



New South Wales

# Occupational Health and Safety (Pest Control) Amendment (Fumigations and Pesticides) Regulation 1997

under the

Occupational Health and Safety Act 1983

His Excellency the Lieutenant-Governor, with the advice of the Executive Council, has made the following Regulation under the *Occupational Health and Safety Act 1983*.

JEFFREY SHAW, Q.C., M.L.C.,  
Minister for Industrial Relations

## Explanatory note

The objects of this Regulation are:

- (a) to repeal the *Occupational Health and Safety (Fumigations and Pesticides) Regulation* (formerly Part 12 of the Public Health Regulations and revived by clause 5 of Schedule 8 to the *Occupational Health and Safety Act 1983*), and
- (b) to incorporate the provisions of the repealed Regulation in the *Occupational Health and Safety (Pest Control) Regulation 1988* with no substantive changes.

The provisions deal with the use of dangerous substances for fumigation in any premises and the use of hazardous pesticides. The existing requirement for a fumigation licence in order to carry out fumigation by means of a dangerous substance is continued by this Regulation.

This Regulation is made under the *Occupational Health and Safety Act 1983*, including section 45 (the general regulation making power).

This Regulation is made in connection with the staged repeal of subordinate legislation under the *Subordinate Legislation Act 1989*.

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# **Occupational Health and Safety (Pest Control) Amendment (Fumigations and Pesticides) Regulation 1997**

## **1 Name of Regulation**

This Regulation is the *Occupational Health and Safety (Pest Control) Amendment (Fumigations and Pesticides) Regulation 1997*.

## **2 Commencement**

This Regulation commences on 1 September 1997.

## **3 Repeal**

The *Occupational Health and Safety (Fumigations and Pesticides) Regulation* is repealed.

## **4 Amendment of Occupational Health and Safety (Pest Control) Regulation 1988**

The *Occupational Health and Safety (Pest Control) Regulation 1988* is amended as set out in Schedule 1.

## **5 Notes**

The explanatory note does not form part of this Regulation.

## **Schedule 1 Amendments**

(Clause 4)

### **[1] Clause 3 Definitions**

Omit the definition of *inspector*.

### **[2] Clause 3 (2)**

Omit the subclause.

### **[3] Clause 4**

Omit the clause. Insert instead:

#### **4 Application of certain provisions**

- (1) Parts 2–4 apply to or in respect of the use of pesticides for the destruction or control of pests in domestic, industrial and other premises, but nothing in those Parts applies to or in respect of the use of pesticides for the destruction or control of pests for agricultural or pastoral purposes.
- (2) Parts 2–4 do not apply to or in respect of the use of pesticides for the destruction or control of pests by fumigation, and nothing in those Parts affects any requirement for a fumigation permit under Division 1 of Part 5 or any of the provisions of Part 5.
- (3) Parts 2–4 (or any specified provision of those Parts) do not apply to a person exempted by the Chairperson of the Committee by notice in writing, subject to compliance by the person with any conditions to which the exemption is subject.

**[4] Part 5**

Insert after Part 4:

**Part 5 Fumigations and hazardous pesticides**

**Division 1 Fumigations**

**34 Definitions**

(1) In this Division:

*dangerous substance* means hydrogen cyanide or any other substance specified in Schedule 3.

*fumigation area* means that part of a building, vessel or other enclosed area undergoing fumigation by means of a dangerous substance.

*fumigation permit* means a fumigation permit in force under this Division.

*risk area* means any part of a building, vessel or other enclosed area into which it is reasonable to assume that a dangerous substance may penetrate from a fumigation area, and includes the part of any building, vessel or enclosed area that is less than 6 metres from the nearest boundary of a fumigation area (unless that part is separated from the fumigation area by a yard, street or other open space not less than 3 metres in width or by a solid wall or two adjoining walls of a total thickness of not less than 60 centimetres).

(2) A fumigation permit may, for any purpose connected with the administration of this Division, be referred to as a fumigation licence.

**35 Certain fumigation operations excluded**

This Division does not apply:

- (a) to fumigation carried out by means of a dangerous substance exclusively for agricultural or horticultural purposes, or
- (b) to fumigation by means of a dangerous substance carried out for the purposes of the *Quarantine Act 1908* of the Commonwealth.

**36 Restriction on use of dangerous substance for fumigation**

- (1) A person who uses any dangerous substance for the purpose of fumigating any premises is guilty of an offence unless the person is the holder of a fumigation permit.
- (2) The holder of a fumigation permit must observe and comply with the conditions of the permit when using any dangerous substance for the purpose of fumigating any premises.

Maximum penalty: 40 penalty units.

**37 Application for fumigation permit**

- (1) A person may apply to the Authority for the grant or renewal of a fumigation permit.
- (2) An application must:
  - (a) be in the form approved by the Authority, and
  - (b) be accompanied by the appropriate application fee, and
  - (c) if required by the Authority, be accompanied by:
    - (i) a certificate by a registered medical practitioner showing that the applicant is not suffering from any infirmity that would make the applicant's use of any dangerous substance for the purpose of fumigation dangerous either to the applicant or the public, and
    - (ii) such particulars as the Authority may require in order to be satisfied that the applicant is a fit and proper person to be granted a fumigation permit, and
  - (d) in the case of a renewal, be made at least 2 months before the expiry of the current fumigation permit.

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- (3) The appropriate application fee is:
  - (a) \$35 for an annual fumigation permit (or \$20 in the case of an application for the grant, but not the renewal, of an annual fumigation permit so long as the application is made after 1 July in any year), or
  - (b) \$100 for a triennial fumigation permit.
- (4) If the application is refused, the fee accompanying the application must be returned to the applicant.

### 38 Determination of application

- (1) The Authority is to determine an application for the grant or renewal of a fumigation permit:
  - (a) by issuing the applicant with a fumigation permit in the form approved by the Authority, or
  - (b) by refusing the application.
- (2) The Authority must not grant or renew a fumigation permit unless the Authority is satisfied that the applicant is a fit and proper person to carry out fumigation by means of a dangerous substance.
- (3) In order to enable the Authority to ascertain whether an applicant is a fit and proper person to hold a fumigation permit, the Authority may require the applicant to complete such theoretical or practical tests as the Authority considers relevant.

### 39 Duration of fumigation permit

Unless sooner cancelled or suspended, a fumigation permit remains in force until the date specified in the fumigation permit.

