



Medicines and Poisons Act 2019

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Queensland

Medicines and Poisons Act 2019

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Medicines and Poisons Act 2019

An Act to regulate activities in relation to particular substances

Chapter 1 Preliminary

Part 1 Introduction

1 Short title

This Act may be cited as the *Medicines and Poisons Act 2019*.

2 Commencement

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

Part 2 Purposes of Act

3 Main purposes

The main purposes of this Act are as follows—

- (a) to ensure particular substances are made, sold, used and disposed of in an appropriate, effective and safe way;
- (b) to ensure health risks arising from the use of the substances are appropriately managed;
- (c) to ensure persons who are authorised to carry out activities using the substances have the necessary competencies to carry out the activities safely.

4 How main purposes are to be achieved

The main purposes of this Act are to be achieved mainly by—

- (a) identifying particular activities and substances to be controlled; and
- (b) authorising classes of persons to use the substances in controlled ways for particular purposes; and
- (c) providing a scheme to authorise additional activities using the substances under approvals or licences; and
- (d) requiring persons authorised to use the substances to have competencies and be accountable for the safe and effective use of the substances; and
- (e) requiring particular things to be done to ensure the appropriate use, quality, safety and disposal of the substances at all stages, from manufacture to supply to the consumer and final disposal as waste; and
- (f) providing for compliance with this Act to be monitored and enforced.

Part 3 Application and operation of Act

5 Act binds all persons

- (1) This Act binds all persons, including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the State, the Commonwealth or another State liable to be prosecuted for an offence against this Act.

6 Relationship with other Acts

This Act does not limit or otherwise affect the application of any of the following Acts—

-
- (a) the *Agricultural and Veterinary Chemicals (Queensland) Act 1994*;
 - (b) the *Agricultural Chemicals Distribution Control Act 1966*;
 - (c) the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*;
 - (d) the *Drugs Misuse Act 1986*;
 - (e) the *Public Health Act 2005*;
 - (f) the *Radiation Safety Act 1999*;
 - (g) the *Therapeutic Goods Act 2019*.

7 Exemption for low-risk activities

- (1) An activity, of a type prescribed by regulation, with a substance is exempt from the operation of this Act.
- (2) The Minister may recommend to the Governor in Council the making of a regulation prescribing a type of activity under subsection (1) only if the Minister is satisfied the activity with the substance could reasonably be expected to pose no, or a negligible, health risk to any person.

Part 4 Interpretation

Division 1 Definitions generally

8 Definitions

The dictionary in schedule 1 defines particular words used in this Act.

9 Relationship with Poisons Standard

- (1) Words and expressions defined in the Poisons Standard and used in this Act have the same meaning in this Act as they

have in the Poisons Standard, to the extent the context permits.

- (2) An interpretation provision in the Poisons Standard applies for interpreting the words and expressions mentioned in subsection (1) for this Act.
- (3) Subsections (1) and (2) do not apply to the meaning of poison.
- (4) For this Act, a schedule of the Poisons Standard applies to a substance if—
 - (a) the substance is listed in the schedule; and
 - (b) the schedule does not exclude the substance from the schedule; and
 - (c) if a restriction is mentioned in the Poisons Standard for the substance—the restriction applies in relation to the substance.

Division 2 Substances

10 Meaning of *substance*

- (1) A *substance* includes an ingredient, compound, preparation or extract of a substance.
- (2) For this Act, a substance may be described by reference to any of the following matters—
 - (a) the Poisons Standard;
 - (b) a code, guideline, protocol or other standard;
 - (c) the purpose for which the substance is, or is intended to be, used;
 - (d) the way in which the substance is, or is intended to be, used;
 - (e) the quantity of the substance;
 - (f) the packaging or labelling of the substance;
 - (g) the physical or chemical state or form of the substance.

11 Meaning of *medicine*

- (1) A *medicine* is—
 - (a) a substance to which the Poisons Standard, schedule 2 applies (an *S2 medicine*); or
 - (b) a substance to which the Poisons Standard, schedule 3 applies (an *S3 medicine*); or
 - (c) a substance to which the Poisons Standard, schedule 4 applies (an *S4 medicine*); or
 - (d) a substance to which the Poisons Standard, schedule 8 applies (an *S8 medicine*).
- (2) However, a substance mentioned in subsection (1) is not a medicine to the extent it is treated as a poison under section 12(2).
- (3) A regulation may prescribe another substance to be an S2, S3, S4 or S8 medicine.

12 Meaning of *poison*

- (1) A *poison* is any of the following substances, other than a fumigant or pesticide—
 - (a) a substance to which the Poisons Standard, schedule 5 applies (an *S5 poison*);
 - (b) a substance to which the Poisons Standard, schedule 6 applies (an *S6 poison*);
 - (c) a substance to which the Poisons Standard, schedule 7 applies (an *S7 poison*).
- (2) A medicine is treated as a *poison* under this Act if the medicine is not used, or is not intended to be used, for a therapeutic use.

Note—

See the Poisons Standard, part 1 for the definition *therapeutic use*.

- (3) Subsection (2) does not apply to waste from a medicine disposed of because it is not required for a therapeutic use.

- (4) A regulation may prescribe another substance to be an S5, S6 or S7 poison.

13 Meaning of *prohibited substance*

- (1) A *prohibited substance* is—
- (a) a substance to which the Poisons Standard, schedule 9 applies (an *S9 prohibited substance*); or
 - (b) a substance to which the Poisons Standard, schedule 10 applies (an *S10 prohibited substance*).
- (2) A regulation may prescribe another substance to be an S9 or S10 prohibited substance.

14 Meaning of *fumigant* and *pesticide*

- (1) A *fumigant* is a substance that is APVMA approved for use to carry out an activity of a type mentioned in section 19(2).
- (2) A *pesticide* is a substance that is APVMA approved for use to carry out an activity of a type mentioned in section 19(3).
- (3) A regulation may prescribe another substance to be a fumigant or pesticide.
- (4) In this section—

APVMA approved, in relation to a use for a substance, means the substance is approved, registered or permitted for the use by the Australian Pesticides and Veterinary Medicines Authority in the exercise of a function or power under the Agvet Code of Queensland, section 21.

15 Meaning of *S7 substance*

An *S7 substance* is—

- (a) an S7 poison; or
- (b) a fumigant or pesticide containing a substance to which the Poisons Standard, schedule 7 applies.

16 Meaning of *hazardous poison*

A *hazardous poison* is—

- (a) an S7 substance; or
- (b) a medicine treated as a poison under section 12(2).

17 Meaning of *regulated substance*

A *regulated substance* is a medicine, poison, prohibited substance, fumigant or pesticide.

Division 3 Activities

18 Meaning of *deals* with a regulated substance

A person *deals* with a regulated substance if the person does any of the following activities—

- (a) manufactures the substance;
- (b) buys the substance;
- (c) possesses the substance;
- (d) supplies the substance;
- (e) if the substance is a medicine—
 - (i) administers the medicine; or
 - (ii) prescribes or makes a standing order for the medicine;
- (f) if the substance is a poison—applies the poison;
- (g) if the substance is a prohibited substance—otherwise uses the substance;
- (h) disposes of waste from the substance;
- (i) asks or directs another person to do something mentioned in any of paragraphs (a) to (h).

19 Meaning of *pest management activity*, *fumigation activity* and *pest control activity*

- (1) A *pest management activity* is a fumigation activity or a pest control activity.
- (2) A person carries out a *fumigation activity* if the person prepares or uses a substance to do any of the following activities when the substance becomes gaseous—
 - (a) kill a pest;
 - (b) sterilise grain or seed to prevent germination;
 - (c) treat soil in which pests might be living;
 - (d) another activity prescribed by regulation.
- (3) A person carries out a *pest control activity* if the person prepares or uses a substance to do any of the following activities, other than a fumigation activity—
 - (a) kill, repel or stupefy a pest;
 - (b) inhibit the feeding of a pest;
 - (c) modify the physiology of a pest to alter its natural development or reproductive capacity.

20 Meaning of *regulated activity*

A *regulated activity* is—

- (a) a dealing with a regulated substance; or
- (b) a pest management activity or asking or directing another person to carry out a pest management activity.

21 Meaning of *manufacture* a regulated substance

Manufacture, a regulated substance—

- (a) means carry out any activity using any substance for the purpose of making the regulated substance; and
- (b) includes any process or step undertaken to produce the regulated substance or to prepare the regulated

substance for supply to the public or a person, including for administration to an animal.

Examples for paragraph (b)—

- testing batches of manufactured substances
- compounding medicines in preparation for supply
- repackaging poisons for supply

22 Meaning of **buy** a regulated substance

Buy, a regulated substance, includes—

- (a) give a purchase order for the substance; and
- (b) otherwise attempt to obtain the substance, whether or not for consideration.

Note—

See also section 29 in relation to the distribution or transfer of regulated substances in workplaces.

23 Meaning of **possess** a regulated substance

- (1) **Possess**, a regulated substance, means have custody or control of the substance.
- (2) To remove any doubt, it is declared that a person may possess a regulated substance jointly with another person.

Note—

See also section 29 in relation to the distribution or transfer of regulated substances in workplaces.

24 Meaning of **supply** a regulated substance

- (1) **Supply**, a regulated substance, means sell or give the substance to a person.

Note—

See also section 25 in relation to particular ways of selling and giving regulated substances.

- (2) However, **supply**, a regulated substance, does not include—

- (a) if the substance is a medicine—administer the substance; or
- (b) if the substance is a poison—apply the substance; or
- (c) dispose of waste from the substance.

Note—

See also section 29 in relation to the distribution or transfer of regulated substances in workplaces.

25 Meaning of particular terms for supply

- (1) *Sell*, a regulated substance, includes attempt to sell the substance or make the substance available for sale.
- (2) *Dispense*, a medicine, means sell the medicine to a person on prescription.
- (3) *Give a treatment dose*, of a medicine, means give 1 or more doses of the medicine to a person to be taken by a particular person, or administered to an animal, at a later time.

26 Meaning of *administer* a medicine

- (1) *Administer*, a medicine, means—
 - (a) introduce a dose of the medicine into the body of a person or animal by any means; or
 - (b) give a dose of the medicine to a person to be taken immediately.

Examples of administering a medicine—

- injecting a medicine into the body of a person or animal
- putting cream on the skin of a person or animal
- putting drops into the eyes of a person or animal
- handing a dose of tablets to a person for the person to swallow immediately
- feeding an animal food that has a medicine mixed into it

- (2) However, *administer*, a medicine, does not include dispensing the medicine.

27 Meaning of *apply* a poison

Apply, a poison, means add, apply, disperse, inject, spray or spread the poison.

Examples of applying a poison—

- cleaning an aluminium surface with a poison
- electroplating metal using a solution containing a poison
- adding a poison to another substance to create a chemical reaction
- using a poison to calibrate or test a scientific or analytical instrument

28 Meaning of *dispose* of waste

Dispose, of waste from a regulated substance, means discard, destroy or abandon the waste at a place.

29 Distribution or transfer in workplaces

- (1) This section applies if—
 - (a) an entity is authorised to carry out a regulated activity with a regulated substance at 1 or more places; and
 - (b) the regulated substance is distributed or transferred between workers for the entity at or between the places.
- (2) Despite sections 22 and 24, the distribution or transfer of the regulated substance is treated as possessing, rather than buying or supplying, the substance under this Act.

Division 4 Authorisations

30 How a person is authorised under this Act

- (1) Under this Act, the following persons are authorised to carry out a regulated activity with a regulated substance—
 - (a) an approved person;
 - (b) a person acting under an emergency order;

- (c) the holder of a substance authority;
- (d) another person acting under a substance authority.

Examples for paragraph (d)—

- a person employed by the holder of a substance authority
- a student or volunteer for the holder of a substance authority

Notes—

- 1 See chapter 3, part 1, division 1 in relation to the authorisation of approved persons.
 - 2 See chapter 3, part 1, division 2 in relation to the authorisation of persons under emergency orders.
 - 3 See chapter 3, part 2, division 1 in relation to the authorisation of holders of substance authorities and other persons acting under substance authorities.
- (2) This Act authorises a person mentioned in subsection (1) only to the extent the person carries out the regulated activity with the regulated substance in the authorised way.

31 Meaning of *authorised way*

A person carries out a regulated activity with a regulated substance in the *authorised way* if—

- (a) the person is authorised under section 54(4), 57 or 62 to carry out the regulated activity with the regulated substance; and
- (b) the person complies with any requirements prescribed for the person under section 91(1) for carrying out the regulated activity with the regulated substance; and
- (c) the person complies with any substance management plan that applies to the person.

Note—

Chapter 4, part 2 provides for substance management plans to be made for regulated places about dealings with regulated substances.

Note—

See also sections 60 and 74 for other persons who are taken to carry out particular regulated activities in the authorised way.

Chapter 2 Offences

Part 1 General offences

Division 1 Regulated substances

32 Offence to deal with prohibited substances

A person must not deal with a prohibited substance unless the person—

- (a) deals with the substance in the authorised way; or
- (b) has a reasonable excuse.

Maximum penalty—750 penalty units.

Examples of a reasonable excuse in relation to possessing a prohibited substance—

- 1 A health practitioner or employee working in a hospital receives a prohibited substance while treating a patient.
- 2 A person becomes responsible for the affairs of the holder of a substance authority who is critically ill, dies, is imprisoned or becomes bankrupt.

33 Offence to manufacture medicines or hazardous poisons

A person must not manufacture a medicine or hazardous poison unless the person—

- (a) manufactures the medicine or poison in the authorised way; or
- (b) has a reasonable excuse.

Maximum penalty—750 penalty units.

34 Offence to buy or possess S4 or S8 medicines or hazardous poisons

- (1) A person must not buy or possess an S4 or S8 medicine or hazardous poison unless the person—
- (a) buys or possesses the medicine or poison in the authorised way; or
 - (b) has a reasonable excuse.

Maximum penalty—200 penalty units.

Example of a reasonable excuse—

A person becomes responsible for the affairs of the holder of a substance authority who is critically ill, dies, is imprisoned or becomes bankrupt.

- (2) However, subsection (1) does not apply to a person to whom an S4 or S8 medicine is lawfully supplied for—
- (a) the person's own therapeutic treatment; or
 - (b) the therapeutic treatment of someone else for whom the person is an agent; or
 - (c) the treatment of an animal.
- (3) Also, subsection (1) does not apply to a person who—
- (a) is given an S4 or S8 medicine lawfully supplied for the therapeutic treatment of someone else or an animal; and
 - (b) temporarily possesses the medicine until it is needed for the treatment.

35 Offence to supply medicines or hazardous poisons

- (1) A person (the *supplier*) must not supply a medicine or hazardous poison to someone else (the *recipient*) unless the supplier—
- (a) lawfully possesses the medicine or poison and supplies the medicine or poison in the authorised way; or
 - (b) has a reasonable excuse.

Maximum penalty—500 penalty units.

- (2) For subsection (1), the following matters are immaterial—
- (a) the quantity of the medicine or poison supplied;
 - (b) whether or not the supplier and the recipient are in the same place when the medicine or poison is supplied;
 - (c) whether or not the medicine or poison is supplied by indirect means.

Division 2 Medicines

Subdivision 1 Administration and supply generally

36 Offence to administer medicines

A person must not administer a medicine to someone else or an animal unless the person—

- (a) administers the medicine in the authorised way; or
- (b) has a reasonable excuse.

Maximum penalty—200 penalty units.

37 Offence to supply or administer animal medicines to humans

- (1) This section applies in relation to the following dealings with an animal medicine—
- (a) supplying the medicine to a person for human therapeutic use;
 - (b) administering the medicine to a person;
 - (c) self-administering the medicine.
- (2) A person must not deal with an animal medicine as mentioned in subsection (1) unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

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- (3) It is a reasonable excuse for the person to deal with the animal medicine because no other medicine is available to treat a human ailment, disease or injury.
- (4) In this section—
animal medicine means a medicine—
 - (a) manufactured or supplied for administration to an animal; or
 - (b) labelled with an approved label stating the medicine is for administration to an animal.

38 Offence to prescribe or make standing orders

A person must not prescribe, or make a standing order for, a medicine unless the person—

- (a) prescribes, or makes the standing order, for the medicine in the authorised way; or
- (b) has a reasonable excuse.

Maximum penalty—200 penalty units.

Subdivision 2 Particular substances

39 Unlawfully buying diversion-risk medicines

- (1) A person must not use a document the person has unlawfully prepared, or knows has been unlawfully prepared, for buying a diversion-risk medicine.

Maximum penalty—100 penalty units.

- (2) A person must not, for buying a diversion-risk medicine, give someone who is authorised to prescribe or supply the medicine—
 - (a) a statement the person knows is false or misleading in any way; or

- (b) a statement that omits anything without which it is false or misleading.

Maximum penalty—100 penalty units.

40 Offences for self-prescribing or self-administering high-risk medicines

- (1) A person who is authorised to prescribe a high-risk medicine must not self-prescribe the medicine unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

Examples of a reasonable excuse—

- 1 A person who is authorised to prescribe a high-risk medicine is injured in an accident and asks someone to urgently administer a high-risk medicine that is an analgesia to the person.
 - 2 A person who is authorised to prescribe a high-risk medicine self-prescribes the medicine because the person urgently needs it to avoid a break in the person's regular treatment for a seizure disorder.
- (2) A person who is authorised to deal with a high-risk medicine must not self-administer a dose of the medicine unless—
- (a) someone else who is authorised to prescribe the medicine has prescribed the medicine for the person's treatment; or
 - (b) someone else who is authorised to give a treatment dose of the medicine has given the medicine to the person for the person's treatment; or
 - (c) the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (3) In this section—

high-risk medicine means a medicine prescribed by regulation to be a high-risk medicine.

41 Requirement to check database for particular dealings with monitored medicines

- (1) This section applies to a relevant practitioner if—
 - (a) the practitioner is authorised to prescribe a monitored medicine and proposes to prescribe the medicine for a person; or
 - (b) the practitioner is authorised to dispense a monitored medicine and proposes to dispense the medicine for a person; or
 - (c) the practitioner is authorised to give a treatment dose of a monitored medicine and proposes to give the treatment dose of the medicine to be taken by a person.
- (2) Before the proposed dealing happens, the relevant practitioner must check the monitored medicines database to see whether information recorded in the database shows that the person has previously been prescribed, dispensed or given any monitored medicine.

Maximum penalty—20 penalty units.

- (3) Subsection (2) does not apply to the relevant practitioner if—
 - (a) the proposed dealing happens in circumstances prescribed by regulation to be exempt from the subsection; or
 - (b) the relevant practitioner has a reasonable excuse for not complying with the subsection.
- (4) In this section—

relevant practitioner means a health practitioner prescribed by regulation to be a relevant practitioner for this section.

42 Offence to dispose of waste from diversion-risk medicines

- (1) A person must not dispose of waste from a diversion-risk medicine unless the person—
 - (a) disposes of the waste in the authorised way; or

(b) has a reasonable excuse.

Maximum penalty—200 penalty units.

(2) Subsection (1) does not apply to a person who—

(a) discards the waste by placing it under the control of a person authorised to dispose of the waste under this Act;
or

Example for paragraph (a)—

a person who returns the waste to a pharmacist for disposal in a 'return unwanted medicines' bin

(b) discards or destroys the waste under another law.

Example for paragraph (b)—

the holder of an environmental authority under the *Environmental Protection Act 1994* who destroys the waste in accordance with the authority

Division 3 Poisons and pest management

43 Offence to apply poisons

(1) This section applies in relation to a poison other than an S5 or S6 poison.

(2) A person must not apply a poison unless the poison is lawfully supplied to the person and the person—

(a) applies the poison in the authorised way; or

(b) has a reasonable excuse.

Maximum penalty—200 penalty units.

44 Offence to carry out pest management activities

(1) A person must not carry out a pest management activity unless the person carries out the activity in the authorised way or has a reasonable excuse.

Maximum penalty—200 penalty units.

(2) Subsection (1) does not apply to a person who is any of the following—

- (a) a primary producer, or an agent of a primary producer, who carries out a pest control activity using a pesticide on land owned or occupied by the primary producer;

Examples for paragraph (a)—

- spraying pesticide on an agricultural crop using a motor vehicle with attached spray booms
- spraying fruit using a pesticide to protect the fruit from damage by insects

- (b) a primary producer, or an agent of a primary producer, who carries out a fumigation activity using a fumigant on land owned or occupied by the primary producer;

Example for paragraph (b)—

sterilising soil by using a fumigant to prepare the soil for planting an agricultural crop

- (c) a person responsible for caring for or growing a plant who carries out a pest control activity using a pesticide on the plant at a place that is primarily used for horticultural, recreational or sporting activities;

Examples for paragraph (c)—

- spraying pesticide on trees at a nursery to prevent diseases
- spraying a bowling green using a pesticide to protect it from damage by insects

- (d) a person who carries out a pest control activity using a household pesticide to control a pest, including a pest on an animal, if—

(i) the activity is carried out—

(A) at residential premises; or

(B) incidentally when performing other activities at another place, using a minimal amount of the pesticide; and

(ii) the activity is not carried out for a pest management business.

