



# Health Act 1937

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## Queensland

# Health Act 1937

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# Health Act 1937

## An Act about particular matters relating to public health

### Part 1 Preliminary

#### 1 Short title

This Act may be cited as the *Health Act 1937*.

#### 5 Interpretation

In this Act—

***advertisement*** means any method of conveying information or making any claim with regard to any drug or article, whether orally or by writing or pictorially, or by telephone, gramophone, or wireless broadcasting or television or any other means of transmitting images or sound or both in association, or by label, letter, circular, pamphlet, book, magazine, newspaper, sign, poster, or otherwise.

***analyse***, for part 4A, see section 136.

***approved form*** see section 15A.

***article***—

- (a) without limit to the generality of its meaning, includes—
  - (i) any textile product, any toys, any medical or surgical apparatus or appliance, any absorbent wool or surgical dressing, and also includes boots, shoes, paint, poisons, drugs, biological preparations, pesticides, detergents, dangerous substances; and

- (ii) substances declared under a regulation to be articles.

**biological preparation** means every substance prescribed as such.

**British pharmacopoeia** means the British pharmacopoeia as in force in Queensland for the time being under the *Drugs Standard Adopting Act 1976*.

**controlled drug** means an article or substance prescribed under a regulation to be a controlled drug.

**document certification requirement**, for part 4A, see section 136.

**document production requirement**, for part 4A, see section 136.

**drug**—

- (a) without limiting the ordinary meaning of the term—
  - (i) means—any article used for or in the composition or preparation of medicine for internal or external consumption or use by humans; and
  - (ii) includes—
    - (A) disinfectants, germicides, antiseptics, pesticides, detergents, preservatives, deodorants, anaesthetics, tobacco, narcotics, soaps, cosmetics, dusting powders, essences, unguents, and all other toilet articles;
    - (B) goods for therapeutic use within the meaning of the *Therapeutic Goods Act 1989* (Cwlth);
    - (C) an article or substance declared under a regulation to be a drug.

**drug dependent person** means a person—

- (a) who, as a result of repeated administration to the person of controlled or restricted drugs or poisons—
  - (i) demonstrates impaired control; or



- (ii) exhibits drug-seeking behaviour that suggests impaired control;  
over the person's continued use of controlled or restricted drugs or poisons; and
- (b) who, when the administration to the person of controlled or restricted drugs or poisons ceases, suffers or is likely to suffer mental or physical distress or disorder.

**endorsement**, for part 4A, see section 136.

**executive officer**, for part 4A, see section 136.

**health service employee**, for part 4A, see section 136.

**hospital** see the *Hospital and Health Boards Act 2011*, schedule 2.

**injurious** includes dangerous.

**inspector** means an inspector appointed under section 137.

**label** means a label, tag, brand, mark, or statement in writing, whether or not containing any pictorial or other descriptive matter.

**occupier** includes a person having the charge, management, or control of premises, and in the case of a house which is let out in separate tenements, or in the case of a lodging house which is let to lodgers, the person receiving the rent payable by the tenants or lodgers either on the person's own account or as the agent of another person.

**offence against a relevant provision**, for part 4A, see section 136.

**official dose**, when used with reference to any drug or other article, means the maximum dose (if any) stated in the British pharmacopoeia.

**package** includes every means by which goods are cased, covered, enclosed, contained, or packed, and includes a cask, bottle, jar, vessel, bag, box, or other receptacle.

**personal particulars requirement**, for part 4A, see section 136.

***pharmacist*** means a person registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession, other than as a student.

***place*** includes any house, building, ship, barge, boat, vehicle, car, station, wharf, shed, land, or premises.

***poison***—

(a) means every substance or article prescribed as such.

***premises*** includes messuages, buildings, lands, easements, and tenements of any tenure, and also any vehicle.

***registrant*** means a person registered under the Health Practitioner Regulation National Law.

***registrant's board***, for a registrant, means the National Board established under the Health Practitioner Regulation National Law for the profession in which the registrant is registered.

***relevant provisions*** see section 134.

***restricted drug*** means every substance or article prescribed as such.

***sale*** includes barter, and also includes offering or attempting to sell, or receiving for sale, or having in possession for sale, or exposing for sale, or sending, forwarding, or delivering for sale, or causing or suffering or permitting or allowing to be sold or offered or exposed for sale, but, refers only to sale for consumption or use by humans, and also, so far as relates to any poison, or to any restricted drug, or to any controlled drug, or to any biological preparation includes supplying, exchanging, lending, or giving away, and whether for consumption or use by humans or for any other purpose whatsoever, and also includes, in relation to any article for use by humans, permitting or allowing such use as a means of advertisement.

***State analyst*** means a State analyst appointed under section 153Z(1).

***substance*** includes a preparation, admixture, or derivative of a substance.

*thing*, for part 4A, see section 136.

*vehicle* without limiting the ordinary meaning of the term, means any motor vehicle, omnibus, coach, cart, sulky, bicycle, velocipede, train, railway carriage, aeroplane, airship, balloon, or other means of conveyance or transit.

*veterinary surgeon* means a veterinary surgeon within the meaning of the *Veterinary Surgeons Act 1936*.

*writing* includes partly printing and partly writing, and printing, typewriting, lithography, photography, and other modes of representing and reproducing words in a visible form.

## Part 2

### Division 1                      Central government

#### 15A    Approval of forms

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

#### 18A    Chief executive to give notice of proceedings to boards

- (1) This section applies if—
  - (a) a health service employee, or public service employee within the department, starts proceedings against a registrant or veterinary surgeon for an offence against this Act or another Act administered by the Minister; or
  - (b) the chief executive suspends or cancels, or imposes or varies conditions on, an authority held by a registrant or veterinary surgeon under the *Health (Drugs and Poisons) Regulation 1996*.
- (2) The chief executive must, as soon as practicable after the chief executive or employee takes action mentioned in subsection (1), give written notice about it—

- (a) for a registrant—to the registrant’s board; or
  - (b) for a veterinary surgeon—to the Veterinary Surgeons Board of Queensland.
- (3) For subsection (1)(a)—  
*health service employee* see the *Hospital and Health Boards Act 2011*, schedule 2.

### **18B Chief executive may inform boards about particular matters**

- (1) This section applies if the chief executive reasonably believes—
- (a) a registrant or veterinary surgeon has committed an offence against this Act; or
  - (b) a ground exists for the chief executive to suspend or cancel, or impose or vary conditions on, an approval or authority held by a registrant or veterinary surgeon under the *Health (Drugs and Poisons) Regulation 1996*.
- (2) The chief executive may give information about the belief, including the grounds for the belief—
- (a) for a registrant—to the registrant’s board; or
  - (b) for a veterinary surgeon—to the Veterinary Surgeons Board of Queensland.