### 40 Cancellation or suspension of fumigation permit

The Authority may at any time cancel, or suspend for such period as the Authority thinks fit, any fumigation permit if the Authority is satisfied that the holder of the fumigation permit is not a fit and proper person to hold such a permit.

**41 Production of fumigation permit for inspection**

The holder of a fumigation permit must produce the permit for inspection when required to do so by any of the following persons:

- (a) a police officer,
- (b) an inspector,
- (c) a health inspector of a local council authorised by the Authority for the purposes of this clause.

Maximum penalty: 2 penalty units.

**42 Particulars of permit holders**

- (1) The Authority is to keep or cause to be kept a register for the purposes of this Division.
- (2) The register is to contain:
  - (a) the name and address of each person to whom a fumigation permit has been granted, and
  - (b) such other particulars as the Authority thinks relevant.
- (3) The holder of a fumigation permit must give written notice to the Authority of any change in the address of the holder within 7 days of the change.

Maximum penalty (subclause (3)): 20 penalty units.

**43 Notice of intention to fumigate**

- (1) Any person who intends to fumigate any premises by means of a dangerous substance must, at least 24 hours before commencing such fumigation, give notice in writing:
  - (a) in the case of a building or other enclosed space—to the local council of the area (or, where there is no such local council, to the authority having

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control of the area) in which the building or other enclosed space is situated, and to the Authority if so directed by the Authority in any particular case, or

(b) in the case of a vessel—to the Waterways Authority.

Maximum penalty: 40 penalty units.

(2) The notice is to be in the form approved by the Authority, and it is to specify the day and hour when the fumigation is to commence.

(3) If the fumigation is not commenced within 2 hours after the time specified in the notice, the person must not commence the fumigation unless:

(a) a further notice has been given in accordance with this clause, and

(b) a notice has been given in accordance with clause 44.

Maximum penalty: 40 penalty units.

(4) If:

(a) it is intended to use methyl bromide to fumigate a building or other enclosed space in urgent circumstances, and

(b) it is not practicable to give 24 hours notice as required by this clause and clause 44,

the local council concerned, or the Authority, may authorise a shorter period of notice.

(5) Such shorter notice may be verbal and later confirmed in writing in the form approved by the Authority.

(6) If, in the case of a vessel, it is not practicable to give 24 hours notice as required by this clause and clause 44, the Waterways Authority may authorise a shorter period of notice.

**44 Notice to occupier of intention to fumigate**

- (1) Any person who intends to fumigate any premises by means of a dangerous substance must, at least 24 hours before commencing the fumigation, give notice in writing to the following persons:
  - (a) in the case of a building or other enclosed space—to the occupier of the building or other enclosed space,
  - (b) in the case of a vessel—to the person in charge of the vessel,
  - (c) in any case—to each tenant and occupier within the fumigation area and the risk area concerned.

Maximum penalty: 40 penalty units.

- (2) The notice is to be in the form approved by the Authority, and it is to be provided in duplicate. A copy must be signed by the person receiving the notice and be retained by the person who issued it.

**45 Requirements before commencing fumigation**

A person must not commence fumigating any premises by means of a dangerous substance until:

- (a) the fumigation area and risk area have been vacated, and
- (b) all fires and naked lights within the fumigation area have been extinguished, and
- (c) all liquids and foods which are liable to absorb the dangerous substance have been removed from the fumigation area, and
- (d) all windows of the ground floor and basement have been securely fastened, and
- (e) all cracks, crevices or openings in or between walls, or between walls and ceilings or roofs or floors, and all windows or ventilators, and all fireplaces in the premises about to be fumigated

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have been closed in such a manner as efficiently to prevent the escape of fumes or vapour from the fumigation area, and

- (f) if it is intended to use methyl bromide to fumigate premises, an area of the flooring, extending 3 feet beyond the fumigation area on all sides has been made impervious to methyl bromide, and
- (g) the nearest police station and fire brigade have been informed.

Maximum penalty: 40 penalty units.

**46 Display of notices concerning fumigation operations**

- (1) Any person who is fumigating any premises by means of a dangerous substance must:
  - (a) close and securely fasten all doors or other means of access to the fumigation area and risk area, and
  - (b) affix securely and conspicuously on the outside of all such doors or other means of access a printed notice containing the following words in capital letters of not less than 5 centimetres in height:

**DANGER**

**KEEP OUT**

**PREMISES UNDER FUMIGATION BY  
POISONOUS GAS**

- (2) The notice must be continuously displayed from the time of commencing the fumigation until the premises are declared safe for re-occupation in accordance with clause 52.
- (3) If methyl bromide is being used, the notice must be displayed on a stand in the vicinity of the fumigation operations.

Maximum penalty: 40 penalty units.

**47 Restriction of times for fumigation operations**

A person must not commence fumigating any premises by means of a dangerous substance on Saturdays, Sundays or public holidays, or at any other time except between the hours of 7 am and 5 pm, unless special permission in writing to do so has been granted by the Authority.

Maximum penalty: 40 penalty units.

**48 Fumigation procedures**

Any person who is fumigating any premises by means of a dangerous substance must not:

- (a) carry out the fumigation operation unless at least one other person is involved in the operation, and
- (b) apply the dangerous substance in such a manner as to be absorbed in liquid form by floors, walls, ceilings, furnishings, canvas or plastic sheeting, and
- (c) in the case of residential premises, apply the dangerous substance in such quantities as to effect an average concentration exceeding one part of hydrogen cyanide gas in every 100 parts of air or one part of methyl bromide gas in 85 parts of air (the application rate being 1.5 kilograms per 28 cubic metres of enclosed space within the fumigation area), and
- (d) allow any mixture of hydrogen cyanide and chloropicrin to be used in the fumigation operation, and
- (e) if chloropicrin is to be used as a mixture with methyl bromide, allow more than 2% chloropicrin to be present in the mixture.

Maximum penalty: 40 penalty units.

**49 Fumigation with methyl bromide**

- (1) The holder of a fumigation permit must ensure that any room or vault to be used for the purposes of fumigating with methyl bromide:
  - (a) is equipped with mechanical exhaust ventilation, preferably at floor level, capable of providing 60 air changes per hour, and
  - (b) has been approved by the Authority before the fumigation commences.

Maximum penalty: 40 penalty units.