Examples for paragraph (d)—

- using a household pesticide to kill cockroaches at a house
 - using a household pesticide to control fleas and ticks on a dog
 - spraying a household pesticide on a water meter box in a nature strip before working on the box
- (3) Subsection (2) applies only if the fumigant or pesticide is used in accordance with the approved label of the fumigant or pesticide.
- (4) In this section—

household pesticide means a pesticide ordinarily used in households and available to buy in a retail store.

Examples—

- bait for killing cockroaches available to buy at a supermarket
- flea and tick treatment for dogs available to buy at a pet store

primary producer, in relation to land, means a person using the land to commercially produce agricultural or horticultural products.

45 Offence to offer to carry out pest management activities if unauthorised

A person must not offer to carry out a pest management activity for a pest management business unless—

- (a) the person has a pest management licence; or
- (b) the person employs someone else with a pest management licence to carry out the pest management activity.

Maximum penalty—200 penalty units.

46 Offence to require or permit unauthorised persons to carry out pest management activities

- (1) This section applies to a person (a ***manager***) who—
- (a) is authorised to carry out a pest management activity; or

- (b) operates a pest management business.
- (2) The manager must not permit or require another person to carry out a pest management activity for the manager if the manager knows the other person is not authorised to carry out the activity, unless the manager has a reasonable excuse.

Maximum penalty—200 penalty units.

47 Offence to dispose of waste from hazardous poison, pesticide or fumigant

- (1) A person must not dispose of waste from a hazardous poison, pesticide or fumigant unless the person—
 - (a) disposes of the waste in the authorised way; or
 - (b) has a reasonable excuse.

Maximum penalty—200 penalty units.

- (2) Subsection (1) does not apply to a person who—
 - (a) discards the waste by placing it under the control of a person authorised to dispose of the waste under this Act; or
 - (b) discards or destroys the waste under another law.

Example for paragraph (a)—

a person who returns the waste from a hazardous poison to a manufacturer of the poison for re-use

Example for paragraph (b)—

the holder of an environmental authority under the *Environmental Protection Act 1994* who destroys the waste in accordance with the authority

Division 4 Miscellaneous

48 Offence for giving or keeping false, misleading or incomplete information and records

- (1) This section applies to a person who—

-
- (a) gives information to the chief executive, whether orally or in a document—
 - (i) for the purpose of obtaining or keeping an authorisation under this Act; or
 - (ii) in response to a request for information under this Act; or
 - (b) is required under this Act to keep a record.
- (2) The person must not—
- (a) give the chief executive information the person knows is false or misleading in a material particular; or
 - (b) make or keep a record the person knows is false or misleading in a material particular; or
 - (c) make or keep a record the person knows is incomplete in a material particular.
- Maximum penalty—50 penalty units.
- (3) Subsection (2)(a) does not apply to a person if the person, when giving information in a document—
- (a) tells the chief executive, to the best of the person’s ability, how the document is false or misleading; and
 - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

Part 2 Exclusions from offences and defences

Division 1 Excluded persons

49 State officers and helpers

- (1) Subsection (2) applies to the following persons (each a *State officer*)—
- (a) an inspector or State analyst;

- (b) a health Act official;
 - (c) a person employed within a part of the department known as Forensic and Scientific Services;
 - (d) a police officer.
- (2) A State officer does not commit an offence against this Act only because the State officer performs the officer's functions or exercises the officer's powers.
- (3) A person does not commit an offence against this Act if the person helps a State officer to perform the officer's functions or exercise the officer's powers.
- (4) In this section—
- health Act official*** means—
- (a) a health ombudsman official; or
 - (b) a person appointed as an authorised person or security officer under the *Hospital and Health Boards Act 2011*; or
 - (c) a person appointed as an authorised person or State analyst under the *Public Health Act 2005*.

50 Persons authorised under other laws

- (1) Subsection (2) applies to a person who has an approval, licence, permission or other authority (a ***related authority***) under another Act or a law of the Commonwealth that permits the person to do something that is, or involves, carrying out a regulated activity with a regulated substance.

Examples of related authorities—

- an authority to aerially distribute an agricultural chemical under the *Agricultural Chemicals Distribution Control Act 1966*
- an approval under the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*
- a licence under the *Drugs Misuse Act 1986*
- a licence under the *Radiation Safety Act 1999*
- a licence or permit under the *Narcotic Drugs Act 1967* (Cwlth)

- an approval, licence or permission under the *Therapeutic Goods Act 1989* (Cwlth)
- (2) The person does not commit an offence against this Act to the extent the person acts under the related authority.
 - (3) For subsection (2), if the person's related authority impliedly permits the person to possess a regulated substance without expressly stating that possession is permitted, the related authority is taken to permit possession of the regulated substance to the extent required to act under the related authority.
 - (4) Also, a person does not commit an offence against this Act to the extent the person acts under an authorisation for the person under the *Voluntary Assisted Dying Act 2021*.

51 Agents and carers supplying or administering medicines

- (1) A person does not commit an offence against this Act if the person—
 - (a) supplies a medicine by giving it to someone else (a *patient*) if the medicine has been lawfully supplied for the therapeutic treatment of the patient; or
 - (b) for lawfully helping a patient, administers a medicine in accordance with the approved label of the medicine; or
 - (c) administers a medicine to an animal in accordance with the approved label of the medicine.

Examples of persons to whom subsection (1) applies—

- a patient's family member who supplies a medicine to the patient in accordance with the medicine's dispensing label or packaging
- a child's parent who administers a medicine to the child in accordance with the medicine's dispensing label or packaging
- a dog's owner who administers a medicine to the dog in accordance with the medicine's approved label

Note—

Under section 34(2) and (3), persons in similar circumstances are also excluded from offences for buying or possessing S4 or S8 medicines.

- (2) However, subsection (1) does not apply to a person to the extent the person is authorised under this Act to supply or administer the medicine.

Examples of persons to whom subsection (2) applies—

- an approved person administering a medicine in the authorised way
 - a person to whom an emergency order applies
- (3) Also, subsection (1) does not apply to a person prescribed by regulation to be a person to whom the subsection does not apply.

52 Clinical trials

- (1) This section applies to a person who is permitted to deal with a regulated substance for a human clinical trial approved by a human research ethics committee.
- (2) The person does not commit an offence against this Act to the extent the person acts in accordance with any protocol or guidelines approved for the human clinical trial by the human research ethics committee.
- (3) In this section—

human research ethics committee means a committee—

- (a) registered with the National Health and Medical Research Council established under the *National Health and Medical Research Council Act 1992* (Cwlth), section 5B; and
- (b) operating in accordance with the human research guidelines issued under the *National Health and Medical Research Council Act 1992* (Cwlth), section 10.

Division 2 Defence provision

53 Defence for workers

In a proceeding for an offence against a provision of this Act, it is a defence for a worker for an entity to prove that the entity

did not provide the worker with suitable equipment, facilities, training or other resources that would have allowed the worker to comply with the provision.

Note—

See also section 214 in relation to the liability of executive officers of corporations.

Chapter 3 Authorising regulated activities

Part 1 Approved persons and emergency orders

Division 1 Approved persons

54 Authorisation of prescribed classes of persons

- (1) A regulation may prescribe a class of persons to be authorised to carry out a regulated activity with a regulated substance.
- (2) Without limiting subsection (1), the regulated activity with the regulated substance for the class of persons may be prescribed by reference to—
 - (a) the circumstances in which the regulated activity may be carried out by the class of persons; or
 - (b) the purposes for which the regulated activity may be carried out by the class of persons; or
 - (c) the direction or supervision under which the regulated activity may be carried out by the class of persons; or
 - (d) an extended practice authority that applies to the class of persons.

- (3) An **approved person** is a member of a class of persons prescribed under subsection (1) for a regulated activity with a regulated substance for the class of persons.
- (4) Subject to section 30(2), the approved person is authorised to carry out the regulated activity with the regulated substance.

Note—

See, however, section 31 for when the approved person carries out the regulated activity with the regulated substance in the authorised way.

- (5) An authorisation under subsection (4) is an **approved person's authorisation**.
- (6) This section is subject to sections 55 and 56.

55 Changes to approved person's authorisation

- (1) This section applies in relation to an approved person if—
 - (a) the chief executive takes administrative action in relation to the approved person's authorisation; or
 - (b) the approved person is a health practitioner subject to a condition, notation or undertaking (each a **condition**) on the person's registration under the Health Practitioner Regulation National Law that relates to the approved person's authorisation; or
 - (c) the approved person is a veterinary surgeon subject to a condition on the person's registration under the *Veterinary Surgeons Act 1936*.
- (2) The approved person's authorisation—
 - (a) if the administrative action is suspension—ends for the period of the suspension; or
 - (b) otherwise—is changed to the extent necessary to give effect to the administrative action or condition.

Examples—

- 1 An approved person's authorisation authorises the person to deal with an S8 medicine. The chief executive takes administrative action to suspend the approved person's authorisation. The

approved person's authorisation does not authorise the person to deal with the S8 medicine.

- 2 An approved person's authorisation authorises the person to deal with any S8 medicine. The approved person is subject to a condition under the Health Practitioner Regulation National Law stating the person must not deal with a particular S8 medicine. The approved person's authorisation does not authorise the person to deal with the particular S8 medicine.

56 Relationship between different authorisations

- (1) This section applies if—
 - (a) an approved person's authorisation (the *primary authorisation*) relates to carrying out a regulated activity with a regulated substance; and
 - (b) the approved person is authorised in another way under another provision of this Act (an *alternative authorisation*) in relation to the regulated activity with the regulated substance.

Examples of when this section applies—

- 1 An approved person's authorisation does not authorise the person to prescribe an S8 medicine and the person holds a prescribing approval authorising the person to prescribe the S8 medicine in particular circumstances.
 - 2 An approved person's authorisation authorises the person to apply an S7 substance, other than a particular poison, and the person holds a general approval authorising the person to apply the particular poison.
- (2) To the extent practicable, the primary authorisation and the alternative authorisation are to be read together.
 - (3) However, if the primary authorisation is inconsistent with the alternative authorisation, the primary authorisation does not apply to the approved person to the extent of the inconsistency.

Division 2 Emergency orders

57 Authorisation under emergency order

Subject to section 30(2), a person is authorised to carry out a regulated activity with a regulated substance if the person is authorised under an emergency order to carry out the activity with the substance.

Note—

See, however, section 31 for when the person carries out the regulated activity with the regulated substance in the authorised way.

58 Chief executive may make emergency order

(1) The chief executive may make an order (an *emergency order*) authorising a person to carry out a regulated activity with a regulated substance in relation to any of the following events—

- (a) a biosecurity event for which a biosecurity emergency order applies under the *Biosecurity Act 2014*, section 113;
- (b) a disaster situation under the *Disaster Management Act 2003*;
- (c) a declared public health emergency under the *Public Health Act 2005*;
- (d) an emergency under the *Public Safety Preservation Act 1986*;
- (e) another event, at a State or local level, that poses a health risk, including an event that has the potential to cause human disease through exposure to infection.

Example for paragraph (e)—

an outbreak of a communicable disease

(2) An emergency order must state the following things—

- (a) the event to which the order applies;
- (b) a description of the area to which the order applies;

- (c) the day the order starts;
- (d) the day, no later than 3 months after the order starts, the order ends;
- (e) the regulated activity with the regulated substance that may be carried out;
- (f) the class of persons who may carry out the regulated activity;
- (g) any conditions applying to the regulated activity, including, for example, the circumstances in which a person may carry out the activity.

59 Publication of emergency order

- (1) The chief executive must, immediately after making the emergency order, take reasonable steps to ensure persons likely to be directly affected by the order are made aware of the order.

Examples of taking reasonable steps—

publishing media releases, contacting persons affected, advertising in newspapers or other publications

- (2) Also, the chief executive must publish the emergency order on the department's website as soon as practicable, but no later than 2 business days, after it is made.
- (3) An emergency order is not invalid only because of a failure of the chief executive to comply with subsection (1).

Division 3 Miscellaneous

60 Authorisation for persons subject to work health and safety laws

- (1) A person is taken to deal with an S7 poison in the authorised way if the dealing is carried out—
- (a) at, or in connection with, a place that is subject to a work health and safety law; and

- (b) in the course of performing the person's duties at, or in connection with, the place; and
 - (c) in compliance with the work health and safety law.
- (2) However, subsection (1) does not apply if—
- (a) the dealing is the manufacture or supply of an S7 poison; or
 - (b) the S7 poison is an excluded S7 poison; or
 - (c) the dealing is carried out at, or in connection with, an excluded place.

- (3) In this section—

excluded place means—

- (a) any part of a place that is a person's residence or that is accessible by the general public; or
- (b) another place prescribed by regulation to be an excluded place for this section.

excluded S7 poison means an S7 poison prescribed by regulation to be an excluded S7 poison for this section.

resource authority see the *Mineral and Energy Resources (Common Provisions) Act 2014*, section 10.

work health and safety law means—

- (a) the *Work Health and Safety Act 2011*; or
- (b) a provision of an Act relating to safely carrying out activities under a resource authority.

Part 2 Authorisation under substance authorities

Division 1 Preliminary

61 What is a *substance authority*

A *substance authority* is—

- (a) a manufacturing licence; or
- (b) a wholesale licence; or
- (c) a retail licence; or
- (d) a pest management licence; or
- (e) a prescribing approval; or
- (f) a general approval.

62 Authorisation under substance authority

Subject to section 30(2), a person is authorised to carry out a regulated activity with a regulated substance if the person—

- (a) is the holder of a substance authority that authorises the holder to carry out the activity; or
- (b) is stated, or is a member of a class of persons stated, to be authorised under the authority to carry out the activity.

Examples for paragraph (b)—

- a person employed by the holder of a substance authority
- a student or volunteer for the holder of a substance authority

Note—

See, however, section 31 for when the person carries out the regulated activity with the regulated substance in the authorised way.

Division 2 Types of substance authorities

63 What is a *manufacturing licence*

- (1) A *manufacturing licence* is a licence that authorises a person to carry out the following regulated activities with a regulated substance stated in the licence—
 - (a) manufacture of the regulated substance at a place stated in the licence;
 - (b) possession of the regulated substance at a place stated in the licence;
 - (c) possession of the regulated substance for transportation to a place where a person is authorised, or where it is not unlawful for a person, to possess the substance;
 - (d) supply of the regulated substance, primarily by wholesale, to—
 - (i) if the licence states a class of persons to whom the substance may be supplied—a person who is a member of the class; or
 - (ii) otherwise—a person who is authorised, or for whom it is not unlawful, to carry out a regulated activity with the substance;
 - (e) disposal of waste from the regulated substance.
- (2) A manufacturing licence may, if stated in the licence, authorise—
 - (a) the buying and possession of another stated regulated substance for manufacturing the regulated substance to be manufactured under the licence (the *final product*); or
 - (b) the manufacture of, and disposal of waste from, another stated regulated substance that is a by-product of the manufacture of the final product.

64 What is a *wholesale licence*

A *wholesale licence* is a licence that authorises a person to carry out the following regulated activities with a regulated substance stated in the licence—

- (a) buying stock of the regulated substance;
- (b) possession of the regulated substance at a place stated in the licence;
- (c) possession of the regulated substance for transportation to a place where a person is authorised, or where it is not unlawful for a person, to possess the substance;
- (d) supply of the regulated substance, primarily by wholesale, to—
 - (i) if the licence states a class of persons to whom the substance may be supplied—a person who is a member of the class; or
 - (ii) otherwise—a person who is authorised, or for whom it is not unlawful, to carry out a regulated activity with the regulated substance;
- (e) disposal of waste from the regulated substance.

65 What is an *S2 retail licence* or an *S7 retail licence*

(1) An *S2 retail licence* is a licence that authorises a person to carry out the following regulated activities with an S2 medicine stated in the licence—

- (a) buying stock of the medicine;
- (b) selling the medicine by retail at a place stated in the licence.

(2) An *S7 retail licence* is a licence that authorises a person to carry out the following regulated activities with an S7 substance stated in the licence—

- (a) buying stock of the substance;
- (b) possession of the substance at a place stated in the licence;

- (c) possession of the substance for transportation to a place where a person is authorised, or where it is not unlawful for a person, to possess the substance;
- (d) selling the substance by retail to—
 - (i) if the licence states a class of persons to whom the substance may be sold—a person who is a member of the class; or
 - (ii) otherwise—a person who is authorised, or for whom it is not unlawful, to carry out a regulated activity with the substance;
- (e) disposal of waste from the substance.

66 What is a *pest management licence*

A *pest management licence* is a licence that authorises a person to carry out the pest management activities stated in the licence using a fumigant or pesticide stated in the licence.

67 What is a *prescribing approval*

A *prescribing approval* is an approval that authorises a person to carry out any of the following regulated activities with a medicine stated in the approval—

- (a) prescribing the medicine for a person, or a class of persons, stated in the approval in the stated circumstances;
- (b) buying, possessing, administering, dispensing and giving a treatment dose of the medicine in the stated circumstances.

68 What is a *general approval*

- (1) A *general approval* is an approval that authorises a person to carry out a regulated activity with a regulated substance stated in the approval.

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- (2) A regulation may prescribe different classes of general approvals for carrying out different types of regulated activities.

Division 3 Duration and conditions of substance authorities

69 Duration

A substance authority remains in force for the term decided by the chief executive and stated in the authority, unless sooner suspended, cancelled or surrendered.

70 Conditions

- (1) A substance authority is subject to—
- (a) a condition (a *standard condition*) prescribed by regulation to apply in relation to the substance authority; and
 - (b) any additional condition decided by the chief executive under part 3.

Examples of standard conditions—

Conditions stating—

- how to test batches of regulated substances during manufacturing; or
 - how a person must dispose of waste from a regulated substance; or
 - when and how the holder of a substance authority must advise the chief executive of changes to the holder's circumstances
- (2) If the chief executive decides to change a standard condition under part 3, the substance authority is subject to the changed condition instead of the standard condition.
- (3) For subsection (1), the regulation may prescribe a standard condition for a substance authority by reference to a code, guideline, protocol or standard, including a departmental standard.

71 Failure to comply with substance authority conditions

A person to whom a substance authority applies must comply with the conditions of the authority unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

Division 4 Changes of circumstances

72 Transfer unavailable

- (1) A substance authority can not be transferred.
- (2) If the sole holder of a substance authority dies, the authority is cancelled.

73 Changes affecting substance authority

- (1) This section applies if the holder of a substance authority notifies the chief executive of a change in circumstances in relation to the authority.
- (2) The chief executive may require the holder to apply to amend the substance authority in a stated way, or apply for a new substance authority, by a stated reasonable day.
- (3) The chief executive must give the holder an information notice for the decision to make a request under subsection (2).
- (4) The substance authority is cancelled—
 - (a) if the holder does not comply with the request before the stated day—on the stated day; or
 - (b) if the holder applies for a new substance authority—on the day the application is decided.

74 Finalising a substance authority

- (1) This section applies if a person stops being the holder of a substance authority.

Example—

The holder of a manufacturing licence surrenders the licence.

- (2) The chief executive may give the person a notice authorising the person to carry out a stated regulated activity with the regulated substance in a stated way for a stated period.

Example of a notice—

A notice states that a person who has surrendered a manufacturing licence for S7 poisons may store the poisons at the place where the poisons were manufactured for 6 months until the poisons can be taken to a disposal facility.

- (3) The person is taken to carry out the regulated activity with the regulated substance in the authorised way if the person complies with the notice.

Part 3 Applications for substance authorities

Division 1 Initial applications

75 Requirements for making initial application

An application for a substance authority (an *initial application*) must—

- (a) be made to the chief executive; and
- (b) be in the approved form; and
- (c) be accompanied by the fee prescribed by regulation; and
- (d) if the application is for a pest management licence—be made by an individual of at least 17 years.

76 Deciding initial application

- (1) The chief executive must decide whether or not to grant the initial application.

