



Pesticides Amendment (User Training) Regulation 2003

under the

Pesticides Act 1999

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Pesticides Act 1999*.

BOB DEBUS, M.P.,

Minister for the Environment

Explanatory note

The objects of this Regulation are as follows:

- (a) to require individuals who use pesticides for commercial or occupational purposes, or in connection with agricultural operations or forestry operations, to undertake the training necessary to acquire competencies approved by the Environment Protection Authority,
- (b) to create offences relating to the employment of unqualified persons to use pesticides in the circumstances referred to above, the supervision of unqualified persons in the use of pesticides in connection with agricultural operations or forestry operations, and the misuse of documents evidencing the achievement of competencies (and to provide for penalty notices to be issued in respect of offences),
- (c) to provide for transitional arrangements in relation to matters referred to in the preceding paragraphs.

This Regulation also removes obsolete provisions in the *Pesticides Regulation 1995* concerning short descriptions of offences for which penalty notices may be issued and processing codes relating to those offences.

This Regulation is made under the *Pesticides Act 1999*, including sections 75, 78, 117 and 119 (the general regulation-making power).

2003 No 613

Clause 1 Pesticides Amendment (User Training) Regulation 2003

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Pesticides Act 1999

1 Name of Regulation

This Regulation is the *Pesticides Amendment (User Training) Regulation 2003*.

2 Commencement

This Regulation commences on 1 September 2003.

3 Amendment of Pesticides Regulation 1995

The *Pesticides Regulation 1995* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] Clause 3 Definitions

Insert “, notes in the text of this Regulation,” after “explanatory note” in clause 3 (2).

[2] Part 3

Insert after Part 2:

Part 3 Compulsory training for certain pesticide users

Division 1 Preliminary

7 Definitions

(1) In this Part:

Australian Qualifications Framework means the Australian Qualifications Framework developed under instructions from the Ministerial Council on Education, Employment, Training and Youth Affairs.

former authority (fumigation permit) means a fumigation permit in force under the *Occupational Health and Safety (Pest Control) Regulation 1988* immediately before its repeal.

former authority (pest control operator’s licence) means a pest control operator’s licence in force under the *Occupational Health and Safety (Pest Control) Regulation 1988* immediately before its repeal.

fumigant has the same meaning as in clause 265 of the *Occupational Health and Safety Regulation 2001*.

prescribed qualification means a qualification with respect to the use of pesticides that is granted to a person by a registered training provider:

- (a) in accordance with the Australian Qualifications Framework, and

2003 No 613

Pesticides Amendment (User Training) Regulation 2003

Schedule 1 Amendments

- (b) in recognition of the person's satisfactory achievement of specified units of competency (being units of competency that, at the time the prescribed qualification is issued, are approved by the Environment Protection Authority under clause 8).

registered training provider means a training provider registered under the *Vocational Education and Training Accreditation Act 1990*.

Note. Generally, registered training providers are also registered training organisations for the purposes of the Australian Qualifications Framework.

- (2) In this Part, a reference to evidence of a qualification is a reference to:
- (a) in the case of a permit or licence, the permit or licence concerned, and
 - (b) in the case of any other qualification:
 - (i) a document that is issued to a person as the qualification concerned achieved by that person, or
 - (ii) a document (including a card) that is issued to the holder of the qualification concerned by a registered training provider, or other person or body approved by the Authority, as a record or evidence (or both) of the person's achievement of that qualification.
- (3) For the purposes of this Part, a prescribed qualification ceases to have effect in relation to a person at the end of 5 years after the person last obtained the qualification (unless sooner cancelled or revoked).

Note. In order to remain qualified, a person will therefore need to requalify every 5 years.

Division 2 Requirement for pesticide users to hold prescribed qualification

7A Only qualified persons to use pesticides in certain circumstances

- (1) A person must not use a pesticide in any of the following circumstances unless he or she holds a prescribed qualification:

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- (a) in the course of acting as, or for or on behalf of, the landlord of any premises,
 - (b) in the course of acting for or on behalf of a public authority,
 - (c) in the course of carrying out pest control operations on a golf course, sporting field or bowling green,
 - (d) in connection with any agricultural operations (including farming, horticultural or aquacultural operations) or forestry operations,
 - (e) in the course of carrying on, or working in, a business, educational institution or hospital (whether as principal, contractor or employee, and regardless of whether, in the case of a business, the use of pesticides is a purpose of the business concerned).

Maximum penalty: 200 penalty units.

