

# Medicines and Poisons (Pest Management, Poisons and Other Regulated Substances) Regulation 2019

Explanatory notes for SL 2019 No. ###

made under the

*Medicines and Poisons Act 2019*

## General Outline

### Short title

*Medicines and Poisons (Pest Management, Poisons and Other Regulated Substances) Regulation 2019*

### Authorising law

Section 240 of the *Medicines and Poisons Act 2019*

## Policy objectives and the reasons for them

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

Following a review of the existing legislation, it was determined that the Health Act, Pest Management Act, Health (Drugs and Poisons) Regulation, Health Regulation and Pest Management Regulation would be repealed and replaced with the *Medicines and Poisons Act 2019* (the Act), *Therapeutic Goods Act 2019*, *Medicines and Poisons (Medicines) Regulation 2019* (Medicines Regulation), *Medicines and Poisons (Pest Management, Poisons and Other Regulated Substances) Regulation 2019* (Poisons Regulation) and the *Therapeutic Goods Regulation 2019*.

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

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

The Poisons Regulation deals specifically with poisons, pest management and other regulated substances and gives effect to the Act’s objectives and supports implementation of the Act. Key policy objectives of the Poisons Regulation include:

- protecting the public from the health risks associated with the inappropriate access to, and use of, poisons;
- adopting a contemporary approach to regulating poisons in Queensland that introduces a more responsive and outcomes-focused regulatory framework;
- streamlining the regulatory controls governing poisons to reduce the associated regulatory costs for industry, consumers and government;
- enhancing consistency with national regulatory frameworks by implementing decisions of the Council of Australian Governments (COAG) in relation to the regulation of poisons and pest management activities;
- improving security controls in the use and storage of poisons to prevent diversion for unlawful purposes; and
- ensuring legislation accords with modern drafting practices and has sufficient regards to fundamental legislative principles.

The Medicines Regulation deals specifically with medicines and adopts regulatory controls which are consistent with the Poisons Regulation, particularly in dealing with non-therapeutic use of regulated substances.

## **Achievement of policy objectives**

### **Adoption of the Poisons Standard**

The Poisons Standard provides for the uniform scheduling of substances classified from Schedule 2 (S2) to Schedule 10 (S10). All States and Territories refer to the Poisons Standard when regulating possession, access and use of scheduled substances.

The Poisons Regulation will achieve the policy objectives by adopting parts 2 and 4 and parts of Appendix J of the Poisons Standard.

Part 2 of the Poisons Standard includes provisions about standard controls for the management of medicines and poisons risks. It covers matters such as labelling, containers, storage and disposal. The matters predominantly apply to sale and supply and most sections are specific to poisons (i.e. S5, S6 and S7 substances). The Poisons Regulation also includes additional controls around the use and disposal of the poisons (e.g. labelling requirements for a substance that has been decanted or transferred to another container, proper accounting of use and disposal of high risk poisons).

Part 4 includes the Schedules of medicines and poisons:

- Schedule 2 – pharmacy medicine (S2);
- Schedule 3 – pharmacist only medicine (S3);
- Schedule 4 – prescription only medicine or prescription animal remedy (S4);
- Schedule 5 – low harm poison (S5);
- Schedule 6 – moderate harm poison (S6);
- Schedule 7 – dangerous poison (S7);
- Schedule 8 – controlled medicine (S8);
- Schedule 9 – prohibited substance, should only be available for medical or scientific research, or for analytical, teaching or training purposes (S9); and
- Schedule 10 – prohibited substance, known for their dangerous properties (S10).

Appendix J identifies S7 agricultural and industrial poisons which are highly dangerous that require additional controls. The Poisons Regulation has prescribed those Appendix J poisons that are either obsolete or banned under international treaties or pose an unacceptable risk to public health. Not all Appendix J poisons have been included in the Regulation due to existing controls under other state laws. The list of high risk poisons are referred to as restricted S7 poisons and replace the list of regulated poisons in Appendix 7 of the Health (Drugs and Poisons) Regulation.

To achieve the policy objectives, the Poisons Regulation inserts:

- a penalty provision for non-compliance with any provision of part 2;
- a provision that states that despite the labelling requirements, a person does not commit an offence if a substance has been rescheduled and the person labelled and packaged the substance prior to the rescheduling taking place;
- a provision that states a person who supplies an S6 or S7 poison by retail does not commit an offence if the poison is stored in accordance with the national guideline for retail storage of S6 or S7 poisons;
- a provision that states a person must not cover, deface, remove or change any labelling requirements of part 2 of the Poisons Standard on a regulated substance container;
- a provision that states poisons must be held in packages that are in good condition - if a person becomes aware that a package containing a poison is damaged, the poisons must be decanted into another container that is appropriate for the poison under the requirements of part 2 of the Poisons Standard, or if the contents are to be disposed of, disposal must be in accordance with any disposal requirements in the Poisons Regulation or other relevant law;
- a provision that states a poison container must not be washed, soaked or treated in a tank or receptacle that is used to hold human or animal food or drink;
- a provision that states a person must store a poison in a manner that minimises or prevents contamination, degradation or adulteration risks, or for S7 poisons, the risk of diversion of the substance; and
- a provision to adopt the classification system of the Poisons Standard and the substances that are scheduled under the classification system in Part 4.

## Offences

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

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

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

While the Act broadly addresses offences associated with authorities or performing regulated activities with regulated substances, the Poisons Regulation provides for some offences that are not covered by the Act. These relate principally to the standard controls for poisons that are in part 2 of the Poisons Standard, or other similar requirements about standard controls. Offences in relation to pest management business have been strengthened under the Poisons Regulation.

The Poisons Regulation inserts offence provisions for non-compliance with the following:

- covering, defacing, removing or changing any labelling requirements of part 2 of the Poisons Standard;
- poisons must be held in packages that are in good condition, and if damaged must be decanted into another container that is appropriate for the poison under the requirements of part 2 of the Poisons Standard;
- poison containers must not be washed, soaked or treated in a receptacle that is used to hold human or animal food or drink;
- non-supervision of a pest management trainee by a pest management business;
- recordkeeping and notification requirements; and
- pest management businesses not providing adequate equipment or vehicles to the pest management technician.

## Licensing

The new regulatory regime rationalises the licensing requirements for medicines and poisons. Under the Health (Drugs and Poisons) Regulation, manufacturers of medicines, including veterinary medicines, are required to hold a licence, in addition to a manufacturing licence under the *Therapeutic Goods Act 1989* (Cth) or the *Agricultural and Veterinary Chemicals Code Act 1994* (Cth). The Act provides that if a Commonwealth licence is held the manufacturer will no longer be required to hold a separate Queensland manufacturing licence.