- (2) In considering the initial application, the chief executive may have regard to any of the following matters—
- (a) the need for, and the safety and efficacy of, the regulated activity with the regulated substance proposed in the application;
 - (b) whether a relevant person is a fit and proper person for the substance authority applied for;
- Note—*
- See section 216 for when the chief executive may seek criminal history information about a relevant person.
- (c) any standard conditions for the substance authority for which the application is made;
- Note—*
- See section 70 in relation to standard conditions.
- (d) whether the place at which the regulated activity is proposed to be carried out is suitable for the activity;
 - (e) if a substance management plan is required under section 93(1) for the place—whether a plan has been prepared;
 - (f) if the application is for a pest management licence—a health assessment under section 90.
- (3) If the initial application relates to matters stated in a competency standard, the chief executive must have regard to the competency standard when considering the application.
- (4) If the chief executive decides to grant the initial application, the chief executive may also decide to take either of the following actions if the chief executive is satisfied the action is reasonably necessary—
- (a) impose additional conditions on the substance authority;
 - (b) change a standard condition.

Note—

See section 70(2) for the effect of changing a standard condition.

- (5) In this section—

competency standard means a departmental standard stating training and competency requirements for a person carrying out a regulated activity with a regulated substance.

Note—

See also division 4 in relation to the chief executive's consideration of applications.

77 Notice about decision

- (1) If the chief executive decides to grant the initial application without imposing additional conditions or changing any standard conditions, the chief executive must give the applicant a notice stating—
 - (a) that the substance authority is granted; and
 - (b) the day the decision takes effect; and
 - (c) that the standard conditions apply to the substance authority.
- (2) If the chief executive decides to grant the initial application subject to additional conditions or changes to any standard conditions, or decides to refuse to grant the application, the chief executive must give the applicant an information notice for the decision.

Division 2 Amendments of substance authorities

78 Requirements for making amendment application

- (1) The holder of a substance authority may apply (an ***amendment application***) to the chief executive to amend the authority.
- (2) The amendment application must—
 - (a) be made to the chief executive; and
 - (b) be in the approved form; and

- (c) be accompanied by the fee prescribed by regulation.

79 Deciding amendment application

- (1) The chief executive must decide whether or not to grant the amendment application.
- (2) In considering the amendment application, the chief executive may have regard to—
 - (a) the conditions of the substance authority; and
 - (b) any changes to the matters considered by the chief executive when the substance authority was granted.

Note—

See also division 4 in relation to the chief executive's consideration of applications.

80 Notice about decision

- (1) If the chief executive decides to grant the amendment application, the chief executive must give the applicant a notice stating—
 - (a) the amendment for the substance authority; and
 - (b) the day the decision takes effect.
- (2) If the chief executive decides to refuse to grant the amendment application, the chief executive must give the applicant an information notice for the decision.

81 Minor amendment by chief executive

- (1) The chief executive may decide to amend a substance authority, without an application by the holder of the authority, if the amendment is only for—
 - (a) a formal or clerical reason; or
 - (b) another reason that does not adversely affect the interests of the holder.

- (2) As soon as practicable after the chief executive decides to make the amendment, the chief executive must give the holder a notice stating the amendment and the reason for the amendment.

Division 3 **Renewal applications**

82 Requirements for making renewal application

- (1) The holder of a substance authority may apply (a *renewal application*) to the chief executive to renew the authority unless the authority states it must not be renewed.
- (2) The renewal application must—
 - (a) be made to the chief executive; and
 - (b) be in the approved form; and
 - (c) be accompanied by the fee prescribed by regulation; and
 - (d) be made within the period starting 90 days before the term of the substance authority ends.
- (3) Despite subsection (2)(d), the chief executive may accept a renewal application for a substance authority made within 30 days after the term of the authority ends if the chief executive is satisfied it is reasonable to accept the application in the circumstances.
- (4) If the chief executive accepts the renewal application, the substance authority is taken to have authorised the carrying out of the regulated activity with the regulated substance stated in the authority for the period between—
 - (a) the day the authority ended; and
 - (b) the day the chief executive accepted the application.

Note—

See section 85 about a substance authority being in force while a renewal application is considered.

83 Deciding renewal application

- (1) The chief executive must decide whether or not to grant the renewal application.
- (2) In considering the renewal application, the chief executive may have regard to—
 - (a) the conditions of the substance authority; and
 - (b) any changes to the matters considered by the chief executive when the substance authority was granted.

Note—

See also division 4 in relation to the chief executive's consideration of applications.

- (3) If the chief executive decides to grant the renewal application, the chief executive may also decide to take either of the following actions if the chief executive is satisfied the action is reasonably necessary—
 - (a) impose additional conditions on the substance authority;
 - (b) change a condition of the substance authority, including a standard condition.

Note—

See section 70(2) for the effect of changing a standard condition.

84 Notice about decision

- (1) If the chief executive decides to grant the renewal application without imposing additional conditions or changing any conditions, the chief executive must give the applicant a notice stating—
 - (a) that the substance authority is renewed; and
 - (b) the day the decision takes effect; and
 - (c) the conditions that apply to the substance authority.
- (2) If the chief executive decides to grant the renewal application subject to additional conditions or changes to any conditions, or decides to refuse to grant the application, the chief

executive must give the applicant an information notice for the decision.

85 Substance authority in force while renewal application considered

- (1) A substance authority subject to a renewal application continues in force from the day the renewal application is accepted by the chief executive until the application is decided or taken to have been withdrawn under division 4.
- (2) However, if the application is refused, or taken to be refused, the substance authority continues in force until an information notice for the refusal is given to the applicant.
- (3) This section does not apply if the substance authority is earlier suspended or cancelled under chapter 4, part 3.

Division 4 Considering applications

Subdivision 1 Preliminary

86 Definitions for division

In this division—

application means each of the following applications made under this part—

- (a) an initial application;
- (b) an amendment application;
- (c) a renewal application.

final consideration day, for an application, means the day that is 90 days after—

- (a) if the chief executive gives the applicant a notice under section 87(1)—the day the chief executive receives the further information stated in the notice; or

- (b) if the chief executive gives the applicant more than 1 notice under section 87(1)—the day the chief executive receives the further information stated in the last notice; or
- (c) otherwise—the day the chief executive receives the application.

Subdivision 2 Further information requests and period for deciding applications

87 Further information request

- (1) The chief executive may give an applicant a notice within 90 days after the chief executive receives the applicant's application stating further information the chief executive considers is reasonably required from the applicant to decide the application.
- (2) The notice must state a reasonable period, of at least 30 days after the day the notice is given, for compliance with the notice.
- (3) The further information must be verified by statutory declaration if required by the notice.
- (4) The applicant is taken to have withdrawn the application if the applicant does not comply with the notice.

88 Agreement to extend period for decision

- (1) The chief executive and an applicant may, at any time before the final consideration day for the applicant's application, agree on a later day by which the application is to be decided.
- (2) The chief executive must give the applicant notice of the day agreed under subsection (1).

89 Period for deciding application

- (1) The chief executive must decide an application—

-
- (a) if the day by which the application must be decided has been extended by agreement under section 88—on or before the agreed day; or
 - (b) otherwise—on or before the final consideration day for the application.
- (2) Subsection (3) applies if the chief executive has asked, under section 216, for a criminal history report about a relevant person in relation to the application.
 - (3) The day by which the application must be decided under subsection (1) is extended by the number of days it takes for the criminal history report to be given to the chief executive after the chief executive asks for the report.
 - (4) The chief executive is taken to have refused to grant the application if the chief executive fails to decide the application by the day required under this section.
 - (5) The applicant is entitled to be given an information notice for the deemed refusal.

Subdivision 3 Health assessments

90 Health assessment for pest management licences

- (1) This section applies in relation to an application for a pest management licence.
- (2) The chief executive may ask the applicant to undergo an assessment (a *health assessment*) by a medical practitioner of the applicant's physical and mental health.

Example—

The chief executive may decide a health assessment is necessary for considering an application for a pest management licence to work with fumigants in enclosed spaces.

- (3) The chief executive must give the applicant a notice stating the following matters—
 - (a) the reason for requesting the health assessment;

[s 91]

- (b) the name of a particular medical practitioner, or the qualifications of a medical practitioner, who may conduct the assessment;
 - (c) the reasonable day by which the assessment must be done.
- (4) The assessment conducted by the medical practitioner must include a written report stating the practitioner's findings about the applicant's physical and mental health in relation to carrying out the type of regulated activity to which the application relates.
- (5) If the applicant fails to give the written report to the chief executive by the day stated in the notice under subsection (3)(c), without a reasonable excuse, the applicant is taken to have withdrawn the application.

Chapter 4 Managing regulated activities

Part 1 Requirements for carrying out regulated activities in the authorised way

91 Requirements may be prescribed

- (1) A regulation may prescribe requirements for a person, or a class of persons, authorised under section 54(4), 57 or 62 in relation to carrying out a type of regulated activity with a regulated substance.

Note—

Under section 31, a person mentioned in subsection (1) must comply with the requirements prescribed for the person to carry out a regulated activity with a regulated substance in the authorised way.

associated with any dealing with a regulated substance are to be managed at, or in connection with, the regulated place.

Examples of risks associated with dealings with regulated substances—

- 1 The quality of a regulated substance is compromised during production.
- 2 A regulated substance is used in an inappropriate way.
- 3 An unauthorised person gains access to a regulated substance.

93 Requirements for substance management plan

- (1) The responsible person for a regulated place must make a substance management plan for the place that complies with subsection (2) before any dealing happens with a regulated substance at the place, unless the person has a reasonable excuse.

Maximum penalty—250 penalty units.

Example—

Before buying substances to manufacture a regulated substance at a regulated place under a manufacturing licence, the responsible person must make a substance management plan for the place.

- (2) The substance management plan for the regulated place must—
 - (a) state the following matters—
 - (i) the day the plan starts;
 - (ii) the location of the place;
 - (iii) the dealings and regulated substances to which the plan applies;
 - (iv) the persons (*staff*) to whom the plan applies; and
 - (b) address the matters prescribed by regulation; and
 - (c) be written in a way that is likely to be easily understood by staff.
- (3) The responsible person must ensure the substance management plan—

- (a) is made available to staff when it is made; and
- (b) is reviewed at the time prescribed by regulation.

Maximum penalty—250 penalty units.

- (4) In a proceeding for an offence against subsection (3), it is a defence for the responsible person to prove the person took reasonable steps to comply with the subsection.

94 Compliance with substance management plan

A person stated in a substance management plan under section 93(2)(a)(iv) must comply with the plan, unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

Part 3 Administrative action

Division 1 Preliminary

95 Definitions for part

In this part—

administrative action, in relation to an authority, means action—

- (a) changing a condition of an authority; or
- (b) suspending an authority for a stated period or indefinitely; or
- (c) cancelling a substance authority.

agreed administrative action see section 103(3).

authority means a substance authority or an approved person's authorisation.

condition, of an approved person's authorisation, means—

- (a) the circumstances in which, or purposes for which, the approved person is authorised under section 54(4); or
- (b) a requirement prescribed under section 91(1) for the approved person in relation to carrying out a regulated activity with a regulated substance.

holder, of an authority, means—

- (a) for a substance authority—the entity granted the substance authority; or
- (b) for an approved person’s authorisation—the approved person.

review day, for administrative action, means the earliest day on which the chief executive is required under this part to consider ending or changing the administrative action.

show cause notice see section 97(2).

show cause period see section 97(2)(d).

Division 2 Taking administrative action generally

96 Grounds for taking action

- (1) The chief executive may take administrative action in relation to an authority if the chief executive believes—
 - (a) a relevant person for the authority has contravened a requirement under this Act or a corresponding law; or
 - (b) the administrative action is reasonably necessary to prevent or minimise a health risk; or
 - (c) a relevant person for the authority is not a fit and proper person; or

Note—

See section 216 for when the chief executive may seek criminal history information about a relevant person.

- (d) a relevant person for the authority has made a materially false or misleading representation to obtain the authority.
- (2) However, the chief executive may take administrative action under this section only if the chief executive has considered giving a compliance notice to the person about the matter to which the proposed administrative action relates.

97 Show cause notice before taking action

- (1) This section applies if the chief executive is proposing to take administrative action in relation to an authority under section 96.
- (2) The chief executive must first give the holder of the authority a notice (a *show cause notice*) stating—
 - (a) that the chief executive proposes to take the administrative action; and
 - (b) the proposed administrative action, including whether it applies to—
 - (i) all regulated activities with regulated substances to which the authority relates; or
 - (ii) a particular regulated activity or regulated substance; and
 - (c) the reasons for the proposed administrative action; and
 - (d) that the holder may, within a stated period of at least 21 days (the *show cause period*), give the chief executive a written response to the show cause notice.

98 Chief executive must consider response

- (1) This section applies if the holder of the authority, within the show cause period, gives the chief executive a written response to the show cause notice.

- (2) The chief executive must consider the written response before deciding whether or not to take the proposed administrative action stated in the show cause notice.

99 Decision not to take administrative action

If the chief executive decides not to take the proposed administrative action stated in the show cause notice, the chief executive must give the holder notice of the decision.

100 Decision to take administrative action

- (1) This section applies if—
 - (a) the show cause period has ended; and
 - (b) the chief executive has considered any written response from the holder of the authority; and
 - (c) the chief executive believes there is a ground for taking administrative action.
- (2) The chief executive may decide—
 - (a) to take the administrative action stated in the show cause notice; or
 - (b) to take other administrative action that is less onerous.
- (3) If the chief executive decides to take administrative action to suspend the authority indefinitely or change the conditions of the authority, the chief executive must also decide the review day for the administrative action.
- (4) The chief executive must give the holder an information notice for a decision under subsection (2) or (3).
- (5) The administrative action takes effect on the day stated in the information notice.
- (6) The day stated in the information notice under subsection (5) must not be earlier than the day the notice is given to the holder.

Division 3 Immediate or agreed administrative action

101 Application of division

- (1) This division applies in relation to taking administrative action despite another division of this part.
- (2) Each section of this division applies even if the chief executive has started, but not completed, the process for making a decision under another section of this division.

102 Immediate administrative action

- (1) The chief executive may decide to take administrative action in relation to an authority on a ground mentioned in section 96(1) without giving the holder of the authority a show cause notice.
- (2) However, subsection (1) applies only if the chief executive considers it is reasonably necessary to take the administrative action immediately because there is an urgent need to prevent a serious health risk to any person, including to the holder.
- (3) If the chief executive decides to take administrative action to suspend an authority indefinitely or change the conditions of an authority, the chief executive must also decide the review day for the administrative action.
- (4) The chief executive must give the holder an information notice for a decision under subsection (1) or (3).
- (5) The administrative action takes effect on the day stated in the information notice.
- (6) The day stated in the information notice under subsection (5) must not be earlier than the day the notice is given to the holder.

103 Agreed administrative action

- (1) The chief executive may take administrative action in relation to an authority, other than cancellation of the authority, if a relevant person for the authority to whom the action applies agrees to the action being taken.

Example of agreeing to an action—

An approved person agrees to an indefinite suspension of the approved person's authorisation.

- (2) However, if the authority is a substance authority, the chief executive may take the administrative action only if the holder of the authority also agrees to the action.
- (3) Action taken under subsection (1) is ***agreed administrative action***.
- (4) The chief executive and the relevant person must agree to a review day for the administrative action.
- (5) The chief executive must give the holder a notice stating—
 - (a) the terms of the agreed administrative action; and
 - (b) the review day that has been agreed by the relevant person for the administrative action.
- (6) The administrative action takes effect on the day stated in the notice.
- (7) The day stated in the notice under subsection (6) must not be earlier than the day the notice is given to the holder.

Division 4 Reviewing administrative action

104 Application of division

This division does not apply in relation to administrative action that is the cancellation of a substance authority.

105 Request by holder to review administrative action

- (1) The holder of an authority in relation to which administrative action has been taken may—
 - (a) ask the chief executive, in writing, to review the administrative action; and
 - (b) give the chief executive information supporting the holder's request under paragraph (a).
- (2) However, the holder may make a request under subsection (1) only on or after the review day for the administrative action.

106 Decision after reviewing administrative action on request

- (1) The chief executive must consider a request made under section 105 and decide whether to—
 - (a) end the administrative action; or
 - (b) continue the administrative action (*further administrative action*); or
 - (c) take other administrative action in relation to the authority that is less onerous (also *further administrative action*).
- (2) However, if the administrative action being considered is agreed administrative action, the chief executive may take further administrative action (*further agreed action*) only if—
 - (a) the relevant person to whom the further administrative action applies agrees to the action; and
 - (b) if the authority is a substance authority—the holder of the authority agrees to the further administrative action.
- (3) If the chief executive decides to take further administrative action that is the suspension of the authority indefinitely or changing the conditions of the authority, the chief executive must also decide the review day for the further administrative action.

- (4) If the chief executive decides to end the administrative action, or decides to take further agreed action, the chief executive must give the holder notice of the decision.
- (5) If subsection (4) does not apply, the chief executive must give the holder an information notice for the decision.

107 Review of administrative action by chief executive

- (1) The chief executive may decide to review administrative action taken in relation to an authority (the *original action*)—
 - (a) whether or not a request for the review of the original action has been made by the holder of the authority; and
 - (b) whether or not the decision is made before the review day for the original action.
- (2) However, the review must be on a ground mentioned in section 96(1).
- (3) If the chief executive proposes to change or continue the original action, the chief executive must give the holder of the authority a show cause notice.
- (4) Sections 97 to 100 apply in relation to the show cause notice as if—
 - (a) the original action had not been taken; and
 - (b) the proposed change or continuation of the original action were the proposed administrative action to be taken under the sections.
- (5) If the chief executive decides to end the administrative action, the chief executive must give the holder notice of the decision.

Part 4 Compliance notices

108 Giving a compliance notice

- (1) This section applies if the chief executive or an inspector believes—

- (a) a person has contravened a provision of this Act in circumstances that make it likely the contravention will continue or be repeated; and
 - (b) a matter relating to the contravention is reasonably capable of being rectified; and
 - (c) it is appropriate to give the person an opportunity to rectify the matter.
- (2) The chief executive or inspector may give the person a notice (a *compliance notice*) requiring the person to rectify the matter.

109 Content of compliance notice

The compliance notice must state the following matters—

- (a) that the chief executive or inspector believes the person has contravened a provision of this Act in circumstances that make it likely the contravention will continue or be repeated;
- (b) the provision the chief executive or inspector believes has been contravened;
- (c) briefly, how it is believed the provision has been contravened;
- (d) the matter relating to the contravention that the chief executive or inspector believes is reasonably capable of being rectified;
- (e) the reasonable steps the person must take to rectify the matter;
- (f) that the person must take the steps within a stated period that is reasonable, having regard to any health risks posed by the contravention;
- (g) that it is an offence to fail to comply with the compliance notice unless the person has a reasonable excuse.

110 Failure to comply with compliance notice

A person given a compliance notice must comply with the notice unless the person has a reasonable excuse.

Maximum penalty—200 penalty units.

Chapter 5 Monitoring and enforcement

Part 1 Special powers

Division 1 Emerging risk declarations

111 What is an *emerging risk declaration*

An *emerging risk declaration* is a declaration made by the chief executive declaring 1 or more of the following in relation to a substance that is not a regulated substance—

- (a) the substance must not be made, sold or used in the State;
- (b) the substance may be used only in a particular device or in a particular way;
- (c) a particular device must not be used with the substance;
- (d) the substance must be disposed of in a particular way.

112 Making emerging risk declaration

- (1) The chief executive may make an emerging risk declaration in relation to a substance that is not a regulated substance if the chief executive believes—

-
- (a) the substance is being made, sold or used in the State, including by using a device; and
 - (b) there is an urgent need to regulate, or further regulate, the substance under this Act because of a health risk.
- (2) However, the chief executive may not make an emerging risk declaration in relation to a medical device under the *Therapeutic Goods Act 1989* (Cwlth).
- (3) The emerging risk declaration may state particular conditions that apply to carrying out an activity with the substance, including conditions about using particular devices, if the chief executive is satisfied the conditions are reasonably necessary to prevent or minimise a health risk.

113 Matters to be included in emerging risk declaration

- (1) The emerging risk declaration must state—
- (a) a description of the substance to which the declaration applies; and
 - (b) if the declaration relates to a device—
 - (i) a description of the device; and
 - (ii) either—
 - (A) a description of the particular way the device may or may not be used with the substance; or
 - (B) a statement that the device must not be used with the substance; and
 - (c) any conditions that apply to carrying out an activity with the substance.
- (2) Also, the emerging risk declaration may state a day on which it takes effect and a day on which it ends.

114 Publication of emerging risk declaration

- (1) The chief executive must—

- (a) publish the emerging risk declaration on the department's website; and
- (b) take reasonable steps to ensure persons likely to be directly affected by the declaration are made aware of it.

Examples of taking reasonable steps—

publishing media releases, contacting persons affected, advertising in newspapers or other publications

- (2) An emerging risk declaration is not invalid only because of a failure of the chief executive to comply with subsection (1).

115 Effect and duration of emerging risk declaration

- (1) The emerging risk declaration takes effect—
 - (a) when the declaration is published on the department's website; or
 - (b) if the declaration states a later day it takes effect—on the later day.

