

Introducing a new regulatory scheme for the pest management industry

A consultation paper

January 2017

Introducing a new regulatory scheme for the pest management industry – A consultation paper

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An electronic version of this document is available at

<https://www.health.qld.gov.au/system-governance/legislation/reviews/medicines-poisons-therapeutic-goods/default.asp>

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Purpose

The purpose of this document is to inform the pest management industry about important changes proposed to the pest management legislation and to invite your feedback on the new directions.

The changes relate to the integration of the current *Pest Management Act 2001* into the proposed new Medicines, Poisons and Therapeutic Goods (MPTG) Bill 2015. This document explains the rationale for the integration and highlights matters that will remain the same and those that will be new or modified under the new scheme. General information about other aspects of the MPTG scheme has also been included to give a more complete outline of the scheme.

The MPTG Bill and subordinate legislation is currently being drafted. The legislation will be introduced to Parliament for consideration by the Health, Communities, Disability Services and Domestic and Family Violence Prevention Parliamentary Committee in due course. The public will be invited to provide comment during the committee review period.

An earlier version of the Bill is available via the Department of Health website: <https://www.health.qld.gov.au/system-governance/legislation/reviews/medicines-poisons-therapeutic-goods/default.asp>

NOTE: This version does not include the pest management provisions and numerous changes have since been made to accommodate the pest management requirements.

Feedback is sought from the pest management industry and other interested stakeholders regarding the information outlined in this document.

Feedback can be made by completing an online form via the [website](#).

The form is also available on the website as a fillable PDF form which can be completed on-screen then printed for returning by post or email.

Completed forms can be either:

- posted to:
MPTG Feedback – Pest Management
Queensland Health
PO Box 2368
FORTITUDE VALLEY BC QLD 4006
- or emailed to: mptg.bill@health.qld.gov.au

1. Background

In Queensland all legislation is required to be reviewed periodically. In accordance with this requirement the *Pest Management Regulation 2003* is due for review. This review has coincided with the review of the *Health Act 1937* and subordinate legislation which includes the *Health (Drugs and Poisons) Regulation 1996* (HDPR).

The new Medicines, Poisons and Therapeutic Goods (MPTG) regulatory scheme will replace the current *Health Act 1937* and HDPR that regulates the use of poisons and medicines. As with the *Pest Management Act 2001*, the MPTG scheme requires that persons be authorised to undertake particular activities with poisons and medicines.

At the core of both regulatory schemes is the control-of-use of regulated substances such as pesticides. Therefore it seemed appropriate for the pest management legislation to be integrated with the MPTG scheme.

Following discussions with members of the pest management industry early in 2016, the decision was made to merge the two schemes, integrating the *Pest Management Act 2001* with proposed new MPTG regulatory framework.

The development of the proposed new regulatory framework has been informed by:

- a review of the existing legislation
- consideration of emerging issues about the regulation of poisons
- national and state initiatives to enhance national consistency, to reduce the regulatory burden and to ensure appropriate safeguards are implemented to protect the health and safety of the community.

Consultation

Initial discussions with stakeholders on the possibility of integrating pest management regulatory provisions into the MPTG Bill took place in February 2016. Industry members were invited to attend a focus group meeting to discuss potential options to inform the regulatory policy development. The meeting covered:

- the framework, particularly in relation to how pest management could be integrated into the MPTG Bill
- licence types and scope
- training and competency requirements for pest management technicians
- substance management plans

Some industry members went on to discuss the options with other members of the industry. Their feedback to the Department of Health indicated that the proposed policy reforms were generally well received.

2. The Medicines, Poisons and Therapeutic Goods regulatory scheme

The MPTG regulatory scheme aims to establish a contemporary framework for the control-of-use of medicines, poisons and therapeutic goods in Queensland.

