



New South Wales

# Pesticides Amendment (Notification and Miscellaneous Matters) Regulation 2005

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:

- (a) to require public notification to be given, in accordance with a pesticide use notification plan, by any **public authority** (which is defined to include a Minister, a government department and a local council) that proposes to use pesticide in a prescribed public place or to allow its use in a prescribed public place (Schedule 1 [13]—Division 2 of Part 4B), and
- (b) to require that, if it is proposed that a pest management technician use pesticide in the common area of a residential complex (such as a block of home units), the person who engages the pest management technician, and the pest management technician, must give notice to all residents of the use (Schedule 1 [13]—Division 3 of Part 4B), and
- (c) to require certain additional matters to be recorded by the holder of an aircraft (pesticide applicator) licence in relation to the application of pesticide (Schedule 1 [2]), and
- (d) to require the holder of an aircraft (pesticide applicator) licence to provide a copy of any record required to be kept in relation to the application of pesticide to the owner or occupier of the land in respect of which it was applied (Schedule 1 [3]), and
- (e) to permit parts of units of competency assessed by registered training providers to be approved as prescribed qualifications, which certain pesticide users are required to hold (Schedule 1 [4] and [6]–[8]), and
- (f) to extend the definition of **registered training provider** in Part 3 of the Regulation to training providers registered outside the State (Schedule 1 [5]), and

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- (g) to recognise certain further training courses as prescribed qualifications, on a transitional basis (Schedule 1 [9]), and
- (h) to permit certificates of completion, or statements of attainment, issued by certain organisations to be approved by the Environment Protection Authority as prescribed qualifications, on a transitional basis (Schedule 1 [9]), and
- (i) to update references to the Australia New Zealand Food Standards Code (Schedule 1 [1] and [10]–[12]), and
- (j) to provide for certain offences to be dealt with by penalty notice (Schedule 1 [14] and [15]).

The amendments in relation to public notification of the use of a pesticide and the giving of notice in relation to residential complexes commence on 1 February 2007. The amendments in relation to the holder of an aircraft (pesticide applicator) licence commence on 1 February 2006. The remaining amendments commence when this Regulation is published in the Gazette.

This Regulation is made under the *Pesticides Act 1999*, including sections 63, 75, 78 and 119 (the general regulation-making power), in particular section 119 (2) (e), (g), (n) and (o).

## **Pesticides Amendment (Notification and Miscellaneous Matters) Regulation 2005**

under the

Pesticides Act 1999

### **1 Name of Regulation**

This Regulation is the *Pesticides Amendment (Notification and Miscellaneous Matters) Regulation 2005*.

### **2 Commencement**

- (1) This Regulation commences on the date on which it is published in the Gazette, except as provided by subclauses (2) and (3).
- (2) Schedule 1 [2], [3], [13] and [14] commence on 1 February 2006.
- (3) Schedule 1 [15] commences on 1 February 2007.

### **3 Amendment of Pesticides Regulation 1995**

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

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**Schedule 1 Amendments**

(Clause 3)

**[1] Clause 3 Definitions**

Omit the definition of *Food Standards Code* from clause 3 (1). Insert instead:

*Food Standards Code* has the same meaning as in the *Food Act 2003*.

**[2] Clause 6A Records of aerial application of pesticides**

Insert after clause 6A (b):

- (c) the name, address and contact details of the owner or occupier of the land in respect of which the pesticide was applied.

**[3] Clause 6B**

Insert after clause 6A:

**6B Provision of record to land owner or occupier**

The holder of an aircraft (pesticide applicator) licence must provide a copy of a record required to be made under section 54 of the Act to the owner or occupier of the land on which the pesticide was applied. The record must be provided as soon as practicable after the application of the pesticide.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, and
- (b) in the case of an individual—50 penalty units.

**[4] Clause 7 Definitions**

Omit “(being units of competency” from paragraph (b) of the definition of *prescribed qualification* in clause 7 (1).

Insert instead “or parts of units of competency (being units of competency, or parts of units of competency,”.

**[5] Clause 7, definition of “registered training provider”**

Omit the definition. Insert instead:

*registered training provider* means:

- (a) a training provider registered under the *Vocational Education and Training Accreditation Act 1990*, or

- (b) a training provider listed as a registered training organisation on the National Training Information Service maintained by the Commonwealth Department of Education, Science and Training.