Note—

Section 128 states the process for applying for compensation for an emerging risk declaration.

- (2) Unless it is sooner revoked, the emerging risk declaration continues in effect until the earliest of the following days—
 - (a) if the declaration states a day on which it ends—the stated day;
 - (b) the day the substance stated in the declaration becomes a regulated substance;
 - (c) if the declaration relates to a device—the day the device is registered as a medical device under the *Therapeutic Goods Act 1989* (Cwlth);
 - (d) the day that is 3 months after the day the declaration takes effect.
- (3) If a provision of this Act or a decision made under this Act is inconsistent with the emerging risk declaration, the declaration prevails to the extent of the inconsistency.

116 Failure to comply with emerging risk declaration

A person must comply with the emerging risk declaration unless the person has a reasonable excuse.

Maximum penalty—500 penalty units.

117 Renewal of emerging risk declaration

- (1) Before the emerging risk declaration ends, the chief executive may renew the declaration by publishing a notice on the department's website.
- (2) However, subsection (1) applies only if the chief executive believes—
 - (a) more time is needed to allow—
 - (i) the substance stated in the declaration to be prescribed under section 11, 12 or 13 as a medicine, poison or prohibited substance; or
 - (ii) the substance stated in the declaration to be considered under the *Therapeutic Goods Act 1989* (Cwlth) for listing in the Poisons Standard; or
 - (iii) the device stated in the declaration to be registered as a medical device under the *Therapeutic Goods Act 1989* (Cwlth); and
 - (b) the substance, or use of the substance with a device, should in the meantime continue to be regulated under this Act to prevent or minimise a health risk.
- (3) In renewing the emerging risk declaration, the chief executive may decide to change any matter stated in the declaration if the chief executive considers the change is reasonably necessary.
- (4) The notice for the renewal must state the following matters—
 - (a) the emerging risk declaration to which the renewal applies;

- (b) the day, no later than 3 months after the day on which the renewal notice is published, on which the declaration ends;
 - (c) if the chief executive decides to change a matter stated in the declaration—a brief statement of the change and the reasons for the change.
- (5) The renewal takes effect on the day the emerging risk declaration would, but for the renewal, end.
- (6) The chief executive must take reasonable steps to ensure persons likely to be directly affected by the renewal of the emerging risk declaration are made aware of the renewal.

Examples of taking reasonable steps—

publishing media releases, contacting persons affected, advertising in newspapers or other publications

- (7) The renewal of the emerging risk declaration is not invalid only because of a failure of the chief executive to comply with subsection (6).

Division 2 Recall orders and public warnings

Subdivision 1 Recall orders

118 Application of subdivision

This subdivision does not apply in relation to a regulated substance if—

- (a) the substance is also regulated under another Act or a Commonwealth law; and
- (b) a power under the other Act or law has been exercised for the recall of the substance, whether or not the substance has been recalled.

119 Chief executive may make recall order

- (1) This section applies if the chief executive considers a product containing a regulated substance poses a health risk.
- (2) The chief executive may make a written order (a *recall order*) that—
 - (a) is directed to a stated person (the *responsible person*) who the chief executive believes is responsible for the manufacture, possession or supply of the product; and
 - (b) requires the responsible person to recall the product from manufacture, possession or supply.
- (3) Without limiting subsection (2), the chief executive may make a recall order for a product if the chief executive considers the order is reasonably necessary to prevent or minimise a health risk because—
 - (a) labelling of the product is inaccurate; or
 - (b) packaging of the product is not sufficiently secure having regard to the nature of the product; or
 - (c) the product is not safe or effective when used in accordance with the label for the use of the product; or
 - (d) the product is contaminated or not consistent with the usual specifications for the product.

120 Notice required for making recall order

- (1) Before making a recall order, the chief executive must give the responsible person for the proposed recall order a notice stating the following matters—
 - (a) the chief executive intends to make a recall order;
 - (b) the terms of the proposed order;
 - (c) the reasons for making the proposed order;
 - (d) that the person may give the chief executive written submissions, within 7 days after the day the notice is given, about why the chief executive should not make the proposed order.

- (2) The responsible person may, within the period stated in the notice under subsection (1)(d), give the chief executive written submissions about why the proposed recall order should not be made.

121 Urgent recall order

- (1) If the chief executive considers a recall order must be made urgently to prevent a serious health risk to a person, the chief executive may make the order without complying with section 120.
- (2) However, the chief executive must give the responsible person for the recall order a notice stating the following matters as soon as practicable, and no later than 48 hours, after the order is made—
 - (a) the terms of the order;
 - (b) the reasons for making the order;
 - (c) that the person may give the chief executive written submissions, within 7 days after the day the notice is given, about why the chief executive should revoke the order.
- (3) The responsible person may, within the period stated in the notice under subsection (2)(c), give the chief executive written submissions about why the recall order should be revoked.

122 Decision about recall order

- (1) After considering any written submissions made under section 120(2) by the responsible person for a proposed recall order, the chief executive must decide whether to make the order.
- (2) After considering any written submissions made under section 121(3) by the responsible person for a recall order, the chief executive must decide whether to revoke the order.

- (3) If the chief executive decides to make, or not revoke, a recall order, the chief executive must give the responsible person for the recall order an information notice for the decision.

123 Notifying public about recall order

- (1) The chief executive must publish, on the department's website, information that is sufficient to alert the public about the potential health risk identified in a recall order.
- (2) The chief executive may publish the information in any other way the chief executive considers reasonably necessary to alert the public.

Examples—

publishing media releases or advertising in newspapers or other publications

124 Content of recall order

- (1) A recall order must state the following matters—
 - (a) details of the product that is recalled under the order;
 - (b) the responsible person for the order;
 - (c) the reasons for the recall of the product;
 - (d) what the responsible person must do to recall the product;
 - (e) the reasonable period for which the order is in effect.
- (2) Without limiting subsection (1)(d), the recall order may state the responsible person must do any of the following—
 - (a) stop the manufacture or supply of the product;
 - (b) take reasonable steps to recover the product from another person;
 - (c) isolate or dispose of the product;
 - (d) repackage or relabel the product;
 - (e) publish warnings about the product.

125 Failure to comply with recall order

The responsible person for a recall order must comply with the order unless the person has a reasonable excuse.

Maximum penalty—500 penalty units.

126 Effect of recall order

- (1) Subject to section 128, the chief executive is not liable for any cost incurred in complying with a recall order.
- (2) A recall order remains in force for the period stated in the order unless it is sooner revoked by the chief executive.

Subdivision 2 Public warnings

127 Statement of warning

- (1) The Minister, chief executive or chief health officer (each a *senior administrator*) may make a public statement identifying, and giving warnings or information about, any of the following matters—
 - (a) contraventions of this Act that have resulted in notification action being taken and the persons who committed the contraventions;
 - (b) practices regulated under a relevant law that, in the reasonable opinion of the senior administrator, are unlawful;
 - (c) offences committed against a relevant law and the persons who committed the offences.
- (2) The statement may identify particular contraventions, practices, offences and persons.
- (3) The senior administrator must not make a statement under this section unless satisfied—
 - (a) it is in the public interest to make the statement; and

- (b) a public statement or warning has not been made, and is not about to be made, under another Act or process that is more appropriate in the circumstances.
- (4) Without limiting what is in the public interest for subsection (3)(a), it is in the public interest to make the public statement if the senior administrator is satisfied the statement is reasonably necessary to prevent or minimise a health risk in relation to a regulated substance.
- (5) No liability is incurred by the State for the making of, or for anything done for the purpose of making, a public statement under this section in good faith.

- (6) In this section—

chief health officer means the chief health officer under the *Hospital and Health Boards Act 2011*, section 52.

notification action means—

- (a) giving a compliance notice; or
- (b) making a recall order; or
- (c) taking immediate administrative action under section 102; or
- (d) giving a show cause notice under chapter 4, part 3.

relevant law means—

- (a) this Act; or
- (b) the *Agricultural and Veterinary Chemicals (Queensland) Act 1994*; or
- (c) the *Agricultural Chemicals Distribution Control Act 1966*; or
- (d) the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*.

Division 3 Compensation

128 Compensation for emerging risk declaration or recall order

- (1) A person directly affected by an emerging risk declaration or the responsible person for a recall order may apply to the chief executive for compensation.
- (2) The chief executive must pay just and reasonable compensation to the applicant if—
 - (a) the applicant suffered loss because of the making of the emerging risk declaration or recall order; and
 - (b) there were insufficient grounds for the making of the declaration or order.
- (3) If the chief executive decides to refuse the application, or to pay an amount of compensation less than the amount sought by the applicant, the chief executive must give the applicant a QCAT information notice for the decision.

Part 2 General provisions about inspectors

Division 1 Appointment

129 Inspectors under part

This part includes provision for the appointment of inspectors, and gives inspectors particular powers.

130 Functions of inspectors

An inspector has the following functions—

- (a) to investigate, monitor and enforce compliance with this Act;

- (b) to investigate or monitor whether an occasion has arisen for the exercise of powers under this Act;
- (c) to facilitate the exercise of powers under this Act.

131 Appointment and qualifications

- (1) The chief executive may, by instrument in writing, appoint any of the following persons as inspectors—
 - (a) a health service employee;
 - (b) a public service employee;
 - (c) other persons prescribed by regulation.
- (2) However, the chief executive may appoint a person as an inspector only if the chief executive is satisfied the person is appropriately qualified.

132 Appointment conditions and limit on powers

- (1) An inspector holds office on any conditions stated in—
 - (a) the inspector's instrument of appointment; or
 - (b) a signed notice given to the inspector; or
 - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the inspector or a regulation may limit the inspector's powers.
- (3) In this section—
signed notice means a notice signed by the chief executive.

133 When office ends

- (1) The office of a person as an inspector ends if any of the following happens—
 - (a) the term of office stated in a condition of office ends;
 - (b) under another condition of office, the office ends;

- (c) the inspector's resignation under section 134 takes effect.
- (2) Subsection (1) does not limit the ways the office of a person as an inspector ends.
- (3) In this section—
condition of office means a condition under which the inspector holds office.

134 Resignation

An inspector may resign by signed notice given to the chief executive.

Division 2 Identity cards

135 Issue of identity card

- (1) The chief executive must issue an identity card to each inspector.
- (2) The identity card must—
 - (a) contain a recent photo of the inspector; and
 - (b) contain a copy of the inspector's signature; and
 - (c) identify the person as an inspector under this Act; and
 - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

136 Production or display of identity card

- (1) In exercising a power in relation to a person in the person's presence, an inspector must—
 - (a) produce the inspector's identity card for the person's inspection before exercising the power; or

- (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the inspector must produce the identity card for the person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an inspector does not exercise a power in relation to a person only because the inspector has entered a place as mentioned in section 140(1)(b) or (d).

137 Return of identity card

If the office of a person as an inspector ends, the person must return the person's identity card to the chief executive within 21 days after the office ends unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

Division 3 Miscellaneous provisions

138 References to exercise of powers

If—

- (a) a provision of this chapter refers to the exercise of a power by an inspector; and
 - (b) there is no reference to a specific power;
- the reference is to the exercise of all or any inspectors' powers under this Act or a warrant, to the extent the powers are relevant.

139 Reference to document includes reference to reproductions from electronic document

A reference in this chapter to a document includes a reference to an image or writing—

- (a) produced from an electronic document; or

- (b) not yet produced, but reasonably capable of being produced, from an electronic document, with or without the aid of another article or device.

Part 3 Entry of places by inspectors

Division 1 Power to enter

140 General power to enter places

- (1) An inspector may enter a place if—
 - (a) an occupier at the place consents under division 2 to the entry and section 144 has been complied with for the occupier; or
 - (b) it is a public place and the entry is made when the place is open to the public; or
 - (c) the entry is authorised under a warrant and, if there is an occupier of the place, section 152 has been complied with for the occupier; or
 - (d) it is a professional practice place of a person authorised under this Act and the entry is made when the place is—
 - (i) open for carrying on business; or
 - (ii) otherwise open for entry; or
 - (e) it is an authorised place that is required to be open for inspection as a condition of the authorisation of the place; or
 - (f) the entry is authorised under section 141 and section 146 has been complied with.
- (2) Subsection (1)(d), (e) and (f) does not authorise entry to a part of the place where a person resides.
- (3) If the power to enter arose only because an occupier of the place consented to the entry, the power is subject to any

conditions of the consent and ceases if the consent is withdrawn.

- (4) The consent may provide consent for re-entry and is subject to the conditions of consent.
- (5) If the power to enter is under a warrant, the power is subject to the terms of the warrant.
- (6) If the power to re-enter is under a warrant, the re-entry is subject to the terms of the warrant.
- (7) In this section—

authorised place means a place where a regulated activity with a regulated substance is authorised to be carried out under an approved person's authorisation or a substance authority.

professional practice place, of a person authorised under this Act—

- (a) means a place where the person lawfully practises a profession, or performs functions, for which the person is authorised; and
- (b) if the person holds a pest management licence—includes a place where building work under the *Queensland Building and Construction Commission Act 1991* is being, or is about to be, carried out.

141 Power to enter place to check compliance with compliance notice or recall order

- (1) This section applies if—
 - (a) a compliance notice has been given to a person or a recall order has been given to a responsible person; and
 - (b) the person practises a profession or performs functions at a place that is the subject of a matter mentioned in the notice or order.
- (2) An inspector may, at reasonable times, enter the place to check whether the compliance notice or recall order has been complied with.

Note—

See, however, the restrictions on entry under section 140(2).

Division 2 Entry by consent

142 Application of division

This division applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place.

143 Incidental entry to ask for access

For the purpose of asking the occupier for the consent, an inspector may, without the occupier's consent or a warrant—

- (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
- (b) enter part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact an occupier of the place.

144 Matters inspector must tell occupier

Before asking for the consent, the inspector must—

- (a) explain to the occupier the purpose of the entry, including the powers intended to be exercised; and
- (b) tell the occupier that—
 - (i) the occupier is not required to consent; and
 - (ii) the consent may be given subject to conditions and may be withdrawn at any time.

145 Consent acknowledgement

- (1) If the consent is given, the inspector may ask the occupier to sign an acknowledgement of the consent.
- (2) The acknowledgement must state—
 - (a) the purpose of the entry, including the powers to be exercised; and
 - (b) that the occupier has been given an explanation about the purpose of the entry, including the powers intended to be exercised; and
 - (c) that the occupier has been told—
 - (i) that the occupier is not required to consent; and
 - (ii) that the consent may be given subject to conditions and may be withdrawn at any time; and
 - (d) that the occupier gives the inspector or another inspector consent to enter the place and exercise the powers; and
 - (e) the day and time the consent was given; and
 - (f) any conditions of the consent.
- (3) If the occupier signs the acknowledgement, the inspector must, as soon as practicable and no later than 1 business day, give a copy to the occupier.
- (4) If—
 - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
 - (b) a signed acknowledgement complying with subsection (2) for the entry is not produced in evidence;the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

Division 3 Entry for checking compliance

146 Entry of place under s 141

- (1) An inspector must, before entering a place under section 141, make a reasonable attempt to locate an occupier of the place and obtain the occupier's consent to the entry.

Note—

See division 2 in relation to entry by consent.

- (2) Subsection (3) applies if—
- (a) after being unable to locate an occupier, the inspector subsequently finds an occupier present at the place; or
 - (b) an occupier refused to consent to the entry.
- (3) The inspector must make reasonable attempts to—
- (a) produce the inspector's identity card for the occupier's inspection; and
 - (b) inform the occupier—
 - (i) of the reason for entering the place; and
 - (ii) that the inspector is authorised under this Act to enter the place without the permission of the occupier.

Note—

See, however, the restrictions on entry under section 140(2).

- (4) Also, if the inspector enters the place after being unable to locate an occupier, the inspector must leave a notice in a conspicuous position and in a reasonably secure way stating—
- (a) the date and time of the entry; and
 - (b) information addressing the matters mentioned in subsection (3)(b).

Division 4 Entry under warrant

Subdivision 1 Obtaining warrant

147 Application for warrant

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

Example—

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

148 Issue of warrant

- (1) The magistrate may issue the warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting that there is at the place, or will be at the place within the next 7 days, a particular thing or activity that may provide evidence of an offence against this Act.
- (2) The warrant must state—
 - (a) the place to which the warrant applies; and
 - (b) that an inspector may with necessary and reasonable help and force—
 - (i) enter the place and any other place necessary for entry to the place; and
 - (ii) exercise the inspector's powers; and

- (c) particulars of the offence that the magistrate considers appropriate; and
- (d) the name of the person suspected of having committed the offence unless the name is unknown or the magistrate considers it inappropriate to state the name; and
- (e) the evidence that may be seized under the warrant; and
- (f) the hours of the day or night when the place may be entered; and
- (g) the magistrate's name; and
- (h) the day and time of the warrant's issue; and
- (i) the day, within 14 days after the warrant's issue, the warrant ends.

149 Electronic application

- (1) An application under section 147 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the inspector reasonably considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances, including, for example, the inspector's remote location.
- (2) The application—
 - (a) may not be made before the inspector prepares the written application under section 147(2); but
 - (b) may be made before the written application is sworn.

150 Additional procedure if electronic application

- (1) For an application made under section 149, the magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—

- (a) it was necessary to make the application under section 149; and
 - (b) the way the application was made under section 149 was appropriate.
- (2) After the magistrate issues the original warrant—
- (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the inspector, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the inspector; or
 - (b) otherwise—
 - (i) the magistrate must tell the inspector the information mentioned in section 148(2); and
 - (ii) the inspector must complete a form of warrant, including by writing on it the information mentioned in section 148(2) provided by the magistrate.
- (3) The copy of the warrant mentioned in subsection (2)(a), or the form of warrant completed under subsection (2)(b) (in either case the ***duplicate warrant***), is a duplicate of, and as effectual as, the original warrant.
- (4) The inspector must, at the first reasonable opportunity, send to the magistrate—
- (a) the written application complying with section 147(2) and (3); and
 - (b) if the inspector completed a form of warrant under subsection (2)(b), the completed form of warrant.
- (5) Despite subsection (3), if—
- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
 - (b) the original warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.

- (6) This section does not limit section 147.

151 Defect in relation to a warrant

- (1) A warrant is not invalidated by a defect in—

- (a) the warrant; or
- (b) compliance with this subdivision;

unless the defect affects the substance of the warrant in a material particular.

- (2) In this section—

warrant includes a duplicate warrant mentioned in section 150(3).

Subdivision 2 Entry procedure

152 Entry procedure

- (1) This section applies if an inspector is intending to enter a place under a warrant issued under this division.
- (2) Before entering the place, the inspector must do or make a reasonable attempt to do the following things—
 - (a) identify the inspector to a person who is an occupier of the place and is present by producing the inspector's identity card;
 - (b) give the person a copy of the warrant;
 - (c) tell the person the inspector is permitted by the warrant to enter the place;
 - (d) give the person an opportunity to allow the inspector immediate entry to the place without using force.

(3) However, the inspector need not comply with subsection (2) if the inspector reasonably believes that entry to the place without compliance is required to ensure the execution of the warrant is not frustrated.

(4) In this section—

warrant includes a duplicate warrant mentioned in section 150(3).

Part 4 Other inspectors' powers and related matters

Division 1 Stopping or moving vehicles

153 Application of division

This division applies if an inspector reasonably suspects, or is aware, that a thing in or on a vehicle may provide evidence of the commission of an offence against this Act.

154 Power to stop or move

- (1) If the vehicle is moving, the inspector may, to exercise the inspector's powers, signal or otherwise direct the person in control of the vehicle to stop the vehicle and to bring the vehicle to, and keep it at, a convenient place within a reasonable distance to allow the inspector to exercise the powers.
- (2) If the vehicle is stopped, the inspector may direct the person in control of the vehicle—
 - (a) not to move it until the inspector has exercised the inspector's powers; or
 - (b) to move the vehicle to, and keep it at, a stated reasonable place to allow the inspector to exercise the powers.

- (3) When giving the direction under subsection (2), the inspector must give the person in control an offence warning for the direction.

155 Identification requirements if vehicle moving

- (1) This section applies if the inspector proposes to give a direction under section 154(1) and the vehicle is moving.
- (2) The inspector must clearly identify the inspector is exercising powers.

Examples—

- 1 If the inspector is in a moving vehicle, the inspector may use a loudhailer to identify the inspector is exercising powers.
 - 2 If the inspector is standing at the side of the road, the inspector may use a sign to identify the inspector is exercising powers.
- (3) When the vehicle stops, the inspector must immediately produce the inspector's identity card for the inspection of the person in control of the vehicle.
 - (4) Subsection (3) applies despite section 136.