The amendments will achieve the policy objectives by streamlining the licensing regime. This means a manufacturing licence will only be required by a manufacturer of regulated substances intended for non-therapeutic use, other than S5 and S6 substances.

Wholesale licences will be required by any person or entity wholesaling medicines or poisons in Queensland. If an entity is based in another state or overseas jurisdiction, it will not require a Queensland wholesale licence provided it holds an equivalent authority in its respective jurisdiction and does not hold stock in Queensland.

The Poisons Regulation supports traceability of substances of high illicit value and recalls of substances that do not meet product specifications or other compliance requirements. Standard conditions have been prescribed in the Poisons Regulation, with additional conditions being prescribed on the authority instrument depending on the substance involved, the purpose of use and any other relevant criteria.

### **General approvals**

A general approval will authorise the holder of the approval to undertake a regulated activity with the regulated substance stated in the approval, under the conditions stated in the approval. The Poisons Regulation will prescribe standard conditions for general approval holders. Additional conditions may be prescribed on the authority instrument depending on the substance involved, the purpose of use and any other relevant criteria.

General approvals will be granted to persons, including entities, for a range of regulated activities, including possession and applying restricted S7 poisons for animal baiting.

General approvals may be renewable or non-renewable. Non-renewable approvals will be assessed on a case-by-case basis and granted for specific, time-limited requirements such as a research project. Renewable approvals may be granted where there is an on-going business need, for example, for the use of cyanide by an electroplating business.

### **Approved persons**

The Poisons Regulation provides for particular classes of persons (approved persons) to be authorised to carry out regulated activities with regulated substances because of their occupation, profession or position.

The different types of authorities granted under the Health (Drugs and Poisons) Regulation have been streamlined and classified by each category of approved person. The Act includes the necessary regulation-making heads of power to enable the following information to be more clearly set out for each of the occupations, professions or positions that will be prescribed as an approved person under the Poisons Regulation:

- the particular regulated substances for which an approved person will be authorised to have access;
- the regulated activities that may be carried out with particular medicines, such as possess, apply or supply; and
- any applicable conditions governing the activities to be carried out with a particular regulated substance (e.g. that the person must hold particular qualifications or comply with recognised industry or departmental standards).

The majority of these authorities will be granted to individuals including:

- a veterinarian who may possess, administer and supply S7 regulated substances for animal treatment;
- a pharmacist who may possess and supply restricted S7 poisons, e.g. strychnine;
- authorised officers under the *Biosecurity Act 2014* who may possess and supply prepared baits with <0.05% fluoroacetic acid to primary producers;
- a primary producer or adult employee or agent who may possess and apply baits with <0.05% fluoroacetic acid supplied by authorised officers under the *Biosecurity Act*; or
- a carrier may possess a restricted S7 poison for the purposes of transporting and delivering it.

The amendments achieve the policy objectives by ensuring the broad model provided in the Health (Drugs and Poisons) Regulation is both retained and streamlined.

### **Pest management**

The Poisons Regulation contains provisions specifically relating to the pest management industry. Many of the terms and requirements under the Pest Management Regulation have been included, in some cases with slight modifications. However, there are several amended and additional provisions included in the Poisons Regulation, including:

- the conditions under which a trainee can carry out pest management activities, and more clearly defining the responsibilities of the trainee's supervisor and employer;
- provisions that apply specifically to a person who operates a business that provides pest management services. This includes self-employed pest management technicians as well as businesses that employ pest management technicians to carry out pest management activities;
- the requirements for respiratory protective devices, which have been removed as they are covered by work health and safety laws;
- provisions stating that a pest control advice notice may be given electronically to the occupant of the premises. Also, when treating a multi-occupancy complex, the notice will be given to the managing entity of the complex who will be responsible for notifying the occupants of the complex; and
- provisions stating that activity-based risk management plans will be required to be completed prior to fumigation and pest control activities being carried out in high risk or sensitive areas, such as food processing facilities and aged care facilities.

### **Fees**

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

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

- manufacturing of S2, S3, S4 and/or S8 regulated substances;
- manufacturing of S7 regulated substances (including pesticides and fumigants) and prohibited substances;
- wholesale of S2, S3, S4 and/or S8 regulated substances;
- wholesale of S7 regulated substances and prohibited substances;
- retail of S2 medicines;
- retail of S7 regulated substances; and
- pest management technicians.

Existing holders of a Commonwealth (Therapeutic Goods Administration or Australian Pesticides and Veterinary Medicines Authority) manufacturing licence must also hold a Queensland manufacturer licence and pay the applicable licence fee. Under the medicines and poisons regulatory framework, Commonwealth manufacturing licences will be recognised. As a consequence, the holders of these licences will not be required to hold a separate Queensland manufacturing licence.

In line with the Health (Drugs and Poisons) Regulation, if a Queensland manufacturer does not have a Commonwealth licence, the Queensland licences authorising the manufacture and wholesale of medicines will attract a specific fee if the licence authorises the manufacture or wholesaling of S8 medicines in addition to S2, S3 or S4 medicines. Where only S8 medicines are manufactured or sold, the specific S8 fee would only apply. For example:

- manufacture of an S2, S3 or S4 poison – one licence, one fee;
- manufacture of an S8 poison – one licence, one fee;
- manufacture of an S2, S3 or S4 poison and manufacture of an S8 poison – one licence, two fees; and
- manufacture of an S7 dangerous poison – one licence, one fee.

Manufacturing licence holders with multiple sites must have a separate licence, and pay a separate licence fee, for each site. The same licence structure applies to state-based wholesale licences.

In a small number of cases, an existing licence holder with one licence will need two licences to perform the same activity. For example, the wholesaler of both S4 medicated animal feed and S7 agricultural poison only requires a restricted drug wholesaler licence under the Health (Drugs and Poisons) Regulation, but will require an S2, S3 or S4 wholesale licence and an S7 wholesale licence under the medicines and poisons regulatory framework. To ensure authority holders are not disadvantaged by this change, the new framework will allow one licence to be issued, and one fee charged, in situations where only one licence is required under the Health (Drugs and Poisons) Regulation. This will apply to both existing licence holders and new industry entrants.

Advantages of the revised fee structure compared to the fees charged under the Health (Drugs and Poisons) Regulation include:

- one licence can cover multiple sites, which streamlines the application process;

- Queensland will now recognise Commonwealth manufacturing licences;
- Queensland manufacturing licence still includes a deemed wholesale licence;
- no fees or licencing requirement for wholesale representatives;
- no increase in fees for licence holders; and
- no new fees for approval and permit holders.

In relation to pest management licence, a person may apply for a licence to carry out one or more pest management activities, provided they meet the competencies outlined in the *Competency requirements for undertaking regulated activities with poisons, pesticides and fumigants for non-therapeutic use in Queensland Standard*. The person may also seek a variation to include additional pest management activities on their licence subject to the payment of an amendment/variation fee and provided they meet the required competencies.