**[6] Clause 8 Approval of units of competency, or parts of units of competency, for prescribed qualifications**

Insert “, or parts of units of competency,” after “competency” wherever occurring in clause 8 (1), (3) and (4) (a).

**[7] Clause 8 (2)**

Omit “approve of units of competency that”.

Insert instead “approve of units of competency, or parts of units of competency, if the units of competency”.

**[8] Clause 8 (4) (b)**

Insert “, or particular parts of units of competency,” after “competency”.

**[9] Clause 8A Transitional provision concerning certificates of competency and statements of attainment**

Insert at the end of clause 8A (before the note):

- (2) A person who holds:
- (a) a certificate of completion or statement of attainment on completion in any of the following competency units, or combinations of competency units, issued by NewTRAIN Incorporated:
- (i) RTC2706A,
  - (ii) RTC3704A and RTC3705A together,
  - (iii) all of the following together: RUAAG2005CHA,  
RUAAG2006CHA, RUAAG2007CHA,  
RUAAG2008CHA, RUAAG2009CHA,  
RUAAG2010CHA, RUAAG2011CHA and  
RUAAG2012CHA,
  - (iv) all of the following together: RUAAG2007CHA,  
RUAAG2008CHA, RUAAG2009CHA,  
RUAAG2010CHA, RUAAG2011CHA and  
RUAAG2012CHA, or
- (b) a certificate of completion or statement of attainment on completion issued by a specified university, industry association or organisation of any kind, being a certificate or statement, and a university, association or organisation, that the Environment Protection Authority has, by notice

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in the Gazette, declared to be sufficient for the purposes of this paragraph,

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, as the case may be (unless the certificate or statement is sooner cancelled or revoked).

- (3) The Environment Protection Authority may, by further notice in the Gazette, amend or revoke a declaration made for the purposes of subclause (2) (b).
- (4) An amendment or revocation referred to in subclause (3) does not affect a person who, before the amendment or revocation, was, by operation of subclause (2), taken to hold a prescribed qualification for the purposes of this Part.

### [10] **Clause 10 Prohibited residues: section 63**

Omit “Column 3 of Schedule 1 to General Standard A14” from clause 10 (1) (a).

Insert instead “Schedule 1 or 2 to General Food Standard 1.4.2”.

### [11] **Clause 10 (2) (a)**

Omit “Column 1 of Schedule 1 to General Standard A14”.

Insert instead “the shaded boxes in Schedule 1 or 2 to General Food Standard 1.4.2”.

### [12] **Clause 10 (2) (b)**

Omit “Column 2 of that Schedule”.

Insert instead “Schedule 1 or 2 to General Food Standard 1.4.2”.

### [13] **Part 4B**

Insert after clause 11H:

## **Part 4B Notification of proposed use of pesticide**

### **Division 1 Operation of Part**

#### **11I Date of effect**

This Part takes effect at the beginning of 1 February 2007.

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## Division 2 Notification by public authorities

### 11J Definitions

(1) In this Division:

**pesticide use notification plan** means a plan referred to in clause 11L (1).

**prescribed public place** means:

- (a) any of the following to which the public is entitled to have access (whether or not on payment of a fee):
  - (i) any public garden,
  - (ii) any picnic area,
  - (iii) any playground,
  - (iv) any park, sporting field or oval,
  - (v) any public land owned or controlled by a public authority (for example, a road verge, rail easement or an easement for electricity purposes or for the purposes of other utilities),
  - (vi) any land reserved under the *National Parks and Wildlife Act 1974* or any State forest or Crown land, or
- (b) the grounds of any government school (within the meaning of the *Education Act 1990*) or any establishment maintained by the Technical and Further Education Commission,

but does not include the inside of any building or structure located at such a place.

**public authority**, in addition to the meaning given by the Act, includes a Minister.

**Note.** **Public authority** is defined in the Act to mean a public or local authority constituted by or under an Act, and to include:

- (a) a government department, or
- (b) a statutory body representing the Crown, a State owned corporation or a local council, or
- (c) a member of staff or other person who exercises functions on behalf of a public authority.

The above definition extends the meaning of the term **public authority** for the purposes of this Division so as to include a Minister.