## **Part 4 Drugs and other articles**

### **Division 1 Preliminary**

#### **101 Adulteration of drug or article**

- (1) For the purposes of this Act, any drug or article is deemed to be adulterated—

- (a) if it contains or is mixed or diluted with any substance in any quantity or in any proportion which diminishes in any manner its nutritive or other beneficial properties as compared with the same in a pure and normal state and in an undeteriorated and sound condition, or which in any manner operates or may operate to the prejudice or disadvantage of the purchaser or consumer;
- (b) if it contains or is mixed or diluted with any substance of lower commercial value than the same in a pure and normal state and in an undeteriorated and sound condition;
- (c) if any substance, constituent, or ingredient has been wholly or in part extracted, abstracted, or omitted from it, and as a result its nutritive or other beneficial properties are less than those of the same in its pure and normal state, or the purchaser or consumer is or may be in any manner prejudiced or disadvantaged;
- (d) if, either wholly or in part, it does not comply with the prescribed standard for it;
- (e) if it contains anything prohibited by this Act;
- (f) if it contains any substance in excess of any quantity or proportion permitted by this Act;
- (g) if it is mixed, coloured, powdered, coated, stained, or treated in any manner whereby damage, deterioration, inferiority, or true character or quality is or may be concealed;
- (h) if it consists wholly or in part of a filthy, decomposed, or putrid animal or vegetable substance, or of any portion of an animal or vegetable unfit for use as or in any drug or article, whether manufactured or not, or it has not been sufficiently cleaned or purified;
- (i) if it is the product of a diseased animal, or of one which has died otherwise than by slaughter;
- (j) if it is damaged, deteriorated, or perished or contains any foreign matter;

- (k) if another substance has been substituted, wholly or in part, for such drug or article.
- (2) However, in any proceeding under this Act for selling a drug or an article to which subsection (1)(a) or (b) applies, such drug or article shall not be deemed to be adulterated if it is sold as a mixture in accordance with this Act.

### **101A False description of drug**

For the purposes of this Act any drug or article is deemed to be falsely described—

- (a) if it is in a package, and—
  - (i) the contents of the package as originally put up have been removed in whole or in part, and other contents have been placed in such package; or
  - (ii) it fails to bear on the package, or on a label on or attached thereto, a statement of the quantity or proportion of any controlled drug, restricted drug or poison, or any other substance prescribed to be so stated, or any derivative or preparation of any such substances contained therein; or
  - (iii) the contents are stated in terms of weight or measure on the outside of the package, or on a label on or attached thereto, and they are not plainly or correctly stated; or
  - (iv) the package or any label on or attached thereto bears a statement, word, brand, mark, design, or device regarding the nature, quality, strength, purity, composition, origin, age, or proportion of the drug or article, or the ingredients, constituents, or substance contained in the drug or article which is false or misleading in any particular;
- (b) in the case of imported goods—if it has not applied thereto the trade or other description as required for its importation under the laws in force for the time being of the Commonwealth of Australia, or if it has applied

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thereto a false trade or other description within the meaning of the aforesaid laws regarding the importation of goods;

- (c) if it is an imitation of or is offered for sale under the distinctive name of another drug or article;
- (d) if it is labelled or marked so as to deceive or mislead the purchaser, or purports to be an imported product when not so;
- (e) if it is labelled as or any advertisement of or concerning it states that it is a herbal medicine, and it contains any drug or substance other than a drug or substance of vegetable origin;
- (f) if any advertisement of or concerning it contains any written, spoken, or pictorial matter calculated or likely to deceive or mislead the purchaser;
- (g) if it is sold under a name which conveys or is likely to convey a false indication of origin, character, or place of manufacture, or to lead the purchaser to suppose that it is any drug or article or product thereof.

## **102 Drugs to comply with description or standard**

For the purposes of this Act—

- (a) a drug sold under a name included in the British pharmaceutical codex, the British pharmacopoeia or the British veterinary codex that does not comply with the description of and tests specified for such drug in those codices or that pharmacopoeia shall be deemed to be a drug that is not of the substance of the drug demanded by the purchaser unless the drug is one to which is applicable a specific standard determined for that drug pursuant to the *Drugs Standard Adopting Act 1976*;
- (b) a drug that is one to which is applicable a specific standard determined for that drug by the Minister pursuant to the *Drugs Standard Adopting Act 1976* and that does not comply with that standard shall be deemed

to be a drug that is not of the substance of the drug demanded by the purchaser.

### **103 Sales by agents or servants etc.**

- (1) For the purposes of this Act any person shall, additionally to any drug or article sold by the person personally, be deemed to sell any drug or article which the person sells through any employee or agent or which the person sells as an employee or agent.
- (2) In this section—  
*employee* or *agent* respectively include, but without limit to the generality of their meanings, a manager or representative of an employer or principal.

## **Division 2 Drugs etc.**

### **104 Adulterated drug not to be sold**

No person shall sell any drug or article which is adulterated or falsely described, or which is packed or enclosed for sale or labelled, branded, or marked in any manner contrary to or not in compliance with this Act.

### **104A Adulterated drug not to be tendered or despatched for or on sale**

- (1) No person shall in or from Queensland tender or despatch or offer to tender or despatch for or on sale any drug or article which is adulterated or falsely described, or which is packed or enclosed for sale or labelled, branded, or marked in any manner contrary to or not in compliance with this Act, whether the actual sale shall be effected or is to become effective in Queensland or elsewhere.
- (2) However, if the actual sale was effective or is to be effective elsewhere than in Queensland it shall be a defence to a charge of an offence against this section to prove that the sale was



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legally authorised under the laws in force where it was effected or to become effective.

- (3) No person shall from elsewhere than in Queensland tender or despatch or offer to tender or despatch to any other person in Queensland for or on sale any drug or article which is adulterated or falsely described, or which is packed or enclosed for sale or labelled, branded, or marked in any manner contrary to or not in compliance with this Act, whether the actual sale shall be effected or is to become effective in Queensland or elsewhere.
- (4) A complaint of an offence against this section shall be heard and determined at a place appointed for holding Magistrates Courts within the Magistrates Court district in which the person to whom the offender tendered or despatched or offered to tender or despatch the drug or article which forms the subject matter of the complaint resided or carried on business when the offence was committed.

## **105 Mixing other ingredients or material with a drug**

- (1) No person shall—
  - (a) for purposes of sale, mix or cause or permit to be mixed any ingredient or material with any drug, or colour or cause or permit to be coloured any drug so as to affect injuriously the quality or potency of such drug;
  - (b) sell any drug mixed with any such ingredient or material, as in paragraph (a) stated, or so coloured as in paragraph (a) stated;
  - (c) for the purposes of sale, mix or cause or permit to be mixed any ingredient or material with any drug in order thereby fraudulently to increase its weight, bulk, or measure, or to conceal its inferior quality;
  - (d) sell any drug mixed with any ingredient or material whereby the weight, bulk, or measure of such drug has been fraudulently increased or its inferior quality concealed;

- (e) sell any drug which is not of the nature, substance, or quality of the drug demanded by the purchaser, or sell any quantity of drug less in weight or measure or number than the weight or measure or number demanded and paid for by the purchaser;
  - (f) sell any compounded drug which is not composed of ingredients in accordance with the demand of the purchaser.
- (2) In any prosecution it shall be no defence to prove that the drug the subject of the prosecution, though defective in nature or in substance or in quality, was not defective in more than 1 such respect.

## 106 Offences in relation to automatic machines

- (1) In this section—
- contraceptive* includes any condom and any other fitting or appliance sold for use as a contraceptive or capable of being used as a contraceptive.
- (2) Subject to subsection (3), a regulation may prohibit the sale or supply, by means of any automatic machine or similar mechanical device, of any drug, poison or contraceptive specified in the regulation.
- (3) A regulation made under subsection (2) in respect of the sale or supply of condoms shall specify the premises or classes of premises to which the prohibition applies.
- (4) Any person who—
- (a) contravenes a regulation made under subsection (2); or
  - (b) installs any automatic machine or similar mechanical device at any place for a purpose prohibited under a regulation made under subsection (2) in respect of that place;

commits an offence against this Act.

Maximum penalty—20 penalty units.

- (5) No licence issued by a local government in respect of any automatic machine or similar mechanical device shall be taken as authorising the installation or use of that machine or device for the sale or supply of any drug, poison or contraceptive if subsection (4) would be contravened by that installation or use.

