

Medicines and Poisons (Validation) Bill 2022

EXPLANATORY MEMORANDUM

The Medicines and Poisons (Validation) Bill 2022 (the Bill) provides for an Act to make provision in relation to the definition of *Standard for the Uniform Scheduling of Medicines and Poisons (SUSMP)* in the *Medicines and Poisons Regulations 2016* regulation 3(1).

The Bill is set out as follows:

Clause 1 **Short title**

Clause 1 cites the short title of the Act; namely the Act will be called the *Medicines and Poisons (Validation) Act 2022*.

Clause 2 **Commencement**

Clause 2 provides that this Act comes into operation on the day that it receives the Royal Assent.

Clause 3 **Act binds Crown**

Clause 3 provides that this Act binds the Crown.

The intent of this clause is not to bind the Crown to anything to which it is not currently bound. It simply ensures that the Crown is bound to the “validation” provisions of the Act.

Clause 4 **Validation**

Clause 4 is aimed at restoring the position that would have been applicable if the definition of *SUSMP* in the *Medicines and Poisons Regulations 2016* had been as set out in clause 4(2) during the validation period, beginning on 1 February 2019 and ending on 19 November 2019.

Subclause (1) defines necessary terms for the purposes of the clause 4.

Key definitions include:

non-legislative instrument, which sets out a list of various instruments that can be made, issued or given under a written law but are not themselves a written law.

relevant definition, which means the definition of *Standard for the Uniform Scheduling of Medicines and Poisons (SUSMP)* in the *Medicines and Poisons Regulations 2016* regulation 3(1). This definition was affected by an anomaly during the validation period, in that it did not refer accurately to where the *SUSMP* was found in the Commonwealth Poisons Standard.¹

validation period, which means the period beginning on 1 February 2019 and ending on 19 November 2019 (inclusive). This is the period during which the relevant definition was affected by the anomaly.

¹ The definition of *SUSMP* in the regulations referred to Schedule 1 of the Poisons Standard. However, as of 1 February 2019 the *SUSMP* was set out in Schedule 2.

Subclause (2) sets out the primary validation provision for the Act. It provides that at all times during the validation period, the definition of SUSMP in the *Medicines and Poisons Regulations 2016* is taken to have been “the Standard for the Uniform Scheduling of Medicines and Poisons set out in the current Poisons Standard”. This overrides the definition that was in place at the time, which was “the document set out in Schedule 1 of the current Poisons Standard”.²

Subclause (3) explains how certain subclauses within clause 4 interrelate. It clarifies that subclauses (4), (5), (7), (8), and (9) supplement, and do not limit, the effect of subclause (2) or each other.

Subclause (4) supplements subclause (2). It provides that a written law or non-legislative instrument in force at any time on or after 1 February 2019 is taken to have, or have had, the same effect at that time as if the definition in subclause (2) had been in place during the validation period.

Subclause (5) supplements subclause (2). It ratifies anything done, or purportedly done, on or after 1 February 2019 as lawful, valid and effective as it would be, or would have been, if the definition in subclause (2) had been in place during the validation period.

Subclause (6) clarifies that a reference in subclause (5) to the doing of anything includes a reference to an omission to do anything.

Subclause (7) supplements subclause (2). It provides that the functions, rights, obligations and liabilities of all persons and bodies, and the State, are taken to be, and have always been, the same as if the definition in subsection (2) had been in place during the validation period.

Subclause (8) supplements subclause (2). It is aimed at overriding the first limb of section 11 of *The Criminal Code* in relation to the status of offences but also extends to other contraventions of written laws or non-legislative instruments.

In subsections (4), (5) and (8), the words “on or after 1 February 2019” are used rather than “during the validation period”. The intent is to cover anything occurring after the validation period that relates to things that occurred during the validation period; for example, the investigation after the validation period of an offence that occurred during the validation period.

Subclause (9) supplements subsection (2). It is aimed at overriding the second limb of section 11 of *The Criminal Code* in relation to the charging of an offence.

Subclause (10) expressly overrides section 11 of *The Criminal Code* section 11.

² As of 1 February 2019 the SUSMP was set out in Schedule 2 of the Poisons Standard.