- (2) A reference in this clause to the holder of a fumigation permit is, if the permit holder is not the employer of the persons carrying out the fumigation operations under the authority of the permit, to be construed as a reference to the employer of those persons.

**50 Requirements relating to masks, protective clothing and related matters**

- (1) The holder of a fumigation permit must provide efficient masks or other apparatus:
  - (a) of a type approved by the Authority, and
  - (b) capable of giving protection to the wearer against a dangerous substance or any gas given off from the substance.
- (2) At any time while a dangerous substance is being released, and until the fumigation area and risk area are free from danger, any person who is carrying out fumigation operations must wear such a mask or other apparatus.
- (3) Any person who is carrying out fumigation operations must, when handling a dangerous substance:
  - (a) wear washable overalls and impervious gloves of a type approved by the Authority, and
  - (b) carry, or have in his or her possession ready for immediate use, an efficient electric torch.

- (4) If the dangerous substance to be used is hydrogen cyanide, the Authority is not to approve a canister for the purposes of this clause unless it is capable of giving effective protection for not less than 2 hours to a concentration of the dangerous substance (or of any gas given off from it) of one part in every 100 parts of air.
- (5) If the dangerous substance to be used is methyl bromide, the Authority is not to approve a canister for the purposes of this clause unless it is capable of giving effective protection for not less than 1 hour to a concentration of the dangerous substance (or any gas given off it) of one part in every 85 parts of air.
- (6) If any person who is carrying out fumigation operations is required to enter a basement, or to climb down a ladder or to be lowered by rope or other means into the hold of a vessel which is in the process of being fumigated, the holder of the fumigation permit must provide a safety harness to which is attached a rope by which the person can be hauled up.
- (7) In the circumstances referred to in subclause (6), the holder of the fumigation permit must ensure that:
  - (a) at least one other person remains in the immediate vicinity, and
  - (b) the person, before entering the fumigation area or risk area, wear a mask or other apparatus referred to in subclause (1).
- (8) The continued efficiency of the masks or other apparatus, and the safety harness, referred to in this clause must be frequently checked and each such mask or other apparatus, and the safety harness, must be maintained in good order by the holder of the fumigation permit concerned.
- (9) The holder of the fumigation permit must keep a written record showing details of the check of each such mask or other apparatus and each safety harness, and of the total length of time that any canister attached to any such mask or other apparatus has been in use.

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- (10) The holder of the fumigation permit must not use or allow a canister to be used in an atmosphere containing hydrogen cyanide gas for a total period exceeding 2 hours without recharging the canister.
- (11) Any person who is carrying out fumigation operations must, before releasing any dangerous substance, test the person's mask for air-tightness in the following manner:
  - (a) apply the mask to the face, close the inlet to the canister with the palm of the hand or other effective means, and inhale deeply,
  - (b) if the vacuum so created makes the mask stick to the face and hold there for at least 15 seconds, the mask may be regarded as air-tight.
- (12) If the dangerous substance to be used is methyl bromide, the holder of the fumigation permit must be equipped with a halide detector approved by the Authority. The permit holder, wearing an approved respirator, must test around the outside of the fumigation area using the halide detector.
- (13) Any such halide detector must be submitted by the permit holder for approval and certification by the Authority at 12 monthly intervals after the date of its initial approval and certification.
- (14) The holder of a fumigation permit must ensure that any methyl bromide used in fumigation operations carried out under the authority of the permit is stored and transported in a safe manner.
- (15) A reference in subclause (1), (6), (7), (8), (9), (13) or (14) to the holder of a fumigation permit is, if the permit holder is not the employer of the persons carrying out the fumigation operations under the authority of the permit, to be construed as a reference to the employer of those persons.

Maximum penalty (subclauses (1)–(3) and (6)–(14)): 40 penalty units.

## **51 First-aid and resuscitation appliances**

- (1) The holder of a fumigation permit must keep immediately available such first-aid and resuscitation appliances and equipment as the Authority may from time to time require by written notice given to the permit holder.
- (2) The permit holder must ensure that resuscitation method instructions are prominently described on the lid of any such first-aid box.  
Maximum penalty: 40 penalty units.
- (3) A reference in this clause to the holder of a fumigation permit is, if the permit holder is not the employer of the persons carrying out the fumigation operations under the authority of the permit, to be construed as a reference to the employer of those persons.

## **52 Procedures during and following fumigation**

- (1) The holder of a fumigation permit must:
  - (a) take all reasonable precautions to prevent any person from entering the fumigation area and risk area, and
  - (b) remain in close attendance near the fumigation area and risk area,  
from the commencement of the fumigation until the premises are declared safe for re-entry by means of a notice in the form approved by the Authority.
- (2) The holder of the fumigation permit must give each person notified under clause 44 a copy of the notice declaring that the premises are safe for re-entry.
- (3) The holder must not give any such notice until:
  - (a) it has been established by tests (other than the sense of smell) that the premises are free from danger, and in order to test the atmosphere, the permit holder must:
    - (i) in the case of hydrogen cyanide, be equipped with test papers or other means approved by the Authority, and

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- (ii) in the case of methyl bromide, be equipped with a halide detector or other means approved by the Authority, and
- (b) any residue of the materials used for fumigation has been removed, and
- (c) all water taps have been turned on for at least one minute and the water allowed to run to waste, and
- (d) all water-closet cisterns have been emptied and the pans adequately flushed, and
- (e) all other receptacles containing water or other liquid which is liable to absorb the dangerous substance (or the gas arising from it) have been emptied, and
- (f) any bedding, blankets, pillows, clothing, cushions and other articles which are liable to absorb the dangerous substance (or the gas arising from it) have been well shaken or beaten and aired until they are free from any dangerous concentration of the dangerous substance or gas.

(4) If the fumigation has been carried out with methyl bromide in an enclosed area inside a locked building or locked part of a building or locked room, and no person (other than those persons involved in the fumigation operation) was able to gain access to the risk area, the holder of the fumigation permit is not required to remain in close attendance as referred to in subclause (1) unless otherwise directed by an inspector.

(5) In any case where less than 500 grams of methyl bromide is used in such operations and the surrounding space is free of partitions and encumbrances, reasonably ventilated and not less than 100 times the cubic space occupied by the enclosed area being fumigated, the holder of the fumigation permit is not required to remain in close attendance as referred to in subclause (1).

Maximum penalty (subclauses (1)–(3)): 40 penalty units.

