

Medicines and Poisons (Pest Management Activities) Amendment Regulation 2023

Explanatory notes for SL 2023 No. 163

made under the

Medicines and Poisons Act 2019

General Outline

Short title

Medicines and Poisons (Pest Management Activities) Amendment Regulation 2023

Authorising law

Sections 54, 70, 233, 240 of the *Medicines and Poisons Act 2019*.

Policy objectives and the reasons for them

The *Medicines and Poisons Act 2019* was enacted in September 2019 and introduced a new regulatory framework for medicines and poisons in Queensland. A key objective of the Medicines and Poisons Act is to ensure medicines, poisons, prohibited substances, pesticides and fumigants are used safely and effectively and do not cause harm to human health.

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. Many pesticides and fumigants are also scheduled poisons and listed in the Poisons Standard.

The *Medicines and Poisons (Pest Management Activities) Regulation 2021* (Pest Management Regulation) supports the Medicines and Poisons Act by providing details on how to carry out pest management activities while minimising risks to public health. It does this by providing details relating to:

- who is authorised to carry out pest management activities;
- requirements for persons carrying out pest management activities;
- pest management business owner obligations; and
- building manager obligations.

The *Medicines and Poisons (Pest Management Activities) Amendment Regulation 2023* (Amendment Regulation) amends the Pest Management Regulation to:

- remove the requirement to include a pest management technician's licence number and signature on a pre-treatment pest control advice;
- clarify that an activity risk management plan must be prepared by an appropriately qualified licensed technician;
- remove the requirement to include, if practicable, a site diagram in an activity risk management plan;
- enable an authorised officer under the *Biosecurity Act 2014* or person directed by or helping an authorised officer to carry out pest control activity for biosecurity matter that is a pest;
- provide that carrying out pest control activity at a high-risk or sensitive place is a standard condition for pest management licenses;
- clarify that while a pest management trainee is carrying out an authorised activity, an authorised pest management technician must supervise and carry out the pest management activity with the trainee;
- clarify what substances are prescribed as fumigants to reflect the updated meaning of fumigation activity in the Medicines and Poisons Act;
- remove the requirement for a pest management technician to provide or display their address in circumstances where it poses a risk to their personal safety and the security of pesticides and fumigants stored at the address;
- amend the definition of high-risk place to ensure it does not capture small retail outlets;
- amend the definition of sensitive place to ensure it does not capture medical facilities that provide outpatient services;
- update references to the Departmental Standard - *Competency requirements for licensed technicians undertaking pest management activities with pesticides and fumigants* (Competency Standard) to reflect version 2 of the Competency Standard;
- provide that the chief executive of the Department is authorised to approve training substantially equivalent to a competency in the Competency Standard;
- insert a transitional provision to provide licensed technicians with an endorsement to treat urban pests at a high-risk or sensitive place with 12-months to complete the competency requirements; and
- make other minor and technical amendments to improve the operation of the Pest Management Regulation.

Information included in a pre-treatment pest control advice

Section 13 of the Pest Management Regulation provides that before starting a pest control activity for a customer, a licensed technician must give the customer a pre-treatment pest control advice for the activity. Section 14 specifies what information must be included in a pre-treatment pest control advice. This includes the licence number and signature of the licensed technician proposed to carry out the activity, the date, and a statement of warranties. A pre-

treatment pest control advice contains generic information and does not include the specifics of the pest control activity to be carried out.

As the licensed technician undertaking the pest control activity can change on short notice, the licensed technician that provided the pre-treatment advice might not be the technician that ultimately undertakes the pest control activity. The requirement to include the technician's licence number and signature on a pre-treatment advice requires a new pre-treatment advice to be issued every time the technician proposed to undertake the pest control activity changes.

The Pest Management Regulation provides safeguards to ensure the quality and safety of work carried out, including the requirement that only a licensed technician can undertake the pest control activity to which the pre-treatment advice relates. Removing the requirement to include a pest management technician's license number and signature on a pre-treatment pest control advice will reduce the administrative burden on pest management technicians and businesses without increasing the risk to public health and safety.

Preparer of activity risk management plan

Section 18 of the Pest Management Regulation requires a licensed technician to ensure an activity risk management plan has been prepared before starting a pest control activity at a high-risk or sensitive place, which includes a building used for aged care, childcare, schooling, or healthcare purposes or a place used for processing food or food manufacturing. Section 18, however, does not specify that the activity risk management plan must be prepared by a licensed technician who holds the competency requirements to treat urban pests at a high-risk or sensitive place.

To limit risks to public health, an activity risk management plan for a high-risk or sensitive place should only be prepared by a licensed technician who holds competency requirements to treat urban pests at a high-risk or sensitive place, as outlined in version 2 of the Competency Standard. This will ensure the licensed technician who is preparing an activity risk management plan is appropriately educated and has the practical experience in applying hazardous pesticides at a high-risk or sensitive place. The amendments will also prevent third party businesses without any pest management expertise from selling generic activity risk management plans.

Similarly, section 23 requires a licensed technician to ensure an activity risk management plan has been prepared before starting a fumigation activity for a customer at a fumigation site. Section 23, however, does not specify that the activity risk management plan must be prepared by a licensed technician. As an activity risk management plan for fumigation activity is a technical document, it is necessary to ensure the plan can only be prepared by a licensed technician, as licensed technicians are appropriately educated and have the practical skills and experience to undertake fumigation activity.

Information included in an activity risk management plan

Section 19(1)(h) of the Pest Management Regulation provides that an activity risk management plan for pest control activity must include the details of the part of the place where the activity is to be carried out, including a diagram, if practicable. Section 24(1)(h) of the Pest Management Regulation similarly provides that an activity risk management plan for fumigation activity must include the details of the exposure area for the activity, including a diagram, if practicable.

