

Queensland



ANNO VICESIMO SECUNDO

ELIZABETHAE SECUNDAE REGINAE

No. 29 of 1973

An Act to amend the Health Act 1937–1971 in certain particulars and for a connected purpose

[ASSENTED TO 19TH APRIL, 1973]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. Short title and citation. (1) This Act may be cited as the *Health Act Amendment Act 1973*.

(2) The *Health Act 1937–1971* is in this Act referred to as the Principal Act.

(3) The Principal Act as amended by this Act may be cited as the *Health Act 1937–1973*.

2. Amendment of s. 3. Section 3 of the Principal Act is amended by inserting after the words "Division IVA—Detention Review Tribunal (ss. 131C–131H)," the words "Division IVB—Labelling of Drugs and Poisons (s. 131I)."

3. Amendment of s. 5. Section 5 of the Principal Act is amended by—

(a) in the meaning of the term “Paint”, omitting all words after the word “enamel,” and inserting in their stead the words “distemper, and any tinting substance or any other substance of any kind whatsoever for use in the composition of any paint or for adding to any paint;”;

(b) adding at the end of the meaning of the term “Prohibited plant” the words “: the term includes, with respect to a plant so declared or a plant of a species so declared, the seeds and all other parts thereof, whether attached thereto or detached therefrom;”.

4. Amendment of s. 127. Section 127 of the Principal Act is amended by—

(a) omitting the second paragraph of subsection (1);

(b) in subsection (2)—

(i) inserting after the word “lead” the words “, arsenic, antimony, cadmium, selenium or mercury or any compound of any such substance”;

(ii) inserting after the word “fence” in paragraph (c) the words “, wall, post”;

(iii) omitting from paragraph (e) the words “household furniture.” and inserting in their stead the words “furniture whatsoever.”;

(c) in subsection (5)—

(i) inserting after the word “fence” the words “, wall, post”;

(ii) omitting the word “household”;

(d) omitting the first paragraph of subsection (6) and inserting in its stead the following paragraph:—

“Upon proof to the satisfaction of the Director-General that any paint containing lead, arsenic, antimony, cadmium, selenium or mercury or any compound of any such substance is on any place, thing or object referred to in paragraph (a), (b), (c), (d) or (e) of subsection (2) of this section whereon the use or putting of that paint is prohibited by a provision of this section, the Director-General may by notice in writing given to the owner of the place, thing or object in question or to the person using or putting on, or who has used or put on, the paint require the owner or person to clean down and remove that paint, within such time as may be specified by the Director-General in the notice, from such place, thing or object.”;

(e) inserting in the second paragraph of subsection (6), after the words “Any such owner”, the words “or person”;

(f) omitting subsection (7) and inserting in its stead the following subsection:—

“(7) Without limiting the meaning that the term “house” has in this Act, that term includes, for the purposes of this section, a caravan or other structure capable of being moved from one place to another (whether by being driven or towed or by being transported on a motor vehicle or trailer) which is designed or adapted for human habitation.”;

(g) omitting subsection (8).

5. Amendment of s. 128. Section 128 of the Principal Act is amended by omitting all words in the section after the words “enclosed for sale a label” and inserting in their stead the words “which complies in all respects with what is prescribed by the Director-General by regulations in relation thereto, it being hereby declared, without limiting any of the provisions of section 152, that such regulations may be made by the Director-General.

A person shall not sell in a package any paint unless such a label complying in all respects as aforesaid is supplied on or attached to such package.”.

6. **Repeal of s. 129.** Section 129 of the Principal Act is repealed.

7. **Amendment of heading to Division IV of Part IV.** The heading to Division IV of Part IV of the Principal Act, occurring immediately before section 130, is amended by inserting, after the words “ Dangerous Drugs ”, the words “, Prohibited Plants ”.

8. **Amendment of s. 130.** Section 130 of the Principal Act is amended by—

(a) in subsection (1) inserting in paragraph (a) after the words “ prohibited plant ” the words “, or procure for himself a dangerous drug or a prohibited plant or attempt so to do,”;

(b) in subsection (2) omitting paragraph (c) and inserting in its stead the following paragraph:—

“(c) sell, give, supply or procure, or attempt so to do, or offer to sell, give, supply or procure, to or for another person or otherwise deal or trade in a dangerous drug or a prohibited plant or attempt so to do;”.

9. **Amendment of s. 130B.** Section 130B of the Principal Act is amended by inserting after the first paragraph of subsection (1), being the paragraph ending with the words “ for the purposes of this section. ”, the following paragraph:—

“ In this subsection “ evidence adduced before it ” means—

- (i) the oral testimony of at least one medical practitioner adduced before the court;
- (ii) at least two certificates placed before the court purporting to be medical certificates by medical practitioners; or
- (iii) both such testimony and certificates.”.

10. **Amendment of s. 130I (1).** Subsection (1) of section 130I of the Principal Act is amended by—

(a) lettering the first paragraph as paragraph (a);

(b) omitting the second paragraph and inserting in its stead the following paragraphs:—

“(b) Proceedings before the stipendiary magistrate shall be proceedings with a view to the committal of the defendant for trial or sentence or proceedings with a view to summary conviction, at the election of the prosecutor.

