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Committee Secretary
State Development, Natural Resources and
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Parliament House
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5th June 2019

First – we thank the Health Protection Branch, Prevention Division, Queensland Health for consulting with a group from the Urban Pest Management industry since it was surprisingly included into the MPTG Bill in 2017 (now MP Bill 2019). There has been insufficient time to go to the industry with the Bill for reaction since it was tabled in May.

There are **two** main issues we ask Committee to consider with respect to Urban Pest Management. Other comments are more specific such as use of incorrect words for the Section. These comments are copied to the Health Protection Branch.

DISCUSSION

Attempting to 'fit' something that does not belong often gives rise to unintended results. The Minister in introducing the Bill to Parliament made no mention of Urban Pest Management, nor is it mentioned in the dot points on the Committee's explanatory notes on the web site. Either it was overlooked or is not considered one of the aims of the Bill.

1) Incorporation of the Pest Management Act 2001 into the Medicines and Poisons Bill

Urban Pest Management was split from the Health Act in 2001. The reasons are as appropriate now as they were then. The main purpose of the Medicines and Poisons Bill is to regulate the possession, manufacture and sale of Scheduled substances. The Bill defines a poison (Section 12 – **Meaning of *poison***) as "A ***poison*** is any of the following substances, other than a fumigant or pesticide."

Products used in Urban Pest Management are registered by the APVMA and usually come under DAF legislation. It appears that the regulation of Urban Pest Management activities is included in this Bill simply because Health licenses the Urban Pest Management industry in Queensland. In most states the industry is licensed by Health but in NSW the EPA is the licensing authority and in Tasmania the DPIPW. The industry uses no Restricted S7 Poisons.

The intent of the Pest Management Act 2001 was to regulate an industry. Other industries with similar legislation include regulation and licensing under the Plumbing and Drainage Act 2018 and the Electrical Safety Act 2002. We believe this reasoning is still valid.

Within Queensland Health another industry-based Act (**Public Health (Infection Control for Personal Appearance Services) Act 2003**) covers activities including beauty therapy, body piercing, hairdressing, personal appearance services, skin penetration and tattooing.

The Urban Pest Management licence is issued by Queensland Health but the licence is required or recognised by two other Departments.

The licence grants Urban Pest Management Technicians a licence for Ground Distribution under the **Agricultural Chemical Distribution Control Act 1966**

16A When pest management technician is taken to hold commercial operator's licence

(1) For a provision of this Act relating to ground distribution, a pest management technician who holds a relevant pest management qualification is taken to hold a commercial operator's licence.

(2) Sections 20 to 23 apply, with necessary changes, to the operation, under this Act, of the pest management technician's licence as if it were a commercial operator's licence.

Also, Health administers the recording of competency in the timber pest units (8 and 10) of the Urban Pest Management Competencies which are part of the requirement for a company licence with the **Queensland Building and Construction Commission (QBCC)**

The work of the UPM Technician straddles many Departments:

- Health - UPM uses pesticides where people live, work and where food is processed to control threats to health such as diseases spread by cockroaches, rodents and mosquitoes.
- Agriculture and Fisheries – the products used by UPM industry are generally based in agriculture and are registered by the APVMA. The licence as a Pest Management Technician Associated services such as the West Indian Drywood Termite and Fire Ant programs are based in DAF are responses to the incursion of pest species into mainland Queensland.
- Housing and Public Works – QBCC – also license Pest Management businesses involved in protection from concealed entry of termites at house construction and inspection and treatment of timber pests of existing premises.
- Local Government – employees need UPM licences to carry out duties in relation to Local Government requirements legislated by the State for control of mosquitoes and rodents.
- Biosecurity – Urban Pest Management Technicians help to provide a check on incursions that may pass through security at the border.
- Workplace Health and Safety also place obligations on activities of Urban Pest Management Technicians to ensure they do not place themselves or others at risk of injury or to health.