The pest management activities include:

- pest control activity excluding timber pests;
- pest control activity including timber pests; and
- fumigation.

## **Standards**

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

The Act empowers the chief executive to make standards relevant to the objects and administration of the new regulatory framework. Standards will be outcomes-focused and set minimum safety and accountability criteria that must be met in relation to particular activities. The standards which support the Poisons Regulation include:

- competency requirements for undertaking regulated activities with poisons, pesticides and fumigants for non-therapeutic use in Queensland;
- composition of tattoo and permanent make-up inks; and
- use of restricted S7 poisons for the control of invasive animals in Queensland.

A copy of each of the standards made by Queensland Health will be published on the Queensland Health website as well as being available for inspection, free of charge.

## **Substance management plans**

The Act contains a new requirement for particular authority holders to develop substance management plans. The plan allows authority holders to achieve compliance while allowing them the flexibility to identify and manage the risks relevant to them. It recognises that there are many options for how compliance can be met rather than via the present highly-prescriptive model. A plan must also document accountabilities and responsibilities of persons employed or engaged by the authority holder.



The plan demonstrates that an authority holder has considered risks involving regulated substances and taken steps to ensure these are adequately managed in the particular context of the practice and work environment of the authority holder. In developing and implementing a plan, there must be compliance with any relevant standards.

The Poisons Regulation requires the following persons to have a substance management plan:

- a holder of a poison manufacturing licence;
- a holder of a poison wholesale licence;
- a holder of a general approval to possess and apply certain restricted S7 poisons, such as cyanide, if it is a condition of the general approval;
- a holder of a general approval for a regulated activity with a prohibited substance; and
- a holder of a general approval to possess and apply a S8 for non-therapeutic purposes, such as a university conducting research using S8 substances.

### **Activity risk management plans**

The Poisons Regulation makes provision for an activity risk management plan to be made by a licensed pest management technician before a fumigation activity or pest control activity happens at a high-risk place or sensitive place.

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

### **Consistency with policy objectives of authorising law**

The regulation is consistent with the policy objectives of the Act.

### **Inconsistency with policy objectives of other legislation**

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

### **Alternative ways of achieving policy objectives**

The regulation is the only effective means of achieving the policy objectives.

### **Benefits and costs of implementation**

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

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

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

The new regime introduces a more streamlined outcome focused regulatory approach and improves clarity and consistency, which will reduce the administrative costs for Queensland Health. Further, the option for multi-site licence options for licence or approval holders and entities, rather than individual based authorities, has a high potential to reduce Queensland Health's operating costs, resulting in a more revenue-neutral outcome.

## **Consistency with fundamental legislative principles**

The Poisons Regulation is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles, based on the indicative draft regulation are addressed below. Further justifications of any breaches will be included prior to the final regulations being made.

### **Rights and liberties of individuals**

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

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

These powers are considered to be sufficiently defined and subject to appropriate review, as outlined below.

Clause 93 (Requirements for substance management plan) of the Act imposes obligations on the responsible person for a regulated place to make a substance management plan for the place before any dealing happens in relation to a regulated substance and that the plan is to be reviewed at the time prescribed by regulation. A substance management plan is a document setting out known and foreseeable risks associated with dealing with a regulated substance to be managed at the regulated place. Clause 68 (Review—Act, s 93) of the Poisons Regulation provides that as soon as practicable after an incident of loss or exposure of a restricted S7 or high-risk poison happens in relation to a place, and at least every 5 years after the day the substance management plan starts, or the plan is reviewed following a review incident.

The substance management plans are an important component in the management of foreseeable risks associated with dealing with regulated substances when undertaking a regulated activity. Examples of foreseeable risks that need to be mitigated may include, diversion or theft of prohibited substances, accidental exposure or spillage of dangerous poisons, or environmental contamination. It is accepted industry practice that the plans are reviewed at least every 5 years, or in response to an incident of loss or exposure. The entity is best placed to review their plan as they have the knowledge and expertise based on their operating procedures and industry practices. The timeframe of 5 years reflects workplace health

and safety practice. Section 274 of the *Work Health and Safety Act 2011* provides that a code of practice expires 5 years after it is approved.

Clause 111 (Activity risk management plan required) requires that before a fumigation activity is carried out, the licensed pest management technician must prepare an activity risk management plan for the activity. Activity risk management plans are made by a licensed pest management technician before undertaking a pest management activity at a high-risk or sensitive place or before undertaking a fumigation activity.

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

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

***Does the legislation provide appropriate protection against self-incrimination?***

Section 4(3)(f) of the Legislative Standards Act provides that whether legislation has sufficient regard to the rights and liberties of individuals depends on whether it provides appropriate protection against self-incrimination.

Clause 34 (Direct delivery) provides that a supplier must ensure a poison is delivered directly to a buyer, or if the poison is delivered by a carrier engaged to transport the poison, that the carrier has established procedures that enable the poison to be delivered directly to the buyer.

Ensuring the direct delivery of these poisons will prevent diversion, which will in turn reduce public health risk. Clause 32 (Buyer acknowledging receipt) provides that the buyer must give the supplier a notice on the day the buyer receives the poison, to ensure direct delivery to the buyer. Further procedures will be determined and outlined by the supplier in a substance management plan, if required as a condition of authority.

Clause 73 (Supplying tattoo inks) provides that a person who supplies a tattoo ink to a buyer must ensure the tattoo ink is sterile and free from microbiological contamination and give the buyer a declaration in the approved form stating the tattoo ink is free from contamination.

Permanent tattoo inks may contain colouring agents designed for industrial application, such as car paints, and not for injecting into human skin. Some of these substances may also be carcinogenic. Exposure to these chemicals is of particular concern in tattooing, due to the intradermal application and permanent nature of the tattoos, which may put consumers at greater risk of developing cancers. Due to the high public health risk, it is appropriate that the

supplier provides advice that the ink complies with the standard. It will also reassure the tattoo industry and its consumers that the inks are safe. A certificate of analysis and declaration will be provided to an importer of tattoo inks by the manufacturer.

Clause 89 (Using containers) provides that a qualified person (an approved person or licensed technician other than a trainee) must ensure a container used in relation to carrying out the pest control activity is impervious to the fumigant or pesticide, does not react chemically or physically, can be securely closed, is sufficiently durable to prevent breaking, is not a container that is for food or drink and is not similar in colour, shape or appearance to a food or drink container.