### **53 Disposal of residue materials**

The holder of a fumigation permit must safely dispose of any residue from the materials used in the fumigation of premises by means of a dangerous substance.

Maximum penalty: 40 penalty units.

### **54 Record of fumigation**

- (1) The holder of a fumigation permit must keep a record, in the form approved by the Authority, relating to each fumigation operation carried out under the authority of the permit.
- (2) The record must be kept for at least 2 years from the date it is made, and must be made available for inspection at any reasonable time by an inspector.

Maximum penalty: 20 penalty units.

### **55 Inspections before fumigations**

- (1) A person who is carrying out, or is about to carry out, the fumigation of any premises by means of a dangerous substance must allow an inspector authorised by the Authority for the purposes of this clause to enter the premises at any reasonable time for purposes of carrying out inspections and tests.
- (2) The inspector may direct that any such fumigation operations must not be carried out, or be discontinued, if in the opinion of the inspector the operations are not being carried out in a safe manner and in accordance with the requirements of this Division.
- (3) Any person to whom such a direction is given, must comply with the direction.

Maximum penalty: 40 penalty units.

### **56 Notice of accident**

If an accident which causes loss of human life or personal injury occurs as a result of the fumigation of any premises by means of a dangerous substance, the

holder of the fumigation permit under which the fumigation was carried out must immediately notify the Authority of that accident.

Maximum penalty: 40 penalty units.

**57 Exemptions**

- (1) A person may apply in writing to the Authority for an exemption from compliance with any of the requirements of this Division.
- (2) The Authority may by notice in writing:
  - (a) exempt the person from compliance with any of the requirements of this Division, and
  - (b) revoke any such exemption for such reasons as it thinks fit.
- (3) An exemption is subject to such conditions as the Authority thinks fit to impose at the time the exemption is granted or any later time while the exemption is in force.

**58 Savings provision**

- (1) In this clause:  
*existing fumigation licence* means a licence issued under Division 2 of Part 2 of Schedule 8 to the Act and in force immediately before 1 September 1997.
- (2) An existing fumigation licence:
  - (a) is taken to be a fumigation permit issued by the Authority under this Division, and
  - (b) continues in force, unless sooner cancelled or surrendered, for the unexpired portion of its term.

**Division 2 Hazardous pesticides**

**59 Definitions and application**

- (1) In this Division:  
*commercial user* means:
  - (a) a person who is, for payment or other reward, employed by another person in connection with the use, handling or disposal of a hazardous pesticide, or

(b) that other person.

**container** includes any receptacle and any covering.

**dispose** of a hazardous pesticide means:

(a) abandon the pesticide, or

(b) decontaminate any thing in or on which the pesticide has been.

**handle** a hazardous pesticide includes mix, load or unload the pesticide.

**hazardous pesticide** means a substance specified in Schedule 4, and includes any preparation or mixture of any such substance.

**prescribed animal** means any poultry, fish, cattle, pig, sheep or goat.

**use** a hazardous pesticide includes:

(a) prepare the pesticide for use, and

(b) disseminate or apply the pesticide by spraying, dusting or any other means.

(2) For the purposes of this Division, disposal of a pesticide does not constitute use of the pesticide.

(3) Nothing in this Division applies to or in respect of any activity being carried on at a factory or shop registered or regulated under the *Factories, Shops and Industries Act 1962* if that activity is being carried on in accordance with that Act or the regulations made under that Act.

## 60 Use of containers, equipment and appliances

(1) A commercial user must, before using or authorising or directing another person to use any container, equipment or appliance in connection with a hazardous pesticide, take all reasonable precautions, or cause all reasonable precautions to be taken, including the making of a visual inspection of the container, equipment or appliance, for the purpose of ascertaining whether the container, equipment or appliance is in such a condition that use of it would not result in an unintended escape of the hazardous pesticide.

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- (2) A commercial user must not use, or authorise or direct another person to use, any container, equipment or appliance in connection with a hazardous pesticide if the commercial user knows or has reasonable cause to suspect that use of the container, equipment or appliance will result in an unintended escape of the hazardous pesticide.
- (3) While using any container, equipment or appliance in connection with a hazardous pesticide, a commercial user must, as far as is reasonably practicable, prevent the hazardous pesticide from being deposited on the exterior surfaces of the container, equipment or appliance.
- (4) If an unintended escape of a hazardous pesticide occurs as a consequence of a defect in any container, equipment or appliance being used by a commercial user in connection with the hazardous pesticide, the commercial user must:
  - (a) cease using the container, equipment or appliance in connection with the hazardous pesticide as soon as the commercial user becomes aware of the escape, and
  - (b) not use that container, equipment or appliance, or authorise or direct another person to use it, in connection with that or any other hazardous pesticide unless the defect has been rectified.
- (5) A commercial user must not:
  - (a) blow or such any jet, sprinkler, nozzle or other equipment that the commercial user knows or has reasonable cause to suspect has been or is being used in connection with a hazardous pesticide, or
  - (b) apply the user's mouth to any container or appliance that the commercial user knows or has reasonable cause to suspect has contained or contains a hazardous pesticide.

Maximum penalty: 40 penalty units.

## **61 Provision of protective clothing and equipment**

(1) A commercial user must not authorise or direct another commercial user to carry on an activity described in column 1 of Schedule 5 unless:

- (a) the other commercial user is provided with the protective clothing and equipment specified in column 2 of Schedule 5 opposite the description of that activity, and
- (b) the other commercial user has been instructed:
  - (i) on the proper use of that protective clothing and equipment, and
  - (ii) to wear and use that protective clothing and equipment,

before the other commercial user commences to carry on the activity.

Maximum penalty: 40 penalty units.

(2) If a commercial user (the principal user) has instructed another commercial user on the proper use of any protective clothing and equipment in accordance with subclause (1), the principal user is not required to instruct the other commercial user on the proper use of protective clothing and equipment that is of the same nature as the first mentioned protective clothing or equipment less than 3 months after the principal user last so instructed the other commercial user.

## **62 Use of protective clothing and equipment**

(1) A commercial user must not carry on an activity described in column 1 of Schedule 5 unless:

- (a) the commercial user is wearing and using, in the manner in which it is designed to be worn and used, the protective clothing and equipment specified in column 2 of Schedule 5 opposite the description of that activity, and

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(b) if an inspector directs the commercial user to wear and use protective clothing and equipment in addition to that which the commercial user is required to wear and use under paragraph (a)—the commercial user is wearing and using, in the manner in which it is designed to be worn and used, the protective clothing and equipment the user is so directed to wear and use.