As discussed later, there have been relatively few changes in the Legislation regarding Urban Pest Management from the Pest Management Act 2001 and Regulation 2003, except they are now harder to find amongst all the other Legislation.

We ask that the repeal of the Pest Management Act 2001 and its incorporation into the Medicines and Poisons Bill 2019 be reconsidered.

2) The definition of a pest management business (MP Bill Schedule 1 Dictionary)

- means a business in which services are offered that include pest management activities

Examples – pest control services offered by a pest management technician **or as part of property management services by a real estate agent.**

The reason given for the inclusion of real estate agents as pest management businesses is so an offence can be created in the Offence Sections 44-46 if they do what they are defined as being. Legislation should be clear and to define that a group is a certain category simply so it commits an offence if it undertakes that activity is confusing. That sentence itself appears to be confusing in itself – real estate agents are included in the definition of being a **Pest management business** so that in the **Offences** it is an offence to undertake non-exempted pest management activities without having a Pest Management licence.

This naming of real estate agents as an example of a *pest management business* can be overcome in Sections 44-46 without defining them as a *pest management business*.

The Medicines and Poisons (Pest Management, Poisons and Other Regulated Substances) Regulation 2019 **Chapter 3 Pest management** activities regularly refers to the 'business' and 'business owner'. This gives rise to the potential that real estate agents (as defined above) could claim to be the legal holder of the treatment paperwork (as opposed to paperwork given to customers) for the properties they manage or they could even find themselves responsible for the signage etc on a vehicle used by a licensed pest management contractor. All of this is unintended consequences of the wording in the definition. **Potential alternative wording (as requested in discussion with Health) is provided below.**

The remainder of the comments focusses on specific wording in the Bill, Regulation and Explanatory Notes.

MEDICINES AND POISONS BILL 2019

Legislation needs to be easily understood by those it directly affects and the general community, not just Government employees. There are various groups that advertise 'pest control' that do not have licensed pest management technicians on staff to perform that activity. Examples include facility management service companies, real estate companies (for rentals), carpet cleaners, building inspectors and pest control companies (where they contract out timber pest work).

The Health Protection Branch, Prevention Division, Queensland Health staff state that 'real estate' is specifically included so that as a 'pest management business' they are covered off in the offences (Section 45). Conversely, we believe that definition will be seen and used by real estate agents to either unwittingly (or on purpose) to flout the intent of the Bill. In discussion with the Health I was asked to offer a suggestion for re-writing the definition of 'pest management business', which also requires a rewrite of the offence provisions Sections 44-46.

Sections in blue bold to be deleted, and replaced by sections in green bold

The definition of a *pest management business* (Schedule 1 of the Bill) states:

- (a) Means a business in which services are offered that include pest management activities; Examples – pest control services offered by a pest management technician or as part of property management services by a real estate agent.**

Means a business that undertakes pest management activities carried out by licensed pest management technicians but

- (b) Does not include a business in which pest management activities are incidentally carried out when performing services for purposes other than pest management.
*Examples – a plumber spraying a pesticide on a drain pipe before clearing the pipe
 – an electrician spraying a pesticide a meter box before working on the meter box.*

Then Section 44-46 of the Bill

Chapter 2 Offences
 Part 1 General offences
 Division 3 Poisons and pest management

44 Offence to carry out pest management activities

(1) A person must not carry out a pest management activity unless the person carries out the activity in the authorised way or has a reasonable excuse.

(2) Does not apply to

a-c various treatments re primary production,

d a person who carries out a pest control activity using a household pesticide to control a pest, including a pest on an animal, at residential premises that they occupy or own and is vacant, other than for a pest management business.

Examples – using a household pesticide to kill cockroaches at a house they occupy
 – using a household pesticide to control fleas and ticks on a dog
 – spraying a household pesticide on a meter box before working on the meter box

household pesticide – means a pesticide ordinarily used in households and available from a retail store

The concept of ‘household’ pesticide has changed since 2001. Products at supermarkets include rodenticides used by pest managers and premixed products as used by pest managers.