- (2) A person must not employ or engage a person to use a pesticide in any circumstance referred to in subclause (1) unless the second-mentioned person holds a prescribed qualification and evidence of the prescribed qualification.

Maximum penalty: 200 penalty units (in the case of an individual) or 400 penalty units (in the case of a corporation).

- (3) This clause does not apply to the storage of pesticides.
- (4) This clause commences on 1 September 2005.

7B Exceptions to clause 7A (1) offence

- (1) Clause 7A (1) does not apply to any person who:
 - (a) holds a licence under the Act, or
 - (b) holds a certificate of competency or recognised qualification (within the meaning of Part 9.1 of Chapter 9 of the *Occupational Health and Safety Regulation 2001*) in relation to the kind of work referred to in clause 11 (Application of pesticides) or 12 (Use of fumigants) of the Schedule to clause 266 of that Regulation, or

2003 No 613

Pesticides Amendment (User Training) Regulation 2003

Schedule 1 Amendments

- (c) is a trainee doing work of the type referred to in paragraph (b) and who is excepted under clause 271 of that Regulation from the requirement of that Regulation to hold a certificate of competency or recognised qualification in relation to that work, or
 - (d) holds a former authority (pest control operator's licence) that is taken to be a certificate of competency under clause 268 of that Regulation.
- (2) Clause 7A (1), to the extent only to which it prohibits a person from using a fumigant unless he or she holds a prescribed qualification, does not apply to any person who holds a former authority (fumigation permit) that is taken to be a certificate of competency under clause 268 of the *Occupational Health and Safety Regulation 2001*.
 - (3) Clause 7A (1) does not apply in relation to the use of a pesticide in public baths or in any swimming pool or spa.

7C Defence to clause 7A offences

- (1) It is a defence in any proceedings against a person for an offence under clause 7A (1) or (2) if the person establishes that the pesticide concerned:
 - (a) was being applied by hand or by a hand-held applicator, and
 - (b) was being used in a quantity that:
 - (i) in the case of outdoor use, is appropriate for outdoor domestic purposes (so long as it does not exceed 20 litres or 20 kilograms of "ready-to-use" product or 5 litres or 5 kilograms of concentrated product), or
 - (ii) in the case of indoor use, is appropriate for indoor domestic purposes (so long as it does not exceed 5 litres or 5 kilograms of "ready-to-use" product or 1 litre or 1 kilogram of concentrated product).
- (2) Subclause (1) does not apply unless the pesticide concerned:
 - (a) is ordinarily used for domestic purposes (including home gardening), and
 - (b) is widely available to the general public at retail outlets (for example, at supermarkets).

**7D Additional defence and other provisions relating to clause 7A
(1) (d) offence**

- (1) It is a defence in any proceedings against a person for an offence under clause 7A (1) (d) if the person establishes, in connection with the agricultural operations or forestry operations concerned:
- (a) that the person used the pesticide under the direct supervision of the holder of a relevant qualification, and
 - (b) that the holder of the relevant qualification:
 - (i) selected the pesticide as the pesticide to be used, and
 - (ii) prepared the pesticide for use, and
 - (iii) tested and calibrated the equipment used to apply the pesticide before it was so used, and
 - (iv) instructed the person in how to apply the pesticide, and
 - (c) that the person applied the pesticide by hand-held and hand-powered equipment, and
 - (d) that the person applied pesticide in connection with the agricultural operations or forestry operations concerned on no more than 12 days in the previous 12 months and on no more than 4 days in the previous month.
- (2) A person must not supervise a person, who does not hold a prescribed qualification, in the use of a pesticide in connection with any agricultural operations or forestry operations unless:
- (a) if the pesticide is a fumigant, the first-mentioned person holds a relevant qualification, or
 - (b) in any other case, the first-mentioned person holds a relevant qualification referred to in paragraph (a), (b), (c) or (e) of the definition of that term in subclause (3).

Maximum penalty: 200 penalty units.

- (3) For the purposes of this clause:

relevant qualification means:

- (a) a prescribed qualification, or
- (b) a licence, certificate of competency or recognised qualification referred to in clause 7B (1) (a) or (b), or

2003 No 613

Pesticides Amendment (User Training) Regulation 2003

Schedule 1 Amendments

- (c) a former authority (pest control operator's licence) that is taken to be a certificate of competency as referred to in clause 7B (1) (d), or
 - (d) in connection only with the supervision of the use of a fumigant, a former authority (fumigation permit) that is taken to be a certificate of competency as referred to in clause 7B (2), or
 - (e) a certificate of completion or a statement of attainment referred to in clause 8A.
- (4) Subclause (2) commences on 1 September 2005.