Maximum penalty: 40 penalty units.

(2) If a commercial user is required under subclause (1) to wear and use protective clothing and equipment because the user is to carry on an activity involving the use of a particular hazardous pesticide, the commercial user does not comply with that requirement if the protective clothing and equipment is damaged or otherwise defective in such a way as is reasonably likely to result in:

- (a) a risk of absorption of the hazardous pesticide, or
- (b) a risk of injury or poisoning arising out of the use of the hazardous pesticide.

(3) An inspector may give a direction referred to in subclause (1) (b) at any time the inspector has reasonable cause to suspect that there would be a risk of the commercial user to whom it is given absorbing a hazardous pesticide or being injured or poisoned if the direction was not given and obeyed.

**63 Washing of clothing and equipment**

(1) If, at any time, a commercial user becomes aware, or has reasonable cause to suspect, that any part of the commercial user's clothing is contaminated by a hazardous pesticide and is in contact or likely to come into contact with the user's body, the commercial user must:

- (a) as soon as is practicable:
  - (i) remove the clothing and place it in a receptacle identified as being a receptacle for contaminated clothing, and

- (ii) thoroughly wash with soap and water any part of his or her body that the commercial user knows is, or that the user has reasonable cause to suspect might be, contaminated by the hazardous pesticide, and
- (b) thoroughly wash the clothing or cause it to be thoroughly washed.

(2) If, on any day, a commercial user has finished carrying on an activity described in column 1 of Schedule 5 and does not intend resuming that activity on that day, the commercial user must:

- (a) as soon as is practicable:
  - (i) remove any protective clothing and equipment that the user has been wearing and using in accordance with this Division and place them in a receptacle identified as being a receptacle for contaminated clothing, and
  - (ii) remove any clothing that the user has worn under that protective clothing and equipment, and
  - (iii) thoroughly wash his or her body with soap and water, and
- (b) thoroughly wash the protective clothing and equipment or cause them to be thoroughly washed.

(3) Subject to subclause (5), a commercial user must:

- (a) as soon as is reasonably practicable after having used any equipment, appliance or container in connection with a hazardous pesticide, and
- (b) immediately after the user has received any direction given by an inspector to have any equipment, appliance or container that the commercial user has used or is using in connection with a hazardous pesticide washed,

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thoroughly wash the equipment, appliance or container with water, or cause it to be so washed, in such a manner as will remove any of the hazardous pesticide that is or may be on the equipment, appliance or container.

- (4) An inspector may give a direction referred to in subclause (3) (b) at any time the inspector has reasonable cause to suspect that there would be a risk of any person absorbing a hazardous pesticide or being injured or poisoned if the direction was not given and obeyed.
- (5) Nothing in subclause (3) requires a commercial user to thoroughly wash a container that is being disposed of in accordance with clause 74 (3) as soon as is reasonably practicable after it has been used in connection with a hazardous pesticide.

Maximum penalty (subclauses (1)–(3)): 40 penalty units.

### 64 Instruction to employees

A commercial user (*the principal user*) must not authorise or direct another commercial user to use or handle at any time, or for a period of time, a hazardous pesticide unless the principal user has, within the period of 3 months occurring immediately before that time or the commencement of that period, instructed the other commercial user (or caused the other commercial user to be instructed):

- (a) on the effects known to the principal user (or that the principal user has reasonable cause to suspect) of absorption of the hazardous pesticide by humans, and
- (b) on the manner in which absorption of the hazardous pesticide by humans may occur, and
- (c) to observe the provisions of this Division that relate to the use or handling of the hazardous pesticide and on the content of those provisions.

Maximum penalty: 40 penalty units.

## **65 Precautions for personal safety**

- (1) A commercial user must not eat, drink or smoke:
  - (a) while using or handling a hazardous pesticide, or
  - (b) after having used or handled a hazardous pesticide until the user has thoroughly washed with soap and water his or her hands, forearms and face.
- (2) If an activity described in column 1 of Schedule 5 is being carried on, a person who knows or has reasonable cause to suspect that the activity is being carried on must not store any food or drink:
  - (a) in the vicinity of the place where the activity is being carried on, or
  - (b) in or on any vehicle, aircraft or vessel in that vicinity or that is being used in connection with that activity,unless the food or drink is completely enclosed in a receptacle that is impervious to hazardous pesticides.
- (3) If a commercial user has worn other clothing under protective clothing while using or handling a hazardous pesticide, the commercial user must:
  - (a) remove the other clothing immediately after the user has removed the protective clothing, and
  - (b) not wear the other clothing again until after it has been thoroughly washed.
- (4) A person must not carry on any of the activities described in column 1 of Schedule 5 unless the person is of or above the age of 16 years.

Maximum penalty: 40 penalty units.

## **66 Personal washing amenities**

- (1) A commercial user must not use or handle a hazardous pesticide, or authorise or direct another commercial user to use or handle a hazardous pesticide, unless there is, in

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the vicinity of the place where the pesticide is, or is to be, used or handled, readily accessible from that place but not in such a position as it is reasonably likely to be contaminated by the pesticide when the pesticide is being used or handled:

- (a) a separate receptacle available for the keeping, by each commercial user who is using or handling or is to use or handle the pesticide, of clean personal clothing and clean protective clothing and equipment, and
- (b) a separate receptacle (other than the receptacle referred to in paragraph (a)) available for the keeping, by each commercial user who is using or handling or is to use or handle the pesticide, of personal clothing and protective clothing and equipment that is or may become contaminated by the pesticide, and
- (c) an amenity for personal washing that complies with subclause (2), and
- (d) if any commercial user who is using or handling or to use or handle the pesticide may be reasonably expected to require food or drink during the period of time the user is or will be using or handling the pesticide—a covered receptacle so constructed as to be impervious to the pesticide and suitable for the storage of that food or drink.

Maximum penalty: 40 penalty units.

