



Queensland

Therapeutic Goods Act 2019

Act No. 27 of 2019

An Act to apply the Therapeutic Goods Act 1989 (Cwlth) and related Commonwealth laws in Queensland

[Assented to 26 September 2019]



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Contents

		Page
Part 1	Preliminary	
Division 1	Introduction	
1	Short title	3
2	Commencement	3
3	Act binds all persons	3
4	Purpose of Act	3
Division 2	Interpretation	
5	Definitions	4
6	Interpretation of applied laws	4
Part 2	Applied therapeutic goods provisions	
7	Application of Commonwealth Therapeutic Goods Laws	5
8	Functions and powers of Commonwealth entities	5
Part 3	Administrative matters	
9	Application of Commonwealth administrative laws	6
10	Functions and powers of Commonwealth entities for administrative matters	7
Part 4	Criminal matters	
11	Application of Commonwealth criminal laws	7
12	Functions and powers of Commonwealth entities for criminal matters	8
13	No double jeopardy for offences	8
Part 5	Miscellaneous	
14	Commonwealth may keep fees	9
15	References in Commonwealth laws	9
Part 6	Transitional provision	
16	Liability of particular individuals for offences	9

The Parliament of Queensland enacts—

Part 1 Preliminary

Division 1 Introduction

1 Short title

This Act may be cited as the *Therapeutic Goods Act 2019*.

2 Commencement

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

3 Act binds all persons

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

4 Purpose of Act

- (1) The purpose of this Act is to manage health and safety risks posed by therapeutic goods by applying Commonwealth regulatory controls on therapeutic goods in Queensland, to the extent those controls do not otherwise apply.
- (2) The purpose is achieved by applying relevant Commonwealth laws in Queensland in a way that allows—
 - (a) the uniform administration of the applied laws by Commonwealth entities; and
 - (b) offences against the applied laws to be treated as if they were offences against Commonwealth laws.

Division 2 Interpretation

5 Definitions

- (1) In this Act—

applied therapeutic goods provisions see section 7.

Commonwealth entity means a Commonwealth authority or Commonwealth officer.

Note—

For the meaning of Commonwealth authority and Commonwealth officer, see subsection (2) and the *Therapeutic Goods Act 1989* (Cwlth), section 3.

Commonwealth Therapeutic Goods Laws means—

- (a) the *Therapeutic Goods Act 1989* (Cwlth); and
- (b) the regulations, orders and manufacturing principles under the *Therapeutic Goods Act 1989* (Cwlth).

Secretary means the Secretary of the department of the Commonwealth in which the Commonwealth Therapeutic Goods Laws are administered.

- (2) Other terms used in this Act and also defined in the Commonwealth Therapeutic Goods Laws have the same meanings in this Act as they have in the Commonwealth Therapeutic Goods Laws, to the extent the context permits.

6 Interpretation of applied laws

- (1) This section applies to a Commonwealth law (an *applied law*) applied as a law of Queensland under this Act.
- (2) The *Acts Interpretation Act 1901* (Cwlth) applies in relation to the interpretation of an applied law as if the applied law were a Commonwealth law and not a Queensland law.
- (3) To the extent subsection (2) applies, the *Acts Interpretation Act 1954* and *Statutory Instruments Act 1992* do not apply in relation to the interpretation of the applied law.

Part 2 Applied therapeutic goods provisions

7 Application of Commonwealth Therapeutic Goods Laws

- (1) The Commonwealth Therapeutic Goods Laws apply as laws of Queensland as if the Commonwealth Therapeutic Goods Laws extended to—
 - (a) things done or omitted to be done by entities that are not corporations; and
 - (b) things done or omitted to be done in the course of trade and commerce within the limits of Queensland.

Note—

For the meaning of corporation, see section 5(2) and the *Therapeutic Goods Act 1989* (Cwlth), section 3.

- (2) A regulation may modify the application, as a law of Queensland, of the Commonwealth Therapeutic Goods Laws.
- (3) The Commonwealth Therapeutic Goods Laws, as applied and modified under this section, are the ***applied therapeutic goods provisions***.

8 Functions and powers of Commonwealth entities

- (1) This section applies to a Commonwealth entity that has a function or power under the Commonwealth Therapeutic Goods Laws.
- (2) The Commonwealth entity is taken to have the same function or power for the applied therapeutic goods provisions.

Example—

The Secretary may include, or cancel the inclusion of, therapeutic goods in the register maintained under the *Therapeutic Goods Act 1989* (Cwlth), section 9A for the applied therapeutic goods provisions.

- (3) When performing the function or exercising the power for the applied therapeutic goods provisions, the Commonwealth entity must, to the extent practicable, act as if the entity were

[s 9]

performing the function or exercising the power under the Commonwealth Therapeutic Goods Laws.

- (4) To remove any doubt, it is declared that a delegation, or the appointment of a person, made by a Commonwealth entity in the performance of a function or exercise of a power under the Commonwealth Therapeutic Goods Laws is taken to have effect for the applied therapeutic goods provisions.