**sensitive place** means:

- (a) any school or pre-school, or
- (b) any kindergarten, or
- (c) any childcare centre, or

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- (d) any hospital, or
- (e) any community health centre, or
- (f) any nursing home, or
- (g) any place declared to be a sensitive place by the Environment Protection Authority by notice in the Gazette.

*use* does not include store.

- (2) The Environment Protection Authority may, by further notice in the Gazette, amend or revoke any declaration made under paragraph (g) of the definition of *sensitive place* in subclause (1).

### 11K Obligations on public authorities concerning use of pesticide

- (1) A public authority must not use any pesticide in a prescribed public place that is owned by or is under the control of the public authority, or allow any person to use any pesticide in a prescribed public place that is owned by or is under the control of the public authority, unless the public authority has first:
  - (a) prepared, finalised and notified the Environment Protection Authority of a pesticide use notification plan in accordance with this Division, and
  - (b) given public notice of the proposed use of pesticide in accordance with that plan.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, and
  - (b) in the case of an individual—200 penalty units.
- (2) A public authority may satisfy an obligation under this clause if it prepares and notifies one or more pesticide use notification plans that apply to all prescribed public places that it owns or controls.

### 11L Contents of pesticide use notification plans

- (1) A pesticide use notification plan for a public authority must set out how and when the public authority will give public notice of the proposed use of pesticides in any prescribed public places owned by the public authority or under its control.
- (2) In particular, a pesticide use notification plan:
  - (a) must identify where it operates, that is, it must identify the categories of prescribed public places in which the public authority proposes to use pesticide or allow its use, and



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- (b) must identify the categories of, or specific, prescribed public places in respect of which the public authority intends to provide notification of:
    - (i) all proposed uses of pesticides under the plan, or
    - (ii) only some proposed uses of pesticides under the plan, and what those uses are, and
  - (c) must indicate, as a separate item, the special protection measures that will be taken if the pesticide is proposed to be used in a prescribed public place that is adjacent to a sensitive place, and
  - (d) must identify the categories of people (the *affected persons*) who regularly use the categories of prescribed public places identified in the plan, and
  - (e) must estimate the degree of use by affected persons of those categories of prescribed public places, and
  - (f) must specify how and when the public authority will notify the affected persons of the proposed use of pesticide in the prescribed public places (other than a prescribed public place referred to in paragraph (k)), and
  - (g) must specify what will be included in that notification, which must include at least the following:
    - (i) the full product name of the pesticide to be used,
    - (ii) the purpose of the use,
    - (iii) the proposed date of use, dates of use or range of dates of use,
    - (iv) the place of use,
    - (v) a contact telephone number or email address for the officer of the public authority whom the affected persons can contact to discuss the notice,
    - (vi) any warnings about limitations on the subsequent use of or entry onto the land if such warnings are specified on the approved label for the pesticide or in the permit for use of the pesticide, and
  - (h) must specify how and when the public authority will inform the general public (and not just the affected persons) of the plan and its contents, and
  - (i) must identify by job title or description, and provide the telephone number or email address of, the officer of the public authority whom any member of the public can contact to discuss the plan, and

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- (j) must set out provisions for future reviews of the pesticide use notification plan, including arrangements for public involvement in those reviews, and
  - (k) must specify the prescribed public places (if any) for which the public authority does not intend to provide notification.
- (3) A pesticide use notification plan for a public authority may, in addition to the matters required by this clause, set out how and when the public authority will give public notice of its use, or its allowing of the use, of pesticide in places other than prescribed public places.

**11M Public consultation on draft pesticide use notification plans**

- (1) A public authority that has prepared a draft pesticide use notification plan must publish a notice, in accordance with this clause, advising that the plan has been prepared.
- (2) The notice must be published:
  - (a) in the case of a public authority that operates throughout the State—in at least one newspaper circulating generally in the State, and
  - (b) in the case of a public authority that operates only in a particular local area or local areas—in at least one newspaper circulating generally in that local area or those local areas, and
  - (c) in the case of a public authority that is a local council—in at least one newspaper circulating generally in the local government area of that council.
- (3) The notice must specify:
  - (a) the area in which the plan is to operate, and
  - (b) where a copy of the draft plan will be displayed for the purposes of public inspection, and
  - (c) the way in which the public may comment on the draft plan, and
  - (d) the deadline for public comment on the draft pesticide use notification plan (which must be at least 4 weeks after the notice is published).
- (4) A public authority must place its draft pesticide use notification plan on display during office hours at the place mentioned in the notice. The public authority must make the draft plan available for inspection free of charge.