- (2) An amenity for personal washing required to be provided in respect of the use or handling or intended use or handling of a hazardous pesticide complies with this, subclause if:
  - (a) soap and a separate towel are provided at the amenity for each commercial user who is or will be using or handling the pesticide, and
  - (b) the amenity is so constructed as to be capable of being used for the thorough washing of each commercial user referred to in paragraph (a), and

- (c) if the use or handling is, or is to be, carried on otherwise than in a building, the amenity:
  - (i) is adequately supplied with clean piped water, or not less than 20 litres of clean water in clean containers on the side of each of which is conspicuously and legibly written in capital letters with a letter height of not less than 2.5 cms the words "FOR PERSONAL WASHING ONLY", or
  - (ii) contains showers adequately supplied with both hot and cold clean water at a ratio of not less than one shower for each 20 (or for such other number if less than 20) of the commercial users who are or will be using or handling the pesticide, and
- (d) if the use or handling is, or is to be, carried on in a building, the amenity contains wash basins and showers both adequately supplied with both hot and cold clean water at a ratio of not less than one wash basin and shower for each 20 (or for such other number if less than 20) of the commercial users who are or will be using or handling the pesticide.

(3) If a hazardous pesticide is, or is to be, used by means of its being sprayed or otherwise dispensed from an aircraft, a reference in subclause (1) to the place where the pesticide is, or is to be, used or handled is to be construed as a reference to:

- (a) the place from which the aircraft is, or is to be, operated, and
- (b) if any marker or other person is, or is to be, situated in any area on which the pesticide is, or is to be, sprayed or otherwise dispensed—that area.

(4) A person must not use a container bearing the words "FOR PERSONAL WASHING ONLY" for any purpose other than as a receptacle for clean water.

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(5) A commercial user who has authorised or directed another commercial user to use or handle a hazardous pesticide must ensure that any amenity provided under subclause (1)(e) in connection with that use or handling is illuminated to a level of not less than 100 lux during the whole of the time that the other commercial user uses or handles the pesticide in accordance with the authorisation or direction and for such period of time after the other commercial user has ceased to so use or handle the pesticide as is sufficient for the other commercial user to wash himself or herself thoroughly.

Maximum penalty (subclauses (4) and (5)): 40 penalty units.

### 67 Illumination of working areas

(1) A commercial user must not, in any place:

- (a) mix or prepare a hazardous pesticide, or
- (b) put a hazardous pesticide into any container, equipment or appliance, or
- (c) dispose of any container, equipment or appliance that contains, or is contaminated by, a hazardous pesticide, or
- (d) clean or maintain any container, equipment or appliance that contains, or is contaminated by, a hazardous pesticide,

if the place is unlit or if the commercial user knows, or has reasonable cause to suspect, that the place is illuminated to a level of less than 200 lux.

(2) A commercial user must not authorise or direct another commercial user to carry on in a place any activity described in subclause (1) unless the place is illuminated to a level of not less than 200 lux.

Maximum penalty: 40 penalty units.

## 68 Restrictions relating to aerial spraying

- (1) Subject to subclause (3), a person must not:
  - (a) introduce any quantity of a hazardous pesticide into an aircraft (or fitting on an aircraft) for the purpose of its being sprayed or otherwise dispensed from the aircraft, or
  - (b) remove a quantity of hazardous pesticide from an aircraft (or fitting on an aircraft) after the aircraft has been used for the purpose of discharging a quantity of the hazardous pesticide, or
  - (c) while it is fitted to an aircraft, carry out any maintenance or repairs on, decontaminate or clean any container, equipment or appliance that has been used for the purpose of discharging a quantity of hazardous pesticide from the aircraft,  
unless the aircraft is situated on a drained surface that is impervious to the hazardous pesticide and has an area of not less than 100 square metres.
- (2) Subject to subclause (3), a person must not authorise or direct another person to carry on any activity described in subclause (1) in contravention of that subclause.
- (3) An inspector may exempt a person from compliance with any requirement under subclause (1) or (2). A person who is so exempted may fail to comply with the requirement from which the person is so exempt, but only if the person complies with the conditions (if any) of the exemption.
- (4) An inspector may grant an exemption referred to in subclause (3) and may impose such conditions as the inspector thinks fit.
- (5) If any activity described in subclause (1) has been carried on in respect of a hazardous pesticide, the person by whom the activity has been carried on must:

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- (a) thoroughly decontaminate and clean the place at which the activity was carried on, and
- (b) dispose of any of the hazardous pesticide that is removed from that place when the place is so decontaminated and cleaned in a manner that avoids risk of absorption of the pesticide by any person, prescribed animal, crop or foodstuff or by water reasonably likely to be drunk by any person or prescribed animal.

Maximum penalty: 40 penalty units.

### 69    Labelling of containers

- (1) A commercial user must not store or convey a hazardous pesticide in a container unless:
  - (a) the pesticide is securely confined by the container, and
  - (b) the container bears, in a conspicuous position, a legible label that complies with subclause (2).

Maximum penalty: 40 penalty units.

- (2) A label borne by a container of a hazardous pesticide complies with this subclause if the label displays, in capital letters with a letter height of not less than 2.5 cms, the following words:

**POISON:** (*followed by the common name of the hazardous pesticide if known to the person storing or conveying it*)

**AVOID CONTACT**

**HAZARDOUS PESTICIDE**

### 70    General safety precautions with containers

- (1) A commercial user must not, without reasonable cause:
  - (a) remove a hazardous pesticide from a container in which it is situated, or
  - (b) authorise or direct another commercial user to so remove a hazardous pesticide.

- (2) A commercial user must not handle, use or convey a hazardous pesticide that is in a container in such a manner as is reasonably likely to result in damage to the container that may cause an unintended escape of the pesticide.
- (3) If a commercial user knows, or has reasonable cause to suspect, that a hazardous pesticide is accidentally escaping from a container in the user's possession or under the user's control, or is reasonably likely to do so, the commercial user must immediately transfer the pesticide (or cause the pesticide to be transferred) to a container that is capable of confining the pesticide.

Maximum penalty: 40 penalty units.

## **71 Storage of hazardous pesticides**

- (1) A commercial user must not store a hazardous pesticide that is not completely confined by a container.
- (2) A commercial user must not store a hazardous pesticide in a place, or authorise or direct another commercial user to store a hazardous pesticide in a place, unless:
  - (a) the place is positioned so that, if an unintended escape of the pesticide occurred while it was being stored, the pesticide would escape on to a surface that is:
    - (i) impervious to the pesticide, and
    - (ii) so constructed as to be capable of retaining not less than 25% of the pesticide that is being stored in that place, and
    - (iii) so situated as to provide access for it to be decontaminated and washed, and
    - (iv) so drained as to enable the pesticide and any substance used in decontaminating or washing the surface to be readily drained into a sump or pit that is adequate to hold the pesticide and substance, and

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(b) the place is situated near a supply of water accessible from the place and of sufficient quantity to wash all of the pesticide that is being stored in the place from the surface referred to in paragraph(a).