## **107 Sale of mixture**

- (1) Where any person sells a drug which is a mixture the ingredients shall be pure and in an undeteriorated and sound condition.
- (2) The person shall deliver the mixture to the purchaser in a package on or attached to which is a label stating that the drug is a mixture and the names of the ingredients legibly and uniformly written and, when so prescribed, the names and proportions of the ingredients.
- (3) But (except as otherwise prescribed in respect of poisons, restricted drugs, controlled drugs, or biological preparations) it shall not be necessary so to supply a label in the case of—
- (a) a drug generally known to users as a compounded article or a drug not recognised by the British pharmacopoeia if such drug is mixed with any ingredient or material not injurious and not intended fraudulently to increase its bulk, weight, or measure, or to conceal its inferior quality; or
  - (b) a drug supplied by prescription or order signed by a medical practitioner for the medical practitioner's patient, or a drug compounded and supplied by a registered pharmaceutical chemist; or
  - (c) a mixture exempted from this section by the regulations.
- (4) No person shall sell any drug which is a mixture in respect of which this section has been contravened or has not been complied with.

## **109 Examination and report upon articles advertised**

- (1) The chief executive may from time to time cause to be examined any drug or article which is advertised for the purpose of ascertaining its composition, properties, and efficiency, and shall compare the results of the examination with any advertisement which relates to the drug or article, and with the price at which it is sold, and shall prepare and forward to the Minister a report upon the whole matter, which may include any comment which the chief executive thinks desirable in the public interest.
- (2) The chief executive may thereupon, with the approval of the Minister, cause the report to be published in the gazette and in any newspaper or public print which circulates within Queensland, and to be distributed among the public in any other way, and no action shall lie in respect of such publication or distribution; but no such approval shall be given and no such publication or distribution shall be made until a reasonable opportunity has been given to the manufacturer, importer, vendor, or owner of such drug or article, or the person's agent, to place the person's objections to the proposed publication before the chief executive.
- (3) However, the chief executive shall have the power pending the consideration of any such objection to prohibit, by order, the sale or further advertisement of any such drug or article.
- (4) In addition, any cost of publication or distribution incurred by the chief executive under this section shall be borne and paid by the importer, vendor, or owner of the drug or article.
- (5) Any such report which has been published by the chief executive as aforesaid may be republished in any newspaper or public print, and no action shall lie against any person whomsoever in respect of such republication.

## **110 Prohibition of sale of injurious articles etc.**

- (1) A regulation may prohibit the advertising or sale of any drug or article which, in the chief executive's opinion is injurious to

life or health, or which by reason of its inactivity or inefficiency is useless for the advertised purposes.

- (2) However, a regulation may be made only if the manufacturer, importer, seller, or owner of the drug or article has been given a reasonable opportunity to object to the chief executive about the proposed prohibition.
- (3) No person shall advertise or sell any drug or article in contravention of such prohibition, and no person shall print any advertisement so prohibited, and no proprietor, editor, publisher, or manager of a newspaper or other public print shall publish any advertisement so prohibited.

#### **111 Extension of ss 109 and 110**

Sections 109 and 110 shall also apply to any article or apparatus alleged to be useful or efficacious in relieving human suffering, or in curing, overcoming, or alleviating any physical defect.

#### **113 Prohibition of sale of disinfectants and preservatives**

- (1) A regulation may prohibit the sale of any article as a disinfectant, germicide, antiseptic, preservative, or deodorant.
- (2) However, a regulation may be made only if the manufacturer, importer, seller or owner of the article has been given a reasonable opportunity to object to the chief executive about the proposed prohibition.
- (3) No person shall sell any article so prohibited.

#### **114 Labelling of disinfectants etc.**

- (1) A regulation may require a label to be supplied on or attached to a package of disinfectant, germicide, antiseptic or deodorant packed or enclosed for sale.
- (2) A person must not sell, in a package, a disinfectant, germicide, antiseptic or deodorant that contravenes a requirement of a regulation made under subsection (1).

Maximum penalty—20 penalty units.

## **Division 6                    Labelling of drugs and poisons**

### **131I    Drugs and poisons to be labelled**

- (1) Every package containing any drug or poison for sale shall bear a label which complies in all respects with what is prescribed under a regulation.
- (2) 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.

## **Division 10                Miscellaneous**

### **132    Regulations about drugs, articles, substances, appliances etc.**

A regulation may be made about the following matters—

- (a) prescribing standards for the composition, strength, weight, quantity, purity, or quality of any drug or article, or of any ingredient or component part thereof, or for the nature or proportion of any substance which may be mixed with or used in the preparation or preservation thereof, or prohibiting the addition of any article to any drug or article;
- (b) the permitted variations (if any) from standards or from statements of measure or volume;
- (c) prohibiting the addition of any specified thing, or of more than the specified quantity or proportion thereof, to any drug or article;
- (d) prohibiting in the manufacture, preparation, storing, preservation, packing, or in the delivering or serving, of any drug or article for sale, the use of appliances containing any substance that may be specified and any

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- substance in or exceeding any proportion that may be specified, and prohibiting the sale, use, serving, or supply of such appliances;
- (e) the substances which shall not be used in making any package;
  - (f) securing the purity of water used in the preparation or manufacture of any drug or article, or used in any boiler producing steam for any process of such preparation or manufacture;
  - (g) securing the wholesomeness, cleanliness and freedom from contamination or adulteration of any drug or article in the course of its manufacture, preparation, storage, packing, carriage, transit or delivery;
  - (h) securing the cleanliness of places, receptacles, appliances, equipment, apparatus and vehicles used in such manufacture, preparation, storage, packing, carriage, transit or delivery;
  - (i) the powers of the chief executive with respect to securing the cleanliness of such places, appliances, equipment or apparatus;
  - (j) the clothing to be worn by persons engaged in such manufacture, preparation, storage, packing, carriage, transit or delivery;
  - (l) prescribing the places where drugs may, with the consent of the chief executive, be sold, manufactured, prepared, stored, packed, served, kept or had;
  - (m) prescribing the mode of labelling any drug or article sold in packages, and the matter to be contained or not to be contained in such labels;
  - (n) exempting any package or any drug or article from any provision of this Act relating to labelling;
  - (o) the degree of approximation allowed between the weight or measure of the drug or article and the weight or measure indicated on the label;

- (p) requiring labels that may be specified to be written on or attached to any drug or article, or to packages containing such drug or article, and prohibiting the use in such labels of words that may be specified;
- (q) prescribing the statement of measure or volume in labels;
- (r) prohibiting the use of the word 'pure' or any like word;
- (s) regulating and controlling and, where deemed necessary, prohibiting or restricting advertisements (written or oral), circulars, posters, notices, pamphlets, or other printed or pictorial matter or statements or claims conveyed by radio relating to drugs or articles for sale, and prohibiting the use in such advertisements, circulars, posters, notices, pamphlets, or other printed or pictorial matter or spoken statements or claims of any statement, claim, design, device, fancy name, or abbreviation which is false or misleading in any particular whatsoever;
- (t) defining or prescribing poisons or restricted drugs or controlled drugs or biological preparations;
- (u) regulating and controlling and, as deemed necessary, prohibiting or restricting the ownership, possession, manufacture, cultivation, sale, distribution, supply, use, lending, dispensing, prescribing, or giving away of, or forging and uttering of prescriptions for or any other dealing with poisons, restricted drugs, controlled drugs, biological preparations or goods for therapeutic use under and within the meaning of the *Therapeutic Goods Act 1989* (Cwlth);
- (v) the licensing of persons or classes of persons to manufacture, pack, re-pack or sell poisons or restricted drugs or controlled drugs, or biological preparations or goods for therapeutic use under and within the meaning of the *Therapeutic Goods Act 1989* (Cwlth);
- (w) the siting, construction, layout, condition and registration of licensee's premises;