The requirement in sections 19(1)(h) and 24(1)(h) to include a site diagram, if practicable, causes uncertainty within the pest management industry about what an activity risk management plan should contain. As the Pest Management Regulation already requires an activity risk management plan to contain details about access to the site, the area to be treated and any precautions to be taken, the public safety benefit of including a site diagram is negligible. The requirement to include a site diagram in an activity risk management plan, if practicable, is not considered necessary to achieve the policy intent of minimising the risk to public health and safety.

Persons treating biosecurity matter

Schedule 1, part 6, division 1 of the Pest Management Regulation provides that 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, can also undertake a pest control activity in relation to the biosecurity matter.

However, schedule 1, part 6, division 1 does not permit an authorised person to carry out a pest control activity for biosecurity matter in circumstances where the biosecurity matter, such as fire ants, is outside the scope of a biosecurity program. Limiting the treatment of biosecurity matter to the scope of a biosecurity program restricts the ability to manage, reduce and eradicate biosecurity matter, for example, if the biosecurity matter is located outside the parameters of a biosecurity program.

The Pest Management Regulation also does not permit an authorised person under the *Biosecurity Act 2014* to direct or seek the assistance of another person, for example, a landholder, to treat the biosecurity matter. This creates difficulties when the biosecurity matter is located on land owned or occupied by another person, thereby limiting the ability to treat the biosecurity matter in a timely manner.

The policy intent of the biosecurity framework is to take a risk-based approach to biosecurity threats that is responsive to each circumstance. This framework ensures biosecurity risks that are, or are likely to become, a significant problem for human health, social amenity, the economy, or the environment are treated in an appropriate and efficient way.

Amendments to the Pest Management Regulation are necessary to allow an authorised person to carry out a pest control activity in relation to all biosecurity matter that is a pest, regardless of whether the area being treated is within the scope of a biosecurity program. Amendments are also necessary to allow another person to treat or destroy biosecurity matter that is a pest, if that person is directed by, or assisting an authorised officer under the *Biosecurity Act 2014*. These amendments will minimise risks to public health, by ensuring all biosecurity matter that is a pest is managed effectively.

Standard conditions

Section 70(1)(a) of the Medicines and Poisons Act provides that a standard condition can be prescribed by regulation to apply in relation to a substance authority. Part 3 of the Pest Management Regulation prescribes standard conditions that apply to pest management licenses. Additional conditions can be prescribed by an authority instrument depending on the substance involved, the purpose of use and any other relevant criteria.

The competencies outlined in the Competency Standard ensure a pest control activity at a high-risk or sensitive place are carried out by, or done under the supervision of, a licensed technician with the appropriate skills and training. These requirements are accepted practice within the pest management industry but are not prescribed as standard conditions under the Pest Management Regulation.

Pest control activity undertaken at a high-risk or sensitive place carries a greater risk to human health compared to pest control activities carried out in other locations. For example, people 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. Similarly, improper application of a pesticide or fumigant at a high-risk place, such as a major food processing site, has the potential to impact health on a large scale.

Given the importance of regulating pest management activities at high-risk or sensitive places, it is appropriate to set these requirements as standard conditions in the Pest Management Regulation. This will make clear that a licensed technician cannot carry out pest control activities at a high-risk or sensitive place unless they hold the relevant competencies or are under the supervision of a licensed technician who holds those competencies.

Supervising trainees

Section 38 of the Pest Management Regulation outlines the obligations of a licensed technician when supervising a pest management trainee. This includes providing directions, training and monitoring, taking reasonable steps to ensure the trainee complies with the Medicines and Poisons Act, and taking remedial action if an emergency arises.

The Pest Management Regulation does not specify that while a licenced technician is supervising a trainee, the pest management activity must be carried out by both the technician and trainee, rather than just the trainee.

To ensure trainees receive appropriate training and oversight for the activities they carry out, it is necessary to clarify that the technician supervising the trainee must also carry out the pest control activity with the trainee. This will improve the quality of pest management services and promote public health and safety.

Updated meaning of fumigants

The definition of fumigation activity in the Medicines and Poisons Act was updated by the *Health and Other Legislation Amendment Act 2023* to clarify that the use of gaseous substances to manage pests, or substances that become gaseous at the time of use, are fumigation activities and not pest control activities.

The definition of fumigants in section 5 of the Pest Management Regulation does not reflect the updated definition of fumigation activity in the Medicines and Poisons Act and requires updating.

Definition of contact details and the disclosure of personal information

Schedule 3 of the Pest Management Regulation defines *contact details* to mean the name, phone number, and address of the person or business. Sections 14, 16, 26, 30, 37, and 56 of the Pest Management Regulation requires licensed technicians and businesses to provide contact

details on things such as pest control advice notices, vehicle signage, fumigation warning signs, clearance certificates and fumigation notices displayed in public.

Requiring a licensed technician or business to provide or display their address in the above circumstances is not required from a public health and safety perspective, as the licensed technician's name and phone number is sufficient for customers and the public to identify and contact the technician or business, if required. These requirements also pose a risk to the licensed technician's personal safety, as well as public safety as hazardous pesticides and fumigants may be stored at these addresses.

There are, however, limited circumstances in the Pest Management Regulation where it is appropriate for a licensed technician or business to continue supply their address:

- section 39 – a licensed technician must notify the chief executive about a change to their address to facilitate Departmental communication; and
- section 58 – a business operator must keep a record of the address of each of the operator's employees carrying out pest management activities to allow the business to identify and communicate with its employees.

To address safety and security concerns, amendments are necessary to remove the requirement for licensed technicians and businesses to produce their address, except in the limited circumstances outlined in sections 39 and 58 of the Pest Management Regulation.