The objectives of the MPTG scheme are:

- to identify and regulate medicines and poisons (regulated substances) that pose a public health risk if not used appropriately
- to ensure the regulated substances are safe and appropriate for their intended use
- to ensure associated public health and safety risks are managed
- to ensure people authorised to deal with regulated substances are appropriately skilled and experienced
- to minimise compliance costs for industry where practicable

The MPTG scheme will adopt the classification system for poisons and medicines under the Standard for the Uniform Scheduling of Medicines and Poisons (the Poisons Standard). The legislation will use the terms 'medicines', 'poisons' and 'prohibited substances' to better define scheduled substances. Poisons are classified as:

- Schedule 5 or S5 - low harm poison
- Schedule 6 or S6 - moderate harm poison
- Schedule 7 or S7 - dangerous poison

Appendix J of the Poisons Standard lists highly dangerous S7 poisons such as strychnine and cyanide. Some of these poisons will be listed in a schedule to the regulation and will be referred to as restricted S7 poisons under the MPTG scheme. This will replace the reference to regulated poisons listed in Appendix 7 of the HDPR.

3. Pest management and the new legislative framework

Why integrate?

Pest management technicians know and understand their obligations under the current *Pest Management Act 2001* and Regulation 2003. However, there are also obligations that may apply under the existing HDPR of which some pest management technicians may not be aware. The HDPR specifies general controls such as packaging and labelling requirements for poisons and medicines, as well as control-of-use requirements for scheduled substances. This includes authorisations for S7 dangerous poisons.

While pest management technicians are currently not required to be authorised to obtain and use regulated poisons (as listed in Appendix 7, HDPR), they are required to comply with other conditions relating to regulated poisons, e.g. the requirement to have an appropriate retail licence under the HDPR to supply a regulated poison to another person.

By integrating the requirements under the *Pest Management Act 2001* into the new MPTG legislation:

- pest management technicians need to refer to and comply with fewer pieces of legislation
- obligations regarding S7 dangerous poisons, in particular controls for use of restricted S7 poisons will be more clearly defined
- licencing and approval requirements will be more streamlined because all authorities will be issued under the MPTG regulatory scheme.

MPTG Overview – similarities and differences

Many of the terms and requirements under the existing *Pest Management Act 2001* have been included in the new MPTG Bill. However, there are some minor changes. These are further outlined in this section.

Terminology

What is the same?

- The terms ‘pesticide’, ‘fumigant’, ‘fumigation activity’, ‘pest control activity’, and ‘pest management activity’ have been included.

Note: the definitions of some of these may have changed slightly. .

What is different?

As the MPTG Bill applies to all poisons and medicines, some new general terms have been introduced to make the legislation easier to read. Additionally, some existing terms have been modified slightly.

Modified terms

- The definition of ‘fumigation’ will include the fumigation of soil.
- ‘Pest management activity’ has been expanded to include an ‘invasive animal activity’.

New terms

- **regulated substance** - includes all scheduled medicines and poisons, as well as pesticides that are not scheduled.
- **regulated activity** – includes all activities involving regulated substances, such as manufacturing, possessing, supplying, applying and disposing of a regulated substance. Undertaking a pest management activity will be a regulated activity.
- **substance authority** – authorities to perform a regulated activity with poisons and pesticides will be known collectively as substance authorities. There will be two types of substance authorities: licences and general approvals. The substance authority for a pest management activity will continue to be a pest management licence.
- **invasive animal activity** - preparing a pesticide or poison for use and using that substance to kill an invasive animal.
- **invasive animal** – an animal established or declared to be an invasive animal that is restricted matter under the *Biosecurity Act 2014* (e.g. wild dogs, feral pigs).
- **authorised way** – a person carries out a regulated activity in the authorised way if they have an authority (i.e. a licence) to carry out the activity.
- **substance management plan** – is a document that sets out a plan for managing known and foreseeable risks associated with performing a regulated activity.

Licenses and approvals

What is the same?

- Pest management technicians will still be required to have a licence to be able to carry out a pest management activity.
- Licenced pest management technicians can continue to use S7 dangerous poisons.
- Licences will continue to be renewable and may be conditional.
- Licences may be issued for a period of up to five years.

- Suitability of applicants for a pest management licence will still be assessed prior to a licence being granted. This may include a requirement for a health assessment.
- Prescribed competencies must still be successfully completed in order to be eligible for a pest management licence.