The difference is not the product but the cost to use a large quantity. The economy of scale is not a health issue – the (mis)application of the product is the health issue. The cost of 5L pre-mix of product available at a supermarket would not be a barrier to a restaurant owner attempting their own pest control.

NOTE – definition of primary producer includes storing

Primary producer – means a person producing or storing agricultural and horticultural products. Current wording includes suburban grain stores, produce stores and fruiterers.

Options – change ‘or’ to ‘and’
 – delete ‘or storing’

45 Offence to offer to carry out pest management activities if unauthorised

A person must not offer to carry out a pest management activity for a pest management business unless

- (a) the person has a pest management licence or
- (b) the person employs someone else with a pest management licence to carry out the pest management activity.

Examples – a real estate agency must contract a pest management business carry out a pest management activity at properties they manage.

 – a commercial business (eg office, restaurant, hotel, hospital, food production facility) must contract a pest management business to carry out any pest management activity at the premises.

46 Offence to require or permit unauthorised persons to carry out pest management activities

(1) This section applies to a person (a **manager**) who –

- (a) is authorised to carry out a pest management activity; or
- (b) operates a pest management business.

(2) The manager must not permit or require another person to carry out a pest management activity for the manager if the manager knows the other person is not authorised to carry out the activity, unless the manager has a reasonable excuse.

(Is Section 46 required?)

14 Definitions – a **pesticide** is a substance or mixture of substances intended for preventing, destroying or controlling any pest. (cut down version from APVMA)

The APVMA definition of **fumigant** should be used: (a fumigant is a certain type of pesticide)
A pesticide that, at normal ambient temperature and pressure, exists in the gaseous state in sufficient concentration to be lethal to a given pest organism or inhibitory to a given pest organism.

19 Meaning of a pest management activity = fumigation activity or pest control activity (uses APVMA definition)

NOTE – A **fumigation activity** is the preparation or use of a **substance fumigant** to –

MEDICINES AND POISONS (PEST MANAGEMENT, POISONS and OTHER REGULATED SUBSTANCES) REGULATION 2019

CHAPTER 3 Pest management activities

PART 2 Classes of persons and regulated activities

Division 3 Activities for State and local government purposes

81 Treating ants under biosecurity program

82 Relevant health officers treating mosquitoes

These Sections are for non-licensed Government employees (permanent or casual) undertaking pest control activities. We believe the prescriptive specification of products described in this Section is limiting in that if a more suitable product becomes available the new product will have to go through the process of being added to the Regulation before it can be used. This is counter to the aim of these programs to use the most effective/suitable (taking into account efficacy, ease of application and safety) products available.

Also, the Fire Ant program treats areas that are not known to be actually infested, adjacent to areas that are infested. The wording of this Section should reflect this.

Division 4 Building-related activities

84 Installers of termite barrier sheet material

(1) The wording does not marry with QBCC requirements. QBCC license a representative of the company – one per company – whereas Health license individual technicians. The wording needs to reflect the difference – perhaps ‘This section applies to a person who is employed by a pest management business which holds a current class of licence called “Termite management – physical”’

If installing products containing pesticide during construction are excluded from requiring a pest management licence then the installers of preconstruction products (sheet, collars, glue etc) containing pesticide should be required to be competent in Urban Pest Management Unit 42A Install Physical Termite Barriers.

Division 5 Agricultural activities**86 Post-harvest treatment of products****87 Treatment of livestock**

86 (2) and 87 (2) “where the product is / livestock are being processed for a commercial purpose.” Agricultural and horticultural products are processed in food processing facilities and livestock are processed in abattoirs. This is in direct contrast to the requirements of licensed pest management technicians to develop Activity Risk Management plans (Division 3 Sections 104-106) to treat these “high risk” places.

The word ‘**processed**’ should be deleted and replaced with ‘**treated**’.