Maximum penalty: 40 penalty units.

## 72 Spillages

(1) If a spillage of a hazardous pesticide occurs when a commercial user is storing, handling, using, conveying or disposing of the pesticide, the commercial user must immediately:

- (a) completely cover the spilled pesticide to a depth of at least 7.5 centimetres with dry soil or another substance having similar absorptive properties, or
- (b) decontaminate any place or thing on which the pesticide was spilled, or
- (c) dispose of the spilled pesticide in a manner that avoids risk of absorption of the pesticide by any person, prescribed animal, crop or foodstuff or by water reasonably likely to be drunk by any person or prescribed animal.

(2) If a hazardous pesticide is, at any time, spilled on a commercial user, the user must immediately:

- (a) thoroughly wash, with soap and water, the area of the user's body on to which the pesticide was spilled, or
- (b) otherwise decontaminate the area of the user's body on to which the pesticide was spilled.

Maximum penalty: 40 penalty units

### **73 Escape of hazardous pesticides**

If an unintended escape of a hazardous pesticide occurs while a commercial user is storing, handling, using, conveying or disposing of the pesticide, the commercial user must immediately notify an inspector or the Authority of

- (a) the name of the pesticide, and
- (b) the date and time of the escape and the place where it occurred,

if the commercial user knows, or has reasonable cause to suspect, that the pesticide has been or will be absorbed by any person, prescribed animal, crop or foodstuff or by water reasonably likely to be drunk by any person or prescribed animal.

Maximum penalty: 40 penalty units.

### **74 Disposal of certain containers**

- (1) A commercial user who removes a hazardous pesticide from a container made of paper, cardboard or any other material that is not impervious to the pesticide (or any combination of those materials), must dispose of the container in accordance with subclause (3) within 48 hours of the time when the commercial user removed the pesticide.
- (2) A commercial user who:
  - (a) has possession or control of a container of a hazardous pesticide or in which the commercial user knows, or has reasonable cause to suspect, a hazardous pesticide has been, and
  - (b) disposes of that container,must dispose of the container in accordance with subclause (3).

Maximum penalty: 40 penalty units.

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(3) A commercial user disposes of a container in accordance with this subclause if the user:

- (a) burns the container in a manner that will not cause an unintended escape of any hazardous pesticide that is or may be in the container, or
- (b) tears, breaks, punctures, flattens or otherwise renders the container unusable for re-use as a container and then buries the remains of the container at a sufficient depth to prevent escape of any hazardous pesticide that may have been in the container on to the surface of or from the place where its remains are buried, or
- (c) returns the container to the person who supplied it to the commercial user, or
- (d) disposes of the container in a manner approved by an inspector or the Authority.

### 75    Absorption of, or injury by, hazardous pesticides

If a commercial user (*the principal user*) has authorised or directed another commercial user to use or handle a hazardous pesticide, and the principal user becomes aware (or has reasonable cause to suspect) that the other commercial user has, while using or handling the pesticide absorbed the pesticide or been injured or poisoned by the pesticide, the principal user must:

- (a) immediately notify an inspector or the Authority of the name and address of the other commercial user, of the name of the hazardous pesticide and of such other particulars as the inspector or Authority reasonably requests the principal user to provide, and
- (b) not, on any other occasion, authorise or direct the other commercial user to use or handle that or any other hazardous pesticide without the consent of an inspector or the Authority.

Maximum penalty: 40 penalty units.

## **76 Inspector's directions**

- (1) An inspector may give oral or written directions to a commercial user concerned in handling, using, storing, conveying or disposing of a hazardous pesticide or a container of a hazardous pesticide, or in authorising or directing the carrying on of any of those activities, specifying:
  - (a) the manner in which the commercial user is to carry on any of those activities or to authorise or direct any of those activities to be carried on, or
  - (b) precautions that the commercial user is to observe in carrying on any of those activities, or in authorising or directing any of those activities to be carried on, being precautions in addition to those required to be observed under this Division.
- (2) A commercial user who has been given a direction under subclause (1) must comply with the direction unless compliance with the direction is not reasonably related to the avoidance of
  - (a) absorption of, or
  - (b) injury or poisoning arising out of the use of, a hazardous pesticide.

Maximum penalty: 40 penalty units.

## **77 Exemptions**

- (1) A person may apply in writing to the Authority for exemption from compliance with all or any of the requirements of clauses 61, 66 (1), 67 (2) and 71.
- (2) The Authority may, by notice in writing served on any such person, exempt the person from compliance with all or any of the requirements referred to in that subclause and may:
  - (a) impose any condition the Authority thinks fit in the notice, and
  - (b) by a subsequent written notice served on that person, revoke any exemption granted by the Authority under this clause.

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(3) If a person has been exempted from compliance with a requirement referred to in subclause (1), the person may fail to comply with that requirement but only if the person complies with the conditions (if any) imposed on the exemption and the exemption has not been revoked.

**[5]      Schedules 3–5**

Insert after Schedule 2:

**Schedule 3   Dangerous substances**

(Clause 34)

acrolein  
aldicarb  
aldrin  
aluminiumphosphide  
aminocarb  
amitraz  
arsenic (inorganic compounds)  
azinphos-ethyl  
azinphos-methyl  
bendiocard  
bromophos-ethyl  
bromoxynil  
camphechlor  
carbofuran  
carbon bisulphide  
carbophenothion

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chlordane  
chlordimeform (including any preparation or mixture)  
chlorfenvinphos  
5-chloro-3-methyl-4-nitro-pyrazole  
chlorpyrifos  
coumaphos  
cypermethrin  
dazomet  
decamethrin  
demeton-O  
demeton-O-methyl  
demeton-S  
demeton-S-methyl  
demeton-S-methyl sulphone  
dialifos  
diazinon  
1,2-dichloropropane  
1,3-dichloropropane  
dichlorvos  
dicrotophos  
dieldrin  
dimefox  
1,3-di (methyl Carbonyl)-1-propen-2-yl dimethyl  
dinitro ortho cresol  
dinoseb