(c) Where proceedings are taken with a view to summary conviction of the defendant and the stipendiary magistrate forms the opinion that the matter should not be determined summarily, he shall abstain from determining the matter summarily and shall instead deal with the proceedings as proceedings with a view to the committal of the defendant for trial or sentence, as the case may be, and may exercise in respect of the defendant for the purpose of such proceedings all the powers conferred on him by law as though the proceedings were proceedings with a view to committal in the first instance.

(d) Where the stipendiary magistrate abstains from determining a matter summarily pursuant to paragraph (c) of this subsection, the plea of the defendant taken at the outset of the summary proceedings shall be disregarded and, before committing the defendant for trial or for sentence, he shall address the defendant in accordance with the provisions of section 104 of *The Justices Acts 1886 to 1968*."

11. Amendment of s. 130M. Section 130M of the Principal Act is amended by inserting after subsection (1) the following subsection:—

"(1A) Without derogating from the provisions of subsection (1) of this section, where complaint is made before a justice on oath by a member of the Police Force or any person authorized by the Director-General in writing for the purposes of this section that a person has or is reasonably suspected of having contravened any provision of section 130 of this Act, the justice may, upon the matter of complaint being substantiated to his satisfaction, issue a warrant for the apprehension of such person and for him to be dealt with according to law."

12. New Division IVB of Part IV. The Principal Act is amended by inserting after section 131H the following heading and section:—

"DIVISION IVB—LABELLING OF DRUGS AND POISONS

131I. Drugs and Poisons to be labelled. Every package containing any drug or poison for sale shall bear a label which complies in all respects with what is prescribed by the Director-General by regulations in relation thereto, it being hereby declared, without limiting any of the provisions of section 152, that such regulations may be made by the Director-General.

A person shall not sell a package containing any drug or poison unless the package bears such a label complying in all respects as aforesaid."

13. Amendment of s. 144. Section 144 of the Principal Act is amended by inserting in the third paragraph of subsection (1), after the words "restricted drug," the words "dangerous drug".

14. Amendment of s. 146. Section 146 of the Principal Act is amended by—

(a) omitting subsections (1) and (2) and inserting in their stead the following subsections:—

"(1) Where in respect of any proceeding for an offence against this Part a copy of a certificate of analysis,

(a) if obtained on behalf of the prosecution, is served with the summons; or

(b) if obtained on behalf of the defendant, is given to the prosecutor at least three clear days before the return day,

then the certificate, a copy of which has been so served or given, purporting to be under the hand of an analyst, on its production in the proceeding shall be sufficient evidence of the facts stated therein unless an order is made pursuant to subsection (2) of this section requiring the calling of the analyst as a witness.

(2) Where a certificate of analysis is, or is proposed to be, produced pursuant to subsection (1) of this section, the court, if it is satisfied, whether on application made to it or without any such application, that in the circumstances of the case the analyst who issued the certificate should be called as a witness, may order that the analyst be called as a witness by the party producing the certificate, or proposing so to do, and may grant any necessary adjournment accordingly.”;

(b) in subsection (3)—

(i) omitting the words “ by a member of the Police Force ”;

(ii) omitting the proviso to the subsection and inserting in its stead the following proviso:—

“ Provided that the court, if it is satisfied, whether on application made to it or without any such application, that in the circumstances of the case the analyst who issued the certificate should be called as a witness, may order that the analyst be called as a witness by the party producing the certificate in lieu of the certificate being received in evidence, and may grant any necessary adjournment accordingly.”;

(c) inserting after subsection (3) the following subsection:—

“ (4) Where the court orders that an analyst be called as a witness pursuant to subsection (2) or subsection (3) of this section, it shall adopt such procedure as to it seems just and equitable to enable the analyst to be called and to be examined by the parties irrespective of the stage reached in the proceeding.”.

15. Amendment of s. 152 (1). Subsection (1) of section 152 of the Principal Act is amended by—

(a) in paragraph (xvii)—

(i) inserting after the word “ sale,” the word “ distribution,”;

(ii) inserting after the words “ giving away of ” the words “ or any other dealing with ”;

(b) omitting paragraph (xxviii) and inserting in its stead the following paragraph:—

“(xxviii) **Penalties.** Prescribing penalties not exceeding \$100 for the breach of any regulation, save that penalties not exceeding \$1,000 may be prescribed for breach of any regulation in respect of—

(a) the obtaining, or doing any act or making any omission for or with a view to the obtaining, of any dangerous drug;

(b) the failing to account for or concealing the whereabouts, possession or disposition of any dangerous drug;

(c) the making of any false or untrue entry in any book or record prescribed by the regulations concerning any dangerous drug;

(d) the prescribing of a dangerous drug;

(e) dispensing a dangerous drug; and ”.

16. Amendment of Form E in Schedule B. Form E in Schedule B to the Principal Act is amended by omitting all words commencing with the words “, for instance,” and ending with the words “ one hundred feet of the said premises ”.

17. Ratification of certain regulations. In so far as it may be necessary to ensure the validity and operation thereof, every regulation made or purporting to have been made under the Principal Act with respect to or in connexion with labelling of any package containing any drug or poison is approved, ratified, confirmed and validated as from the date it came, or purports to have come, into force, and is declared and deemed to be and from such date to have been a good and valid regulation, but subject to any repeal or amendment thereof.