This still leaves the situation where an off-farm grain trader (eg near the port at Hamilton) would be able to fumigate a huge grain store without a having a licence. Sections 7 (b), (c) and (d) and the explanation in Section 8 of the Pest Management Act 2001 cover this situation well. Exemptions included:

- On-farm pest management activities (including fumigation)
- Pest control activities in processing grain or seed for use as food for animals

Once the produce leaves the farming property involved in primary production it should only be fumigated by a licensed fumigator.

PART 3 Requirements and conditions for qualified persons**Division 2 Labels, containers and storage****91 Storage on vehicle****92 Storage generally**

Sections 128 Storage on vehicle and 130 Secure storage duplicates the above sections for pest management businesses (not real estate agents).

Division 3 Documentation**93 Records of use of fumigants and pesticides**

93 (1) (c) the name of the person who performed the activity should be required, whether a licensed technician or a qualified person.

93 (3) and 94 (3) – The qualified person must keep a copy of the record. – Delete and replace with 93 (4) “**If the qualified person is employed**” and then make 93 (4) and 94 (4) “**The qualified person fulfills the obligation to keep records when the record is passed on to the pest management business.**”

The paperwork belongs to the pest management business (that is another reason why it cannot be a pest management business cannot be a real estate agent!!) not the employee. It is the responsibility of the business to keep the paperwork.

94 Records of use for termite treatments

AS 3660.1 requires a **Certificate of Installation**, AS3660.2 requires a **Certificate of Treatment**

Division 4 Incidents and disposal**97 Disposal of fumigants or pesticides**

Delete ‘**may**’ and replace with ‘**must**’.

98 Exposure or spillage

Delete ‘**immediately**’ and replace with ‘**as soon as practical**’.

99 Suspicious products

(1) Example: the product does not have a label registered by the APVMA.

PART 4 Additional conditions for licensed technicians

Division 1 Preliminary

100 Definitions for part

high risk place

(a) delete “owned by a person and” so it reads “means premises being used for

Many premises are not owned by a ‘person’.

(b) delete, replace with “includes land adjacent to those premises”

Add to Examples “food manufacturing premises”

pest control advice

(a) not all pest management businesses are carried on by persons – change to “for a licensed technician employed by a pest management business – the name of the business”; or

(b) the licensed technician’s (add) “name and” licence number

(e) how long a treatment is expected to take can be difficult to estimate – esp, termite some work.

Division 2 Pest control activities

101 Purpose of division

(2) (a) “live, work and process food”

(b) add “and others in the Medicines and Poisons (Bill) 2019, Schedule 1 Dictionary – Pest”.

102 Giving pest control advice

(2) “personally” – is that in writing or by voice?

Division 3 High-risk and sensitive places

106 Contents of the plan

(1) (k) – either as a preventative or reaction to an infestation – control of pests – unnecessary item.

Division 4 Fumigation activities

108 What is a fumigation notice (a) and (b)

109 What is a clearance certificate (b) and (c)

see comments re *pest control advice* about person and name of technician

112 Contents of plan

Why (i) – availability of water and power and

(p) reason and

(r) how to be used – is that covered off in (j)?

113 Notifying persons about fumigation activity

See comments about 93 / 94 (3) and (4) above

115 Inspecting before fumigating

(1) (d) add “underground services” – very important when treating buildings.

121 Re-entering fumigation space

(3) methyl bromide (an ozone depleter) has not been used to treat residences for many years. West Indian Drywood Termite infestations are now treated with Sulphuryl Fluoride. Suggest delete “and methyl bromide is used as a fumigant in the space.”

122 Clearance certificate

See comments re Sections 93 (3) and 94 (3) – the business, not the technician, must keep a copy of the fumigation notice and clearance certificate.