Definition of high-risk place

Schedule 3 of the Pest Management Regulation defines *high-risk place* as a place owned or occupied by a person and used for intensive high density livestock farming, processing food or food manufacturing, and includes land adjacent to the place that is owned or occupied by the same person. As the definition of high-risk place extends to facilities processing or manufacturing food, the definition unintentionally captures small retail outlets. The policy intent of the definition is to capture food processing and food manufacturing facilities that have the potential to affect many people or with distribution over a large geographical area.

Small retail outlets pose a significantly lesser risk to public health, as they cater to a smaller, more localised population. Additional requirements are placed on small retail outlets captured within the definition of high-risk place, which is disproportionate to the public health risks these outlets pose. Amendments are necessary to clarify that a high-risk place does not include small retail outlets.

Definition of sensitive place

Schedule 3 of the Pest Management Regulation defines *sensitive place* as a building used for aged care, childcare, schooling, or healthcare purposes and includes land adjacent to the building used for the same purposes. This definition captures small medical facilities, such as local doctor's clinics and dental clinics, which is contrary to the policy intent. The policy intent of the definition is to capture health care facilities treating inpatients, as these places accommodate vulnerable people over extended periods of time.

Smaller medical facilities are considered lower risk, as they provide outpatient services or appointments that do not require hospital admission. This is consistent with other sensitive locations captured within the definition, such as childcare centres and aged care facilities.

Persons at these sensitive locations are more susceptible to the negative health impacts caused by periods of exposure to a pesticide or fumigant, as they typically spend extended periods of time at these locations.

The additional requirements placed on medical facilities providing outpatient services and captured within the definition of *sensitive place* is disproportionate to the public health risks these facilities pose. Amendments are necessary to clarify that a sensitive place does not include medical facilities that provide outpatient services.

Departmental Standard - Competency requirements for licensed technicians undertaking pest management activities with pesticides and fumigants

Section 233 of the Medicines and Poisons Act empowers the chief executive to make departmental standards relevant to the objectives and administration of the regulatory framework. Section 8 of the Pest Management Regulation approves the departmental standard by name and version number. When a new version of the departmental standard is made by the chief executive or their delegate, the Pest Management Regulation requires an amendment to reflect the new version so it can take effect. The Medicines and Poisons Act provides that the departmental standard does not take effect until it is approved by the Pest Management Regulation.

The departmental standard which supports the Pest Management Regulation is the *Competency requirements for licensed technicians undertaking pest management activities with pesticides and fumigants*. The Competency Standard establishes the minimum competency requirements for persons seeking to carry out pest management activities.

Version 1 of the Competency Standard outlined the competencies required to:

- treat urban pests at a high-risk or sensitive place
- supervise the treatment of urban pests at a high-risk or sensitive place; or
- prepare an activity risk management plan for a high-risk or sensitive place.

Despite the additional precautions that must be taken when undertaking activities at a high-risk or sensitive place, the competency requirements to treat urban pests were the same for high-risk or sensitive places as for places that are not high-risk or sensitive.

Version 2 of the Competency Standard updates the competency requirements to prescribe additional competency requirements for pest management technicians treating urban pests at a high-risk or sensitive place. This reflects the additional education and training that should be undertaken to safely undertake those activities. Under version 2 of the Competency Standard, licensed technicians who successfully complete the competency requirements to treat urban pests at a high-risk or sensitive place will be eligible to receive an endorsement on their licence to undertake those activities. Licensed technicians with this endorsement will also be able to supervise a licensed technician undertaking an activity at a high-risk or sensitive place, and prepare an activity risk management plan for a high-risk or sensitive place.

Chief executive's approval of training substantially equivalent to a competency in the Competency Standard

Version 1 of the Competency Standard provided that a licensed technician was required to satisfy and continue to satisfy the competency requirements in the Competency Standard, or a competency approved by the chief executive of Queensland Health, that was substantially equivalent to a competency in the Competency Standard.

As these are key requirements and powers under the pest management regulatory framework, it is appropriate for these requirements and powers to be specified in the Pest Management Regulation, rather than the Competency Standard. This will provide clarity, improve transparency in decision-making and ensure that key requirements for licensed technicians are specified in the Pest Management Regulation.

To reflect the transfer of these requirements from version 1 of the Competency Standard to the Pest Management Regulation, version 2 of the Competency Standard does not specify these requirements.

Commencement of updated Competency Standard

Pest management technicians applying for an endorsement to treat urban pests at a high-risk or sensitive place after the commencement of version 2 of the Competency Standard must complete the relevant competencies outlined in the Competency Standard.

A transitional provision is required for pest management technicians who obtained an endorsement under version 1 of the Competency Standard to treat urban pests at a high-risk or sensitive place. This is necessary to allow sufficient time for technicians with existing contracts at high-risk and sensitive places to carry out the work and obtain the new competencies. It will also ensure pest management training providers are not overwhelmed with the demand to deliver training for the new competencies.

Pest management technicians who obtained an endorsement to treat urban pests at a high-risk or sensitive place prior to the commencement of version 2 of the Competency Standard were required to provide evidence of experience working in high-risk or sensitive places. This evidence was assessed by Queensland Health to determine whether the pest management technician possessed the requisite training and work experience to undertake this work in a safe and effective manner. As such, providing a transitional period for this limited group of pest management technicians to obtain the new competencies does not pose a greater risk to public health and safety.

Minor and technical amendments

Minor and technical amendments to the Pest Management Regulation are necessary to clarify and improve the operation of existing provisions, as well as remove any redundant provisions.

