

Medicines and Poisons Act 2019

Factsheet – current as at December 2021

Reviews of decisions, stays and appeals

Chapter 6, Part 1 of the *Medicines and Poisons Act 2019* (Qld) (the **Act**) contains provisions relevant to:

- internal review (of an original decision);
- stays (of an original decision);
- external review (following an internal review); and
- appeals (relevant to the seizure or forfeiture of property).

These provisions detail the differing processes to be followed for the review, stay and appeal of decisions that have been made under the Act.

Who is an ‘affected person’?

Section 196 of the Act provides that an ‘affected person’ in relation to a decision means:

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

An ‘original decision’ is defined in section 196 of the Act to mean a decision for which an information notice must be given under the Act, other than a decision to seize or forfeit a thing under Chapter 5, Part 4 of the Act.

An ‘internal review decision’ is defined in section 196 of the Act to mean a decision made, or taken to have been made, under section 200 of the Act on an application for internal review of an original decision.

What are the internal review provisions?

Sections 196 – 200 of the Act contain provisions relating to internal reviews. Relevantly, an internal review decision must be made (or be taken to have been made) prior to any application being made for an external review.

An application for internal review made by an affected person must, under section 199(1) of the Act:

- be in the approved form;
- for a person who has been given an information notice for the decision—include enough information to enable the chief executive of Queensland Health (chief executive) (or delegate) to decide the application; and

- be made within specified timeframes (i.e. within 14 days after a person is given an information notice for the decision; or within 28 days after the day the person becomes aware of the decision, if the person has not been given an information notice for the decision).

The requirement in section 199(1)(b) of the Act for a person who has been given an information notice for a decision to include enough information to enable the chief executive (or delegate) to decide the application, is vital to consider.

Importantly, this requirement does not permit an affected person to submit new or fresh information or evidence with their application for internal review. The chief executive (or delegate) who is conducting an internal review under the Act, will consider the same information and evidence that was available to the person who made the original decision, when making a decision regarding the internal review. An internal review is not an opportunity for an affected person to present new information and evidence, however, any new information and evidence could form the basis of a new application, which would need to be assessed and decided on its merits in the usual manner under a fresh application process.

Under section 199(3) of the Act, an application for internal review does not affect the operation of the decision requested to be reviewed, or prevent the decision being implemented. However, an application may be made to the Queensland Civil and Administrative Tribunal (**QCAT**) to stay the operation of the original decision (as discussed below in this Factsheet).

Under section 200(1) of the Act, the chief executive (or delegate) must make a decision regarding the internal review within 28 days after receiving an application for internal review of an original decision, unless (under section 200(2) of the Act) both the chief executive (or delegate) and the affected person agree to a longer period of time to make the decision.

Importantly, if the chief executive (or delegate) does not give the affected person a QCAT notice within the timeframes under sections 200(1) or (2) of the Act, the chief executive (or delegate) is taken to have confirmed the original decision.

Following the internal review, the decision may be (section 200(1)(b) of the Act) to:

- confirm the original decision; or
- amend the original decision; or
- substitute another decision for the original decision.

Importantly, pursuant to section 200(3) of the Act, an application for internal review may be dealt with only by a person who:

- did not make the original decision; and
- holds a more senior office than the person who made the original decision.

Under section 200(1)(c) of the Act, the chief executive (or delegate) must also give the affected person for the original decision a **QCAT information notice** for the decision, which means a notice complying with section 157(2) of the *Queensland Civil and Administrative Tribunal Act 2009 (QCAT Act)*.

What are the provisions concerning stays?

Under section 201 of the Act, an affected person for an original decision may apply to QCAT for a stay of the operation of the decision. The application may be made at any time within the application period for an internal review of the original decision.

QCAT may make an order staying the operation of the original decision only if it considers the order is desirable, having regard to the interests of any person whose interests may be affected, any submission made by the entity that made the original decision, and the public interest.

Under section 201(4) of the Act, QCAT is not required to give the affected person an opportunity to make submissions for QCAT's consideration if it is considered that it is not practicable because of the urgency of the case or for another reason.

If QCAT grants a stay of the original decision, the stay cannot extend past the end of the period when an application for internal review of the original decision may be made, or past the end of the period within which an application for review of the internal review decision may be made under the QCAT Act.

What are the external review provisions?

Section 202 contains information about applying for an external review.

After an internal review decision has been made (or taken to have been made), a person given or entitled to be given a QCAT information notice may apply to QCAT for a review of an internal review decision or a decision about compensation under section 128 of the Act.

Section 22(3) of the QCAT Act allows QCAT to stay the operation of an internal review decision, either on application or by its own initiative.

What are the appeal provisions?

Section 203 of the Act (appealing seizure or forfeiture decision) provides that a person who is given an information notice for a decision of the chief executive to seize or forfeit a thing under Chapter 5, Part 4 of the Act, may appeal the decision to a Magistrates Court.

Section 204 of the Act (staying operation of decision) provides that a person who appeals a seizure or forfeiture decision (property decision) may apply to the court for a stay of the operation of the decision.

Section 205 of the Act (powers of court on appeal) provides that, in deciding an appeal against the property decision, the court has the same powers as the chief executive (or delegate) in making the decision, is not bound by the rules of evidence and must comply with natural justice. The appeal is by way of rehearing. The court may confirm the property decision, substitute another decision or set the decision aside and return the matter to the chief executive (or delegate) with directions the court considers appropriate.

Section 206 of the Act (effect of court's decision on appeal) states that, if the court substitutes another decision for the property decision, the substituted decision is taken to be a decision of the chief executive (or delegate), and the chief executive (or delegate) may give effect to the substituted decision as if it were their original decision and no application for review or appeal had been made.

Associated guidance documents

- Application for internal review of an original decision relating to a substance authority – form
- Application for internal review of an original decision relating to an authorisation as an approved person for medicines – form
- QCAT website: www.qcat.qld.gov.au

Further information

For further information, contact the Healthcare Approvals and Regulation Unit:

- Email: HARU@health.qld.gov.au