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dioxathion  
diquat  
disulfoton  
endosulfan  
endrin  
ethion  
ethoprophos  
ethylene dibromide  
ethylene oxide  
famphur  
fenamiphos  
fenitrothion  
fensulfothion  
fenthion-ethyl  
flucythrinate  
formetenate  
heptachlor  
hexa-ethyl tetraphosphate  
ioxynil  
isocarbophos  
leptophos  
magnesium phosphide  
mecarbam  
metham  
methamidophos

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methidathion  
methiocarb  
methomyl  
methyl bromide  
methyl isocyanate  
mevinphos  
mipafox  
mirex  
monocrotophos  
naphthalophos  
nicotine sulphate  
omethoate  
oxamyl  
paraquat  
parathion  
parathion-methyl  
pentachlorphenol  
phenkapton  
phenyl mercuric acetate  
phenyl mercuric chloride  
phorate  
phosfolan  
phosphamidon  
phosphate  
pirimicarb

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pirimiphos-ethyl  
pirimiphos-methyl  
promecarb  
propoxure  
schradan  
sodium pentachlorphenate  
sulfotep  
TEPP  
terbufos  
thiofanox  
trichlorfon  
tricholoronitromethane (chloropain, chloropicrin or  
nitro-chloroform)  
zinc phosphide

### Schedule 4      Hazardous pesticides

(Clause 59)

#### Part 1      Organic phosphate

azinphos-ethyl  
azinphos-methyl  
bromophos-ethyl  
carbophenothion  
chlorfenvinphos  
chlorpyrifos  
coumaphos  
demeton-O

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demeton-O-methyl  
demeton-S  
demeton-S-methyl  
demeton-S-methyl sulphone  
dialifos  
diazinon  
dichlorvos  
dicrotophos  
dimefox  
1,3-di (methoxy carbonyl)- 1-propen-2-yl  
dimethylphosphate  
dioxathion  
disulfoton  
ethion  
ethoprophos  
famphur  
fenamiphos  
fenitrothion  
fensulfothion  
fenthion-ethyl  
hexa-ethyl tetraphosphate  
isocarbophos  
leptophos  
mecarbam  
methamidophos

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methidathion  
mevinphos  
mipafox  
monocrotophos  
napthalophos  
omethoate  
parathion  
parathion-methyl  
phenkapton  
phorate  
phosfolan  
phosphamidon  
pirimiphos-ethyl  
pirimiphos-methyl  
schradan  
sulfotep  
TEPP  
terbufos  
Trichlorfon

### **Part 2      Carbamate**

aldicarb  
aminocarb  
bendiocarb  
carbofuran

formetanate  
methiocarb  
methomyl  
pirimicarb  
promecarb  
propoxur (except in aerosol packs of less than 1 kilogram net contents)  
thiofanox

**Part 3 Chlorinated hydrocarbon**

aldrin  
camphechlor  
chlordane  
1,2-dichloropropane  
1,3-dichloropropene  
dieldrin  
endosulfan  
endrin  
heptachlor  
mirex  
pentachlorphenol  
sodium pentachlorphenate

**Part 4 Miscellaneous**

acrolein  
aluminium phosphide

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amitraz  
arsenic (inorganic compounds)  
bromoxynil  
carbon bisulphide  
chlordimeform  
5-chlor-3-methyl-4-nitropyrazole  
cypermethrin  
dazomet  
decamethrin  
dinitro ortho cresol  
dinoseb  
diquat  
ethylene dibromide  
flucythrinate  
ioxynil  
magnesium phosphide  
metham  
methyl isocyanate  
nicotine sulphate  
Oxamyl  
paraquat  
phenyl mercuric acetate  
phenyl mercuric chloride  
zinc phosphide

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## **Schedule 5 Protective clothing and equipment**

(Clauses 61, 62 and 63)

<b>Column 1</b>	<b>Column 2</b>
<b>Activity</b>	<b>Protective clothing and equipment</b>
Marking or otherwise providing visual signals on the ground in connection with aerial spraying or otherwise dispensing of a hazardous pesticide.	Boilersuit with sleeves and buttoned up at wrists and throat. Washable hat. Polyvinyl chloride or rubber boots or shoes impervious to the hazardous pesticide. When in spray drift (a) half face respirator [see note (1)], and (b) adequate supply of cartridges [see note (2)].
Mixing a hazardous pesticide.	Boilersuit with sleeves and buttoned up at wrists and throat. Polyvinyl chloride or rubber calf length apron impervious to the hazardous pesticide. Washable hat. Polyvinyl chloride or rubber boots or shoes impervious to the hazardous pesticide. When mixing a liquid concentrate of the hazardous pesticide—face shield [see note (3)]. When mixing a powder concentrate of the hazardous pesticide or mixing acrolein: (a) half face respirator [see note (1)], and (b) adequate supply of cartridges [see note (2)]. Polyvinyl chloride gauntlets [see note (4)].

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Column 1	Column 2
Activity	Protective clothing and equipment
Piloting or flying in an aircraft when the aircraft is spraying or otherwise dispensing a hazardous pesticide.	Boilersuit with sleeves and buttoned up at wrists and throat or flying suit [see note (5)]. Polyvinyl chloride or rubber boots or shoes impervious to the hazardous pesticide. When flying through spray drift: (a) half face respirator [see note (1)], and (b) adequate supply of cartridges [see note (2)].
Handling, using or conveying, (otherwise than as described above) or disposing of a hazardous pesticide that is not securely confined by a container.	Boilersuit with sleeves and buttoned up at wrists and throat. Washable hat. Polyvinyl chloride or rubber boots or shoes impervious to the hazardous pesticide. When in spray drift: (a) half face respirator [see note (1)], and (b) adequate supply of cartridges [see note (2)]. Polyvinyl chloride gauntlets [see note (4)].

### Notes

- (1) **half face respirator** means a half face respirator the face piece of which conforms with section 1 of Australian Standard AS 1716–1975.
- (2) **cartridges** means cartridges conforming with section 4 of Australian Standard AS 1716–1975.
- (3) **face shield** means a full face shield conforming with Australian Standard AS 1337–1974.
- (4) **gauntlets** means gauntlets conforming with section 5 of Australian Standard AS 2161–1978.
- (5) **flying suit** means a flying suit as recommended by the Commonwealth Department of Civil Aviation.