Achievement of policy objectives

Information included in a pre-treatment pest control advice

The Amendment Regulation amends section 14 of the Pest Management Regulation to omit the requirement to include a technician's licence number and signature on the pre-treatment pest control advice. This will reduce the administrative burden on pest management businesses by ensuring a new pre-treatment pest control advice will not have to be issued every time the technician proposed to undertake the pest control activity changes. As the Pest Management Regulation contains safeguards to ensure only a licensed technician can carry out the pest control activity, removing this requirement will not increase the risk to public health and safety.

Preparer of an activity risk management plan

The Amendment Regulation updates sections 18 of the Pest Management Regulation to clarify that an activity risk management plan for a high-risk or sensitive place must be prepared by a licensed technician who has successfully completed the competency requirements outlined in the Competency Standard, or has successfully completed training approved by the chief executive that is substantially equivalent to the competency requirements outlined in the Competency Standard.

The Amendment Regulation updates section 23 of the Pest Management Regulation to clarify that an activity risk management plan for a fumigation activity for a customer at a fumigation site must be prepared by a licensed technician authorised to carry out the fumigation activity.

These amendments will ensure that an activity risk management plan is only prepared by persons who possess the appropriate skills and experience or meet the specific competency requirements outlined in the Competency Standard and Pest Management Regulation.

Information included in an activity risk management plan

The Amendment Regulation updates sections 19(1)(h) and 24(1)(h) of the Pest Management Regulation to remove the requirement to include a site diagram in an activity risk management plan, if practicable. This will improve certainty within the industry about what an activity risk management plan should contain.

Persons treating biosecurity matter

The Amendment Regulation inserts new division 1 in schedule 1, part 6 of the Pest Management Regulation to provide that an authorised officer under the *Biosecurity Act 2014* can carry out a pest control activity for biosecurity matter that is a pest. The authorised officer will be permitted to use a pesticide, other than a schedule 7 (S7) substance, to carry out the pest control activity.

The Amendment Regulation also inserts new division 1A in schedule 1, part 6 of the Pest Management Regulation, which further provides that a person who is directed by or is helping an authorised officer under the *Biosecurity Act 2014* can also carry out pest control activity for biosecurity matter that is a pest. The Amendment Regulation inserts a definition of biosecurity

matter that refers to the definition of biosecurity matter in section 15 of the *Biosecurity Act 2014*.

These amendments will allow authorised officers under the *Biosecurity Act 2014*, and persons directed by or assisting an authorised officer, to use pesticides to control biosecurity matter that is a pest, regardless of whether the biosecurity matter is outside the scope of a biosecurity program. This will achieve the policy intent of facilitating preparedness and treatment for incursions of biosecurity matter to prevent, respond to and recover from pests that threaten the economy, environment and public health.

Standard condition

The Amendment Regulation inserts a new provision in the Pest Management Regulation which provides that a licensed technician cannot carry out pest control work at a high-risk or sensitive place unless they:

- have successfully completed the relevant competencies under the Competency Standard;
- have successfully completed training, approved by the chief executive, that is substantially equivalent to a competency in the Competency Standard; or
- are working under the supervision of a person who has the competencies or training.

By inserting these requirements in part 3 of the Pest Management Regulation, these requirements are standard conditions for pest management licences under section 70(1)(a) of the Medicines and Poisons Act. As pest management activities carried out at a high-risk or sensitive place pose a greater risk to human health and the environment, the amendments will ensure and make clear that activities in these places must be carried out by or under the supervision of a licensed pest management technician who holds the relevant qualifications.

Supervising trainees

The Amendment Regulation amends section 38 of the Pest Management Regulation to clarify that when a pest management trainee is carrying out an authorised pest management activity, the licensed technician supervising the trainee must carry out the pest management activity with the trainee.

This amendment will more clearly define the responsibilities of the trainee's supervisor and ensure pest management trainees are adequately supervised and trained. This will improve the quality of pest management services and pest management training, as well as promote public health and safety.

Updated meaning of fumigants

The Amendment Regulation amends section 5 of the Pest Management Regulation to clarify that a fumigant is when ozone, carbon dioxide, or nitrogen, or a combination of any of these substances, is prepared or used for an activity of a type mentioned in section 19(2) of the Medicines and Poisons Act when the substance becomes gaseous. This amendment ensures consistency between the definition of fumigant in the Pest Management Regulation and the updated meaning of fumigation activity in the Medicines and Poisons Act.

Definition of contact details and the disclosure of personal information

The Amendment Regulation updates the definition of *contact details* for a person or business in schedule 3 of the Pest Management Regulation to mean the name and phone number of a person or business. The updated definition omits ‘address’ from the definition of contact details, to ensure a licensed technician or business is not required to display or provide their address in unnecessary circumstances. This amendment promotes the safety of licensed technicians and maintains the security of hazardous pesticides and fumigants that may be stored at these addresses.

The Amendment Regulation amends sections 39 and 58 of the Pest Management Regulation to clarify that a licensed technician or business must continue to provide an address in the following circumstances:

- section 39 – a licensed technician must notify the chief executive about a change to their address to facilitate Departmental communication; and
- section 58 – a business operator must keep a record of the address of each of the operator’s employees carrying out pest management activities to allow the business to identify and communicate with its employees.

The amendments to section 39 and 58 require an ‘address’, rather than a residential address, to be produced. This means that a person or business who wishes to maintain their privacy, for example, because they are fleeing a domestic violence situation, will be able to provide a post office box as their address as per the requirements of the Pest Management Regulation.

Definition of high-risk place

The Amendment Regulation updates the definition of *high-risk place* in schedule 3 of the Pest Management Regulation to include intensive or high-density livestock farming, or large-scale manufacturing, processing, or storage of food for sale primarily by wholesale. This achieves the policy intent by ensuring the definition does not capture small retail outlets that do not distribute over a large geographical area or have the potential to affect many people.