- (x) regulating the supply of drugs to drug dependent persons;
- (za) the registration by the chief executive of premises in which medicines, mixtures, compounds and drugs are dispensed (other than a dispensary in any public sector hospital within the meaning of the *Hospital and Health Boards Act 2011* or premises in which medicines, mixtures, compounds or drugs are dispensed by a person (not being a pharmacist) authorised so to do under this Act) or items of trade are sold or services in conjunction with such dispensing are provided;
- (zb) the siting, construction, layout and condition of such premises;
- (zc) prescribing the method of analysis of any drug;

### **Conditions**

- (zd) the conditions on which endorsements may be granted, suspended, or revoked;

### **Fees**

- (ze) prescribing the fees payable for—
  - (i) an application for, or renewal of, an endorsement;  
or
  - (ii) an application for an amendment of, or the repeal of a decision to suspend or cancel, an endorsement;  
or
  - (iii) the analysis of a drug or article by a State analyst;

### **Standards for composition etc.**

- (zf) prescribing standards for the composition or quality of any article, or of any ingredient or component part thereof, or for the nature or proportion of any substance which may be mixed or used in the preparation thereof, or prohibiting the addition of any substance to any article;

### **Mode of packing etc.**

- (zg) prescribing the mode of packing, labelling, branding, or marking, any article;
- (zh) fixing rates for payment for samples of drugs or articles taken or obtained under this Act.

### **133 Suggestive names for drugs**

- (1) No drug sold under any fancy or suggestive or proprietary or registered name, which is a substitute or is intended to be or may be used as a substitute, either wholly or in part, for any drug, shall, by reason only being so sold under such name, be exempt from this Act.
- (2) Nothing in this Act shall be construed as requiring proprietors or manufacturers of proprietary drugs which contain no unwholesome added ingredient to disclose their trade formulae except in so far as this Act may require to secure freedom from adulteration or false description or to secure the prescribed declaration of any drug or substance.

## **Part 4A                      Monitoring, investigation and enforcement**

### **Division 1                      Preliminary**

#### **134 Application of pt 4A**

This part applies for the purposes of the following (the *relevant provisions*)—

- (a) part 4, divisions 1, 2, 6 and 10;
- (b) a regulation made under part 4, division 1, 2, 6 or 10.

#### **136 Definitions for pt 4A**

In this part—

*analyse* includes measure and test.

*conviction*, relating to an offence against a relevant provision or this part, means being found guilty of the offence, on a plea of guilty or otherwise, whether or not a conviction is recorded.

*document certification requirement* means a document certification requirement under section 153N(5).

*document production requirement* means a document production requirement under section 153N(6).

*endorsement* means an endorsement as defined under a regulation made under section 132.

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

*health service employee* see the *Hospital and Health Boards Act 2011*, schedule 2.

*offence against a relevant provision*, includes an offence under section 175 relating to a relevant provision.

*personal particulars requirement* means a personal particulars requirement under section 153L(5).

*thing* includes a sample of, or from, a thing.

## Division 2                      Inspectors

### 137      Appointment and qualifications

- (1) The chief executive may appoint any of the following persons as an inspector—
  - (a) an officer of the department;
  - (b) a health service employee;
  - (c) a person prescribed under a regulation.
- (2) However, the chief executive may appoint a person as an inspector only if the chief executive is satisfied the person is

qualified for appointment because the person has the necessary expertise or experience.

### **138 Appointment conditions and limit on powers**

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

### **139 Issue of identity card**

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

### **140 Production or display of identity card**

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

- (b) have the identity card displayed so it is clearly visible to the person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the inspector must produce the identity card for the person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an inspector does not exercise a power in relation to a person only because the inspector has entered a place as mentioned in section 144(1)(b) or (2).

#### **141 When inspector ceases to hold office**

- (1) An inspector ceases to hold office if any of the following happens—
  - (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the inspector ceases to hold office;
  - (c) the inspector's resignation under section 142 takes effect.
- (2) Subsection (1) does not limit the ways an inspector may cease to hold office.
- (3) In this section—  
*condition of office* means a condition on which the inspector holds office.

#### **142 Resignation**

- (1) An inspector may resign by signed notice given to the chief executive.
- (2) However, if holding office as an inspector is a condition of the inspector holding another office, the inspector may not resign as an inspector without resigning from the other office.

### **143 Return of identity card**

A person who ceases to be an inspector must return the person's identity card to the chief executive within 21 days after ceasing to be an inspector unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

## **Division 3 Powers of inspectors**

### **Subdivision 1 Entry of places**

#### **144 Power to enter places**

- (1) An inspector may enter a place if—
  - (a) its occupier consents to the entry; or
  - (b) it is a public place and the entry is made when the place is open to the public; or
  - (c) the entry is authorised by a warrant; or
  - (d) the entry is to account for controlled drugs, restricted drugs or poisons kept at the place by the holder of an endorsement and the place is open for carrying on business or otherwise open for entry.
- (2) For the purpose of asking the occupier of a place for consent to enter, an inspector may, without the occupier's consent or a warrant—
  - (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
  - (b) enter part of the place the inspector reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.
- (3) Subsection (4) applies if the holder of an endorsement is an individual who carries on business at a place and also resides at the place.

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- (4) Subsection (1)(d) does not authorise an inspector to enter a part of the place in which the individual resides.

## **Subdivision 2 Procedure for entry**

### **145 Consent to entry**

- (1) This section applies if an inspector intends to ask an occupier of a place to consent to the inspector or another inspector entering the place under section 144(1)(a).
- (2) Before asking for the consent, the inspector must tell the occupier—
- (a) the purpose of the entry; and
  - (b) that the occupier is not required to consent.
- (3) If the consent is given, the inspector may ask the occupier to sign an acknowledgment of the consent.
- (4) The acknowledgment must state—
- (a) the occupier has been told—
    - (i) the purpose of the entry; and
    - (ii) that the occupier is not required to consent; and
  - (b) the purpose of the entry; and
  - (c) the occupier gives the inspector consent to enter the place and exercise powers under this division; and
  - (d) the time and date the consent was given.
- (5) If the occupier signs an acknowledgment, the inspector must immediately give a copy to the occupier.
- (6) If—
- (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) an acknowledgment complying with subsection (4) for the entry is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

## 146 Application for warrant

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

*Example—*

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

## 147 Issue of warrant

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



- (c) the evidence that may be seized under the warrant; and
- (d) the hours of the day or night when the place may be entered; and
- (e) the date, within 14 days after the warrant's issue, the warrant ends.

## 148 Special warrant

- (1) An inspector may apply for a warrant (a *special warrant*) by phone, fax, radio or another form of communication if the inspector considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the inspector's remote location.
- (2) Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.
- (3) The inspector may apply for the warrant before the application is sworn.
- (4) After issuing the warrant, the magistrate must immediately fax a copy to the inspector if it is reasonably practicable to fax the copy.
- (5) If it is not reasonably practicable to fax a copy to the inspector—
  - (a) the magistrate must tell the inspector—
    - (i) what the terms of the warrant are; and
    - (ii) the date and time the warrant was issued; and
  - (b) the inspector must complete a form of warrant (a *warrant form*) and write on it—
    - (i) the magistrate's name; and
    - (ii) the date and time the magistrate issued the warrant; and
    - (iii) the terms of the warrant.