156 Failure to comply with direction

- (1) The person in control of the vehicle must comply with a direction under section 154 unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for the person not to comply with a direction if—
 - (a) the vehicle is moving and the inspector has not complied with section 155; or
 - (b) to comply immediately would endanger the person or someone else or cause loss or damage to property, and the person complies as soon as it is practicable to do so.
- (3) Subsection (2) does not limit what may be a reasonable excuse for subsection (1).

-
- (4) A person does not commit an offence against subsection (1) if—
- (a) the direction the person fails to comply with is given under section 154(2); and
 - (b) the person is not given an offence warning for the direction.

Division 2 General powers of inspectors after entering places

157 Application of division

- (1) The powers under this division may be exercised if an inspector enters a place under section 140(1)(a), (c), (d) or (e).
- (2) However, if the inspector enters a place under section 140(1)(a) or (c), the powers under this division are subject to any conditions of the consent or terms of the warrant.

158 General powers

- (1) The inspector may do any of the following (each a *general power*)—
 - (a) search any part of the place;
 - (b) inspect, examine or film any part of the place or anything at the place;
 - (c) take for examination a thing, or a sample of or from a thing, at the place;
 - (d) place an identifying mark in or on anything at the place;
 - (e) take an extract from, or copy, a document at the place, or take the document to another place to copy;
 - (f) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic

document to another place to produce an image or writing;

- (g) take to, into or onto the place and use any person, equipment and materials the inspector reasonably requires for exercising the inspector's powers under this part;
 - (h) remain at the place for the time necessary to achieve the purpose of the entry.
- (2) The inspector may take a necessary step to allow the exercise of a general power.
 - (3) If the inspector takes a document from the place to copy it, the inspector must copy the document and return it to the place as soon as practicable.
 - (4) If the inspector takes from the place an article or device reasonably capable of producing a document from an electronic document to produce the document, the inspector must produce the document and return the article or device to the place as soon as practicable.
 - (5) In this section—

examine includes analyse, test, account, measure, weigh, grade, gauge and identify.

film includes photograph, videotape and record an image in another way.

inspect, a thing, includes open the thing and examine its contents.

159 Power to require reasonable help

- (1) The inspector may make a requirement (a *help requirement*) of an occupier of the place or a person at the place to give the inspector reasonable help to exercise a general power, including, for example, to produce a document or to give information.
- (2) When making the help requirement, the inspector must give the person an offence warning for the requirement.

160 Offence to contravene help requirement

- (1) A person of whom a help requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.
- (3) However, subsection (2) does not apply if a document or information the subject of the help requirement is required to be held or kept by the individual under this Act.

Note—

See, however, section 188.

Division 3 Seizure by inspectors and forfeiture

Subdivision 1 Power to seize

161 Seizing evidence at a place that may be entered without consent or warrant

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

162 Seizing evidence at a place that may be entered only with consent or warrant

- (1) This section applies if—
- (a) an inspector is authorised to enter a place only with the consent of an occupier of the place or a warrant; and
 - (b) the inspector enters the place after obtaining the consent or under a warrant.

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

163 Seizure of property subject to security

- (1) An inspector may seize a thing, and exercise powers relating to the thing, despite a lien or other security over the thing claimed by another person.
- (2) However, the seizure does not affect the other person's claim to the lien or other security against a person other than the inspector or a person acting under the direction or authority of the inspector.

Subdivision 2 Powers to support seizure

164 Power to secure seized thing

- (1) Having seized a thing under this division, an inspector may—

-
- (a) leave it at the place where it was seized (the *place of seizure*) and take reasonable action to restrict access to it; or
 - (b) move it from the place of seizure.
- (2) For subsection (1)(a), the inspector may, for example—
- (a) seal the thing, or the entrance to the place of seizure, and mark the thing or place to show access to the thing or place is restricted; or
 - (b) for equipment—make it inoperable; or
- Example—*
- make it inoperable by dismantling it or removing a component without which the equipment can not be used
- (c) require a person the inspector reasonably believes is in control of the place or thing to do an act mentioned in paragraph (a) or (b) or anything else an inspector could do under subsection (1)(a).

165 Offence to contravene other seizure requirement

A person must comply with a requirement made of the person under section 164(2)(c) unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

166 Offence to interfere

- (1) If access to a seized thing is restricted under section 164, a person must not tamper with the thing or with anything used to restrict access to the thing without—
 - (a) an inspector's approval; or
 - (b) a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If access to a place is restricted under section 164, a person must not enter the place in contravention of the restriction or

tamper with anything used to restrict access to the place without—

- (a) an inspector's approval; or
- (b) a reasonable excuse.

Maximum penalty—100 penalty units.

Subdivision 3 Safeguards for seized things

167 Receipt and information notice for seized thing

- (1) This section applies if an inspector seizes anything under this division unless—
 - (a) the inspector reasonably believes there is no-one apparently in possession of the thing or it has been abandoned; or
 - (b) because of the condition, nature and value of the thing it would be unreasonable to require the inspector to comply with this section.
- (2) The inspector must, as soon as practicable after seizing the thing, give an owner or person in control of the thing before it was seized—
 - (a) a receipt for the thing that generally describes the thing and its condition; and
 - (b) an information notice about the decision to seize it.
- (3) However, if an owner or person from whom the thing is seized is not present when it is seized, the receipt and information notice may be given by leaving them in a conspicuous position and in a reasonably secure way at the place at which the thing is seized.
- (4) The receipt and information notice may—
 - (a) be given in the same document; and
 - (b) relate to more than 1 seized thing.

- (5) The inspector may delay giving the receipt and information notice if the inspector reasonably suspects giving them may frustrate or otherwise hinder an investigation by the inspector under this part.
- (6) However, the delay may be only for so long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place at which the thing was seized to keep it under observation.

168 Access to seized thing

- (1) Until a seized thing is forfeited or returned, the inspector who seized the thing must allow an owner of the thing—
 - (a) to inspect it at any reasonable time and from time to time; and
 - (b) if it is a document—to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.
- (3) The inspection or copying must be allowed free of charge.

169 Return of seized thing

- (1) This section applies if a seized thing is not—
 - (a) forfeited or transferred under subdivision 4 or 5; or
 - (b) subject to a disposal order under section 174.
- (2) As soon as the chief executive stops being satisfied there are reasonable grounds for retaining the thing, the chief executive must return it to its owner.
- (3) If the thing is not returned to its owner within 3 months after it was seized, the owner may apply to the chief executive for its return.
- (4) Within 30 days after receiving the application, the chief executive must—

- (a) if the chief executive is satisfied there are reasonable grounds for retaining the thing and decides to retain it—give the owner notice of the decision, including the grounds for retaining the thing; or
 - (b) otherwise—return the thing to the owner.
- (5) For this section, there are reasonable grounds for retaining a seized thing if—
- (a) the thing is being, or is likely to be, examined; or
 - (b) the thing is needed, or may be needed, for the purposes of—
 - (i) a proceeding for an offence against this Act that is likely to be started or that has been started but not completed; or
 - (ii) an appeal from a decision in a proceeding for an offence against this Act; or
 - (c) it is not lawful for the owner to possess the thing.
- (6) Subsection (5) does not limit the grounds that may be reasonable grounds for retaining the seized thing.
- (7) Nothing in this section affects a lien or other security over the seized thing.
- (8) In this section—
examine includes analyse, test, measure, weigh, grade, gauge and identify.

Subdivision 4 Forfeiture

170 Forfeiture by chief executive decision

- (1) The chief executive may decide a seized thing is forfeited to the State if an inspector—
- (a) after making reasonable inquiries, can not find an owner; or

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- (b) after making reasonable efforts, can not return it to an owner; or
 - (c) reasonably believes it is necessary to keep the thing to prevent it being used to commit the offence for which it was seized.
- (2) However, the inspector is not required to—
- (a) make inquiries if it would be unreasonable to make inquiries to find an owner; or
 - (b) make efforts if it would be unreasonable to make efforts to return the thing to an owner.
- Example for paragraph (b)—*
- The owner of the thing has migrated to another country.
- (3) Regard must be had to the thing's condition, nature and value in deciding—
- (a) whether it is reasonable to make inquiries or efforts; and
 - (b) if inquiries or efforts are made—what inquiries or efforts, including the period over which they are made, are reasonable.

171 Information notice about forfeiture decision

- (1) If the chief executive decides under section 170(1) to forfeit a thing, the chief executive must as soon as practicable give a person who owned the thing immediately before the forfeiture (the *former owner*) an information notice about the decision.
- (2) If the decision was made under section 170(1)(a) or (b), the information notice may be given by leaving it at the place where the thing was seized, in a conspicuous position and in a reasonably secure way.
- (3) The information notice must state that the former owner may apply for a stay of the decision if the owner appeals against the decision.
- (4) However, subsections (1) to (3) do not apply if—

- (a) the decision was made under section 170(1)(a) or (b);
and
- (b) the place where the thing was seized is—
 - (i) a public place; or
 - (ii) a place where the notice is unlikely to be read by
the former owner.

Subdivision 5 Dealing with property forfeited or transferred to State

172 When thing becomes property of the State

A thing becomes the property of the State if—

- (a) the thing is forfeited to the State under section 170(1);
or
- (b) the owner of the thing and the State agree, in writing, to
the transfer of the ownership of the thing to the State.

173 How property may be dealt with

- (1) This section applies if, under section 172, a thing becomes the
property of the State.
- (2) The chief executive may deal with the thing as the chief
executive considers appropriate, including, for example, by
destroying it or giving it away.
- (3) The chief executive must not deal with the thing in a way that
could prejudice the outcome of an appeal against the
forfeiture under this part.
- (4) If the chief executive sells the thing, the chief executive must,
after deducting the costs of the sale, make reasonable efforts
to return the proceeds of the sale to the former owner of the
thing.
- (5) This section is subject to any disposal order made under
section 174 for the thing.

Division 4 Disposal orders

174 Disposal order

- (1) This section applies if a person is convicted of an offence against this Act.
- (2) The court may make an order (a *disposal order*), on its own initiative or on an application by the prosecution, for the disposal of any of the following things owned by the person—
 - (a) anything that was the subject of, or used to commit, the offence;
 - (b) another thing the court considers is likely to be used by the person or another person in committing a further offence against this Act.
- (3) The court may make a disposal order for a thing—
 - (a) whether or not it has been seized under this part; and
 - (b) if the thing has been seized—whether or not it has been returned to the former owner.
- (4) In deciding whether to make a disposal order for a thing, the court—
 - (a) may require notice to be given to any person the court considers appropriate, including, for example, a person who may have any property in the thing; and
 - (b) must hear any submissions that a person claiming to have any property in the thing may wish to make.
- (5) The court may make any order it considers appropriate to enforce the disposal order.
- (6) This section does not limit the court's powers under another law.

Division 5 Other information-obtaining powers of inspectors

175 Power to require name and address

- (1) This section applies if an inspector—
 - (a) finds a person committing an offence against this Act; or
 - (b) finds a person in circumstances that lead the inspector to reasonably suspect the person has just committed an offence against this Act; or
 - (c) has information that leads the inspector to reasonably suspect a person has just committed an offence against this Act.
- (2) The inspector may require the person to state the person's name and residential address.
- (3) The inspector may also require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to—
 - (a) be in possession of evidence of the correctness of the stated name or address; or
 - (b) otherwise be able to give the evidence.
- (4) When making a personal details requirement, the inspector must give the person an offence warning for the requirement.
- (5) A requirement under this section is a *personal details requirement*.

176 Offence to contravene personal details requirement

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

Maximum penalty—50 penalty units.

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- (2) A person may not be convicted of an offence against subsection (1) unless the person is found guilty of the offence in relation to which the personal details requirement was made.

177 Power to require production of document

- (1) An inspector may require a person to make available for inspection by an inspector, or to produce to an inspector for inspection, at a reasonable time and place nominated by the inspector—
- (a) a document given to the person under this Act; or
 - (b) a document required to be kept by the person under this Act; or
 - (c) if a document or information required to be kept by the person under this Act is stored or recorded by means of a device—a document that is a clear written reproduction of the stored or recorded document or information.
- (2) A requirement under subsection (1) is a ***document production requirement***.
- (3) For an electronic document, compliance with the document production requirement requires the making available or production of a clear written reproduction of the electronic document.
- (4) The inspector may keep the document to copy it.
- (5) If the inspector copies the document, or an entry in the document, the inspector may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.
- (6) A requirement under subsection (5) is a ***document certification requirement***.
- (7) The inspector must return the document to the person as soon as practicable after copying it.

- (8) However, if a document certification requirement is made of a person, the inspector may keep the document until the person complies with the requirement.

178 Offence to contravene document production requirement

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

Maximum penalty—50 penalty units.

- (2) It is not a reasonable excuse for a person to fail to comply with a document production requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.

Note—

See, however, section 188.

- (3) The inspector must inform the person, in a way that is reasonable in the circumstances, that—
- (a) the person must comply with the document production requirement even though complying might tend to incriminate the person or expose the person to a penalty; and
 - (b) if the person is an individual—there is a limited immunity under section 188 against the future use of the information or document given in compliance with the requirement.
- (4) If the person fails to comply with the document production requirement when the inspector has failed to comply with subsection (3), the person may not be convicted of the offence against subsection (1).
- (5) If a court convicts a person of an offence against subsection (1), the court may, as well as imposing a penalty for the offence, order the person to comply with the document production requirement.

179 Offence to contravene document certification requirement

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

Maximum penalty—50 penalty units.

- (2) It is not a reasonable excuse for a person to fail to comply with a document certification requirement on the basis that complying with the requirement might tend to incriminate the person or expose the person to a penalty.

Note—

See, however, section 188.

- (3) The inspector must inform the person, in a way that is reasonable in the circumstances, that—
- (a) the person must comply with the document certification requirement even though complying might tend to incriminate the person or expose the person to a penalty; and
 - (b) if the person is an individual—there is a limited immunity under section 188 against the future use of the information or document given in compliance with the requirement.
- (4) If the person fails to comply with the document certification requirement when the inspector has failed to comply with subsection (3), the person may not be convicted of the offence against subsection (1).

180 Power to require information

- (1) This section applies if an inspector reasonably believes—
- (a) an offence against this Act has been committed; and
 - (b) a person may be able to give information about the offence.

- (2) The inspector may, by notice given to the person, require the person to give the inspector information related to the offence by a stated reasonable time.
- (3) For information that is an electronic document, compliance with the information requirement requires the giving of a clear image or written version of the electronic document.

181 Offence to contravene information requirement

- (1) A person of whom a requirement is made under section 180(2) must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for an individual not to give the information if giving the information might tend to incriminate the individual or expose the individual to a penalty.

Part 5 Miscellaneous provisions relating to inspectors

Division 1 Damage

182 Duty to avoid inconvenience and minimise damage

In exercising a power, an inspector must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

Note—

See also section 184.

183 Notice of damage

- (1) This section applies if—

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- (a) an inspector damages something when exercising, or purporting to exercise, a power; or
 - (b) a person (the *assistant*) acting under the direction or authority of an inspector damages something.
 - (2) However, this section does not apply to damage the inspector reasonably considers is trivial or if the inspector reasonably believes—
 - (a) there is no-one apparently in possession of the thing; or
 - (b) the thing has been abandoned.
 - (3) The inspector must give notice of the damage to a person who appears to the inspector to be an owner, or person in control, of the thing.
 - (4) However, if for any reason it is not practicable to comply with subsection (3), the inspector must—
 - (a) leave the notice at the place where the damage happened; and
 - (b) ensure the notice is left in a conspicuous position and in a reasonably secure way.
 - (5) The inspector may delay complying with subsection (3) or (4) if the inspector reasonably suspects complying with the subsection may frustrate or otherwise hinder the performance of the inspector's functions.
 - (6) The delay may be only for so long as the inspector continues to have the reasonable suspicion and remains in the vicinity of the place.
 - (7) If the inspector believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the inspector or the assistant, the inspector may state the belief in the notice.
 - (8) The notice must state—
 - (a) particulars of the damage; and
 - (b) that the person who suffered the damage may claim compensation under section 184.

Division 2 Compensation

184 Compensation for exercise of powers generally

- (1) A person may claim compensation from the State if the person incurs loss because of the exercise, or purported exercise, of a power by or for an inspector including a loss arising from compliance with a requirement made of the person under part 4, division 3 or 5.
- (2) The compensation may be claimed and ordered in a proceeding—
 - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
 - (b) for an alleged offence against this Act the investigation of which gave rise to the claim for compensation.
- (3) The court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.
- (4) Section 182 does not provide for a statutory right of compensation other than as provided by this section.
- (5) In this section—

loss includes costs and damage.

Division 3 Other offences relating to inspectors

185 Giving inspector false or misleading information

- (1) A person must not, in relation to the administration of this Act, give an inspector information the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

- (2) Subsection (1) applies to information given in relation to the administration of this Act whether or not the information was given in response to a specific power under this Act.
- (3) Subsection (1) does not apply to a person if the person, when giving information in a document—
 - (a) tells the inspector, to the best of the person's ability, how the document is false or misleading; and
 - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

186 Obstructing inspector

- (1) A person must not obstruct an inspector exercising a power, or someone helping an inspector exercising a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed an inspector, or someone helping an inspector, and the inspector decides to proceed with the exercise of the power, the inspector must warn the person that—
 - (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and
 - (b) the inspector considers the person's conduct an obstruction.
- (3) In this section—

obstruct includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

187 Impersonating inspector

A person must not impersonate an inspector.

Maximum penalty—100 penalty units.

Division 4 Other provisions

188 Evidential immunity for individuals complying with particular requirements

- (1) Subsection (2) applies if an individual gives or produces information or a document to an inspector under section 159 or 177.
- (2) Evidence of the information or document, and other evidence directly or indirectly derived from the information or document, is not admissible against the individual in any proceeding to the extent the evidence tends to incriminate the individual, or expose the individual to a penalty, in the proceeding.
- (3) Subsection (2) does not apply to—
 - (a) a proceeding about the false or misleading nature of the information or anything in the document or in which the false or misleading nature of the information or document is relevant evidence; or
 - (b) a proceeding in relation to administrative action taken against the individual; or
 - (c) a proceeding in relation to a compliance notice applying to the individual.

Part 6 State analysts and analysis of things

189 Appointment and qualifications of State analyst

- (1) The chief executive may appoint any of the following persons as a State analyst—
 - (a) a health service employee;
 - (b) a public service employee;
 - (c) other persons prescribed by regulation.

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- (2) However, the chief executive may appoint a person as a State analyst only if the chief executive is satisfied the person is appropriately qualified.

190 Appointment conditions of State analyst

- (1) A State analyst holds office on any conditions stated in—
- (a) the State analyst's instrument of appointment; or
 - (b) a signed notice given to the State analyst; or
 - (c) a regulation.
- (2) In this section—
signed notice means a notice signed by the chief executive.

191 When office of State analyst ends

- (1) The office of a person as a State analyst ends if any of the following happens—
- (a) the term of office stated in a condition of office ends;
 - (b) under another condition of office, the office ends;
 - (c) the State analyst's resignation under section 192 takes effect.
- (2) Subsection (1) does not limit the ways the office of a person as a State analyst ends.
- (3) In this section—
condition of office means a condition under which the State analyst holds office.

192 Resignation of State analyst

A State analyst may resign by signed notice given to the chief executive.

193 Chief executive may approve laboratory

The chief executive may approve a laboratory to analyse things taken under this Act if the chief executive is satisfied the laboratory has the resources and expertise to conduct the analysis.

194 Analysis

- (1) If an inspector takes a thing for analysis under this Act, the inspector must, as soon as practicable, give the thing to a State analyst for analysis.
- (2) The State analyst must, as soon as practicable after receiving the thing—
 - (a) analyse the thing; or
 - (b) give the thing to another person for analysis at a laboratory approved under section 193.
- (3) If the thing is analysed by the State analyst, the State analyst must, as soon as practicable after analysing the thing—
 - (a) complete a certificate of analysis for the thing; and
 - (b) give the certificate to the inspector who took the thing for analysis.
- (4) If the thing is analysed at a laboratory approved under section 193, the State analyst must, as soon as practicable after the thing is analysed—
 - (a) obtain a certificate of analysis for the thing from the person at the laboratory who analysed the thing; and
 - (b) give the certificate to the inspector who took the thing for analysis.

195 Certificate of analysis to indicate method used

A certificate of analysis completed under section 194 must include information about the method used to conduct the analysis.