Definition of sensitive place

The Amendment Regulation updates the definition of *sensitive place* in schedule 3 of the Pest Management Regulation to include a building used for providing childcare, schooling, or aged care, or used as a hospital. This achieves the policy intent by ensuring the definition does not capture small medical facilities that do not provide inpatient treatment, such as local doctor’s clinics.

Departmental Standard - Competency requirements for licensed technicians undertaking pest management activities with pesticides and fumigants

The Amendment Regulation updates section 8 of the Pest Management Regulation and inserts a definition of *competency standard* in schedule 3, to reflect version 2 of the Competency Standard. A copy of the updated Competency Standard will be tabled in Parliament as extrinsic material, to reflect the revised standard. The Medicines and Poisons Act provides that the Competency Standard does not take effect until it is approved by the regulation.

The new version of the Competency Standard makes the following changes:

- adds CPPUPM4003 and CPPUPM4005 as primary competency units for the treatment of urban pests at a sensitive place (excluding timber pests and pest birds);
- adds CPPUPM4004 and CPPUPM4006 as primary competency units for the treatment of urban pests at a high-risk place (excluding timber pests and pest birds);
- adds a definition for ‘pests’ and ‘pest birds’;
- removes the ability for the chief executive of Queensland Health to approve substantially equivalent competencies, as the Amendment Regulation specifies this power in Clause 6; and
- adds additional competencies in Appendix 1 that are equivalent to the primary competencies.

Prescribing version 2 of the Competency Standard in the Pest Management Regulation achieves the policy intent of promoting public health and safety. The amendment ensures work at a high-risk or sensitive place is carried out by or under the supervision of a technician who has undertaken the necessary training and education.

Chief executive’s approval of training substantially equivalent to a competency

The Amendment Regulation amends section 10 of the Pest Management Regulation to clarify that for a licensed technician to satisfy and continue to satisfy the competency requirements stated in the Competency Standard, the licensed technician must:

- have a statement of attainment stating the person has successfully completed the competency in the Competency Standard; or
- have successfully completed training approved by the chief executive that is substantially equivalent to the competency in the Competency Standard.

This will achieve the policy intent of ensuring key requirements for licensed technicians are specified in the Pest Management Regulation, rather than in extrinsic materials.

Commencement of updated Competency Standard

Version 2 of the Competency Standard commenced on 1 November 2023 in line with the commencement of the Amendment Regulation. The Amendment Regulation inserts a transitional provision, which provides that pest management technicians who received an endorsement under version 1 of the Competency Standard to treat urban pests at a high-risk or sensitive place will have 12 months to obtain the new competencies outlined in version 2 of the Competency Standard.

This limited group of pest management technicians will be able to continue to undertake work at high-risk or sensitive places without obtaining the new competencies until 1 November 2024. After 1 November 2024, licensed technicians must not carry out a pest control activity for a customer at a high-risk or sensitive place unless the licensed technician has:

- a statement of attainment stating the technician has successfully completed the competency required under version 2 of the Competency Standard to treat urban pests at a high-risk or sensitive place; or
- successfully completed training, approved by the chief executive, that is substantially equivalent to the competencies in version 2 of the Competency Standard.

Successfully completing these competencies will also authorise a licenced technician to prepare an activity risk management plan for a high-risk or sensitive place, and supervise another licenced technician carrying out a pest control activity for a customer at a high-risk or sensitive place.

A licensed technician who does not hold these competencies can still undertake pest management activities at a high-risk or sensitive places if the activity-risk management plan has been prepared by a licensed technician with these competencies and the licenced technician is working under the general supervision of a technician with these competencies.

Minor and technical amendments

The Amendment Regulation:

- omits the definition of *business employee*, as it is redundant and not referred in the Pest Management Regulation;
- updates the authorising provision under schedule 1 (approved persons) by omitting ‘section 9’ and replacing it with ‘section 7’ of the Pest Management Regulation; and
- removes the definition of *competency standard* from section 10 and inserts it in schedule 3 (Dictionary), as it is now referred to in multiple sections of the Pest Management Regulation.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of the authorising 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 Amendment Regulation is the only effective means of achieving the policy objectives.

Benefits and costs of implementation

The Amendment Regulation does not impose significant costs on persons or organisations. The amendments do not impose any new or increased fees. The cost of implementing the amendments will be met within existing budget allocations.

Consistency with fundamental legislative principles

The Amendment Regulation is generally consistent with the fundamental legislative principles in section 4 of the *Legislative Standards Act 1992*, however it may potentially impact on the following fundamental legislative principles.

Institution of Parliament

Competency Standard

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 cases and to appropriate persons (section 4(5)(e) of the Legislative Standards Act).

Section 233 of the Medicines and Poisons Act empowers the chief executive to make standards about carrying out regulated activities with regulated substances and other matters relating to the purpose and administration of the Medicines and Poisons 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. Section 233 provides that a standard may adopt all or part of another entity's code, guideline, protocol or standard.

Clause 5 provides that for section 233(4) of the Medicines and Poisons Act, version 2 of the Competency Standard is approved.

The Competency Standard is outcomes focused. It provides minimum criteria and acceptable actions to achieve the required outcomes, including multiple options in situations where a range of vocational courses or qualifications are acceptable to achieve the outcomes. These outcomes-based requirements would not be suitable for inclusion in a regulation, which is inherently a more prescriptive instrument.

The competencies prescribed in the Competency Standard are nationally agreed and set out under various state or Commonwealth laws, such as the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* (Cth). 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. The standards will continue to be monitored and updated, align with industry best practice and be published on the Queensland Health website (www.health.qld.gov.au). When making or amending a standard, relevant individuals and organisations with expertise and experience relevant to the matters under consideration will be consulted.