This clause provides general precautions to minimise public health risks, to ensure the storage of pesticides and fumigants are suitable to prevent the loss of the contents and will not be confused with a food container and possibly ingested. For example, if a pesticide is stored in a container which is made from a material that can react with the pesticide, a hole in the container may result, causing a leak and possible exposure; or if a pesticide has been removed from its original container and stored in a drink bottle, a person may mistake it for its original contents and ingest the pesticide. To mitigate this, a qualified person may ensure unused pesticides or fumigants remain in their original package or, if there is a fault with the original container, ensure the new container complies with clause 89 (Using containers). The qualified person may need to contact the suppliers to identify a suitable alternative container.

Clause 127 (Equipping employees) provides that a business owner must ensure that any equipment, documents or vehicles used, or provided to the employee for carrying out a pest management activity are suitable to carry out the activity, comply with any requirements of this regulation and allow the employee to comply with any requirements of this regulation.

This provision carries a maximum penalty of 20 penalty units. The pest management business owner has a responsibility to provide suitable equipment, including appropriately signed vehicles, pesticides and fumigants in appropriate containers, necessary registers and logs, to their employees so that they can undertake the activities required by the employer and in compliance with the Poisons Regulation. Pest management business owners should have policies and procedures in place and made available to ensure their employees comply with the Poisons Regulation.

This is a new provision that was not covered by the Pest Management Act and places the responsibility on the business owner rather than the pest management technician. This provision is necessary as the pest management industry has been evolving from sole owner businesses to large pest management businesses employing over a hundred pest management technicians. For example, if a pest management business owner is to ensure employees are properly equipped to undertake pest management activities, it is feasible to assume that all services provided by that company will ensure public health, whereas if the onus is on the employee, there is a risk that some technicians will not have the resources required to perform services safely, which would negatively and unpredictably impact health of their customers and the public. The business is best placed to provide training and development of procedures to be followed by their employees.

Additionally, it was requested by industry at consultation that the onus of certain responsibilities be placed on the pest management business owner. The maximum penalty of

20 penalty units aligns with all other offences related to pest management business owners in the Poisons Regulation (clauses 126 and 128-132).

### **Institution of Parliament**

#### ***Does the subordinate legislation contain only matters appropriate to subordinate legislation?***

Section 4(5)(c) of the Legislative Standards Act states that whether legislation has sufficient regard to the institution of Parliament depends on whether the subordinate legislation contains only matters appropriate to subordinate legislation.

Clause 138 (Fees payable) provides that the fees payable are stated in schedule 7. These fees include the application for the granting or renewal of a manufacturing or wholesaling licence, application for the granting or renewal of a retail licence, and the application for the granting, renewal or amendment of a pest management licence.

All licences granted under the Act will attract a fee to partly cover the cost of assessing an application and issuing the licence. All fees will be adjusted annually in accordance with government policy. The actual increase may be higher than the stated rate due to Departmental rounding policy.

For existing licence holders, the amount paid will not change and there will be no changes to the classification or fee structure for pest management licences. The aim of the revised fee structure is to streamline and simplify the existing licence process, while ensuring no new fees or charges.

Advantages of the revised fee structure compared to the fees charged under the Health (Drugs and Poisons) Regulation include:

- one licence can cover multiple sites, which streamlines the application process;
- Queensland will now recognise Commonwealth manufacturing licences;
- Queensland manufacturing licence still includes a deemed wholesale licence;
- no increase in fees for licence holders; and
- no fees for approvals as is currently the case under the Health (Drugs and Poisons) Regulation.

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

Section 4(5)(e) of the Legislative Standards Act states that whether legislation has sufficient regard to the institution of Parliament depends on whether the subordinate legislation allows the subdelegation of a power delegated by an Act, only in appropriate case and to appropriate persons, and if authorised by an Act.

Clause 139 (Refunds) of the Poisons Regulation provides that the chief executive may refund an application for a substance authority or renewal of a substance authority fee, or a proportion of the fee, if they are satisfied it is appropriate and reasonable to do so in the circumstances.

This provision may be seen to breach the principle that subordinate legislation should allow the subdelegation of a power delegated by an Act only in appropriate cases and to appropriate persons and if authorised by an Act (section 4(5)(e) of the Legislative Standards Act).

The chief executive is required to exercise flexibility in decision making around fees to account for administrative issues. When considering the proportion to retain, the chief executive may consider the cost of considering the application or renewal. For example, withdrawal of an application by an applicant or inadvertent errors in the application submitted by the applicant.

### Standards

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

- Clause 23 (Tattoo services) provides that a person who holds a licence or permit under the *Tattoo Industry Act 2013* may deal with a prohibited tattoo ink only if the concentration of the prohibited substance in the ink does not exceed the concentration limit for the substance stated in the *Acceptable Concentrations for Tattoo and Permanent Makeup Inks Standard*. The *Acceptable Concentrations for Tattoo and Permanent Makeup Inks Standard* will detail the threshold quantities for the substances in permanent ink listed in the Regulation. Only detailing the threshold quantities, rather than the specific substance, will provide Queensland Health with the ability to change the quantities based on scientific evidence and international legislation. Changes will be required as research uncovers new information. This new information is likely to come at inconsistent time periods; therefore, it is not possible to predict the frequency that concentration thresholds will need to be changed. It is considered that the rigour surrounding the development of the tattoo standard and the need to be responsive to changes in the composition of tattoo inks justifies the need to sub-delegate by referring to an external document.
- Clause 67 (Matters—Act, s 93) provides that for section 93 of the Act, the matters to be addressed for a substance management plan are stated in the *Substance Management Plans for Poisons and Prohibited Standard*. The *Substance Management Plans for Poisons and Prohibited Substances Standard* contains detailed requirements, of a technical nature, that are subject to change. Having the details in the standard provides clarity for end users. It is considered that the rigour surrounding the development of the tattoo standard and the need to be responsive to changes in the composition of tattoo inks justifies the need to sub-delegate by referring to an external document.
- Clause 85 (Treating fence posts) provides that when installing fence posts, a person who satisfies the competency requirements for treating fences posts stated in the *Competency Requirements for Approved Persons Undertaking Regulated Activities with Poisons, Pesticides and Fumigants Standard* or holds a commercial operator's licence under section

16 of the *Agricultural Chemicals Distribution Control Act 1966* may carry out a pest control activity using a pesticide to treat the posts or soil near the posts.

The competencies prescribed in the *Competency Requirements for Approved Persons Undertaking Regulated Activities with Poisons, Pesticides and Fumigants Standard* are nationally agreed and set out under the various state or commonwealth laws, such as the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*. Representatives from each jurisdiction sit on the committee responsible for determining these competencies. The Queensland representative comes from the Department of Agriculture and Fisheries, with Queensland Health as an observer. Otherwise, competencies determined are industry endorsed (e.g. pest management industry and agriculture industry via consultation) and may be revised and renamed as industry practices change. It is considered that the rigour surrounding the development of the competency standard and the need to be responsive to changes in national training requirements justifies the need to sub-delegate by referring to an external document.