Part 3 Administrative matters

9 Application of Commonwealth administrative laws

- (1) The following laws apply as laws of Queensland to a matter arising in relation to the applied therapeutic goods provisions as if the provisions were Commonwealth laws and not Queensland laws—
- (a) the *Administrative Appeals Tribunal Act 1975* (Cwlth);
 - (b) the *Freedom of Information Act 1982* (Cwlth);
 - (c) the *Ombudsman Act 1976* (Cwlth);
 - (d) the *Privacy Act 1988* (Cwlth);
 - (e) a regulation under a Commonwealth Act mentioned in paragraphs (a) to (d).
- (2) For applying a Queensland law, a matter arising in relation to the applied therapeutic goods provisions is taken—
- (a) to be a matter arising in relation to a Commonwealth law; and
 - (b) not to be a matter arising in relation to a Queensland law.
- (3) A regulation may modify the application, as a law of Queensland, of a Commonwealth law mentioned in subsection (1).

10 Functions and powers of Commonwealth entities for administrative matters

- (1) This section applies to a Commonwealth entity that has a function or power under a Commonwealth law mentioned in section 9(1).
- (2) The Commonwealth entity is taken to have the same function or power in relation to a matter arising under the applied therapeutic goods provisions.
- (3) When performing the function or exercising the power for the applied therapeutic goods provisions, the Commonwealth entity must, to the extent practicable, act as if the entity were performing the function or exercising the power under the Commonwealth law.

Part 4 Criminal matters

11 Application of Commonwealth criminal laws

- (1) This section applies to a Commonwealth law relevant to an offence against the Commonwealth Therapeutic Goods Laws, including, for example, a Commonwealth law about any of the following matters—
 - (a) the investigation and prosecution of offences;
 - (b) the arrest, custody, bail, trial and conviction of persons charged with offences;
 - (c) the sentencing, punishment and release of persons convicted of offences;
 - (d) fines and penalties for offences;
 - (e) the proceeds from, or forfeitures in relation to, the commission of offences;
 - (f) spent convictions;
 - (g) proceedings, appeals and reviews relating to matters mentioned in paragraphs (a) to (f).

[s 12]

- (2) The Commonwealth law applies as a law of Queensland in relation to an offence against the applied therapeutic goods provisions as if the provisions were Commonwealth laws and not Queensland laws.
- (3) For applying a Queensland law, an offence against the applied therapeutic goods provisions is taken—
 - (a) to be an offence against a Commonwealth law; and
 - (b) not to be an offence against a Queensland law.
- (4) A regulation may modify the application, as a law of Queensland, of the Commonwealth law.

12 Functions and powers of Commonwealth entities for criminal matters

- (1) This section applies to a Commonwealth entity that has a function or power under a Commonwealth law mentioned in section 11(1).
- (2) The Commonwealth entity is taken to have the same function or power in relation to an offence against the applied therapeutic goods provisions.
- (3) When performing the function or exercising the power for the applied therapeutic goods provisions, the Commonwealth entity must, to the extent practicable, act as if the entity were performing the function or exercising the power under the Commonwealth law.

13 No double jeopardy for offences

- (1) This section applies if—
 - (a) an act or omission constitutes an offence against both the applied therapeutic goods provisions and the Commonwealth Therapeutic Goods Laws; and
 - (b) a person has been punished for the offence under the Commonwealth Therapeutic Goods Laws.

- (2) The person is not liable to be punished for the offence under the applied therapeutic goods provisions.

Part 5 Miscellaneous

14 Commonwealth may keep fees

The Commonwealth may keep fees paid to, or recovered by, the Secretary for the exercise of any functions conferred on the Secretary under the applied therapeutic goods provisions.

15 References in Commonwealth laws

For sections 9 and 11, a reference in a Commonwealth law to a provision of that law or another Commonwealth law is taken to be a reference to that provision as applying because of those sections.

Part 6 Transitional provision

16 Liability of particular individuals for offences

- (1) This section applies to an individual if—
- (a) immediately before the commencement it was not unlawful for the individual to deal with goods; and
 - (b) on the commencement—
 - (i) the goods are therapeutic goods under the applied therapeutic goods provisions; and
 - (ii) but for this section, the individual would be liable to be prosecuted, or subject to a civil proceeding, for contravention of an applied offence provision for dealing with the goods.
- (2) For 2 years after the commencement—

[s 16]

- (a) the individual may deal with the goods to the same extent as the individual was dealing with the goods immediately before the commencement; and
 - (b) the individual is not liable to be prosecuted, or subject to a civil proceeding, for contravention of an applied offence provision for dealing with the goods to the extent mentioned in paragraph (a).
- (3) This section does not prevent the individual from complying with the applied offence provision.
- (4) In this section—

applied offence provision means an applied therapeutic goods provision creating an offence or civil penalty.

Example—

The *Therapeutic Goods Act 1989* (Cwlth), Chapter 3, Part 3-2, as applied under this Act, creates offences and civil penalties relating to the registration or listing of imported, exported, manufactured or supplied therapeutic goods.

deal, with goods, means import, export, manufacture, supply or otherwise use the goods.

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