Chapter 6 Reviews and legal proceedings

Part 1 Review of decisions

Division 1 Preliminary

196 Definitions for part

In this part—

affected person, in relation to a decision, means—

- (a) if the decision is an original decision—a person who is given, or is entitled to be given, an information notice for the decision; or
- (b) if the decision is an internal review decision—the person who applied for the internal review.

internal review, of an original decision, see section 198(1).

internal review decision means a decision made, or taken to have been made, under section 200 on an application for internal review of an original decision.

original decision means a decision for which an information notice must be given under this Act, other than a decision to seize or forfeit a thing under chapter 5, part 4.

Division 2 Internal review

197 Review process must start with internal review

- (1) An affected person for an original decision may apply to QCAT for a review of the decision only if a decision on an application for internal review of the decision has been made, or is taken to have been made, under this division.

- (2) Subsection (1) does not apply to a decision about compensation made under section 128.

198 Who may apply for internal review

- (1) An affected person for an original decision may apply to the chief executive for a review of the decision under this division (an *internal review*).
- (2) If the affected person has not been given an information notice for the original decision, the affected person may ask the chief executive for an information notice for the decision.
- (3) A failure by the chief executive to give the affected person an information notice for the original decision does not limit or otherwise affect the person's right to apply for an internal review of the decision.

199 Requirements for application

- (1) An application for internal review of an original decision must—
 - (a) be in the approved form; and
 - (b) for a person who has been given an information notice for the decision—include enough information to enable the chief executive to decide the application; and
 - (c) be made to the chief executive within—
 - (i) for a person who has been given an information notice for the decision—14 days after the day the person is given the notice; or
 - (ii) for a person who has not been given an information notice for the decision—28 days after the day the person becomes aware of the decision.
- (2) The chief executive may, at any time, extend the period within which the application may be made.
- (3) The application does not affect the operation of the decision or prevent the decision being implemented.

Note—

Division 3 provides for a stay of the original decision.

200 Internal review

- (1) The chief executive must, within 28 days after receiving an application for internal review of an original decision—
 - (a) review the original decision; and
 - (b) decide to—
 - (i) confirm the original decision; or
 - (ii) amend the original decision; or
 - (iii) substitute another decision for the original decision; and
 - (c) give the affected person for the original decision a QCAT information notice for the decision under paragraph (b).
- (2) The chief executive and the affected person may, before the period stated in subsection (1) ends, agree to a longer period for the chief executive to comply with the subsection.
- (3) The application may be dealt with only by a person who—
 - (a) did not make the original decision; and
 - (b) holds a more senior office than the person who made the original decision.
- (4) Subsection (3) does not apply to an original decision made by the chief executive personally.
- (5) If the chief executive does not give the affected person a QCAT information notice within the period required under subsection (1) or a longer period agreed under subsection (2), the chief executive is taken to confirm the original decision.

Division 3 Stays

201 QCAT may stay operation of original decision

- (1) An affected person for an original decision may apply to QCAT, in the way provided under the QCAT Act, for a stay of the operation of the decision.
- (2) The application may be made at any time within the period within which an application for an internal review of the original decision may be made under division 2.
- (3) QCAT may make an order staying the operation of the original decision only if it considers the order is desirable after having regard to the following—
 - (a) the interests of any person whose interests may be affected by the making of the order or the order not being made;
 - (b) any submission made to QCAT by the entity that made the original decision;
 - (c) the public interest.
- (4) Subsection (3)(a) does not require QCAT to give a person whose interests may be affected by the making of the order, or the order not being made, an opportunity to make submissions for QCAT's consideration if it is satisfied it is not practicable because of the urgency of the case or for another reason.
- (5) A stay by QCAT under this section—
 - (a) may be given on conditions QCAT considers appropriate; and
 - (b) operates for the period fixed by QCAT; and
 - (c) may be amended or revoked by QCAT.
- (6) The period of a stay by QCAT under this section must not extend past—
 - (a) the end of the period within which an application for an internal review of the original decision may be made under division 2; or

- (b) if an application for an internal review of the original decision is made under division 2—the end of the period within which an application for a review of the internal review decision may be made under the QCAT Act.

Note—

The QCAT Act, section 22(3) enables QCAT to stay the operation of the internal review decision, either on application by a person or on its own initiative.

Division 4 External review

202 Applying for external review

- (1) This section applies to a person who must be given a QCAT information notice for a decision.

Note—

The chief executive must give a QCAT information notice for an internal review decision and a decision about compensation under section 128.

- (2) The person may apply to QCAT, as provided under the QCAT Act, for a review of the internal review decision or a decision about compensation under section 128.

Note—

The QCAT Act, section 22(3) enables QCAT to stay the operation of the internal review decision, either on application by a person or on its own initiative.

Division 5 Appeals

203 Appealing seizure or forfeiture decision

- (1) This section applies to a person who must be given an information notice for a decision of the chief executive (a *property decision*) to seize or forfeit a thing under chapter 5, part 4.

- (2) The person may appeal to a Magistrates Court (the *court*) against the property decision by filing a notice of appeal with the registrar of the court.
- (3) The notice of appeal must state fully the grounds of the appeal.
- (4) The person must file the notice of appeal within 28 days after an information notice for the decision is given to the person or the person otherwise becomes aware of the decision.
- (5) However, the court may, on application and at any time, extend the time for filing the notice of appeal.
- (6) The person must serve a copy of the notice of appeal, and any application to extend the time for filing the notice of appeal, on the chief executive.
- (7) The appeal does not affect the operation of the property decision or prevent the property decision being implemented.

204 Staying operation of decision

- (1) A person mentioned in section 203(1) may apply to the court for a stay of the operation of the property decision.
- (2) The court may, by order, stay the operation of the property decision to secure the effectiveness of the appeal.
- (3) The court may stay the operation of the property decision on conditions the court considers appropriate.
- (4) The stay operates for the period decided by the court.
- (5) However, the period of the stay must not extend past the time when the court decides the appeal.

205 Powers of court on appeal

- (1) When deciding the appeal against a property decision, the court—
 - (a) has the same powers as the chief executive in making the property decision; and

- (b) is not bound by the rules of evidence; and
 - (c) must comply with natural justice.
- (2) An appeal is by way of rehearing.
- (3) The court may—
- (a) confirm the property decision; or
 - (b) substitute another decision for the property decision; or
 - (c) set aside the property decision and return the matter to the chief executive with directions the court considers appropriate.

206 Effect of court's decision on appeal

- (1) If the court substitutes another decision for the property decision—
- (a) the substituted decision is taken to be a decision of the chief executive; and
 - (b) the chief executive may give effect to the substituted decision as if—
 - (i) the substituted decision were the original decision of the chief executive; and
 - (ii) no application for review or appeal of the original decision had been made.
- (2) If the court sets aside the property decision and returns the matter to the chief executive with directions, any decision made by the chief executive in accordance with the directions may not be reviewed or appealed against under this part.

Part 2 Legal proceedings

Division 1 Evidence

207 Application of division

This division applies to a legal proceeding under this Act.

208 Evidentiary aids generally

- (1) A certificate purporting to be signed by the chief executive stating any of the following matters is evidence of the matter—
- (a) a stated document is 1 of the following things made, granted, given, issued or kept under this Act—
 - (i) an appointment or decision;
 - (ii) a direction, notice or requirement;
 - (iii) a record in a database or register;
 - (iv) a departmental standard;
 - (v) an emergency order;
 - (vi) an extended practice authority;
 - (vii) a substance authority;
 - (b) a stated document is a code, guideline, protocol or other standard mentioned in this Act;
 - (c) a stated document is a document given to the chief executive under this Act;
 - (d) a stated document is a copy of, or an extract from a part of, a thing mentioned in paragraph (a), (b) or (c);
 - (e) on a stated day, or for a stated period, a substance authority—
 - (i) was or was not in force; or
 - (ii) was or was not subject to a stated condition;

- (f) on a stated day, or for a stated period, an appointment as an inspector or State analyst was or was not in force for a stated person;
- (g) on a stated day—
 - (i) a stated person was given a stated notice or direction under this Act; or
 - (ii) a stated requirement under this Act was made of a stated person; or
 - (iii) a stated amount is payable under this Act by a stated person and has not been paid.
- (2) In a complaint starting a proceeding, a statement that the matter came to the knowledge of the complainant on a stated day is evidence of when the matter came to the complainant's knowledge.
- (3) A certificate purporting to be that of a State analyst in relation to a thing seized or taken by an inspector under chapter 5 and stating any of the following matters is evidence of the matters—
 - (a) the analyst's qualifications;
 - (b) the analyst took, or received from a stated person, the thing;
 - (c) the thing was analysed at a stated place on a stated day or during a stated period;
 - (d) the method used to analyse the thing;
 - (e) the results of the analysis.
- (4) In a proceeding in which the chief executive applies under section 213 to recover costs incurred by the chief executive, a certificate by the chief executive stating that stated costs were incurred and the way in which, and purpose for which, they were incurred is evidence of the matters stated.

209 Evidence of regulated substance

- (1) This section applies in relation to a legal proceeding in which it is necessary to prove that a particular substance is a regulated substance.
- (2) Evidence that a regulated substance is commonly supplied under the same name or description as the particular substance is evidence that the particular substance is the same type of regulated substance.
- (3) Evidence that the particular substance, or a container for the particular substance, is labelled or marked in the way required under this Act for a type of regulated substance is evidence that the particular substance is the same type of regulated substance.

210 Health assessment not admissible

- (1) This section applies to a report about a person's health assessment done by a medical practitioner under section 90.
- (2) The report is not admissible as evidence in a legal proceeding, other than a review proceeding relating to the report.
- (3) A person can not be compelled to produce the report, or to give evidence about the report or its contents, in a proceeding, other than a review proceeding relating to the report.
- (4) Subsections (2) and (3) do not apply if the person to whom the report relates consents to the report being admitted, produced or given as evidence.
- (5) In this section—

review proceeding means a proceeding for an internal review or external review under part 1.

Division 2 Proceedings

211 Offences against this Act

- (1) A proceeding for an offence against this Act is to be heard and decided summarily.
- (2) A proceeding for the offence must start within the later of the following periods to end—
 - (a) 1 year after the offence was allegedly committed;
 - (b) 6 months after the offence comes to the complainant's knowledge, but within 2 years after the offence was allegedly committed.

212 Proceeding not to commence if compliance notice in effect

- (1) This section applies to a person given a compliance notice in relation to a provision that it is an offence to contravene.
- (2) The person can not be prosecuted for the offence unless the person—
 - (a) fails to comply with the compliance notice; and
 - (b) does not have a reasonable excuse for failing to comply.

213 Recovery of particular costs of investigation

- (1) This section applies if—
 - (a) a court convicts a person of an offence against this Act; and
 - (b) the chief executive applies to the court for an order against the person for the payment of costs incurred by the State for the investigation of the offence; and
 - (c) the court finds the costs—

- (i) were not, and could not reasonably have been, expected to be incurred for the investigation of the offence; and
 - (ii) were reasonably incurred.
- (2) The court may order the person to pay the State an amount equal to the costs if it is satisfied it would be just to make the order in the circumstances of the particular case.
- (3) In deciding whether to make the order, the court must have regard to—
 - (a) the extent to which the person’s conduct during the investigation contributed to the costs being incurred; and
 - (b) whether the offence was committed, wholly and partly, for a commercial purpose; and
 - (c) any other relevant matter.
- (4) This section does not limit the court’s powers under the *Penalties and Sentences Act 1992* or another law.
- (5) An application to a court under this section, and any order made by the court on the application, is a judgment in the court’s civil jurisdiction.
- (6) Any issue is to be decided on the balance of probabilities.

214 Executive officer may be taken to have committed offence

- (1) If a corporation commits an offence against a serious offence provision, each executive officer of the corporation is taken to have also committed the offence if—
 - (a) the officer authorised or permitted the corporation’s conduct constituting the offence; or
 - (b) the officer was, directly or indirectly, knowingly concerned in the corporation’s conduct.
- (2) The executive officer may be proceeded against for, and convicted of, the offence whether or not the corporation has been proceeded against for, or convicted of, the offence.

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- (3) This section does not affect either of the following—
- (a) the liability of the corporation for the offence;
 - (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence.
- (4) In this section—
- serious offence provision* means each of the following provisions—
- a provision of chapter 2, part 1, division 1
 - sections 42, 43, 44, 46, 47, 48, 71, 93(1) and (3), 94, 110, 116 and 125.

Chapter 7 General

Part 1 Criminal history

215 Exceptions to criminal history disclosure requirements

The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to a request, disclosure or notification made in relation to a person's criminal history provided under this part.

216 Criminal history report

- (1) The chief executive may ask the police commissioner for a written report (a *criminal history report*) about the criminal history of a person that includes a brief description of the circumstances of a conviction or allegation mentioned in the criminal history.
- (2) However, the chief executive may make the request only if—

- (a) the chief executive is considering whether the person is a fit and proper person in relation to a substance authority or whether to take administrative action in relation to the person; and
 - (b) the person has given the chief executive written consent for the request.
- (3) The police commissioner must comply with the request.
- (4) However, the duty to comply applies only to information in the police commissioner's possession or to which the commissioner has access.

217 Changes in criminal history must be disclosed

- (1) This section applies if—
- (a) the chief executive has obtained a criminal history report about a person; and
 - (b) the person is later convicted of an indictable offence; and
 - (c) at the time of the conviction, the person—
 - (i) is an approved person; or
 - (ii) is a relevant person for a substance authority.
- (2) The person must, within 14 days after the conviction, give notice of the conviction to the chief executive, unless the person has a reasonable excuse.
- Maximum penalty—100 penalty units.
- (3) The notice must include the following information—
- (a) the existence of the conviction;
 - (b) details adequate to identify the offence of which the person was convicted;
 - (c) when the offence was committed;
 - (d) the sentence imposed on the person.

218 Destruction of criminal history information

The chief executive must ensure any document containing information from a criminal history report or a notice under section 217 is destroyed as soon as practicable after it is no longer needed for the purpose for which it was given.

Note—

See part 2 about the confidentiality of information, including criminal history information.

Part 2 Confidentiality

219 Definitions for part

In this part—

administrator means—

- (a) a person who is, or was, the chief executive; or
- (b) a person who is, or was, employed by the chief executive for performing a function, or exercising a power, of the chief executive under this Act; or
- (c) a person who is, or was, employed in the department in which this Act is, or was, administered for performing a function, or exercising a power, of the chief executive under this Act.

confidential information—

- (a) means the following information that has become known to an administrator in the course of performing the administrator's functions under this Act—
 - (i) personal information;
 - (ii) information that would be likely to damage the commercial activities of a person to whom the information relates; but
- (b) does not include criminal history information or information that is lawfully available to the public.

220 Confidentiality of information

- (1) An administrator must not, directly or indirectly, disclose confidential information or criminal history information to another person unless the disclosure is permitted under subsection (2).

Maximum penalty—50 penalty units.

- (2) The administrator is permitted to disclose confidential information to another person—
- (a) under this Act; or
 - (b) if the disclosure is otherwise required or permitted by law; or
 - (c) if the person to whom the information relates consents to the disclosure; or
 - (d) if the disclosure is in a form that does not identify the person to whom the information relates.
- (3) Subsection (2) applies despite the *Hospital and Health Boards Act 2011*, section 142.

221 Disclosure of information to entities performing relevant functions

- (1) An administrator may disclose confidential information—
- (a) to a health ombudsman official; or
 - (b) to a coroner investigating the death of a person under the *Coroners Act 2003*; or
 - (c) to the chief executive of the department in which the *Food Act 2006* or the *Food Production (Safety) Act 2000* is administered; or
 - (d) to a Hospital and Health Service established under the *Hospital and Health Boards Act 2011*, section 17; or
 - (e) to the Veterinary Surgeons Board of Queensland established under the *Veterinary Surgeons Act 1936*, section 4; or

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- (f) to an entity of the State or another jurisdiction responsible for law enforcement, for the purposes of detecting, investigating, preventing or prosecuting an offence in relation to a regulated substance; or
 - (g) to the Australian Health Practitioner Regulation Agency, or a National Health Practitioner Board, established under the Health Practitioner Regulation National Law; or
 - (h) to the Australian Pesticides and Veterinary Medicines Authority for performing its functions under the *Agricultural and Veterinary Chemicals Act 1994* (Cwlth) or the *Agricultural and Veterinary Chemicals Code Act 1994* (Cwlth); or
 - (i) to the Secretary under the *Therapeutic Goods Act 1989* (Cwlth) for performing the Secretary's functions under that Act or the *Therapeutic Goods Act 2019*; or
 - (j) to another corresponding law entity; or
 - (k) to another entity of the Commonwealth or another State for performing its functions relating to—
 - (i) a practitioner law; or
 - (ii) the management of health and safety risks in public places and workplaces; or
 - (iii) the importation or exportation of goods or substances into or from Australia; or
 - (l) to a foreign regulatory authority for performing its functions relating to the importation or exportation of regulated substances into or from Australia.
- (2) However, an administrator may disclose confidential information to an entity under subsection (1) only if the administrator is satisfied—
- (a) the disclosure is reasonably necessary for the entity to exercise its functions; and
 - (b) the confidential information will be collected, stored and used by the entity in a way that protects the privacy

of the persons to whom the information relates from unjustified intrusion.

- (3) This section does not limit, and is not limited by, section 231.

Note—

Section 231 allows the chief executive to give information to a person from the administrative action register and the substance authority register.

- (4) However, this section is subject to section 227 in relation to the disclosure of information in the monitored medicines database.

- (5) In this section—

corresponding law entity means an entity of the Commonwealth or another State that administers, or performs functions in relation to, a corresponding law.

practitioner law means—

- (a) in relation to a health practitioner—the Health Practitioner Regulation National Law; or
- (b) in relation to a veterinary surgeon—the *Veterinary Surgeons Act 1936* or a law of another State that provides for, or provided for, the same or similar matters as that Act.

222 Disclosure for therapeutic treatment of person

An administrator may disclose confidential information to a health practitioner if—

- (a) the health practitioner is providing therapeutic treatment to the person to whom the information relates; and
- (b) the disclosure is reasonably necessary for the therapeutic treatment of the person.

223 Requests by chief executive for information

- (1) Subsection (2) applies if the chief executive considers a public sector unit has information, including confidential

information, that is reasonably necessary for the chief executive to—

- (a) carry out the chief executive's functions under this Act; and
 - (b) urgently prevent a health risk in relation to a substance.
- (2) The chief executive may, by notice, direct the head of the public sector unit to give the chief executive the information within a stated reasonable time.
- (3) The head of the public sector unit must comply with the notice unless the head considers the disclosure of the information—
- (a) would prejudice the investigation of a contravention, or possible contravention, of a law; or
 - (b) would prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or otherwise dealing with a contravention or possible contravention of a law; or
 - (c) would endanger a person's life or physical safety.
- (4) However, in complying with the notice, the head of the public sector unit and the chief executive must ensure—
- (a) the information given to the chief executive relates only to the chief executive's functions under this Act; and
 - (b) to the extent possible, the privacy of a person to whom the information relates is protected from unjustified intrusion.
- (5) In this section—
- head**, of a public sector unit, means the chief executive of the unit.

Part 3 Databases and registers

Division 1 Monitored medicines database

224 Chief executive to keep database

- (1) The chief executive must keep an electronic database (the *monitored medicines database*) to record information about the prescription and supply of monitored medicines.
- (2) The purposes of keeping the monitored medicines database are—
 - (a) to promote safe practices for the therapeutic use of monitored medicines and reduce community harm caused by monitored medicines; and
 - (b) to ensure particular health practitioners are complying with this Act, a corresponding law or any applicable requirements under the Health Practitioner Regulation National Law; and
 - (c) to facilitate—
 - (i) the assessment or investigation of health service complaints under the *Health Ombudsman Act 2013*; and
 - (ii) the investigation or monitoring of persons subject to actions or orders under that Act; and
 - (d) to enable particular health practitioners to access the database to record and review information for the therapeutic treatment of persons; and
 - (e) to facilitate evaluation and research into monitored medicines; and
 - (f) to facilitate national consistency in the therapeutic use of monitored medicines; and
 - (g) any other purpose prescribed by regulation.

225 Information recorded in database

- (1) A regulation may prescribe the information that must be recorded by the chief executive in the monitored medicines database.
- (2) Without limiting subsection (1), the information prescribed may include—
 - (a) personal information; and
 - (b) information obtained under the repealed *Health Act 1937* before the commencement of this section, despite the purpose for which the information was obtained or created; and
 - (c) information obtained under a law of another jurisdiction for a purpose mentioned in section 224.

226 Giving information

- (1) An information provider must give the chief executive the relevant information for the provider at the time, and in the way, prescribed by regulation, unless the information provider has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) In this section—

information provider means an entity prescribed by regulation to be an information provider for this section.

relevant information, for an information provider, means the information prescribed by regulation to be relevant information for the provider for this section.