- Clause 86 (Post-harvest treatment of products) provides that a person may carry out a pest control activity using a pesticide to treat an agricultural or horticultural product, after the product has been harvested, at a place where the product is being processed for a commercial purpose and provided the person satisfies the competency requirements in the *Competency Requirements for Approved Persons Undertaking Regulated Activities with Poisons, Pesticides and Fumigants Standard*.

The competencies prescribed in the *Competency Requirements for Approved Persons Undertaking Regulated Activities with Poisons, Pesticides and Fumigants Standard* are nationally agreed and set out under the various state or commonwealth laws, such as the *Chemical Usage (Agricultural and Veterinary) Control Act*, or they are industry endorsed and may be revised and renamed as industry practices change. It is considered that the rigour surrounding the development of the competency standard and the need to be responsive to changes in national training requirements justifies the need to sub-delegate by referring to an external document.

- Clause 87 (Treatment of livestock) provides that a person may carry out a pest control activity using a pesticide to treat livestock at a place where the livestock is being processed for a commercial purpose, provided the person satisfies the competency requirements for carrying out a pest control activity stated in the *Competency Requirements for Approved Persons Undertaking Regulated Activities with Poisons, Pesticides and Fumigants Standard*.

The competencies prescribed in the *Competency Requirements for Approved Persons Undertaking Regulated Activities with Poisons, Pesticides and Fumigants Standard* are nationally agreed and set out under the various state or commonwealth laws, such as the *Chemical Usage (Agricultural and Veterinary) Control Act*, or they are industry endorsed and may be revised and renamed as industry practices change. Inclusion of the competencies in a Standard allows flexibility to maintain the currency of criteria used to assess if the person can undertake the activity without it becoming a public health risk. It is considered that the rigour surrounding the development of the competency standard and the need to be responsive to changes in national training requirements justifies the need to sub-delegate by referring to an external document.

The standards will be outcomes focused and may list options to achieve the desired outcome which would not be suitable for inclusion in a prescriptive requirement in a regulation. For example, the substance management plan standard provides alternative security measures for ensuring regulated substances are stored securely.

Prescribing requirements by reference to an external document may be seen to breach section 4(5)(e) of the Legislative Standards Act. A standard is a document certified by the chief executive of Queensland Health that are relevant to the object and administration of the new legislation regime and provides guidance, allows flexibility on activities and apply to individuals and entities. The standards are monitored and updated when necessary, align with industry best practice and are published on the Queensland Health website ([www.health.qld.gov.au](http://www.health.qld.gov.au)).

Schedule 1 (Departmental standards) of the Poisons Regulation details the name of the standard and the date it is made. The regulation will be updated to reflect the new name and date of the new version each time a new version is made. A copy of the updated standard will be tabled as extrinsic material each time the regulation is remade, to reflect the changed standard. The Act provides that the standard does not take effect until it is approved by the regulation and published free of charge on Queensland Health's website.

By including a list of standards in the schedule it creates certainty for professionals and the public about exactly which documents on Queensland Health's website form part of the law and when they commenced. This will be particularly important for future prosecutions. When making or amending a standard, relevant individuals or organisations with expertise in, or experience of, the matters under consideration will be consulted.

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

### Poisons Standard

In accordance with the National Scheduling Policy Framework for Medicines and Chemicals, Queensland will continue to adopt the classification system for medicines and poisons under the current version of the Poisons Standard made under section 52D of the *Therapeutic Goods Act 1989* (Cth).

Clause 69 (Compliance with Poisons Standard, part 2) provides that a person doing a thing mentioned in a part 2 requirement of the Poisons Standard, must comply with the requirement for doing the thing.

Clause 70 (Interfering with labelling) provides that a person must not change, cover, deface or remove a brand, declaration, label, mark or statement that is fixed to or shown on the container of a regulated substance and is required under part 2 of the Poisons Standard. The label contains public health risk advice specific to the particular substance. Damage or alteration of the label increases the risk of inappropriate use and possible harm.

Clause 71(2) (Cracked and damaged containers) provides that if a person becomes aware that a container containing a poison is cracked or damaged, the person must immediately empty the poison into a container labelled in compliance with part 2 of the Poisons Standard or dispose of the contents lawfully.



These provisions may be seen to breach the principle that subordinate legislation should allow the subdelegation of a power delegated by an Act only in appropriate cases and to appropriate persons and if authorised by an Act (section 4(5)(e) of the Legislative Standards Act). Adopting the current version of the Poisons Standard will ensure key regulatory controls governing the availability and accessibility of medicines and poisons in Queensland will continue to be consistent with those in the other states and territories. Reference to the Poisons Standard provides national consistency. There are representatives from each State on the scheduling committee to ensure the Poisons Standard is applicable in all jurisdictions. Additionally, the committee meet three times per year to discuss updates to be made to the Poisons Standard.

By referencing the Poisons Standard, as opposed to stating requirements directly in the Regulation, ensures that the Regulation will always be consistent with the Poisons Standard and relevant to national requirements. In addition, the new legislation will enable regulations to be made so that short-term gaps in the scheduling of a medicine or poison at the national level to be addressed by the Queensland legislation if they arise in the future.

### External Standards and Guidelines

In some cases, it is necessary to adopt or specify Standards that have been developed by relevant industry bodies (e.g. Australian Standards or safe Work Australia).

Clause 94(1)(a) (Records of use for termite treatments) provides that a licensed technician who carries out a pest management activity to which AS 3660 (Termite management) applies must also prepare a certificate of termite treatment under the standard for the activity.

The Building Code of Australia requires a pest management technician to work under AS 3660. Most pest management technicians would already have a copy of AS 3660 or could purchase online from <https://infostore.saiglobal.com>. However, it is not a requirement that pest management technicians must have a copy of the code, it is only that they should have a copy, or access to a copy.

Clause 94(1)(b) (Records of use for termite treatments) provides that an approved person who installs termite barrier sheet material and prepare a certificate of installation in accordance with AS 3660.1 (Termite management, Part 1: New building work) will meet the record keeping requirements of the regulation without duplicating the information already required under Australian Standard AS 3660.1.

The Building Code of Australia requires a pest management technician to work under AS 3660. Most pest management technicians would already have a copy of AS 3660 or could purchase online from <https://infostore.saiglobal.com>. Preparing the certificate of termite treatment under AS 3660.1, as the record of the pest control activity, saves the technician from duplicating this information in the record required to be kept under the Poisons Regulation. The information outlined in the certificate of termite treatment also covers all content required to be recorded under the Poisons Regulation.