- (6) The facsimile warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the other powers stated in the warrant issued by the magistrate.
- (7) The inspector must, at the first reasonable opportunity, send to the magistrate—
  - (a) the sworn application; and
  - (b) if the inspector completed a warrant form—the completed warrant form.
- (8) On receiving the documents, the magistrate must attach them to the warrant.
- (9) If—
  - (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a special warrant; and
  - (b) the warrant is not produced in evidence;the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a special warrant authorised the exercise of the power.

#### **149 Warrant—procedure before entry**

- (1) This section applies if an inspector named in a warrant issued under this division for a place is intending to enter the place under the warrant.
- (2) Before entering the place, the inspector must do or make a reasonable attempt to do the following—
  - (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the inspector's identity card or other document evidencing the appointment;
  - (b) give the person a copy of the warrant or, if the entry is authorised by a facsimile warrant or warrant form

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- mentioned in section 148(6), a copy of the facsimile warrant or warrant form;
- (c) tell the person the inspector is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the inspector immediate entry to the place without using force.
- (3) However, the inspector need not comply with subsection (2) if the inspector believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.

## **150 Stopping motor vehicles**

- (1) This section applies if an inspector suspects on reasonable grounds, or is aware, that a thing in or on a motor vehicle may provide evidence of an offence against a relevant provision or this part.
- (2) For the purpose of exercising the powers of an inspector under this division, an inspector may—
  - (a) if the motor vehicle is moving—ask or signal the person in control of the motor vehicle to stop the motor vehicle; and
  - (b) whether or not the motor vehicle is moving—ask or signal the person in control of the motor vehicle to bring the motor vehicle to a convenient place within a reasonable distance to allow the inspector to exercise the inspector’s powers under this division.
- (3) Despite section 140, for the purpose of exercising a power under subsection (2)(a), the inspector must—
  - (a) have with him or her the inspector’s identity card; and
  - (b) produce the identity card for the person’s inspection immediately after the motor vehicle is stopped.
- (4) The person must comply with the inspector’s request or signal, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (5) If the motor vehicle is stopped, the inspector may direct the person—
  - (a) not to move the motor vehicle until the inspector has exercised the inspector's powers under this division; or
  - (b) to move the motor vehicle to, and keep it at, a stated reasonable place to allow the inspector to exercise the inspector's powers under this division.
- (6) When giving the direction, the inspector must warn the person it is an offence not to comply with the direction, unless the person has a reasonable excuse.
- (7) The person must comply with the inspector's direction, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (8) In this section—

*motor vehicle* means a vehicle propelled by a motor that forms part of the vehicle, and includes a trailer attached to the vehicle.

### **Subdivision 3 Powers after entry**

#### **151 General powers after entering place**

- (1) This section applies to an inspector who enters a place.
- (2) However, if an inspector enters a place to get the occupier's consent to enter a place, this section applies to the inspector only if the consent is given or the entry is otherwise authorised.
- (3) For monitoring or enforcing compliance with a relevant provision or this part, the inspector may—
  - (a) search any part of the place; or
  - (b) inspect, measure, test, photograph or film any part of the place or anything at the place; or

- (c) take a thing at the place for analysis; or
  - (d) take an extract from, or copy of, a document at the place; or
  - (e) take into or onto the place any person, equipment and materials the inspector reasonably requires for exercising a power under this division; or
  - (f) require the occupier of the place, or a person at the place, to give the inspector reasonable help to exercise the inspector's powers under paragraphs (a) to (e); or
  - (g) require the occupier of the place, or a person at the place, to give the inspector information to help the inspector find out whether a relevant provision or this part is being complied with.
- (4) When making a requirement under subsection (3)(f) or (g), the inspector must warn the person it is an offence not to comply with the requirement unless the person has a reasonable excuse.

## **152 Failure to help inspector**

- (1) A person required to give reasonable help under section 151(3)(f) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) If an individual is required under section 151(3)(f) to give information or produce a document, it is a reasonable excuse for the individual not to comply with the requirement that complying with the requirement might tend to incriminate the individual.

## **153 Failure to give information**

- (1) A person of whom a requirement is made under section 151(3)(g) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for an individual not to comply with the requirement that complying with the requirement might tend to incriminate the individual.

## **Subdivision 4      Power to seize evidence**

### **153A    Seizing evidence at a place that may be entered without consent or warrant**

An inspector who enters a place that may be entered under this division without the consent of the occupier and without a warrant, may seize a thing at the place if the inspector reasonably believes the thing is evidence of an offence against a relevant provision or this part.

### **153B    Seizing evidence at a place that may only be entered with consent or warrant**

- (1) This section applies if—
  - (a) an inspector is authorised to enter a place under this division only with the consent of the occupier or a warrant; and
  - (b) the inspector enters the place after obtaining the necessary consent or warrant.
- (2) If the inspector enters the place with the occupier's consent, the inspector may seize a thing at the place if—
  - (a) the inspector reasonably believes the thing is evidence of an offence against a relevant provision or this part; and
  - (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.
- (3) If the inspector enters the place with a warrant, the inspector may seize the evidence for which the warrant was issued.

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- (4) The inspector also may seize anything else at the place if the inspector reasonably believes—
- (a) the thing is evidence of an offence against a relevant provision or this part; and
  - (b) the seizure is necessary to prevent the thing being—
    - (i) hidden, lost or destroyed; or
    - (ii) used to continue, or repeat, the offence.
- (5) Also, the inspector may seize a thing at the place if the inspector reasonably believes it has just been used in committing an offence against a relevant provision or this part.

### **153C Securing seized thing**

Having seized a thing, an inspector may do 1 or more of the following—

- (a) move the thing from the place where it was seized (the *place of seizure*);
- (b) leave the thing at the place of seizure but take reasonable steps to restrict access to it;

*Examples of restricting access to a thing—*

- 1 sealing a thing and marking it to show access to it is restricted
  - 2 sealing the entrance to a room where the seized thing is situated and marking it to show access to it is restricted
- (c) if the thing is equipment—make it inoperable.

*Example of making equipment inoperable—*

dismantling equipment or removing a component of equipment without which the equipment is not capable of being used

### **153D Tampering with seized thing**

- (1) If an inspector restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing, or something restricting access to the thing, without an inspector's approval.

Maximum penalty—100 penalty units.

- (2) If an inspector makes seized equipment inoperable, a person must not tamper, or attempt to tamper, with the equipment, without an inspector's approval.

Maximum penalty—100 penalty units.

### **153E Powers to support seizure**

- (1) To enable a thing to be seized, an inspector may require the person in control of it—
  - (a) to take it to a stated reasonable place by a stated reasonable time; and
  - (b) if necessary, to remain in control of it at the stated place for a stated reasonable period.
- (2) The requirement—
  - (a) must be made by notice in the approved form; or
  - (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice in the approved form as soon as practicable.
- (3) A further requirement may be made under this section about the thing if it is necessary and reasonable to make the further requirement.
- (4) A person of whom a requirement is made under subsection (1) or (3) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—50 penalty units.

### **153F Receipt for seized thing**

- (1) As soon as practicable after an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt at the



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place of seizure in a conspicuous position and in a reasonably secure way.

- (3) The receipt must describe generally each thing seized and its condition.
- (4) This section does not apply to a thing if it is impracticable or would be unreasonable to give the receipt (given the thing's nature, condition and value).