227 Use of information

- (1) The chief executive may disclose information in the monitored medicines database to a user by—
 - (a) giving the information to the user; or
 - (b) giving the user electronic access to the database.

- (2) However, the chief executive may disclose the information to the user only for a purpose prescribed by regulation for the user.
- (3) The chief executive may impose a condition on a user for accessing or using information in the monitored medicines database if the condition is consistent with a purpose mentioned in section 224 or prescribed by regulation for the user under subsection (2).
- (4) In this section—
user means an entity prescribed by regulation to be a user for this section.

Division 2 Registers

228 Chief executive to keep registers

The chief executive must keep a register about each of the following matters—

- (a) administrative action taken under chapter 4, part 3 (the *administrative action register*);
- (b) substance authorities (the *substance authority register*).

229 Content of administrative action register

The administrative action register must contain the following information about administrative action taken in relation to a person—

- (a) the name of the person;
- (b) a brief description of the administrative action taken in relation to the person.

230 Content of substance authority register

The substance authority register must contain the following information about each substance authority—

- (a) the identification number allocated to the authority;
- (b) the name of the holder of the authority;
- (c) if the holder of the authority trades as a business—
 - (i) the business or trading name of the holder; and
 - (ii) the name of the person responsible for overseeing or supervising the regulated activity authorised under the authority;
- (d) the type of authority or the regulated activity authorised under the authority;
- (e) the term of the authority and the day the authority ends;
- (f) the postcode of the place where the regulated activity under the authority will be carried out.

231 Publishing, and giving information from, registers

- (1) The chief executive may publish the substance authority register, or part of the register, on the department's website if the chief executive is satisfied it is in the public interest to do so.
- (2) The chief executive may give information, including confidential information, from the administrative action register or the substance authority register to a person seeking the information if the chief executive is satisfied it is in the public interest to do so.

Division 2 Departmental standards

233 Making departmental standards

- (1) The chief executive may make a standard (a *departmental standard*) in relation to matters regulated under this Act.
- (2) Without limiting subsection (1), a departmental standard may be about any of the following matters—
 - (a) procedures for carrying out regulated activities;
Examples—
 - a standard stating how to prepare and lay baits
 - a standard about prescribing or supplying monitored medicines
 - (b) procedures for keeping, storing and managing regulated substances;
 - (c) training and competency requirements for persons carrying out regulated activities with regulated substances;
 - (d) procedures to ensure products containing regulated substances are safe and suitable for the intended use of the products;
 - (e) requirements for tracing the movement of regulated substances from their manufacture to final disposal, including requirements about documentation and electronic transactions;
 - (f) matters for which another provision of this Act requires compliance with a departmental standard.
- (3) The chief executive may make a departmental standard by adopting all or part of another entity's code, guideline, protocol or standard.
- (4) A departmental standard must be approved by regulation and takes effect—
 - (a) on the day it is approved; or
 - (b) if a later day is stated in the standard—on the later day.

234 Consultation about departmental standards

- (1) Before making a departmental standard, the chief executive must take reasonable steps to consult with entities that—
 - (a) are proposed to be subject to the standard; or
 - (b) have expertise about the matters proposed to be dealt with by the standard.
- (2) A failure to comply with subsection (1) does not affect the validity of the departmental standard.

235 Use of departmental standards in proceedings

- (1) This section applies in a proceeding for an offence against a provision of this Act if the provision states a departmental standard provides for a way that is not the only way of complying with the provision.
- (2) The departmental standard is admissible in the proceeding as evidence of whether or not the provision has been complied with.
- (3) The court may have regard to the departmental standard in deciding whether or not the provision has been complied with.
- (4) Subsections (2) and (3) do not prevent a person from introducing evidence of compliance with the provision in a way that is different from the departmental standard but otherwise satisfies the requirements of the provision.

Division 3 Publishing

236 Availability of extended practice authorities and departmental standards

The chief executive must publish each extended practice authority and departmental standard free of charge on the department's website.

Part 5 Miscellaneous

237 **Civil remedies not affected**

Nothing in this Act affects or limits a civil remedy a person may have against an approved person, the holder of a substance authority or another person in relation to a matter dealt with under this Act.

238 **Delegation by chief executive**

- (1) The chief executive may delegate the chief executive's functions—
 - (a) under chapter 7, part 3, division 1 to an appropriately qualified person; or
 - (b) under another provision of this Act, other than section 127, to an appropriately qualified person who is a health service employee or public service employee.

Notes—

- 1 Chapter 7, part 3, division 1 provides for the monitored medicines database.
 - 2 Section 127 allows the chief executive to make a public statement about particular matters.
- (2) To remove any doubt, it is declared that the chief executive must not delegate the chief executive's functions under section 127.
 - (3) In this section—

functions includes powers.

239 **Approved forms**

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

240 Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made about the following matters—
 - (a) buying and possessing S2 and S3 medicines;
 - (b) disposing of waste from medicines in relation to which section 42 does not apply;
 - (c) dealing with S5 and S6 poisons;
 - (d) the packaging, labelling, containing and storing of regulated substances;
 - (e) security practices for the supply of regulated substances;
 - (f) record-keeping and accounting for regulated substances;
 - (g) risk management and notification requirements for regulated activities with regulated substances;
 - (h) the establishment and use of electronic systems, computers and other devices in relation to regulated activities with regulated substances;
 - (i) the advertising of regulated substances;
 - (j) fees, or refunds of fees, for applications and other matters under this Act, including criminal history checks and the analysis of things by State analysts.
- (3) A regulation may impose a penalty of not more than 100 penalty units for a contravention of the regulation.

Chapter 8 Repeal, savings and transitional provisions

Part 1 Repeals

241 Acts repealed

The following Acts are repealed—

- Health Act 1937, 1 Geo 6 No. 31
- Pest Management Act 2001, No. 103.

Part 2 Savings and transitional provisions

Division 1 Preliminary

242 Definitions for part

In this part—

former authorisation means an HDPR approval, HDPR authority or pest licence.

HDPR means the repealed *Health (Drugs and Poisons) Regulation 1996*.

HDPR approval means an endorsement, other than an authority, under the HDPR.

HDPR authority means an authority under the HDPR.

HDPR standing order see the HDPR, appendix 9, definition *written instruction*, paragraph (b).

Health Act means the repealed *Health Act 1937*.

medicated animal feed means a product containing an S4 medicine that is used to feed, or is mixed with food to feed, a

food producing animal within the meaning of the *Biosecurity Regulation 2016*, schedule 3, part 2.

new authorisation means an approved person's authorisation or a substance authority.

pest licence means a licence under the Pest Management Act.

Pest Management Act means the repealed *Pest Management Act 2001*.

243 Meaning of *equivalent*

- (1) For this part, a new authorisation is **equivalent** to a former authorisation if the new authorisation authorises substantially the same activity with a substance as the former authorisation authorised, even if—
- (a) the activity is described differently; or
 - (b) the conditions of the new authorisation and the former authorisation are not identical; or
 - (c) the new authorisation authorises a regulated activity that includes, and is more than, the activity authorised under the former authorisation.

Examples—

- 1 Under the HDPR, section 18, registered nurses employed at prisons were granted an endorsement authorising supply of restricted drugs in particular doses at prisons. If a new authorisation states that registered nurses may give treatment doses of S4 medicines to the same dosage amount, the new authorisation is equivalent to the former authorisation.
 - 2 Under the HDPR, section 171, pharmacists were authorised to administer vaccines under the pharmacist vaccination program DTP. If a new authorisation states that pharmacists may administer vaccinations under an extended practice authority, the new authorisation is equivalent to the former authorisation.
- (2) Without limiting subsection (1), a regulation may prescribe a new authorisation to be equivalent to a former authorisation.

244 Equivalent administrative action

- (1) This section applies if a provision of this part provides that a suspension or cancellation of a former authorisation is taken to be administrative action.
- (2) The administrative action has effect to the same extent as the suspension or cancellation of the former authorisation.
- (3) However, if a new authorisation is equivalent to a cancelled HDPR authority, the administrative action is taken to be the indefinite suspension of the new authorisation.
- (4) To remove any doubt, it is declared that the suspension or cancellation of the former authorisation that is taken to be administrative action must be included in the administrative action register.

Division 2 Continued former authorisations

Subdivision 1 Preliminary

245 Ending of former authorisations not provided for

To remove any doubt, it is declared that a former authorisation not provided for under this part ends on the commencement.

Subdivision 2 HDPR approvals and pest licences

246 Holders who become approved persons on commencement

- (1) This section applies to a person if—
 - (a) immediately before the commencement, the person held an HDPR approval or pest licence; and
 - (b) on the commencement, a new authorisation that is an approved person's authorisation applies to the person; and

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- (c) the new authorisation authorises a regulated activity that is more limited than the activity authorised under the person's HDPR approval or pest licence.
- (2) The person's HDPR approval or pest licence continues in effect until—
 - (a) if, within 3 months after the commencement, the person applies for a substance authority equivalent to the approval or licence—the day the application for the substance authority is decided; or
 - (b) otherwise—the day that is 3 months after the commencement.
- (3) For subsection (2)—
 - (a) in relation to an HDPR approval—the HDPR continues to apply in relation to the approval as if this Act had not commenced; and
 - (b) in relation to a pest licence—the Pest Management Act continues to apply in relation to the licence as if this Act had not commenced.

247 Holders who do not become approved persons on commencement

- (1) This section applies to a person who—
 - (a) immediately before the commencement, held an HDPR approval or pest licence; and
 - (b) on the commencement, does not hold a new authorisation that is an approved person's authorisation; and
 - (c) is required under this Act to hold the new authorisation to carry out the activity with the substance that was authorised under the HDPR approval or pest licence.
- (2) The person's HDPR approval or pest licence continues in effect until the earliest of the following—
 - (a) a substance authority equivalent to the HDPR approval or pest licence is granted to the person;

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- (b) the term of the HDPR approval or pest licence ends under the HDPR or Pest Management Act, as the case may be;
 - (c) the HDPR approval or pest licence is cancelled or surrendered under the HDPR or Pest Management Act, as the case may be.
- (3) However, subsection (4) applies if—
- (a) before the term of the HDPR approval or pest licence ends under the HDPR or Pest Management Act, the person applies for a substance authority equivalent to the approval or licence; and
 - (b) the chief executive has not decided whether to grant the substance authority on the day the term of the approval or licence would otherwise end.
- (4) Despite subsection (2), the HDPR approval or pest licence continues in effect until the day the chief executive decides the application.
- (5) For this section—
- (a) in relation to an HDPR approval—the HDPR continues to apply in relation to the approval as if this Act had not commenced; or
 - (b) in relation to a pest licence—the Pest Management Act continues to apply in relation to the licence as if this Act had not commenced.

248 Approval holders who no longer need authorisation

- (1) This section applies if—
- (a) immediately before the commencement, a person held an HDPR approval or pest licence to carry out an activity with a substance; and
 - (b) on the commencement, the person is not required under this Act to hold a new authorisation to carry out the activity with the substance.

- (2) The HDPR approval or pest licence ends on the commencement.

Examples—

- 1 A person held an HDPR approval that was a restricted drug manufacturer licence to manufacture a substance. If, on the commencement, the person holds a licence to manufacture the substance under the *Therapeutic Goods Act 1989* (Cwlth), section 50 of this Act applies to the person and the HDPR approval ends on the commencement.
- 2 A person held an HDPR approval that was an operating approval under the HDPR, section 122A to operate a controlled drugs administration facility. On the commencement, there is no requirement under this Act to hold an equivalent approval to operate the facility. The HDPR approval ends on the commencement.

249 Manufacturing licences for medicated animal feed

- (1) This section applies to an HDPR approval that, immediately before the commencement, was a restricted drug manufacturer licence authorising the manufacture of medicated animal feed.
- (2) On the commencement, the HDPR approval is taken to be a manufacturing licence authorising the manufacture of the medicated animal feed—
 - (a) with each substance that was approved under the HDPR approval; and
 - (b) under the supervision of the person responsible for supervising the manufacture under the HDPR approval; and
 - (c) at the place that was approved for manufacturing the feed under the HDPR approval; and
 - (d) for the term of the HDPR approval.
- (3) To remove any doubt, it is declared that no conditions of the HDPR approval, other than those mentioned in subsection (2), apply to the manufacturing licence.
- (4) This section applies despite sections 246 to 248.

250 Approvals for drug dependent persons

- (1) This section applies to an HDPR approval that, immediately before the commencement, authorised the treatment of a drug dependent person, or class of drug dependent persons, under the HDPR, section 120, 122, 213 or 213A.
- (2) The HDPR approval continues in effect until the earliest of the following—
 - (a) the day the term of the approval ends under the HDPR;
 - (b) the day the approval is cancelled or surrendered under the HDPR;
 - (c) the day prescribed under section 281 to be the day the monitored medicines database is fully operational.
- (3) The HDPR continues to apply to the HDPR approval as if this Act had not commenced.
- (4) This section applies despite sections 246 to 248.

251 Authorised way for continued approvals

A person who holds an HDPR approval or pest licence continued in effect under this part is taken to carry out a regulated activity with a regulated substance in the authorised way if the person carries out the activity under the HDPR or Pest Management Act, as the case may be.

252 Waiving fees for continued approvals

- (1) This section applies if—
 - (a) a person holds an HDPR approval or pest licence continued in effect under this part; and
 - (b) before the term of the approval or licence ends, the person applies for a substance authority equivalent to the approval.
- (2) The chief executive may decide to waive a fee, or part of a fee, payable under this Act for the application.

Subdivision 3 HDPR authorities

253 Royal Flying Doctor Service

- (1) This section applies in relation to an HDPR authority that, immediately before the commencement, authorised a person from the Royal Flying Doctor Service of Australia to carry out an activity with a substance under the HDPR, section 54(1) or 157(1).
- (2) The HDPR authority continues in effect as if this Act had not commenced until—
 - (a) if, within 1 year after the commencement, an appropriately qualified officer of the Royal Flying Doctor Service of Australia applies for a substance authority equivalent to the HDPR authority—the day the application for the substance authority is decided; or
 - (b) otherwise—the day that is 1 year after the commencement.

254 St John Ambulance Australia—Queensland

- (1) This section applies in relation to an HDPR authority that, immediately before the commencement, authorised a person from St John Ambulance Australia—Queensland to carry out an activity with a substance under the HDPR, section 174B.
- (2) The HDPR authority continues in effect as if this Act had not commenced until—
 - (a) if, within 1 year after the commencement, an appropriately qualified officer of St John Ambulance Australia—Queensland applies for a substance authority equivalent to the HDPR authority—the day the application for the substance authority is decided; or
 - (b) otherwise—the day that is 1 year after the commencement.

255 Universities

- (1) This section applies in relation to an HDPR authority that, immediately before the commencement, authorised the vice-chancellor of a university, or the vice-chancellor's delegate, to carry out an activity with a substance under the HDPR, section 179A or 265A.
- (2) The HDPR authority continues in effect as if this Act had not commenced until—
 - (a) if, within 1 year after the commencement, an appropriately qualified officer of the university applies for a substance authority equivalent to the HDPR authority—the day the application for the substance authority is decided; or
 - (b) otherwise—the day that is 1 year after the commencement.

Division 3 Continued applications

256 Existing applications for new interests

- (1) This section applies if—
 - (a) before the commencement, a person applied for an approval, licence or permit (the *interest*) under the Health Act or the Pest Management Act; and
 - (b) immediately before the commencement, the person's application had not been decided.
- (2) The person's application must be decided as if it were—
 - (a) an application for a substance authority that is equivalent to the interest; and
 - (b) made under this Act on the commencement.
- (3) For subsection (2), if a fee has been paid or waived for the interest, a fee payable under this Act for an application for the substance authority is waived.

257 Amendment or renewal applications for approvals

- (1) This section applies if—
 - (a) before the commencement, a person applied to amend or renew an HDPR approval or pest licence; and
 - (b) immediately before the commencement, the application had not been decided; and
 - (c) the HDPR approval or pest licence is continued in effect under this part.
- (2) The person's application must be decided as if it were—
 - (a) an application to amend or renew a substance authority that is equivalent to the HDPR approval or pest licence; and
 - (b) made under this Act on the commencement.
- (3) For subsection (2), if a fee has been paid or waived for the application, a fee payable under this Act to amend or renew the substance authority is waived.

258 Amendment or repeal applications about suspension or cancellation decisions—HDPR authorities

- (1) This section applies if—
 - (a) before the commencement, a person applied, under the HDPR, section 26A, for the amendment or repeal of a decision (the *original decision*) to suspend or cancel an HDPR authority; and
 - (b) immediately before the commencement, the application had not been decided; and
 - (c) on the commencement, a new authorisation that is an approved person's authorisation is equivalent to the HDPR authority and applies to the person.
- (2) The person's application must be decided as if it were a request to review administrative action under section 105.

-
- (3) For considering the application under subsection (2), the original decision is taken to be administrative action taken under this Act in relation to the equivalent new authorisation.

259 Amendment or repeal applications about suspension or cancellation decisions—HDPR approvals

- (1) This section applies if—
- (a) before the commencement, a person applied, under the HDPR, section 26A, for the amendment or repeal of a decision (the *original decision*) to suspend or cancel an HDPR approval; and
 - (b) immediately before the commencement, the person's application had not been decided.
- (2) The person's application must be decided as if it were a request to review administrative action under section 105.
- (3) For considering the application under subsection (2)—
- (a) the person is taken to be the holder of a substance authority that is equivalent to the HDPR approval; and
 - (b) the original decision is taken to be administrative action taken under this Act in relation to the substance authority.

Division 4 Continued processes and proceedings

Subdivision 1 Former offences

260 Proceedings for former offences

- (1) This section applies in relation to an offence against a provision of the Health Act or Pest Management Act committed by a person before the commencement.

- (2) Without limiting the *Acts Interpretation Act 1954*, section 20, a proceeding for the offence may be continued or started, and the person may be convicted of and punished for the offence, as if this Act had not commenced.
- (3) Subsection (2) applies despite the Criminal Code, section 11.
- (4) An analysis completed under section 273 may be used in relation to the proceeding to the extent otherwise authorised under the Health Act or Pest Management Act.

261 Applications for recovery of costs

- (1) Subsection (2) applies if—
 - (a) before the commencement, the chief executive applied to a court for an order for the payment of costs under the Health Act, section 153ZL or the Pest Management Act, section 119; and
 - (b) immediately before the commencement, the application had not been decided.
- (2) The application may be decided as if this Act had not commenced.
- (3) Subsection (4) applies if a person is convicted of an offence after the commencement because of a proceeding continued or started under section 260.
- (4) The chief executive may apply to a court for an order for the payment of costs under the Health Act, section 153ZL or the Pest Management Act, section 119, and the application may be decided, as if this Act had not commenced.

Subdivision 2 Reviews and appeals

262 Review of HDPR decisions

- (1) This section applies if, before the commencement, a decision was made by the chief executive under the HDPR and—

- (a) immediately before the commencement, the period during which an application for a review of the decision may have been made to QCAT under the HDPR, section 33 had not ended; or
 - (b) an application was made to QCAT under the HDPR, section 33 for a review of the decision and the application had not been decided by QCAT immediately before the commencement.
- (2) The application may be decided, or made and decided, as if this Act had not commenced.
 - (3) Subsection (4) applies if, as a result of QCAT's decision on the application, an approval, licence or permit (an *interest*) would have been granted under the HDPR but for the commencement of this Act.
 - (4) The chief executive must grant the person a substance authority that is equivalent to the interest and is subject to the conditions that would have applied to the interest had it been granted under the HDPR before the commencement.

263 Review of Pest Management Act decisions

- (1) This section applies if, before the commencement, a person was given, or entitled to be given, an information notice for a decision under the Pest Management Act and—
 - (a) immediately before the commencement, the period during which an application for a review of the decision may have been made under the Pest Management Act, part 4 had not ended; or
 - (b) an application was made under the Pest Management Act, part 4 for a review of the decision and the application had not been decided immediately before the commencement.
- (2) The application may be decided, or made and decided, as if this Act had not commenced.

- (3) Subsection (4) applies if, as a result of a decision on the application, a licence would have been granted under the Pest Management Act if this Act had not commenced.
- (4) The chief executive must grant the person a pest management licence that is equivalent to the licence under the Pest Management Act and is subject to the conditions that would have applied to the licence, if it had been granted under the Pest Management Act before the commencement.

