurity program for a pest that is the biosecurity matter to which the program relates.

Division 2 Public health prevention and control programs

Class of person

Clause 21 provides that this division applies to an authorised person under the *Public Health Act 2005* who is authorised to take action in relation to a designated pest to which a prevention and control program under that Act relates.

Pest management activities authorised

Clause 22 provides that an authorised person to which this division applies, can perform the following regulated activities:

- a pest control activity that is applying a briquette, for a pesticide that is a briquette containing not more than 18 grams of (S)-methoprene for each kilogram of briquette as the only active constituent, if the pest control activity is carried out under the prevention and control program for treating a designated pest that is a vector mosquito;
- a pest control activity that is applying a pellet, for a pesticide that is a pellet containing not more than 40 grams of (S)-methoprene for each kilogram of pellet as the only active constituent, if the pest control activity is carried out under the prevention and control program for treating a designated pest that is vector mosquito;
- a pest control activity that is setting an ovitrap, for a pesticide that is an approved ovitrap, if the pest control activity is carried out under the prevention and control program for treating a designated pest that is a vector mosquito.

Part 7 Teachers

Class of person

Clause 23 provides that this part applies to a person (a *teacher*) who:

- has a diploma or equivalent in relation to pest management or agricultural studies; and
- is teaching a course about pest management at a secondary school or tertiary institution.

Pest management activity authorised

Clause 24 provides that a teacher to which this part applies, can perform a pest management activity with a fumigant or pesticide, if the pest management activity is carried out for teaching the course.

Part 8 Timber infrastructure contractors

Class of person

Clause 25 provides that this part applies to a person (a *timber infrastructure contractor*) who:

- has:
 - a statement of attainment stating the person has successfully completed the core pesticide competencies; or
 - a statement of attainment stating the person has successfully completed the applying pesticides competency; or
 - successfully completed training, approved by the chief executive, that is substantially equivalent to the competencies mentioned in subparagraph (i) or (ii); and
- is employed to treat timber infrastructure for pests.

Pest management activities authorised

Clause 26 provides that a timber infrastructure contractor to which this part applies, can perform a pest control activity with a pesticide, if the pest control activity is carried out to treat timber infrastructure for pests.

Part 9 Trainees

Division 1 Pest management trainees

Class of person

Clause 27 provides that this division applies to a person (a *pest management trainee*) who is undertaking a course about pest management that would enable the person to obtain a qualification in pest management.

Pest management activities authorised

Clause 28 provides that a pest management trainee to which this division applies, can perform a pest management activity with a fumigant or pesticide, if the pest management activity is carried out under the supervision of a licensed technician or an approved person mentioned in part 7.

Division 2 Other trainees

Class of person

Clause 29 provides that this division applies to a person (*other trainees*) who is:

- undertaking training to become a member of a class of persons mentioned in parts 1 to 3, 5, 7, 8 or part 11, division 1 (the *trainee's class*); and
- employed in the same way, or practising the same profession, as described in the trainee's class.

Pest management activity authorised

Clause 30 provides that other trainees to which this division applies, can perform a pest management activity mentioned in the table for the trainee's class with a fumigant or pesticide mentioned in the table for the pest management activity for the trainee's class, if the pest management activity is carried out under the supervision of a person authorised under the Medicines and Poisons Act to carry out the activity with the fumigant or pesticide.

Part 10 QBCC licensees for termite management

Division 1 Licensees

Class of person

Clause 31 provides that this division applies to a person (a *licensee*) who holds a QBCC licence of the termite management class and is employed to construct, extend or renovate a building or other structure.

Pest management activity authorised

Clause 32 provides that a licensee to which this division applies, can perform a pest control activity that is installing a physical termite barrier, with a pesticide that is termite barrier sheet material, if the pest control activity is carried out during the construction, extension or renovation of a building or other structure.

Division 2 Persons supervised by licensees

Class of person

Clause 33 provides that this division applies to a person (a *person supervised by a licensee*) who is supervised by a person holding a QBCC licence of the termite management class and is employed to construct, extend or renovate a building or other structure.

Pest management activity authorised

Clause 34 provides that a person supervised by a licensee to which this division applies, can perform a pest control activity that is installing a physical termite barrier, with a pesticide that is termite barrier sheet material, if the pest control activity is carried out during the construction, extension or renovation of a building or other structure.

Part 11 Veterinary professions

Division 1 Veterinary surgeons

Class of person

Clause 35 provides that this division applies to a veterinary surgeon.

Pest management activity authorised

Clause 36 provides that a veterinary surgeon to which this division applies, can perform a pest control activity with a pesticide, if the pest control activity is carried out for treating a pest on an animal.

Division 2 Veterinary assistants

Class of person

Clause 37 provides that this division applies to a person (a *veterinary assistant*) employed by, or volunteering to assist, a veterinary surgeon.

Pest management activity authorised

Clause 38 provides that a veterinary assistant to which this division applies, can perform a pest control activity with a pesticide, other than an S7 substance, if the pest control activity is carried out for treating a pest on an animal.

Schedule 2 Fees

Schedule 2 provides that the fees payable under the Medicines and Poisons Act are stated in the schedule.

Schedule 3 Dictionary

Schedule 3 defines certain words and terms used throughout the regulation.