Division 3 Other requirements relating to qualifications

7E Evidence of qualification must be produced on request

- (1) A person who:
- (a) under clause 7A (1), is required to hold a prescribed qualification in respect of the use of a pesticide, or
 - (b) under clause 7D (2), is required to hold a relevant qualification in respect of the supervision of the use of a pesticide,

must, if requested to do so by an authorised officer, produce evidence of the qualification concerned for inspection by the authorised officer.

Maximum penalty: 200 penalty units.

- (2) This clause commences on 1 September 2005.

7F False representations and fraudulent misuse of evidence of prescribed qualification

- (1) A person must not forge or alter evidence of a prescribed qualification.

Maximum penalty: 100 penalty units.

- (2) A person must not falsely represent, whether in writing, by word or by conduct, that he or she is the holder of a prescribed qualification.

Maximum penalty: 100 penalty units.

- (3) This clause commences on 1 September 2005.

**Division 4 Miscellaneous provisions relating to
prescribed qualifications****8 Approval of units of competency for prescribed qualification**

- (1) The Environment Protection Authority may from time to time approve of units of competency for the purposes of the definition of *prescribed qualification* in clause 7.
- (2) The Authority may only approve of units of competency that are specified in a current Training Package endorsed by the National Training Framework Committee of the Australian National Training Authority (being an Authority established under the *Australian National Training Authority Act 1992* of the Commonwealth).
- (3) Before approving units of competency under this clause, the Authority:
 - (a) must consult relevant groups, including registered training providers and environmental and industry representatives, and
 - (b) must be satisfied that the proposed units of competency are relevant to the objects of the Act.
- (4) An approval under this clause:
 - (a) must clearly identify all units of competency required to be achieved for the issue of a prescribed qualification, and
 - (b) may specify that particular units of competency must be achieved by particular pesticide users or classes of pesticide users (including, for example, the users of a particular type of pesticide).
- (5) An approval under this clause is to be published in the Gazette and takes effect on the day that it is so published or on such later date as may be specified in the approval.
- (6) The Authority must ensure that copies of any approval in force under this clause are available for public inspection, without charge and during ordinary business hours, at each of its offices.

2003 No 613

Pesticides Amendment (User Training) Regulation 2003

Schedule 1 Amendments

8A Transitional provision concerning ChemCert, Farmcare and SMARTtrain Programs

A person who holds:

- (a) a certificate of completion under the ChemCert (NSW) Ltd Farm Chemical User Training Program (also known as the Farmcare Australia Farm Chemical User Training Program), or
- (b) a statement of attainment on completion of the SMARTtrain Chemical Application Course, the SMARTtrain Managing Chemical Use Course or the SMARTtrain Chemical Risk Management Course,

that is current immediately before 1 September 2003 is taken to hold a prescribed qualification for the purposes of this Part until the expiration of 5 years from the date of issue of the certificate or statement of attainment, as the case may be (unless sooner cancelled or revoked).

Note. Accordingly, before the date that such a certificate or statement ceases to be a prescribed qualification for the purposes of this Part, the person who holds the certificate or statement must ensure that he or she undertakes the training and assessment necessary for the award of a prescribed qualification.

[3] Clause 12 Definitions

Omit the clause.

[4] Clause 14 Amounts of penalty payable: section 78

Omit "Column 5" and "Column 6" wherever occurring.

Insert instead "Column 2" and "Column 3", respectively.

[5] Clause 15 Short descriptions of offences

Omit the clause.

[6] Schedule 1 Penalty notice offences

Omit "(Clauses 13–15)". Insert instead "(Clauses 13 and 14)".

[7] Schedule 1

Omit Columns 2, 3 and 4 (including all headings to, and all matter in, those Columns) and renumber Columns 5 and 6 as Columns 2 and 3, respectively.

[8] Schedule 1

Insert in appropriate order in Columns 1, 2 and 3, respectively (as renumbered by item [7]):

Clause 7A (1) (a)	400	—
Clause 7A (1) (b)	400	—
Clause 7A (1) (c)	400	—
Clause 7A (1) (d)	400	—
Clause 7A (1) (e)	400	—
Clause 7A (2)	400	800
Clause 7D (2)	400	—
Clause 7E (1) (a)	400	—
Clause 7E (1) (b)	400	—
Clause 7F (1)	400	—