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- (5) A public authority must also place its draft pesticide use notification plan on its internet website, if it has one.
  - (6) The draft pesticide use notification plan must be on display for at least the period commencing on the date on which notice of the display is first given under this clause and ending on the date of the deadline for public comments.
  - (7) As soon as practicable after the date of the deadline for submissions for public comment, the public authority must prepare a final version of the plan, taking into consideration any comments made by the public before the deadline.

**11N Giving notice of final pesticide use notification plans**

- (1) A public authority that has prepared a final pesticide use notification plan in accordance with this Division must, as soon as practicable after the finalisation of the plan, give notice of the plan in accordance with this clause.
- (2) The notice must be published:
  - (a) in the Gazette, and
  - (b) in accordance with clause 11M (2).
- (3) The notice must specify:
  - (a) the area in which the plan is to operate, and
  - (b) where a copy of the plan will be displayed.
- (4) A public authority must place its pesticide use notification plan on display during office hours at the main address of the public authority. The public authority must make the plan available for inspection free of charge.
- (5) A public authority must also place its pesticide use notification plan on its internet website, if it has one.

**11O Notification to the Environment Protection Authority of final pesticide use notification plans**

- (1) A public authority that has prepared a final pesticide use notification plan must notify the Environment Protection Authority in writing that the plan has been finalised.
- (2) Such notice must include a statement as to whether or not clauses 11L, 11M and 11N have been complied with in relation to the plan.
- (3) Such notice must be given as soon as practicable after finalisation of the plan.

**11P Review of final pesticide use notification plans**

- (1) A public authority that has prepared a final pesticide use notification plan may review that plan.
- (2) If, as a result of that review, a public authority wishes to amend the plan, or adopt a new plan, it must comply with this Division in relation to the making of the amended or new plan unless (in the case of an amendment) the public authority considers on reasonable grounds that the amendment is not of sufficient substance to warrant public consultation, in which case, it need not comply with clauses 11M and 11N.

**Division 3 Notification about pesticide use in common areas of residential complexes and other places**

**11Q Definitions**

In this Division:

*association property* has the same meaning as in the *Community Land Development Act 1989*.

*common area* of a residential complex means:

- (a) in relation to land under a strata scheme—so much of any parcel of land in a strata scheme that is not comprised in any lot, for example, any roof void, any sub-floor space, any grounds of the residential complex or any stairwell, or
- (b) in relation to land under a community scheme—association property in the scheme, or
- (c) in relation to land under company title (that is, land that a person is entitled to occupy because of the ownership of shares)—land used as common property by the residents or land that no person has an exclusive right to occupy.

*community scheme* has the same meaning as in the *Community Land Development Act 1989*.

*dual occupancy* premises means residential premises that comprise only two dwellings.

*pest management technician* means a person who:

- (a) 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 under the subheading “**Application of pesticides**” or “**Use of**

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**fumigants**” in the Schedule to clause 266 of that Regulation, or

- (b) is a trainee doing work of the type referred to in paragraph (a) 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
- (c) holds a former authority (pest control operator’s licence) that is taken to be a certificate of competency under clause 268 of that Regulation.

**residential complex** means any multiple occupancy medium-density or high-density residential premises, and includes:

- (a) any block of home units, or
- (b) any caravan park used for, amongst other purposes, residencies of over 8 weeks’ duration, or
- (c) multiple occupancy land under a strata scheme (whether or not the dwellings are separate from each other), or
- (d) a community scheme,

but does not include dual occupancy premises.

**strata scheme** means a strata scheme under the *Strata Schemes (Freehold Development) Act 1973* or a leasehold strata scheme under the *Strata Schemes (Leasehold Development) Act 1986*.