The Pest Management Regulation will be amended to reflect the updated version number each time a new version of the Competency Standard is made. A copy of the updated Competency Standard will be tabled as extrinsic material each time the regulation is amended, to reflect the changed Competency 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, outcomes-focused nature of the documents justifies the references to external documents. For these reasons, prescribing requirements by reference to the Competency Standard does not breach fundamental legislative principles.

Chief Executive approvals

The Amendment Regulation will also provide that a licensed technician must satisfy and continue to satisfy the relevant competency standards stated in the Competency Standard, or a competency approved by the chief executive that is substantially equivalent to the relevant competency in the Competency Standard. Allowing the chief executive of Queensland Health to approve a competency that is substantially equivalent to a competency in the Competency Standard may be seen to breach section 4(5)(e) of the Legislative Standards Act.

The power of the chief executive to approve a competency that is substantially equivalent to a competency in the Competency Standard was previously prescribed in version 1 of the Competency Standard. The Amendment Regulation prescribes this requirement in the Pest Management Regulation itself to improve clarity and transparency of decision-making.

Allowing the chief executive to approve substantially equivalent competencies is necessary to avoid the duplication of education and training requirements. The chief executive of the Department, who is empowered under the Medicines and Poisons Act to make the Competency Standard, is the appropriate person to make these decisions. As such, the powers of delegation do not breach fundamental legislative principles, as it permits delegation only in appropriate cases and to appropriate persons.

Privacy rights

Contact details

Section 4(2)(a) of the Legislative Standards Act provides that legislation must have sufficient regard to the rights and liberties of individuals. A relevant consideration is whether the legislation impacts upon a person's right to privacy. The ultimate question is whether an acceptable balance is struck between the need to adequately protect and promote the health of the public, on the one hand, and the rights and liberties of the individual on the other.

The Amendment Regulation amends the definition of contact details, by omitting the address of a person or business from the definition (clause 21). The updated definition defines contact details as the name and phone number of a person or business. This amendment has the effect of no longer requiring a person or business to provide an address when contact details are required to be produced. However, continuing to require a person or business to provide their name and phone number when contact details are required may impact the right to privacy.

The Amendment Regulation also continues to require a person or business to produce their address in the following circumstances, which may impact the right to privacy:

- a change in a licensed technician's address must be disclosed to the chief executive (clause 16); or
- a business operator must keep a record of the address of each of the operator's employees carrying out pest management activities (clause 17).

Contact information is collected to facilitate contact with a licensed technician and business, to ensure that the technician and business is accountable for compliance with various standards. This personal information is collected to facilitate the overall pest management scheme, which is ultimately directed to protect public health.

Disclosure of personal information in the form of a name and telephone number, and address in limited circumstances, impinges on a person's privacy. However, it is at the lower end of intrusions into privacy. The amendments to section 39 and 58 of the Pest Management Regulation require an 'address', rather than residential address, to be produced. This means that a person or business who wishes to maintain their privacy (for example, because they are fleeing a domestic violence situation), will be able to provide a post office box as their address as per the requirements of the Pest Management Regulation.

The disclosure of a person's or business's address in the circumstances outlined in the Amendment Regulation is also necessary to facilitate Departmental communications and to allow the business to identify and communicate with its employees. Allowing the effective operation of a scheme designed to protect human life outweighs the minor impact on privacy.

Ordinary activities should not be unduly restricted

Competency requirements for treating urban pests at a high-risk or sensitive place

Section 4(2)(a) of the Legislative Standards Act provides that legislation must have sufficient regard to the rights and liberties of individuals. A relevant consideration is that legislation should not, without sufficient justification, unduly restrict ordinary activities. The most general concept of liberty logically requires that an activity should be lawful unless for a sufficient reason it is declared unlawful by an appropriate authority.

Clause 5 may limit this principle, as it prescribes version 2 of the Competency Standard in the Pest Management Regulation. Version 2 of the Competency Standard prescribes additional competency requirements for pest management technicians. This requires licensed technicians to successfully complete the additional competency requirements to treat urban pests at a high-risk or sensitive place, supervise a trainee or licensed technician undertaking an activity at a high-risk or sensitive place or prepare an activity risk management plan for a high-risk or sensitive place.

Clause 19 of the Amendment Regulation also inserts a transitional provision to ensure that pest management technicians who obtained an endorsement to treat urban pests at a high-risk or sensitive place prior to the commencement of version 2 of the Competency Standard have 12 months from the commencement of the updated Competency Standard to obtain the relevant competencies. This transitional period will ensure their activities are not unduly restricted, by allowing technicians with existing contracts for pest control activities at high-risk and sensitive places sufficient time to obtain the new competencies. It will also ensure pest management training providers are not overwhelmed with the demand to deliver training for the new competencies.

Pest management activities carried out at a high-risk or sensitive place poses a greater risk to human health and the environment. The amendments ensure that pest management activities in these places are carried out by or performed under the supervision of suitably qualified pest management technicians in a safe and competent way. As the additional competencies in version 2 of the Competency Standard promote public health and safety, and the

transitional provision ensures industry is not significantly burdened by the training requirements, the ordinary activities of pest management technicians are not unduly restricted. Therefore, the fundamental legislative principle is not breached.

Consultation

The amendments contained in the Amendment Regulation were developed in consultation with the Australian Environmental Pest Managers Association. The Australian Environmental Pest Managers Association is the peak body in the industry and represents professional pest managers across Queensland and Australia. The Australian Environmental Pest Managers Association were supportive of the Amendment Regulation.