What is different?

- Pest management technicians operating in primary production settings will not be exempt from the Act.
- New licence classes have been introduced for:
 - pest control activity in a primary production setting
 - commercial baiting of invasive pest animals
- Only persons carrying out an invasive pest animal activity will be able to access restricted S7 dangerous poisons such as strychnine and 1080.
- PMTs who intend using restricted S7 avicides such as 4-amino pyridine for the purpose of bird control may need to state this when applying for or renewing a licence. Approval to use these substances will be a condition of the licence.

Fees

Fees for pest management licences will not change from the current fee structure. There will be no increases to fees other than normal CPI-linked increases.

Training and competencies

What is the same?

- Existing competency requirements for general pest management, general pest management including timber pest and fumigation will remain the same.

What is different?

- Additional competency requirements will be prescribed by regulation for:
 - pest management in primary production
 - commercial invasive animal baiting

Table 1 below shows current licence classes and competencies and includes new licence classes and proposed competencies.

The proposed new licence classes and competency requirements are based on proposed harmonisation of training and licensing requirements under the *National Framework for the Assessment Registration and Control-of-Use of Agricultural and Veterinary Chemicals*.

Table 1 Licence classes and units of competency

| Licence Class | Approved Unit of Competency |
|---|---|
| 1. Pest management - general | CPPPMT3005 Manage pest without applying pesticides CPPPMT3006 Manage pest by applying pesticides CPPPMT3018 Maintain equipment and pesticide storage area in pest management vehicles |
| 2. Pest management – general including timber pests | As for General above plus: CPPPMT3008 Inspect and report on timber pests CPPPMT 3010 Control timber pests |
| 3. Fumigation | CPPPMT3011 Manage organisms by applying fumigant to commodities and environments |
| 4. Pest management – primary production (NEW) | AHCCHM303 Prepare and apply chemicals AHCCHM304 Transport and store chemicals AHCPMG308 Implement pest management strategies AHCCHM402 Plan and implement a chemical use program |
| 5. Invasive animal management (NEW) | AHCCHM303 Prepare and apply chemicals AHCCHM304 Transport and store chemicals AHCPMG309 Apply pest animal control techniques AHCCHM402 Plan and implement a chemical use program AHCCHM305 Conduct manual fumigation of vertebrate and invertebrate pests |

Management plans

Substance management plans

The MPTG Bill introduces a new requirement for preparation of substance management plans (SMP). A SMP is a document that sets out a plan for managing known and foreseeable risks associated with carrying out a regulated activity for a regulated substance.

An SMP is intended to be a high level, overall management plan that details matters such as where the substance will be stored, how it will be transported, the risks associated with the substance, any safety measures to be implemented, roles and responsibilities, and how staff will be trained in or kept informed about the plan.

The Bill provides for existing risk management systems or plans to be recognised for the purposes of compliance with the Bill if they meet the relevant criteria.

Who is required to have a SMP?

The Bill prescribes who is required to have a SMP. Pest management technicians will not be required to have a SMP.

However, a SMP may be required if administrative action has been taken due to significant non-compliance issues or is imposed as a condition of a pest management licence.

Activity-based risk management plans (ARMP)

Although pest management technicians are not required to prepare an SMP it is expected that activity-based risk management plans (ARMP) will be required to be prepared for certain activities. ARMPs are more focused on individual jobs and are intended to address the risk associated with a particular regulated activity being carried out with a regulated substance in a particular location or environment.

An ARMP will not be required for general and timber pest control activities. However it is proposed that fumigation, pest management in primary production and invasive animal management activities will require an ARMP be prepared prior to undertaking an activity.

This requirement and the matters that are required to be in the plan will be prescribed in the regulation, but will be similar to what is currently required for fumigation activities.

Offences

The MPTG regulatory scheme establishes some key offences to replace the numerous offences of the current legislation. While the key offences will be set out at the beginning of the Act, other offences will be included throughout the Act and in the regulation.

What is the same?