The AS 3660 standard is published by Standards Australia. This body is the nation's peak non-government, not-for-profit standards organisation and are the Australian representatives of the International Organization for Standardization and International Electrotechnical Commission. Standards Australia develops internationally aligned Australian Standards in the national

interest through a process of consensus. Standards Australia is responsible for ensuring Australia's viewpoint is heard and considered in the development of International Standards, and their subsequent adoption as Australian Standards. The standards development process is based on three internationally recognised principles, openness and transparency; consensus and balance of representation.

Schedule 8, definition of *safe exposure concentration*, provides that for a fumigant it means the concentration of the fumigant in the air that is safe for human exposure stated on the approved label and in accordance with the *Workplace exposure standards for airborne contaminants* published by Safe Work Australia. It is considered that the rigour surrounding the development of the workplace exposure standards and the need to be responsive to changes in national exposure standards justifies the need to sub-delegate by referring to an external document.

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

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

Australian Standards and Safe Work Australia are recognised and accepted industry standards and developed by technical experts with industry and government consultation. The standards are accredited by Standards Australia and Safe Work Australia, which are nationally recognised peak bodies for standards. The prescribed standards in clause 94 and the definition of safe exposure concentration deal with termite treatment and safe exposure to airborne contaminants. The content is technical and detailed in nature. It is appropriate to delegate this detail to the standards rather than set out the requirements in the Poisons Regulation.

Clause 69(3) (Compliance with Poisons Standard, part 2) provides that a person does not commit an offence if the part 2 requirement of the Poisons Standard relates to storing an S6 poison or S7 substance and the person stores the substance in compliance with the *National guideline for retail storage of schedule 6 and schedule 7 poisons* made by the Australian Health Minister's Advisory Council.

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

S6 poisons are substances with a moderate potential for causing harm, the extent of which can be reduced through the use of distinctive packaging with strong warnings and safety directions on the label. S7 poisons are substances with a high potential for causing harm at low exposures which require special precautions during manufacture, handling or use. These poisons should be available only to specialised or authorised users who have the skills necessary to handle them safely. Special regulations restricting their availability, possession, storage or use may apply.

The *National guideline for retail storage of schedule 6 and schedule 7 poisons* is published under the authority of the Australian Health Minister's Advisory Council and is to be read in conjunction with the relevant provisions of the Poisons Standard and the relevant jurisdictions' drugs/medicines and poisons legislation.

This guideline aligns with the hierarchy of controls over poisons in the Poisons Standard and provides for a nationally uniform approach to retail storage that meets the expectations of consumers, regulators and other stakeholders while retaining flexibility for business where possible.

### **Fundamental legislative principles not contained in Legislative Standards Act**

#### **Offences**

The offences and penalty amounts contained in the Poisons Regulation are generally consistent with similar offences and penalty amounts contained in the Health (Drugs and Poisons) Regulation, Health Regulation and the Pest Management Regulation, with the exception of sections 126 (Obligations in relation to trainees) and 136 (Recording information).

The high penalty levels are justifiable given the level of harm to health that can be caused by poisons and prohibited substance, for example, cyanide and strychnine, and the potential impacts that offending can have on public health. The penalties reflect the importance of correctly labelling, packaging and storing poisons and prohibited substances. Many of the offences with high penalties relate to keeping poisons in appropriate containers and preventing contamination of food and accidental ingestion. The remaining offence provisions and corresponding maximum penalties have been reviewed and the penalties are proportionate to the seriousness of the offences.

Clause 69(1) (Compliance with Poisons Standard, part 2) provides that it is an offence for a person doing a thing mentioned in a part 2 requirement of the Poisons Standard if they fail to comply with the requirement for doing the thing. The offence carries a maximum penalty of 40 penalty units.

Part 2 of the Poisons Standard contains nationally agreed requirements regarding labels, containers, storage, disposal, record keeping and sale, supply, possession or use of poisons. If the matters referenced in the Poisons Standard were contained in the Act or Regulations, they would frequently be out of date and not reflect changing practices, substances and activities. It is necessary to refer to the Poisons Standard in the Regulation rather than to duplicate it in the Medicines and Poisons scheme, as it is technical and detailed in nature. The maximum penalty of 40 penalty units, is equivalent to other offences under the Health (Drugs and Poisons) Regulation. These offences under the Health (Drugs and Poisons) Regulation include sections 291 (Labels and containers), 296 (Samples of poisons) and 300 (Use of food or drink container for poisons prohibited).

Clause 70 (Interfering with labelling) provides that it is an offence for a person to change, cover, deface or remove a brand, declaration, label, mark or statement that is required under part 2 of the Poisons Standard, to be fixed to, or shown on, the container of a regulated substance. The offence carries a maximum penalty of 40 penalty units.

Labels on regulated substances are an important control measure for minimising public health risk and informing users of any precautions they need to take when using the substance. Alteration of the label increases the risk of misuse and potential harm to the user, including death in some cases, for example cyanide and hydrofluoric acid. The penalty is equivalent the corresponding provision in the Health (Drugs and Poisons) Regulation (section 291).

Clause 71(1) (Cracked and damaged containers) provides that it is an offence for a person to possess or supply a cracked or damaged container containing a poison. The offence carries a maximum penalty of 40 penalty units.

Poisons leaking from a cracked or damaged container pose a serious risk of harm to people, particularly to young children, for example acid burns or pesticide poisoning. The penalty is equivalent the corresponding provision in the Health (Drugs and Poisons) Regulation (section 291(2)).

Clause 71(2) (Cracked and damaged containers) provides that it is an offence for a person to be aware that a container containing a poison is cracked or damaged and not immediately empty the poison into a container labelled in compliance with part 2 of the Poisons Standard or to dispose of the contents lawfully. The offence carries a maximum penalty of 40 penalty units.

Storing poisons in a cracked or damaged container poses a serious risk of harm to people which can be mitigated by transferring the contents to another suitable container which is correctly labelled, or by disposing of the poison in an appropriate way. The appropriate way to dispose of a poison for an S2, S3, S4 poison or high-risk poison is by complying with clause 38 of the Poisons Regulation or for an S5 or S6 poison, by complying with the disposal instructions on the label. The penalty is equivalent the corresponding provision in the Health (Drugs and Poisons) Regulation (section 291(3)).

Clause 72(1) (Washing poison containers) provides that it is an offence for a person to soak, wash or otherwise treat a poison container in a tank or receptacle used to soak, wash or treat bottles or other containers of a type commonly used to hold human or animal food or drink. The offence carries a maximum penalty of 40 penalty units.