#### **11R Prior notice of application of pesticide to be given by management**

- (1) A person who engages a pest management technician to use pesticides in any common area of a residential complex must give each resident of the residential complex prior notice, in accordance with this clause, of the use by the pest management technician of a pesticide in any common area of the complex or must ensure that an agent of the person gives such notice.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, and
  - (b) in the case of an individual—200 penalty units.
- (2) At least 5 working days’ notice must be given of the proposed use.
  - (3) The notice must be given:
    - (a) to each resident in person, by facsimile transmission, email or telephone, or

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- (b) by placing a written notice in the resident's letter box or under a resident's front door or by posting a written notice:
  - (i) on the main notice boards at the complex (if available), and
  - (ii) at the main entrances and exits to each building in the complex.
- (4) The notice must include at least the following:
  - (a) the date, dates or range of dates on which the pesticide will be used,
  - (b) where the pesticide will be used,
  - (c) the full product name of the pesticide that will be used,
  - (d) the purpose for which the pesticide will be used,
  - (e) the period (if any) during which the affected area should not be entered (but only if the approved label for the pesticide or the permit for use of the pesticide requires that such a period be observed),
  - (f) the contact details of the pest management technician or of his or her office.
- (5) This clause does not require notice to be given in respect of any pesticide to be used in the period before 8 February 2007.
- (6) Without limiting the meaning of the term, a *person who engages a pest management technician* includes:
  - (a) a managing agent of an owners corporation for a strata scheme, or
  - (b) a managing agent for an association for a community scheme, or
  - (c) a park manager for a caravan park,where that agent or manager, or a member of his or her staff, arranges for a pest management technician to use the pesticide.

**11S Concurrent notice to be posted by pest management technician at the time of application of pesticide**

- (1) A pest management technician who uses pesticide in the common area of a residential complex must post a notice, in accordance with this clause, on the day on which (or on the first day of any unbroken period during which) the pesticide is to be used.  
Maximum penalty:
  - (a) in the case of a corporation—400 penalty units, and
  - (b) in the case of an individual—200 penalty units.

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- (2) The notice must be posted at the main entry doors and exit doors to the building and on the main notice board of the building (if available), if that is accessible to the pest management technician (and at entrance points to the property if the pesticide is to be used on the grounds or external areas of the building).
  - (3) The notice must be posted before the pesticide is used and must continue to be displayed while the pesticide is being used and after use for the length of any period during which the affected area should not be entered (but only if the approved label for the pesticide or the permit for use of the pesticide requires that such a period be observed).
  - (4) The notice must include at least the matters required to be included in a notice under clause 11R (4).
  - (5) This clause does not apply to any second or subsequent installation of pesticide in baits as part of an ongoing baiting program of which notice has been given under this clause.

**11T Less notice may be given in an emergency**

A pest management technician may use pesticide in an emergency so as to deal with biting or dangerous pests (such as rodents, wasps, bees, venomous spiders, fleas, bird mites or similar creatures) without any person giving the prior notice required by clause 11R but must:

- (a) give the concurrent notice required by clause 11S before the use of the pesticide, and
- (b) keep records of the emergency and the use of pesticide.

**11U Provision of Material Safety Data Sheet**

If a person who is required to be notified under this Division makes a request to the pest management technician, or a person at his or her office, to see a copy of the Material Safety Data Sheet for the relevant pesticide, the pest management technician must give the person, or ensure that the person is given, a copy of the Material Safety Data Sheet as soon as practicable after the notice of the intended use of pesticide is given.

Maximum penalty:

- (a) in the case of a corporation—30 penalty units, and
- (b) in the case of an individual—15 penalty units.

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**11V Records that must be kept**

- (1) A pest management technician who is required by this Division to give any notice or keep any record must keep a paper copy of the notice or record for at least 3 years after it is given.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, and  
(b) in the case of an individual—50 penalty units.

- (2) A person (other than a pest management technician) who is required by this Division to give any notice must keep a paper copy of any letter, facsimile transmission or email used to give the notice, or a diary entry of any notice given in person or by telephone, including the name of the person notified, for at least 3 years after the notice is given.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, and  
(b) in the case of an individual—50 penalty units.

**[14] Schedule 1 Penalty notice offences**

Insert in order of provisions of the Regulation:

Clause 6B	100	200
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**[15] Schedule 1**

Insert in order of provisions of the Regulation:

Clause 11K (1)	400	800
Clause 11R (1)	400	800
Clause 11S (1)	400	800
Clause 11U	100	200
Clause 11V (1)	100	200
Clause 11V (2)	100	200

BY AUTHORITY

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