The Australian Environmental Pest Managers Association was consulted on version 2 of the Competency Standard and confirmed that the pest management industry has had sufficient notice of the introduction of new competencies contained in the Competency Standard. The Australian Environmental Pest Managers Association was supportive of the Competency Standard taking effect on the commencement of the Regulation.

AgForce Queensland was also consulted on amendments of relevance to Queensland's rural producers and were supportive of the amendments consulted on.

The Office of Best Practice Regulation was consulted when developing the Impact Analysis Statement for the amendments contained in the Amendment Regulation. Queensland Health has assessed the amendments in accordance with the *Queensland Government Better Regulation Policy* as being unlikely to result in significant adverse impacts. The Minister for Health, Mental Health and Ambulance Services and Minister for Women, and the Director-General of Queensland Health are satisfied that the regulatory review requirements have been met and have approved the Impact Analysis Statement for publication.

Notes on provisions

Short title

Clause 1 states the short title is the *Medicines and Poisons (Pest Management Activities) Amendment Regulation 2023* (Amendment Regulation).

Commencement

Clause 2 provides for the commencement of the regulation on 1 December 2023.

Regulation amended

Clause 3 provides that the regulation amends the *Medicines and Poisons (Pest Management Activities) Regulation 2021* (Pest Management Regulation).

Amendment of s 5 (Fumigants—Act, s 14)

Clause 4 amends section 5 of the Pest Management Regulation by omitting ‘section 19(2)(a), (b), (c) or (d)’ and replacing it with ‘section 19(2)’. This amendment reflects changes made to the *Medicines and Poisons Act 2019* in the *Health and Other Legislation Amendment Act 2023*, which clarifies that the use of gaseous substances to manage pests, or substances that become gaseous at the time of use, are fumigation activities and not pest control activities.

Amendment of s 8 (Approval of departmental standard—Act, s 233)

Clause 5 amends section 8 of the Pest Management Regulation by replacing ‘version 1’ with ‘version 2’ to reflect new version 2 of the Departmental Standard - *Competency requirements for licensed technicians undertaking pest management activities with pesticides and fumigants* (Competency Standard).

Amendment of s 10 (Competency condition)

Clause 6 inserts new section 10(2) which provides that for a licensed technician to satisfy, and continue to satisfy, the competency requirements stated in the Competency Standard, the licensed technician must:

- have a statement of attainment stating the person has successfully completed the competency in the Competency Standard; or
- have successfully completed training approved by the chief executive that is substantially equivalent to the competency in the Competency Standard.

Amendment of s 11 (Application of division)

Clause 7 amends section 11 by omitting the reference to a licenced technician supervising a pest management trainee. This ensures the division applies only in relation to a licensed technician who is authorised under the technician’s licence to carry out a pest control activity.

Amendment of s 14 (Contents of pre-treatment pest control advice)

Clause 8 amends section 14 by omitting the requirement for a licensed technician to include the technician's licence number and signature on the pre-treatment pest control advice. The clause inserts a requirement that a pre-treatment pest control advice must include the date the technician gives the pre-treatment pest control advice to the customer. This amendment improves the operation of the licenced technician's business and prevents unnecessary delays by ensuring a pre-treatment pest control advice does not have to be reissued each time the licensed technician proposed to undertake the pest control activity changes.

Amendment of s 18 (Activity risk management plan required)

Clause 9 replaces section 18 by providing that a licensed technician must not start carrying out a pest control activity for a customer at a high-risk or sensitive place unless an activity risk management plan has been prepared for the activity.

Clause 9 also provides that an activity risk management plan can only be prepared by a licensed technician who has:

- a statement of attainment stating the person has successfully completed the competency required under the Competency Standard; or
- successfully completed training, approved by the chief executive, that is substantially equivalent to the above competency.

This amendment ensures that an activity risk management plan must always be prepared when carrying out a pest control activity at a high-risk or sensitive place. It also ensures that a licensed technician preparing an activity risk management plan is appropriately qualified and has the practical experience in applying hazardous pesticides at high-risk or sensitive places.

Amendment of s 19 (Contents of activity risk management plan)

Clause 10 amends section 19 by clarifying the requirements of what an activity risk management plan for a pest control activity carried out for a customer at a high-risk or sensitive place should include.

Clause 10(1) amends section 19(1)(b) by providing that a licensed technician preparing the activity risk management plan must provide their contact details and licence number on the plan, if that technician is not carrying out that activity.

Clause 10(2) amends section 19(1)(h) by omitting the requirement to include, if practicable, a diagram to accompany the details of the part of the place where the activity is to be carried out in an activity risk management plan.

Insertion of new s 20A

Clause 11 inserts new section 20A (Supervision required for carrying out activity) to clarify that a licensed technician must not carry out a pest control activity for a customer at a high-risk or sensitive place, unless the licensed technician has, or is supervised by a licensed technician who has:

- a statement of attainment stating the person has successfully completed the competency required under the Competency Standard; or
- successfully completed training approved by the chief executive that is substantially equivalent to the above competency.

This amendment ensures that work at high-risk or sensitive places is only carried out by, or under the supervision of, a technician that is appropriately educated and has the practical experience in applying hazardous pesticides at high-risk or sensitive places.

Amendment of s 21 (Application of division)

Clause 12 amends section 21 by omitting the reference to a licenced technician supervising a pest management trainee. This ensures the division applies only in relation to a licensed technician who is authorised under the technician's licence to carry out a pest control activity.

Replacement of s 23 (Activity risk management plan required)

Clause 13 replaces section 23 to clarify that before carrying out a fumigation activity for a customer at a fumigation site, a licensed technician must prepare an activity risk management plan for carrying out, and addressing the risks associated with the activity. This amendment ensures only a licensed technician can prepare an activity risk management plan for carrying out a fumigation activity, which promotes public health and safety.