A poison container means a bottle or other container that is used, or is of a type commonly used, to hold a poison, or has a brand, mark or label on it stating that the bottle or container has been used to hold a poison. Washing poisons containers in a tank or sink used to clean food containers poses a serious risk of harm to people, due to the possibility that poison residues may contaminate the food containers. The penalty is equivalent the corresponding provision in the Health (Drugs and Poisons) Regulation (section 291(4)).

Clause 73(1) (Supplying tattoo inks) provides that it is an offence for a person who supplies a tattoo ink to a buyer who fails to ensure the tattoo ink is sterile and free from microbiological contamination. The offence carries a maximum penalty of 80 penalty units. This penalty is high because of the potential for serious risk of infection to the person being tattooed, noting that the tattooing is applied intradermally.

Clause 73(2) (Supplying tattoo inks) provides that it is an offence for a person who supplies tattoo ink to a buyer who fails to give the buyer a declaration in the approved form stating the

tattoo ink is free from contamination. The offence carries a maximum penalty of 40 penalty units. This is an offence because if a certificate is not provided the user will not have confidence that the inks are safe and will not cause harm or infection to the person being tattooed. Noting that the tattooing is applied intradermally.

Clause 74 (Advertising poisons) provides that it is an offence for a person to advertise, or cause someone else to advertise, an S2, S3 or S4 poison or a high-risk poison, whether or not the poison is named in the advertisement. The offence carries a maximum penalty of 80 penalty units.

This clause does not apply to an advertisement in a professional or trade journal, or a price list, advertisement or promotional material intended for circulation only to wholesalers or industrial users of the poison. This is an offence because it is inappropriate for the poison to be in the possession of, or used by, the general community due to high risk illicit use or diversion. The promotion or advertising of such poisons should be limited to legitimate users.

Clause 126 (Obligations in relation to trainees) provides that it is an offence if a business owner who employs a trainee fails to ensure the trainee is appropriately supervised while carrying out a pest management activity, the trainee is supervised by a licensed technician and the trainee receives appropriate training for the work and the trainee's level of competency. The offence carries a maximum penalty of 20 penalty units.

It is important that a pest management business owner ensures that a trainee is appropriately supervised and trained while undertaking pest management activities to prevent harm to themselves, clients and other people. The business owner needs procedures in place to ensure the trainee is supervised. A trainee is considered a trainee for the period that they are undertaking the required competencies and until their pest management licence has been approved. The business owner may ensure that a trainee is supervised by ensuring another licensed technician employed by the business is assigned to an activity along with the trainee. The level of supervision and what activities a trainee would undertake would be dependent on their level of experience. The trainee is also required to keep a record of activities undertaken and signed off by the licenced technician supervising them.

The offence is equivalent to section 52 of the Pest Management Act, which has a maximum penalty of 200 penalty units. The maximum penalty has been reduced to 20 penalty units to align with all other offences within this Regulation related to pest management businesses. Such offences include those in clauses 127 (Equipping employees), 128 (Storage on vehicle), 129 (Signage on vehicle), 130 (Secure storage), 131 (Employee records) and 132 (Completing and keeping documentation). Serious or continuing offences would be subject to clause 46 (Offence to require or permit unauthorised persons to carry out pest management activities) of the Act, which has a penalty of 200 penalty units.

Clause 127 (Equipping employees) provides that it is an offence if a business owner fails to ensure that any equipment (such as containers, hoses, measuring tools, spray packs and spill kits), documents or vehicles used, or provided to the employee, for carrying out a pest management activity are suitable for carrying out the activity, comply with any requirements of this regulation and allow the employee to comply with any requirements of this regulation. The offence carries a maximum penalty of 20 penalty units.

The pest management business owner has a responsibility to ensure equipment used by their employees comply with the Poisons Regulation and are maintained to minimise public health risks. The business owner can do this by ensuring company policies and procedures align with the requirements set out in the Poisons Regulation and by providing adequate training to employees. In the Pest Management Regulation, the onus of compliance is on the individual pest management technician. In the Poisons Regulation, the onus of compliance is now on the pest management business rather than the individual. The onus has been transferred to the business owner. As the business owner is the entity that receives all profits for their employees' activity, the responsibility of complying with the Act should be with the business. Additionally, the pest management industry has evolved over the last 20 years from being predominantly self-employed to working under a larger company. The maximum penalty of 20 penalty units is the same as all other offences related to the pest management business owners in the Poisons Regulation.

Clause 128 (Storage on vehicle) provides that it is an offence if a business owner fails to ensure that a vehicle used to store or transport a fumigant or pesticide meets the following requirements:

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

The offence carries a maximum penalty of 20 penalty units.

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

Clause 129 (Signage on vehicle) provides that it is an offence if a business owner fails to ensure that a motor vehicle used to store or transport fumigants or pesticides has the following information printed on the exterior of the vehicle in English in a way that can be easily read:

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

The offence carries a maximum penalty of 20 penalty units.

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

Clause 130(1) (Secure storage) provides that it is an offence if a business owner fails to ensure that a fumigant or pesticide available for use for the owners pest management business is stored at a place that is kept locked when unattended, has a floor and other surfaces that are impervious to the fumigant or pesticide, is built in a way that the leakage or escape of the fumigant or pesticide is not likely to cause harm or nuisance to a person or the environment, is adequately ventilated, provides protection from the weather and is located in an area that is separated from a residence or another work area that is not used for pest management activities. The offence carries a maximum penalty of 20 penalty units.

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

Clause 130(2) (Secure storage) provides that it is an offence if a business owner fails to ensure that a person has access to the place only with the owner's knowledge and authority and if the person is an adult or trainee. The offence carries a maximum penalty of 20 penalty units.

Pesticides and fumigants pose a serious risk to health if they are not securely stored to prevent unauthorised access. These measures are ineffective if the pest management business owner does not have procedures in place to limit access to an adult or trainee who is authorised. The maximum penalty of 20 penalty units is the same as all other offences related to the pest management business owners in the Poisons Regulation. The penalty is equivalent the corresponding provision in the Pest Management Regulation (section 10(2)).

Clause 131 (Employee records) provides that it is an offence if a business owner fails to keep a record of the details of each of the employees, the pest management activities carried out by each employee and any notifiable incidents reported to the chief executive. The offence carries a maximum penalty of 20 penalty units.

The keeping of records by the pest management business owner is necessary to respond to clients regarding the use of pesticides and fumigants on their properties and to respond to future concerns of employees regarding health impacts. Employees frequently work for multiple employers over their working life and clients would expect the business to be able to respond to their request for information. The maximum penalty of 20 penalty units is similar to other offences related to pest management business owners. Many equivalent provisions where the onus of compliance is on the individual pest management technician in the Pest Management

Regulation that are being carried into the new legislation, the new legislation will reassign the onus to the pest management business. Many of the provisions where onus is being transferred have a maximum penalty of 20 penalty units in the Pest Management Regulation.