With respect to pest management it will still be an offence to:

- undertake a pest management activity without a licence
- fail to observe the conditions imposed on a licence
- fail to obey a direction of an authorised person

What is different?

The MPTG legislation establishes regulatory controls over restricted S7 dangerous poisons in order to govern the availability and accessibility of such poisons. It will be an offence to:

- supply, possess, apply or dispose of a restricted S7 dangerous poison unless authorised or there is an exemption
- direct another person to supply someone a restricted S7 dangerous poison unless authorised or there is an exemption
- fail to implement a substance management plan (if required) that meets the minimum requirements specified in the legislation

The maximum penalties that could be imposed for contravening particular provisions have been reviewed.

Monitoring and enforcement

What is the same?

- Licences may be suspended, cancelled or varied, or have additional conditions imposed on them.
- Compliance notices will be able to be issued.
- Penalty Infringement Notices (PIN) will be able to be issued for non-compliance with the Act.
- Authorised persons have the same powers as in the *Pest Management Act 2001*

What is different?

- The term 'administrative action' has been adopted and includes the suspension, cancellation, variation or imposition of conditions on the licence and issuing of show cause notices.

Other requirements

What is the same?

Matters relating to the following will be prescribed in regulation:

- record keeping
- notification and provision of information
- vehicle signage
- containers, labelling, and storage
- management of spills and leaks
- disposal of substances / containers

What is different?

Currently many obligations in the regulation apply specifically to a pest management technician. While some of these may be appropriate for a self-employed person, others may not be appropriate where the pest management technician is an employee of a business providing pest management services. To overcome these issues it is proposed to impose the obligations on a 'responsible person'. A responsible person will include a business that provides the pest management service and may be an individual or a company. Examples of provisions which may be changed include:

- vehicle signage provisions
- record keeping requirements

Some provisions such as the requirements for respiratory protective devices will be removed. This is because the requirements to manage health and safety risks to workers are covered by the provisions of the *Work Health and Safety Act 2011*. In the case of personal protective equipment (PPE), appropriate PPE should be determined by undertaking a risk assessment of the task and the pesticides involved.

4. Other aspects of the MPTG scheme

The following aspects of the new scheme may not apply directly to the pest management industry, but have been included for general information.

Emerging risk declarations and recall orders

Under the new legislation it is proposed that the chief executive will be able to:

- make an emerging risk declaration
- make a recall order.

An *emerging risk declaration* may be made where there is a reasonable belief that an unscheduled or emerging substance or device poses a risk of injury or illness. The emerging risk declaration will state any conditions that apply with respect to performing an activity for the declared substance or device.

A *recall order* may be made if there is a risk of harm to persons or animals because of labelling, packaging or safety issues. Before making the recall order the chief executive will have to advise the person responsible for the substance of the intention to make an order. Recall orders may be applied to declared substances or devices.

Standards

The chief executive will be able to make standards that are relevant to the object and administration of the new legislative regime. Standards may address matters such as baiting for pest animal eradication and be prescribed by regulation or referred to in the conditions of a licence. It is also possible to adopt or specify standards that have been developed by other regulators or relevant industry bodies (e.g. Workplace health and safety code of practice managing hazardous chemicals). A copy of each standard made by the Department of Health will be published on the Queensland Health website as well as being available for inspection, free of charge.

Sharing of information

The MPTG Bill sets out a number of provisions to allow sharing of information under particular circumstances.

- **Public warnings:** The Minister or chief executive may issue a public statement giving warnings or information about such things as contraventions of the Act
- **Registers:** A register about substance authorities, including pest management licences and any administrative action taken will be kept by the Department. The register will be published on the Department's website.
- **Confidentiality provisions:** These allow for disclosure of relevant information to other regulators and disclosure to health professional for patient care reasons.

Transitional arrangements

The Bill includes transitional arrangements to deal with matters that may be outstanding when the *Health Act 1937* and *Pest Management Act 2001* are repealed.

Existing pest management licences will transition to the new regulatory scheme.

The Bill also recognises that time may be needed to implement some of the new requirements of the regulatory regime, e.g. one year for the development of substance management plans by current authority holders, if required.