### **153G Forfeiture of seized thing**

- (1) A seized thing is forfeited to the State if the inspector who seized the thing—
  - (a) can not find its owner, after making reasonable inquiries; or
  - (b) can not return it to its owner, after making reasonable efforts; or
  - (c) reasonably believes it is necessary to keep the thing to prevent it being used to commit an offence against a relevant provision or this part.
- (2) In applying subsection (1)—
  - (a) subsection (1)(a) does not require the inspector to make inquiries if it would be unreasonable to make inquiries to find the owner; and
  - (b) subsection (1)(b) does not require the inspector to make efforts if it would be unreasonable to make efforts to return the thing to its owner.

*Example for paragraph (b)—*

The owner of the thing has migrated to another country.

- (3) If the inspector makes a decision under subsection (1)(c), resulting in the thing being forfeited to the State, the inspector must immediately give the owner a written notice stating—
  - (a) the reasons for the decision; and
  - (b) that the owner may appeal against the decision within 28 days; and

- (c) how the owner may appeal against the decision.
- (4) Subsection (3) does not apply if—
  - (a) the inspector can not find the owner, after making reasonable inquiries; or
  - (b) it is impracticable or would be unreasonable to give the notice.
- (5) Regard must be had to a thing's nature, condition and value—
  - (a) in deciding—
    - (i) whether it is reasonable to make inquiries or efforts; and
    - (ii) if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable; or
  - (b) in deciding whether it would be unreasonable to give the written notice.

### **153H Forfeiture on conviction**

- (1) On the conviction of a person for an offence against a relevant provision or this part, the court may order the forfeiture to the State of—
  - (a) anything used to commit the offence; or
  - (b) anything else the subject of the offence.
- (2) The court may make the order—
  - (a) whether or not the thing has been seized; or
  - (b) if the thing has been seized, whether or not the thing has been returned to its owner.
- (3) The court may make any order to enforce the forfeiture it considers appropriate.
- (4) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

### **153I Dealing with forfeited things etc.**

- (1) On the forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the chief executive as the chief executive considers appropriate.
- (2) Without limiting subsection (1), the chief executive may destroy or dispose of the thing.
- (3) Despite subsection (1), the chief executive must not deal with the thing in a way that could prejudice the outcome of an appeal, relevant to the thing, of which the chief executive is aware.

### **153J Return of seized thing**

- (1) If a seized thing is not forfeited, the inspector must return it to its owner—
  - (a) at the end of 6 months; or
  - (b) if a proceeding for an offence against a relevant provision or this part involving the thing is started within 6 months, at the end of the proceeding and any appeal from the proceeding.
- (2) Despite subsection (1), unless the thing is forfeited, the inspector must immediately return a thing seized as evidence to its owner if the inspector stops being satisfied its continued retention as evidence is necessary.

### **153K Access to seized thing**

- (1) Until a seized thing is forfeited or returned, an inspector must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

## **Subdivision 5      Power to obtain information**

### **153L   Power to require name and address**

- (1) This section applies if—
  - (a) an inspector finds a person committing an offence against a relevant provision or this part; or
  - (b) an inspector finds a person in circumstances that lead, or has information about a person that leads, the inspector to reasonably suspect the person has just committed an offence against a relevant provision or this part.
- (2) The inspector may require the person to state the person's name and residential address.
- (3) When making the requirement, the inspector must warn the person it is an offence to fail to state the person's name or residential address, unless the person has a reasonable excuse.
- (4) The inspector may require the person to give evidence of the correctness of the stated name or residential address if the inspector reasonably suspects the stated name or address is false.
- (5) A requirement under subsection (2) or (4) is called a *personal particulars requirement*.

### **153M   Failure to give name or address**

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

Maximum penalty—50 penalty units.
- (2) A person does not commit an offence against subsection (1) if—
  - (a) the person was required to state the person's name and residential address by an inspector who suspected the person had committed an offence against a relevant provision or this part; and

- (b) the person is not proved to have committed the offence.

### **153N Power to require production of documents**

- (1) An inspector may require a person to make available for inspection by an inspector, or produce to the inspector for inspection, at a reasonable time and place nominated by the inspector—
  - (a) a document issued to the person under a relevant provision; or
  - (b) a document required to be kept by the person under a relevant provision.
- (2) The inspector may keep the document to copy it.
- (3) If the inspector copies a document mentioned in subsection (1)(b), or an entry in the document, the inspector may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.
- (4) The inspector must return the document to the person as soon as practicable after copying it.
- (5) However, if a requirement (a *document certification requirement*) is made of a person under subsection (3), the inspector may keep the document until the person complies with the requirement.
- (6) A requirement under subsection (1) is called a *document production requirement*.

### **153O Failure to produce document**

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

Maximum penalty—50 penalty units.
- (2) It is not a reasonable excuse for a person not to comply with a document production requirement that complying with the requirement might tend to incriminate the person.

### **153P Failure to certify copy of document**

A person of whom a document certification requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

### **153Q Power to require information**

- (1) This section applies if an inspector reasonably believes—
  - (a) an offence against a relevant provision or this part has been committed; and
  - (b) a person may be able to give information about the offence.
- (2) The inspector may, by written notice given to the person, require the person to give information about the offence to the inspector at a stated reasonable time and place.
- (3) The person must comply with a requirement under subsection (2), unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (4) It is a reasonable excuse for an individual to fail to give information if giving the information might tend to incriminate the individual.

## **Division 4 General enforcement matters**

### **153R Compliance notice**

- (1) This section applies if the chief executive or an inspector reasonably believes—
  - (a) a person—
    - (i) is contravening a relevant provision or a provision of this part; or

- (ii) has contravened a relevant provision or a provision of this part in circumstances that make it likely the contravention will continue or be repeated; and
  - (b) a matter relating to the contravention is reasonably capable of being rectified; and
  - (c) it is appropriate to give the person an opportunity to rectify the matter.
- (2) The chief executive or inspector may give the person a notice (a ***compliance notice***) requiring the person to rectify the matter.
- (3) The compliance notice must state—
- (a) that the chief executive or inspector believes the person—
    - (i) is contravening a relevant provision or a provision of this part; or
    - (ii) has contravened a relevant provision or a provision of this part in circumstances that make it likely that the contravention will continue or be repeated; and
  - (b) the provision the chief executive or inspector believes is being, or has been, contravened; and
  - (c) briefly, how it is believed the provision is being, or has been contravened; and
  - (d) the matter relating to the contravention that the chief executive or inspector believes is reasonably capable of being rectified; and
  - (e) the reasonable steps the person must take to rectify the matter; and
  - (f) that the person must take the steps within a stated reasonable period of not less than 21 days; and
  - (g) that it is an offence to fail to comply with the compliance notice unless the person has a reasonable excuse.

- (4) The person must comply with the compliance notice, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (5) The person can not be prosecuted for contravention of the provision unless the person—
- (a) fails to comply with the compliance notice within the stated period; and
  - (b) does not have a reasonable excuse for failing to comply with the notice.

### **153S Notice of damage**

- (1) This section applies if—
- (a) an inspector damages property when exercising or purporting to exercise a power; or
  - (b) a person (the *other person*) acting under the direction or authority of an inspector damages property.
- (2) The inspector must immediately give notice of particulars of the damage to the person who appears to the inspector to be the owner of the property.
- (3) If the inspector believes the damage was caused by a latent defect in the property or circumstances beyond the inspector's or other person's control, the inspector may state the belief in the notice.
- (4) If, for any reason, it is impracticable to comply with subsection (2), the inspector must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.
- (5) This section does not apply to damage the inspector reasonably believes is trivial.
- (6) In this section—
- owner*, of property, includes the person in possession or control of it.