Amendment of s 24 (Contents of activity risk management plan)

Clause 14 amends section 24 by clarifying the requirements of what an activity risk management plan for a fumigation activity carried out for a customer at a fumigation site should contain.

Clause 14(1) amends section 24(1)(b) by providing that a licensed technician preparing the activity risk management plan must provide their contact details and licence number, if that person is not carrying out the activity.

Clause 14(2) amends section 24(1)(h) by omitting the requirement to include, if practicable, a diagram to accompany the details of the exposure area for the activity in an activity risk management plan.

Amendment of s 38 (Obligations when supervising)

Clause 15 amends section 38 by clarifying the requirements of a licensed pest management technician when supervising a pest management trainee.

Clause 15(1) amends the heading of section 38 to clarify that the provision applies in relation to the supervision of pest management trainees.

Clause 15(2) amends section 38(1) to clarify that section 38 applies if a pest management trainee is carrying out an authorised pest management activity and an authorised licensed technician is carrying out the pest management activity with and supervising the trainee.

Clause 15(3) amends section 38(3) to clarify that when carrying out the pest management activity with, and supervising the pest management trainee, the licensed technician must comply with the requirements in section 38(3).

Amendment of s 39 (Changes affecting licence)

Clause 16 amends section 39 by providing that a licensed technician must notify the chief executive about a change in the technician's address or contact details. This amendment reflects the updated meaning of 'contact details' in clause 21 of the Amendment Regulation.

Amendment of s 58 (Business records)

Clause 17 amends section 58(a) by providing that a business operator must keep a record of the address and contact details for the operator's employees carrying out pest management activities. This amendment reflects the updated meaning of 'contact details' in clause 21 of the Amendment Regulation.

Insertion of new pt 7, div 1, hdg

Clause 18 inserts a new division heading (Division 1 Transitional provisions for SL No. 142 of 2021) into part 7, division 1, before section 71.

Insertion of new pt 7, div 2

Clause 19 inserts a new division (Division 2 Transitional provisions for Medicines and Poisons (Pest Management Activities) Amendment Regulation 2023) into part 7. Division 2 consists of new sections 73 (Existing activity risk management plans) and 74 (Particular licensed technicians taken to hold competency for 1 year).

New section 73 provides that this section applies if before the commencement of the Amendment Regulation, an activity risk management plan was prepared under former sections 19 or 24, and immediately before the commencement, the activity had not been carried out. Former sections 19 and 24 continue to apply in relation to the activity risk management plan as if the Amendment Regulation had not commenced.

New section 74 applies to a licensed technician who immediately before the commencement of version 2 of the Competency Standard held a licence stating the technician was authorised to carry out a pest control activity for a customer at a high-risk or sensitive place and does not have the statement of attainment or training for a high-risk or sensitive place. Licensed technicians captured within new section 74 are taken to hold the competencies required under section 18(2) or 20A of the Pest Management Regulation until the day that is 1 year after the commencement of version 2 of the Competency Standard.

Amendment of sch 1 (Approved persons)

Clause 20 amends schedule 1 by enabling an authorised officer under the *Biosecurity Act 2014* to carry out a pest control activity in relation to biosecurity matter that is a pest, or direct an assistant to a biosecurity officer to treat or destroy biosecurity matter that is a pest.

Clause 20(1) amends schedule 1, authorising provision, by omitting 'section 9' and replacing it with 'section 7'. This amendment reflects the correct authorising provision for schedule 1.

Clause 20(2) amends schedule 1, part 6, heading, by replacing ‘Persons delivering State programs’ with ‘State officers and assistants’.

Clause 20(3) omits schedule 1, part 6, division 1, and inserts new divisions 1 (Biosecurity officers) and 1A (Assistants to biosecurity officers).

New division 1, inserts new sections 19 and 20 to provide that this division applies to a person who is an authorised officer under the *Biosecurity Act 2014*. A biosecurity officer can undertake a pest control activity with a pesticide, other than an S7 substance, to carry out a pest control activity for biosecurity matter that is a pest.

New division 1A, inserts new sections 20A and 20B to provide that this division applies to a person who is directed by, or is helping, an authorised officer under the *Biosecurity Act 2014* to treat or destroy biosecurity matter that is a pest. A person assisting a biosecurity officer can undertake a pest control activity with a pesticide, other than an S7 substance, to carry out pest control activity for the biosecurity matter that is a pest, if the person is subject to a direction, or if the person is helping an authorised officer in an agreed way.

Clause 20(4) amends schedule 1, part 6, division 2, heading, by replacing ‘Public health prevention and control programs’ with ‘Public health officers’.

Clause 20(5) amends schedule 1, section 28, table, column 3, to clarify that pest management trainees are authorised to carry out a pest management activity under the supervision of a licensed technician or an approved person mentioned in part 7 who is authorised under the Medicines and Poisons Act to carry out the activity.

Amendment of sch 3 (Dictionary)

Clause 21 amends definitions contained in schedule 3 (Dictionary).

Clause 21(1) omits the definition of *business employee*, as the definition is redundant.

Clause 21(2) inserts definitions for *biosecurity matter* and *competency standard*.

Clause 21(3) amends the definition of *contact details* of a person and business, by omitting ‘address’. The amended definition of contact details of a person and business means name and phone number.

Clause 21(4) amends the definition of *high-risk place* in paragraph (a) to mean a place owned or occupied by a person and used for intensive or high density livestock farming, or large scale manufacturing, processing or storage of food for sale primarily by wholesale.

Clause 21(5) amends the definition of *sensitive place* in paragraph (a) to mean a building used for providing aged care, child care or schooling or used as a hospital.