The pest management business owner has a responsibility to ensure equipment used by their employees comply with the Poisons Regulation and are maintained to minimise public health risks. In the Pest Management Regulation, the onus of compliance is on the individual pest management technician. In the Poisons Regulation, the onus of compliance is now on the pest management business rather than the individual. The maximum penalty of 20 penalty units is the same as all other offences related to the pest management business owners in the Poisons Regulation.

Clause 132(2) (Completing and keeping documentation) provides that it is an offence if a business owner fails to ensure that an employee of the business owner makes the record and the record is kept in the way, and for the period required, under the regulation. The offence carries a maximum penalty of 20 penalty units.

The keeping of records by the pest management business owner is necessary to respond to clients regarding the use of pesticides and fumigants on their properties and to respond to future concerns of employees regarding health impacts. Employees frequently work for multiple employers over their working life and clients would expect the business to be able to respond to their request for information. The maximum penalty of 20 penalty units is similar to other offences related to pest management business owners. The penalty is equivalent to the corresponding provision in the Pest Management Regulation (section 14).

Clause 133(2) (Manager to notify attendees) provides that it is an offence if the manager of the premises fails to give the attendees a notice, or leave it in a conspicuous place, before the pest control activity is carried out advising when the pest control activity will be carried out, the precautions stated in the pest control advice for the activity and that the pest control advice for the activity may be inspected and where it may be inspected. The offence carries a maximum penalty of 20 penalty units.

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

Attendees of premises where pest management activities are planned have a right to be informed so that they can take precautions for themselves and any pets. It is impracticable to require the pest management technician to personally inform each occupant of a premise with multiple occupiers of the planned pest management activity, for example, a nursing home. The manager of the premises is best placed to notify the occupiers, for example by email or placing notices in common areas. The maximum penalty of 20 penalty units is similar to other offences related to pest management business owners. Many equivalent provisions where the onus of compliance is on the individual pest management technician in the Pest Management Regulation that are being carried into the new legislation, the new legislation will reassign the onus to the manager of the business. Many of the provisions where onus is being transferred have a maximum penalty of 20 penalty units in the Pest Management Regulation.



Clauses 133(4) (Manager to notify attendees) provides that it is an offence if the manager of the premises fails to give the attendees a notice stating when the pest control activity was completed as soon as practicable after the pest control activity has been completed. The offence carries a maximum penalty of 20 penalty units.

Attendees of premises where pest management activities have been undertaken have a right to be informed that the pest management activity has been completed so that they can return. It is impracticable to require the pest management technician to personally inform each occupant of a premise with multiple occupiers, for example a nursing home, of the completion of the pest management activity. The manager of the premises is best placed to notify the occupiers, for example by email or placing notices in common areas. The maximum penalty of 20 penalty units is similar to other offences related to pest management business owners. Many equivalent provisions where the onus of compliance is on the individual pest management technician in the Pest Management Regulation that are being carried into the new legislation, the new legislation will reassign the onus to the manager of the business. Many of the provisions where onus is being transferred have a maximum penalty of 20 penalty units in the Pest Management Regulation.

Clause 134 (Interfering with fumigation barricades or warning signs) provides that it is an offence for a person, without the permission of a licensed technician carrying out a fumigation activity, to take down, remove or alter the position of a barricade erected by the technician or deface, take down, remove or alter the positions of a warning sign displayed by the technician. The offence carries a maximum penalty of 20 penalty units.

Barricades and warning signs are placed around a fumigation activity to prevent unauthorised people entering the area and being exposed to hazardous concentrations of fumigants. If an unauthorised person changes the position of a barricade or removes or defaces a warning sign there is a risk a person may suffer adverse health effects or die. The penalty is equivalent the corresponding provision in the Pest Management Regulation (section 23).

Clause 135 (Smoking prohibited) provides that it is an offence for a person to smoke tobacco or any other substance while the person is carrying out, or is with a person who is carrying out, a fumigation activity. The offence carries a maximum penalty of 20 penalty units.

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

Clause 136(2) (Recording information) provides that it is an offence for a person to fail to record information on a document that is not written in English and if recorded on paper, durably marked on the document. The offence carries a maximum penalty of 20 penalty units.

It is a defence to the offence if the person writes in a language other than English, if it ensures the person named in the document understands the instructions given.

Record keeping is an important control measure for minimising public health risk as it provides information regarding the supply of regulated substances and details of pest management activities. To be effective, the records must be written in English so that they can be understood

by most people and durable so that the information can be read for the life of the document. Clause 136(3) also allows the information to be written in a language other than English if it is necessary for the information to be understood by non-English speaking people. The penalty is equivalent the corresponding provision in the Health (Drugs and Poisons) Regulation (section 305).

Clause 137(2) (Keeping information) provides that it is an offence for a person responsible for controlling the recording and keeping of information to fail to ensure the information is readily retrievable, can not be altered, obliterated, deleted or removed without detection and is kept for 5 years after the day it is recorded. The offence carries a maximum penalty of 20 penalty units.

Records are an important control measure for minimising public health risk as they provide information regarding dealings with regulated substances and pest management activities. The value of the records is reduced if they can be changed without an indication of the change and the person responsible. Records are kept often electronically, and as electronic data technology advances some older records may not be retrievable unless the records are transferred to newer software and hardware. This clause requires that any records must be retrievable over the retention period. The penalty is equivalent the corresponding provision in the Health (Drugs and Poisons) Regulation (section 302).

## Consultation

A wide range of stakeholders were invited to comment on the Poisons Regulation, including:

- AgForce Queensland;
- Australian Environmental Pest Management Association;
- Land holders in rural and regional Queensland;
- Local Government Association of Queensland;
- Local governments;
- Poison manufacturers, wholesalers and retailers; and
- Universities.

Some stakeholders provided feedback on drafting matters. This feedback was incorporated into the Poisons Regulation where appropriate. Information sheets provided during consultation have also been updated to provide additional clarification.

Stakeholders, namely universities and local governments, acknowledged that the new regime would reduce the administrative burden due to the ability to apply for entity level authorities. Entity level approvals will also reduce waiting times for new employees to commence necessary duties.

During consultation with AgForce Queensland, it was expressed that the new scheme would increase regulatory burden in primary production. Under the Pest Management Act, pest control activities in primary production were exempt. This is no longer the case under the proposed scheme. AgForce Queensland presented a number of scenarios where activities applying pesticide as part of other business activity (e.g. building a fence around a farmyard) would be captured and require a pest management licence. To alleviate additional burden, such persons will be exempt from requiring an authority if they have qualifications that are

prescribed under the national harmonisation scheme for the use of agricultural and veterinary chemicals by fee for service providers.

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

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