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### **153T Compensation**

- (1) A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under any of the following subdivisions of division 3—
  - (a) subdivision 1 (Entry of places)
  - (b) subdivision 3 (Powers after entry)
  - (c) subdivision 4 (Power to seize evidence).
- (2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under the subdivision.
- (3) Compensation may be claimed and ordered to be paid in a proceeding—
  - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
  - (b) for an offence against a relevant provision or this part brought against the person claiming compensation.
- (4) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

### **153U False or misleading statements**

- (1) A person must not state anything to an inspector the person knows is false or misleading in a material particular.  
Maximum penalty—50 penalty units.
- (2) In a proceeding for an offence against subsection (1), it is enough for a charge to state that the statement was, without specifying which, ‘false or misleading’.

### **153V False or misleading documents**

- (1) A person must not give an inspector a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
- (a) tells the inspector, to the best of the person’s ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information, gives the correct information.
- (3) In a proceeding for an offence against subsection (1), it is enough for a charge to state that the statement was, without specifying which, ‘false or misleading’.

### **153W Obstructing inspector**

- (1) A person must not obstruct an inspector in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed an inspector and the inspector decides to proceed with the exercise of the power, the inspector must warn the person that—
- (a) it is an offence to obstruct the inspector, unless the person has a reasonable excuse; and
  - (b) the inspector considers the person’s conduct is an obstruction.

- (3) In this section—

*obstruct* includes hinder and attempt to obstruct or hinder.

### **153X Impersonation of inspector**

A person must not pretend to be an inspector.

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Maximum penalty—50 penalty units.

### **153Y Dealing with certain things**

- (1) If an inspector takes a thing under section 151(3)(c), the inspector must—
  - (a) divide the thing into 3 separate parts and—
    - (i) seal or fasten each part in a way that will, so far as is practicable, prevent a person tampering with the part; and
    - (ii) attach a label containing the label details to each part; and
  - (b) leave 1 part with the owner of the thing or the person from whom the thing was obtained; and
  - (c) deal with 1 of the remaining parts under section 153ZD; and
  - (d) keep the other remaining part for future comparison.
- (2) Subsection (3) applies if a thing is in more than 1 package and the inspector reasonably believes that, because of the size of the packages, dividing 1 package of the thing for analysis into 3 separate parts would—
  - (a) affect the composition or quality of the thing in a way that would make the separate parts unsuitable for accurate analysis; or
  - (b) make the parts insufficient for accurate analysis; or
  - (c) make the thing in any other way unsuitable for analysis.
- (3) If the inspector reasonably believes the packages contain the same substance, the inspector may—
  - (a) mix 2 or more of the packages and deal with the mixture under subsection (1); or
  - (b) use more than 1 of the packages to make up each part mentioned in subsection (1).

- (4) Subsections (1) to (3) do not apply to a thing to the extent that, because of its nature, it is impossible or impractical to deal with it in the way mentioned in the subsections.
- (5) In this section—  
*label details* means—
  - (a) an identification number; and
  - (b) a description of the thing; and
  - (c) the date it was taken or seized; and
  - (d) the place where it was taken or seized; and
  - (e) the inspector's signature.

## **Division 5                      Analysis of things**

### **153Z    Appointment and qualifications**

- (1) The chief executive may appoint any of the following persons as a State analyst—
  - (a) an officer of the department;
  - (b) a health service employee;
  - (c) a person prescribed under a regulation.
- (2) However, the chief executive may appoint a person as a State analyst only if the chief executive is satisfied the person is qualified for appointment because the person has the necessary expertise or experience.

### **153ZA   Appointment conditions and limit on powers**

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

- (2) The instrument of appointment, a signed notice given to the State analyst or a regulation may limit the State analyst's powers under this part.
- (3) In this section—  
*signed notice* means a notice signed by the chief executive.

### **153ZB When State analyst ceases to hold office**

- (1) A State analyst ceases to hold office if any of the following happens—
  - (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the State analyst ceases to hold office;
  - (c) the State analyst's resignation under section 153ZC takes effect.
- (2) Subsection (1) does not limit the ways a State analyst may cease to hold office.
- (3) In this section—  
*condition of office* means a condition on which the State analyst holds office.

### **153ZC Resignation**

- (1) A State analyst may resign by signed notice given to the chief executive.
- (2) However, if holding office as a State analyst is a condition of the State analyst holding another office, the State analyst may not resign as a State analyst without resigning from the other office.

### **153ZD Analysis**

- (1) If an inspector who, under section 151(3)(c), takes a thing for analysis is not a State analyst, the inspector must, as soon as practicable, give it to a State analyst for analysis.

[s 153ZE]

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- (2) The State analyst must, as soon as practicable, complete a certificate of analysis for the thing and give the certificate to the inspector.
- (3) If an inspector who takes a thing as mentioned in subsection (1) is a State analyst, the inspector must, as soon as practicable, complete a certificate of analysis for the thing.
- (4) For dealing with a part of a thing mentioned in section 153Y(1)(c), subsections (1) and (3) apply as if a reference to a thing were a reference to a part.

### **153ZE Certificate must indicate methodology used**

The certificate of analysis must include information about the methodology used to conduct the analysis.

## **Division 6            Legal proceedings**

### **Subdivision 1        Application**

#### **153ZF Application of division**

This division applies to a proceeding under a relevant provision or this part.

### **Subdivision 2        Evidence**

#### **153ZG Appointments and authority**

It is not necessary to prove—

- (a) the chief executive's appointment; or
- (b) the appointment of an inspector or State analyst; or
- (c) the authority of the chief executive, an inspector or State analyst to do anything under this part.

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## 153ZH Signatures

A signature purporting to be the signature of the chief executive, an inspector or State analyst is evidence of the signature it purports to be.

## 153ZI Evidentiary aids

- (1) A certificate purporting to be signed by the chief executive stating any of the following matters is evidence of the matter—
  - (a) a stated document is an appointment, endorsement or notice made, given, issued or kept under a relevant provision or this part;
  - (b) a stated document is a document given to the chief executive under a relevant provision;
  - (c) a stated document is a copy of a thing mentioned in paragraph (a) or (b);
  - (d) on a stated day, or during a stated period, a stated person was or was not the holder of an endorsement;
  - (e) on a stated day, or during a stated period, an endorsement—
    - (i) was or was not in force; or
    - (ii) was or was not subject to a stated condition;
  - (f) on a stated day, an endorsement was suspended or cancelled;
  - (g) on a stated day, or during a stated period, an appointment as an inspector or State analyst was, or was not, in force for a stated person;
  - (h) on a stated day, a stated person was given a stated notice under this part;
  - (i) on a stated day, a stated requirement was made under a relevant provision or this part of a stated person.
- (2) A statement in a complaint for an offence against a relevant provision or this part that the matter of the complaint came to

the knowledge of the complainant on a stated day is evidence of when the matter came to the complainant's knowledge.

- (3) A certificate purporting to be that of a State analyst in relation to a thing taken by an inspector at a place under section 151(3)(c), or seized under section 153A or 153B, stating any of the following matters is evidence of the matters—
  - (a) the analyst's qualifications;
  - (b) the analyst took, or received from a stated person, the thing;
  - (c) the thing was analysed at a stated place on a stated day or during a stated period;
  - (d) the methodology used to analyse the thing;
  - (e) the results of the analysis.
- (4) In a proceeding in which the chief executive applies under section 153ZK to recover costs incurred by the chief executive, a certificate by the chief executive stating that stated costs were incurred and the way in which, and purpose for which, they were incurred is evidence of the matters stated.