264 Appeals against forfeiture decisions under Health Act

- (1) This section applies if, before the commencement, a thing was forfeited to the State under the Health Act, repealed section 153G(1)(c) and, immediately before the commencement—
 - (a) the period during which the owner may have started an appeal to a Magistrates Court under the Health Act, part 4A, division 7 had not ended; or
 - (b) the owner had started an appeal (the *first appeal*) that had not been decided by the Magistrates Court; or
 - (c) the period in which the owner may have started an appeal to the District Court from a decision of the Magistrates Court on the first appeal had not ended; or
 - (d) the owner started an appeal (the *second appeal*) to the District Court from a decision of the Magistrates Court on the first appeal and the second appeal was not decided.
- (2) The first appeal and second appeal may be decided, or started and decided, as if this Act had not commenced.
- (3) Also, the owner may start an appeal to the District Court from a decision of the Magistrates Court as if this Act had not commenced.

Subdivision 3 Other continued processes

265 Show cause notices

- (1) This section applies if—
 - (a) before the commencement, a person was given—
 - (i) a show cause notice under the Pest Management Act, section 44 that was in effect immediately before the commencement; or
 - (ii) a written notice for a suspension or cancellation under the HDPR, section 24 that was in effect immediately before the commencement; and
 - (b) on the commencement, the person has a new authorisation that is equivalent to the former authorisation.
- (2) The notice is taken to be a show cause notice for administrative action taken under this Act in relation to the new authorisation.

266 Suspension of former authorisations

- (1) This section applies if, immediately before the commencement, a suspension (the *former suspension*) of a person's former authorisation was in effect.
- (2) The former suspension is taken to be administrative action.
- (3) If the former authorisation was an HDPR approval or HDPR authority, the suspension notice day for the former suspension is taken to be the review day for the administrative action.
- (4) In this section—

suspension notice day, for a suspension, means the day stated in the notice under the HDPR, section 24 for the suspension before which the person was not permitted to apply to the chief executive for an amendment or repeal of the chief executive's decision under the HDPR, section 26A.

267 Cancellation of HDPR authority

- (1) This section applies if, immediately before the commencement, a cancellation (the *former cancellation*) of a person's former authorisation that was an HDPR authority was in effect.
- (2) The former cancellation is taken to be administrative action.
- (3) The cancellation notice day for the former cancellation is taken to be the review day for the administrative action.
- (4) In this section—

cancellation notice day, for a cancellation, means the day stated in the notice under the HDPR, section 24 for the cancellation before which the person was not permitted to apply to the chief executive for an amendment or repeal of the chief executive's decision under the HDPR, section 26A.

268 Surrender of HDPR authority

- (1) This section applies if—
 - (a) immediately before the commencement, a surrender (the *former surrender*) under the HDPR, section 32 was in effect for a person's HDPR authority; and
 - (b) on the commencement, a new authorisation that is an approved person's authorisation and is equivalent to the HDPR authority applies to the person.
- (2) The former surrender is taken to be agreed administrative action.

269 Compliance notices

- (1) This section applies to a compliance notice given to a person under the Pest Management Act, section 89 that was in effect immediately before the commencement.
- (2) The compliance notice is taken to be a compliance notice under this Act.

270 Warrants

- (1) A warrant issued under the Health Act or the Pest Management Act, that was in force immediately before the commencement, continues in force until the earliest of the following—
 - (a) the warrant is executed;
 - (b) the warrant is cancelled;
 - (c) the period during which the warrant can be executed ends.
- (2) For this section, the Health Act or Pest Management Act, as the case may be, continues to apply to the warrant as if this Act had not commenced.

271 Requirements made by Health Act inspectors

- (1) This section applies to a requirement made by an inspector under the Health Act for a person to do a thing under any of the following provisions of that Act—
 - section 151
 - section 153E
 - section 153N
 - section 153Q
 - section 153R.
- (2) The requirement continues to apply to the person until it has been satisfied or otherwise ends under the terms of the requirement.
- (3) The Health Act continues to apply to the requirement as if this Act had not commenced.

272 Requirements made by Pest Management Act inspectors

- (1) This section applies to a requirement made by an inspector for a person to do a thing under any of the following provisions of the Pest Management Act—

[s 273]

- section 69
 - section 76
 - section 83
 - section 85
 - section 88
 - section 89.
- (2) The requirement continues to apply to the person until it has been satisfied or otherwise ends under the terms of the requirement.
- (3) The Pest Management Act continues to apply to the requirement as if this Act had not commenced.

273 Analysis by State analysts

- (1) This section applies if, immediately before the commencement, a State analyst under the Health Act or Pest Management Act—
- (a) was undertaking analysis of a thing, whether the analysis was under the Health Act, Pest Management Act or another Act; and
 - (b) the State analyst had not completed the analysis or a certificate for the analysis.
- (2) A State analyst under this Act may continue to analyse the thing and give a certificate of analysis for the thing.
- (3) The Health Act continues to apply to the analysis as if this Act had not commenced.

Division 5 Transition of other matters

Subdivision 1 Documents

274 Prescriptions

- (1) This section applies if—
 - (a) before the commencement, a prescription was given under the Health Act for the supply or administration of a substance; and
 - (b) immediately before the commencement, the substance had not been dispensed, supplied or administered.
- (2) The prescription continues in force until the earliest of the following—
 - (a) the substance is dispensed, supplied or administered;
 - (b) the prescription is cancelled by a person who had the authority to cancel the prescription under the Health Act;
 - (c) the period, stated on the prescription or provided for under the Health Act, during which the substance must be supplied or administered ends.
- (3) The Health Act continues to apply in relation to the prescription as if this Act had not commenced.
- (4) In this section—

prescription means any instrument under the Health Act, other than an HDPR standing order, that, immediately before the commencement, permitted a substance to be dispensed or supplied for, or administered to, a stated person or animal.

275 Purchase orders

- (1) This section applies if—
 - (a) before the commencement, a purchase order was given under the Health Act for the supply of a substance; and

- (b) immediately before the commencement, the substance had not been supplied under the purchase order.
- (2) If the purchase order was for the supply of a substance other than medicated animal feed, the order continues in force until the earliest of the following—
 - (a) the substance is supplied under the order;
 - (b) the order is cancelled by a person who had the authority to cancel the order under the Health Act;
 - (c) the period, stated on the order or provided for under the Health Act, during which the substance must be supplied ends.
- (3) If the purchase order is for the supply of medicated animal feed, the order continues in force until the earliest of—
 - (a) the day a circumstance mentioned in subsection (2)(a) or (b) applies to the order; or
 - (b) the day that is 6 months after the commencement.
- (4) The Health Act continues to apply to the purchase order as if this Act had not commenced.

276 Standing orders

- (1) This section applies to an HDPR standing order in effect immediately before the commencement.
- (2) The HDPR standing order continues in force until the day that is 6 months after the commencement.
- (3) The Health Act continues to apply to the HDPR standing order as if this Act had not commenced.

277 References to repealed Acts

A reference in a document to the Health Act or Pest Management Act, may, if the context permits, be taken to be a reference to this Act.

Subdivision 2 Offices and functions

278 Inspectors

- (1) This section applies to a person who held office as an inspector under the Health Act or Pest Management Act immediately before the commencement.
- (2) The person is taken to hold office as an inspector under this Act on the conditions, if any, stated in the person's instrument of appointment.
- (3) This section stops applying to the person on the day that is 6 months after the commencement.

279 State analysts

- (1) This section applies to a person who held office as a State analyst under the Health Act or Pest Management Act immediately before the commencement.
- (2) The person is taken to hold office as a State analyst under this Act on the conditions, if any, stated in the person's instrument of appointment.
- (3) This section stops applying to the person on the day that is 6 months after the commencement.

Division 6 Extended periods for compliance

280 Substance management plans

- (1) This section applies to a responsible person who, on the commencement, would be required under section 93 to make a substance management plan for a regulated place.
- (2) The responsible person is not required to comply with the requirements of chapter 4, part 2 until 1 year after the commencement (the *transition period*).

[s 281]

- (3) Subsection (4) applies if the responsible person becomes subject to the requirements in chapter 4, part 2 because a former authorisation is replaced with a substance authority during the transition period.
- (4) The responsible person must comply with chapter 4, part 2 when the transition period ends, regardless of when the substance authority is granted.

281 Procedure until monitored medicines database operational

- (1) This section applies for the period (the *transition period*)—
 - (a) starting on the commencement; and
 - (b) ending on the day prescribed by regulation to be the day the monitored medicines database is fully operational.
- (2) In the transition period—
 - (a) a person is not liable to be prosecuted for a contravention of section 41 or 226; and
 - (b) a person to whom the HDPR, section 84(2) to (10) or 84A(3) and (4) applied immediately before the commencement must continue to comply with the section as if this Act had not commenced; and

Note—

The HDPR, sections 84 and 84A provided for a dispenser to send particular information to the chief executive.

- (c) a person to whom the HDPR, section 120, 122, 213 or 213A applied immediately before the commencement must continue to comply with the section as if this Act had not commenced.

Note—

The HDPR, sections 120, 122, 213 and 213A provided for approvals for the treatment of drug dependent persons.

- (3) This section does not prevent a person complying with this Act to the extent practicable if, during the transition period, the monitored medicines database is able to be used.

Example of complying to the extent practicable—

An information provider under section 226 gives information to the chief executive to the extent the provider is able to access the system required to be used for providing the information to the monitored medicines database.

Division 7 Miscellaneous

282 Transitional regulation-making power

- (1) A regulation (a *transitional regulation*) may make provision of a saving or transitional nature about any matter—
 - (a) for which it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the Health Act or the Pest Management Act to this Act; and
 - (b) for which this Act does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a day that is not earlier than the day on which this section commences.
- (3) A transitional regulation must declare it is a transitional regulation.
- (4) This section and any transitional regulation expire 2 years after this section commences.

Schedule 1 Dictionary

section 8

administer, a medicine, see section 26.

administrative action, in relation to an authority, see section 95.

administrative action register see section 228(a).

administrator, for chapter 7, part 2, see section 219.

affected person, in relation to a decision, for chapter 6, part 1, see section 196.

agreed administrative action see section 103(3).

amendment application see section 78(1).

application, for chapter 3, part 3, division 4, see section 86.

apply, a poison, see section 27.

approved form means a form approved under section 239.

approved label—

- (a) of a regulated substance—means a label lawfully made and attached to the substance stating a direction or instruction about how to carry out a regulated activity with the substance; or
- (b) of a medicine—includes a dispensing label.

Example—

a label consistent with the Poisons Standard, part 2 or the Agvet Code of Queensland, part 2

Note—

See the Poisons Standard, part 1 for the definition *dispensing label*.

approved person see section 54(3).

approved person's authorisation see section 54(5).

Australian Pesticides and Veterinary Medicines Authority means the authority of that name continued in existence under

the *Agricultural and Veterinary Chemicals (Administration) Act 1992* (Cwlth), section 6.

authorised way see section 31.

authority, for chapter 4, part 3, see section 95.

buy, a regulated substance, see section 22.

compliance notice see section 108(2).

condition, of an approved person's authorisation, for chapter 4, part 3, see section 95.

confidential information see section 219.

corresponding law means—

- (a) the Commonwealth Therapeutic Goods Laws, and the applied therapeutic goods provisions, under the *Therapeutic Goods Act 2019*; or
- (b) a law of another jurisdiction that provides for, or provided for, the same or similar matters as this Act.

court see section 203(2).

criminal history, of a person, means—

- (a) a conviction of the person by or before any court for an offence, whether or not recorded, in Queensland or elsewhere, before or after the commencement of this Act; or
- (b) an allegation formally made in court that the person has committed an offence, in Queensland or elsewhere, whether before or after the commencement of this Act.

criminal history information means information from a criminal history report or a notice given under section 217(2), other than information in the report or notice that is lawfully available to the public.

criminal history report see section 216(1).

deals, with a regulated substance, see section 18.

departmental standard see section 233(1).

device means an instrument, apparatus, appliance, material or other article, other than a medical device under the *Therapeutic Goods Act 1989* (Cwlth), that is used, or intended to be used, with a substance.

dispense, a medicine, see section 25(2).

dispose, of waste from a regulated substance, see section 28.

diversion-risk medicine means a medicine prescribed by regulation to be a diversion-risk medicine.

document certification requirement see section 177(6).

document production requirement see section 177(2).

electronic document means a document of a type mentioned in the *Acts Interpretation Act 1954*, schedule 1, definition *document*, paragraph (c).

emergency order see section 58(1).

emerging risk declaration see section 111.

employ includes engage on a contract for services.

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

extended practice authority see section 232(1).

final consideration day, for an application, for chapter 3, part 3, division 4, see section 86.

former owner see section 171(1).

fumigant see section 14(1).

fumigation activity see section 19(2).

general approval see section 68(1).

general power see section 158(1).

give a treatment dose, of a medicine, see section 25(3).

harm includes a latent disease or injury.

hazardous poison see section 16.

health ombudsman official means an official under the *Health Ombudsman Act 2013*.

health practitioner means—

- (a) a health practitioner registered under the Health Practitioner Regulation National Law; or
- (b) another practitioner who provides a service for maintaining, improving, restoring or managing people's health or wellbeing; or
- (c) an individual training to be a practitioner mentioned in paragraph (a) or (b).

health risk—

- (a) in relation to a person—means a risk of harm to the life, health or safety of someone arising from a person carrying out a regulated activity with a regulated substance; or
- (b) in relation to a substance—means a risk of harm to the life, health or safety of someone arising from the use, or potential use, of the substance or a device used, or intended to be used, with the substance.

health service employee means a person appointed as a health service employee under the *Hospital and Health Boards Act 2011*, section 67.

help requirement see section 159(1).

holder—

- (a) of an authority, for chapter 4, part 3—see section 95; or
- (b) of a substance authority—means the entity granted the substance authority.

identity card, for a provision about inspectors, means an identity card issued under section 135.

information notice, for a decision, means a notice stating the following information—

- (a) the decision;
- (b) the day the decision takes effect;

- (c) the reasons for the decision;

Note—

See the *Acts Interpretation Act 1954*, section 27B for matters that must be included with the reasons.

- (d) that the person to whom the notice is given may ask for a review of the decision under this Act;
- (e) how, and the period within which, the review may be started;
- (f) if the person may apply for a stay of the operation of the decision under this Act—how the person may apply for the stay.

initial application see section 75.

inspector means a person who holds office as an inspector under chapter 5, part 2.

internal review, of an original decision, for chapter 6, part 1, see section 198(1).

internal review decision, for chapter 6, part 1, see section 196.

manufacture, a regulated substance, see section 21.

manufacturing licence see section 63.

medicine see section 11.

monitored medicine means a medicine prescribed by regulation to be a monitored medicine.

monitored medicines database see section 224(1).

notice means written notice.

occupier, of a place, includes the following—

- (a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;
- (b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;
- (c) if no-one apparently occupies the place—any person who is an owner of the place.

of, a place, includes at or on the place.

offence warning, for a direction or requirement by an inspector, means a warning that, without a reasonable excuse, it is an offence for the person to whom the direction is given, or of whom the requirement is made, not to comply with it.

original decision, for chapter 6, part 1, see section 196.

owner, of a thing that has been seized under chapter 5, includes a person who would be entitled to possession of the thing had it not been seized.

personal details requirement see section 175(5).

personal information see the *Information Privacy Act 2009*, section 12.

person in control—

- (a) of a vehicle, includes—
 - (i) the vehicle's driver or rider; and
 - (ii) any person who reasonably appears to be, claims to be, or acts as if the person is, the vehicle's driver or rider or the person in control of the vehicle; or
- (b) of another thing, includes any person who reasonably appears to be, claims to be, or acts as if the person is, the person in possession or control of the thing.

pest—

- 1 *Pest* means an arthropod, bird, mollusc or rodent that injuriously affects, or may injuriously affect, a place, person or animal by—
 - (a) transmitting disease, a toxin or another pest in the place or to the person or animal; or
 - (b) causing physical damage to the place or a thing in the place; or
 - (c) causing distress to, or an adverse physiological or social effect in, the person or animal.
- 2 *Pest* includes another biological entity prescribed by regulation to be a pest.

3 *Pest* does not include a biological entity prescribed by regulation not to be a pest.

pest control activity see section 19(3).

pesticide see section 14(2).

pest management activity see section 19(1).

pest management business—

(a) means a business in which services are offered that include pest management activities; but

Examples—

pest control services offered by a pest management technician or as part of property management services by a real estate agent

(b) does not include a business in which pest management activities are incidentally carried out when performing services for purposes other than pest management.

Examples—

- a plumber spraying a pesticide on a drain pipe before clearing the pipe
- an electrician spraying a pesticide on a meter box before working on the meter box

pest management licence see section 66.

place includes the following—

- premises;
- vacant land;
- a place in Queensland waters;
- a place held under more than 1 title or by more than 1 owner;
- the land or water on or in which a building or other structure, or a group of buildings or other structures, is situated.

poison see section 12.

Poisons Standard means the current Poisons Standard within the meaning of the *Therapeutic Goods Act 1989* (Cwlth), section 52A(1).

police commissioner means the commissioner of the police service.

possess, a regulated substance, see section 23.

premises includes—

- (a) a building or other structure; and
- (b) a part of a building or other structure; and
- (c) a caravan or vehicle; and
- (d) a cave or tent; and
- (e) premises held under more than 1 title or by more than 1 owner.

prepare, a regulated substance, includes measure, mix or weigh the substance.

prescribe, in relation to a medicine, means direct a person, orally or in writing, to administer, dispense or give a treatment dose of the medicine for the treatment of a person or animal.

prescribing approval see section 67.

prescription, in relation to a medicine, means a direction, orally or in writing, to administer, dispense or give a treatment dose of the medicine for the treatment of a person or animal.

prohibited substance see section 13.

property decision see section 203(1).

public place means—

- (a) a place, or part of the place—
 - (i) that the public is entitled to use, is open to members of the public or is used by the public, whether or not on payment of money; or

Examples of a place that may be a public place under subparagraph (i)—

a beach, a park, a road

- (ii) the occupier of which allows, whether or not on payment of money, members of the public to enter; or

Examples of a place that may be a public place under subparagraph (ii)—

a saleyard, a showground

(b) that is a public place under another Act.

purchase order means a document requesting the supply of stock of a regulated substance from a supplier of the substance.

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

reasonably believes means believes on grounds that are reasonable in the circumstances.

reasonably suspects means suspects on grounds that are reasonable in the circumstances.

recall order see section 119(2).

regulated activity see section 20.

regulated place, for chapter 4, part 2, see section 92.

regulated substance see section 17.

relevant person—

1 ***Relevant person***, for a substance authority, means any of the following persons—

- (a) the person applying for, or holding, the authority;
- (b) a person acting in partnership with the applicant for, or the holder of, the authority;
- (c) a person who is, or is proposed to be, responsible for overseeing or supervising the regulated activity under the authority;
- (d) if the applicant for, or the holder of, the authority is a corporation—an executive officer of the corporation.

2 ***Relevant person***, in relation to an approved person's authorisation, means the approved person.

renewal application see section 82(1).

responsible person—

- (a) for a regulated place, for chapter 4, part 2, see section 92; or
- (b) for a recall order, see section 119(2)(a).

retail licence means an S2 retail licence or an S7 retail licence.

review day, for administrative action, see section 95.

S2 medicine see section 11(1)(a).

S2 retail licence see section 65(1).

S3 medicine see section 11(1)(b).

S4 medicine see section 11(1)(c).

S5 poison see section 12(1)(a).

S6 poison see section 12(1)(b).

S7 poison see section 12(1)(c).

S7 retail licence see section 65(2).

S7 substance see section 15.

S8 medicine see section 11(1)(d).

S9 prohibited substance see section 13(1)(a).

S10 prohibited substance see section 13(1)(b).

sell, a regulated substance, see section 25(1).

show cause notice, for chapter 4, part 3, see section 97(2).

show cause period, for chapter 4, part 3, see section 97(2)(d).

standard condition, for a substance authority, see section 70(1)(a).

standing order, for a medicine, means a document authorising the medicine to be administered or given as a treatment dose at a stated place or in stated circumstances.

State analyst means a person who holds office under chapter 5, part 6 as a State analyst.

stock means—

- (a) a regulated substance that is intended for supplying a place or a person who is authorised to carry out a regulated activity with the substance; or
- (b) a regulated substance that is not sold or dispensed to a particular person.

substance see section 10.

substance authority see section 61.

substance authority register see section 228(b).

substance management plan, for a regulated place, see section 92.

supply, a regulated substance, see section 24.

vehicle—

- (a) means a vehicle under the *Transport Operations (Road Use Management) Act 1995*; and
- (b) includes a vessel under that Act.

veterinary surgeon see the *Veterinary Surgeons Act 1936*.

waste, from a regulated substance, means the regulated substance in a form that—

- (a) is leftover, or is an unwanted by-product, from a manufacturing process; or
- (b) is surplus or unwanted; or
- (c) is expired or otherwise unusable.

wholesale licence see section 64.

worker, for an entity, means a person who—

- (a) is employed by the entity; or
- (b) is a student of, or volunteer for, the entity.