Division 5 Other conditions

124 Changes affecting licence

(c) delete “by a person”

(i) delete “person” and replace with “pest management business”

PART 5 OFFENCES

Division 1 Business owners

125 Application of division

Delete “a person” and the brackets

Division 2 Managers

133 Manager to notify attendees

The term ‘Managers’ appears to be all encompassing compared to how it has been described to industry. We understood this to be for Aged Care facilities and other sensitive sites and Body Corporates. The Division does not appear to be limited to these sites – the definition of ‘manager’ could include more groups than given as examples - the home owner, the 24hr café manager, the hotel manager – these would not want notices left at conspicuous places at their premises.

Comments on the Explanatory Notes

Page 1

Policy objectives and the reasons for them

The Pest Management Act 2001 and the Pest Management Regulation 2003 **regulate access to** and use of **poisons** such as pesticides and fumigants.

They also set licensing and competency requirements for persons who carry out pest management activities.

The products used by pest managers are (not such as) pesticides and fumigants – and the general public has access to most of the pesticides used by licensed technicians.

The reason for licensing the activities is to allow their use in non-agricultural situations other than in domestic premises not occupied by that person.

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Alternative ways of achieving policy objectives

The Bill was developed following an extensive review of the existing legislation. Alternatives to repealing and replacing the current legislation were considered, namely retaining the current legislation or significantly amending the current framework to modernise it. These options were not considered appropriate as the current legislative framework is not fit for purpose – it is outdated, difficult to apply and unnecessarily prescriptive.

Amending the current framework to modernise it would be a significant process due to its size and complexity and the age of the legislation. The amendments required would be significant and drafting would be constrained by the current structure of the legislation. The **duplication** between the Health Act, Health (Drugs and Poisons) Regulation and Health Regulation, and the Pest Management Act and Regulation would also not be addressed. The current duplication between the Health Regulation and the Commonwealth Therapeutic Goods Act would also continue.

There are very few changes to the Pest management Act 2001 and Regulation 2003.

Duplication – the problem for the pest management industry is we need to delve from one Chapter/Part/Division to another without missing something. Then there is the confusion over the terminology relating to poison/pesticide/fumigant/S7/restricted S7. The industry uses mainly S5 and S6 products registered by the APVMA – these products are generally available.

There is some modernisation - paperwork can be in electronic form. Businesses will have responsibility for the vehicle and keeping of records. Extra risk assessments for high risk and sensitive sites (that many companies already do) will be formally required. A pest management business can provide a pest control advice to the manager of an accommodation facility (hospital, aged care facility etc).

The prescriptive sections remain – types of containers that cannot be used to contain pesticides, the requirements for labels if a product is kept in a container for later use etc. Not much has changed – except allowing city grain traders to undertake their own pest control and fumigation activities (Section 44 (4) of the Bill).

primary producer means a person producing or **storing** agricultural or horticultural products.

This would allow a company with a grain store in the wharf area in Brisbane to legitimately fumigate the grain without a pest management licence. That was not the case under the existing Pest Management Act.

There may be changes in enforcement and powers of officers section. Few relate specifically to pest management – these could be transferred easily to the current Pest Management Act.

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Pest management activities

Clause 19(2) defines fumigation activity as the preparation or use of a **substance fumigant** to: kill a pest; sterilise grain or seed to prevent germination; or treat soil in which pests might be living. The clause also provides that a regulation may prescribe carrying out another activity as a fumigation activity.

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What is a pest management licence

Clause 66 provides that a pest management licence is a licence that authorises a person to carry out the pest management activities stated in the licence using **a fumigant or pesticide stated in the licence**. It will also allow a pest management technician to possess and apply pesticides or fumigants and **dispose of the substance waste, in a way stated in the licence**.

The licence will be endorsed for the types of pest management activity that the person wishes to perform and for which they have the necessary competencies. Pest management technicians will be required to only use APVMA approved pesticides and fumigants. Pest management technicians seeking to supply S7 pesticides or fumigants will also be required to obtain an S7 retail licence.

The fumigant and pesticide are not stated on the license – just the activities they can undertake.

The method of disposal of waste is NOT on the licence, it is per the label of the product.

I am happy to answer any questions generated from these comments that you may have.

PC Sayer

Yours sincerely,

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