## **Subdivision 3 Proceedings**

### **153ZJ Summary proceedings for offences against a relevant provision or this part**

- (1) A proceeding for an offence against a relevant provision or this part is to be taken in a summary way under the *Justices Act 1886*.
- (2) The proceeding must start—
  - (a) within 1 year after the commission of the offence; or
  - (b) within 6 months after the offence comes to the complainant's knowledge, but within 2 years after the commission of the offence.



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### **153ZK Recovery of costs of investigation**

- (1) This section applies if—
  - (a) a court convicts a person of an offence against a relevant provision or this part; and
  - (b) the chief executive applies to the court for an order against the person for the payment of the costs the chief executive has incurred in taking a thing, conducting an analysis or doing something else during the investigation of the offence; and
  - (c) the court finds the chief executive has reasonably incurred the costs.
- (2) The court may order the person to pay the chief executive an amount equal to the costs if it is satisfied it would be just to make the order in the circumstances of the particular case.
- (3) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

### **153ZL Application for order for payment of costs under s 153ZK**

- (1) An application to a court under section 153ZK is, and any order made by the court on the application is, a judgment in the court's civil jurisdiction.
- (2) Any issue on the application is to be decided on the balance of probabilities.

### **153ZM Responsibility for acts or omissions of representatives**

- (1) This section applies in a proceeding for an offence against a relevant provision or this part.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
  - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.

- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
- (4) In this section—
- representative* means—
- (a) for a corporation—an executive officer, employee or agent of the corporation; or
  - (b) for an individual—an employee or agent of the individual.
- state of mind*, of a person, includes—
- (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

### **153ZN Executive officer may be taken to have committed offence**

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

- (b) the liability, under the Criminal Code, chapter 2, of any person, whether or not the person is an executive officer of the corporation, for the offence.

## **Division 7                      Appeals**

### **153ZO Who may appeal**

An owner of a thing forfeited to the State under section 153G(1)(c) who is dissatisfied with the decision resulting in the forfeiture may appeal against the decision.

### **153ZP Starting an appeal**

- (1) An appeal may be started at—
  - (a) the Magistrates Court nearest the place where the person lives or carries on business; or
  - (b) a Magistrates Court at Brisbane.
- (2) The notice of appeal under the *Uniform Civil Procedure Rules 1999* must be filed with the registrar of the court within 28 days after—
  - (a) if the person is given notice of the decision under section 153G(3)—the day the person is given the notice; or
  - (b) if paragraph (a) does not apply—the day the person otherwise becomes aware of the forfeiture.
- (3) The court may, at any time, extend the time for filing the notice of appeal.

### **153ZQ Hearing procedures**

- (1) In hearing the appeal, the court is not bound by the rules of evidence and must comply with natural justice.

- (2) The appeal is by way of rehearing, unaffected by the inspector's decision, on the material before the inspector and any further evidence allowed by the court.

### **153ZR Powers of court on appeal**

- (1) In deciding the appeal, the court may confirm the inspector's decision or substitute another decision for the inspector's decision.
- (2) The chief executive or inspector must give effect to the court's decision.

### **153ZS Appeal to District Court**

An appeal lies to the District Court from a decision of a Magistrates Court under section 153ZR, but only on a question of law.

## **Division 8                      Miscellaneous**

### **153ZT Protecting officials from liability**

- (1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under a relevant provision or this part.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.
- (3) In this section—  
*official* means—
  - (a) the chief executive; or
  - (b) an inspector or State analyst; or
  - (c) a person acting under the direction of an inspector.

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## Part 6                      Miscellaneous provisions

### 175      **General penalty**

Every person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence and liable, if no other penalty is imposed, to a penalty not exceeding 20 penalty units.

### 178      **Evidence**

In any legal proceeding under this Act—

- (f) where it is necessary or proper to prove in respect of any particular article or substance that it conforms to any of the following descriptions, namely—
  - (i) that it is a poison; or
  - (ii) that it consists of or contains poison; or
  - (iii) that it is a restricted drug; or
  - (iv) that it is a controlled drug;then in every such case—
  - (v) evidence that any substance commonly sold under the same name or description as the said particular article or substance conforms to any of the descriptions contained in subparagraph (i), (ii), (iii) or (iv) shall be prima facie evidence that the said particular article or substance also conforms to the same description accordingly;
  - (vi) evidence that any particular article or substance bears any inscription required by the regulations in respect of any substance or class of substances shall be prima facie evidence that that particular article or substance is a substance, or belongs to the class of substances, in respect of which that inscription is so required;

- (vii) evidence that the container in which any particular article or substance is contained is labelled as required, or bears any inscription required by the regulations in respect of containers containing any substance or class of substances shall be prima facie evidence that that particular article or substance is a substance, or belongs to a class of substances, the containers of which are so required to be labelled or to bear that inscription.

### **180 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation may be made under this section with respect to any of the following matters—
  - (f) prescribing penalties of not more than 80 penalty units for offences against a regulation.

## **Part 8 Transitional provisions**

### **Division 1 Transitional provisions for Health Legislation Amendment Act 2001**

#### **184 Transitional provision for things done etc. before this section commences**

- (1) Subsection (2) applies in relation to anything done, omitted or started under, or in relation to, a section 184 provision before the commencement.
- (2) The pre-amended Act continues to apply as if the *Health Legislation Amendment Act 2001* had not been passed.
- (3) Subsections (1) and (2) do not limit the *Acts Interpretation Act 1954*, section 20.

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- (4) Without limiting subsections (1) to (3), a proceeding for an offence against a section 184 provision committed before the commencement may be started or continued, and the pre-amended Act applies in relation to the proceeding, as if the *Health Legislation Amendment Act 2001* had not been passed.
- (5) In this section—
- commencement* means the commencement of this section.
- pre-amended Act* means this Act as in force before the commencement.
- relevant provision* means a relevant provision as in force before the commencement.
- repealed provision* means any of sections 132 to 151 of the pre-amended Act.
- section 184 provision* means a relevant provision or a repealed provision.

## 185 Transitional provisions about certain authorities

- (1) Subsection (2) applies if, immediately before the commencement, a person's authority under section D2 of the repealed regulation to take an old action in relation to all dangerous drugs and restricted drugs was cancelled under section D3 of that regulation.
- (2) To remove any doubt, it is declared that starting on the commencement, the person's authority under the new regulation to take a new action in relation to all controlled drugs and restricted drugs is taken to be cancelled by a decision of the chief executive properly made under chapter 1, part 5, division 4 of the new regulation, and subject to subsection (5), continues to be cancelled.
- (3) Subsection (4) applies if, immediately before the commencement, a person's authority under section D2 of the repealed regulation to take an old action in relation to a particular substance that was a dangerous drug or restricted

drug under that regulation was cancelled under section D3 of that regulation.

- (4) To remove any doubt, it is declared that starting on the commencement, the person's authority under the new regulation to take a new action in relation to the substance is taken to be cancelled by a decision of the chief executive properly made under chapter 1, part 5, division 4 of the new regulation, and subject to subsection (5), continues to be cancelled.
- (5) Subsections (2) and (4) do not prevent the chief executive repealing, under section 26A of the new regulation, the decision of the chief executive.
- (6) In this section—

**commencement** means the commencement of the new regulation.

**new action** means administer, dispense, issue, obtain, possess, including possess at a particular place, prescribe, sell or supply.

**new regulation** means the *Health (Drugs and Poisons) Regulation 1996*.

**old action** means administer, buy, dispense, obtain, possess, including possess on particular premises or at a particular place, procure or offer to procure, sell, or supply or offer to supply.

**repealed regulation** means the *Poisons Regulation 1973*.