

[Act 1999 No 80]



New South Wales

## Pesticides Bill 1999

### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.\*

#### Overview of Bill

The objects of this Bill are as follows:

- (a) to promote the protection of human health, the environment, property and trade in relation to the use of pesticides, having regard to the principles of ecologically sustainable development within the meaning of the *Protection of the Environment Administration Act 1991*,
- (b) to minimise risks to human health, the environment, property and trade,
- (c) to promote collaborative and integrated policies in relation to the use of pesticides,
- (d) to establish a legislative framework to regulate the use of pesticides.

This Bill complements the legislative scheme involving the “*Agvet Code*” (ie the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code*

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\* Amended in committee—see table at end of volume.

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*Act 1994* of the Commonwealth). The Agvet Code applies as a law of New South Wales. It provides for the approval and registration of agricultural products (ie pesticides and herbicides) and veterinary chemical products, and it controls the manufacture and supply of those chemical products. The control of the use of those chemical products is what this Bill is designed to achieve.

This Bill replaces the *Pesticides Act 1978*.

## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** sets out the objects of the proposed Act (as stated in the above overview).

**Clause 4** defines certain words and expressions used in the proposed Act. Words and expressions used in the Agvet Code that are also used in the proposed Act have the same meaning in the proposed Act as they have in the Code.

**Clause 5** defines the term *pesticide* as being an agricultural chemical product within the Code, or a veterinary chemical product (within the meaning of the Code) that is used for the external control of ectoparasites of animals.

**Clause 6** declares certain offence provisions of the proposed Act to be “eligible laws” for the purposes of the definition of *permit* in Part 7 of the Agvet Code. Part 7 of the Agvet Code sets up a system under which a person who wants to do something in respect of a pesticide that would otherwise be prohibited under an eligible law may obtain a permit in respect of the doing of the thing. In other words, a permit authorises a person to whom the permit applies to do (or omit to do) something that is otherwise prohibited by the proposed Act.

### Part 2 Control of pesticides

#### Division 1 Wilful or negligent misuse of pesticides

This Division creates upper level offences that involve an element of culpability with respect to the misuse of pesticides. The maximum penalty for committing an

offence under this Division is \$250,000 for a corporation or \$120,000 for an individual.

**Clause 7** provides that it is an offence to wilfully or negligently use a pesticide in a manner that injures any person or damages any property of another person (eg livestock or agricultural produce). The offence does not apply in relation to agricultural farm land (ie the “on-farm” exception).

**Clause 8** provides that it is an offence to wilfully or negligently use a pesticide in a manner that harms any non-target animal or non-target plant (ie an animal or plant that is not one that the pesticide is meant to be used against) or that harms any animal in the case where the pesticide concerned is not subject to an approved label or a permit. The on-farm exception also applies in relation to this offence. The offence does not also apply in relation to residential premises.

**Clause 9** provides that it is an offence to wilfully or negligently use a pesticide in a manner that materially harms any endangered, vulnerable or protected animal.

## **Division 2      Misuse of pesticides**

**Clause 10** provides that it is an offence to use a pesticide in a manner that injures any person or damages any property of another person. An “on-farm” exception applies in relation to this offence, and it is a defence if it is established that the commission of the offence was due to causes over which the person had no control and that the person took reasonable precautions and exercised due diligence to prevent the commission of the offence (the “due diligence” defence).

**Clause 11** provides that it is offence to use a pesticide in a manner that harms any non-target animal or non-target plant or, in the case where the pesticide concerned is not subject to an approved label or permit, harms any animal or plant. The “on-farm” exception and residential premises exception also apply in relation to this offence, as does the “due diligence” defence.

## **Division 3      General offences relating to control of pesticides**

**Clause 12** prohibits the possession of an unregistered pesticide (ie a pesticide that is not registered under the Agvet Code) unless authorised by a permit and the permit is complied with.

**Clause 13** prohibits the use of an unregistered pesticide unless authorised by a permit and the permit is complied with.

**Clause 14** makes it an offence not to read the relevant approved label or permit for a pesticide before using the pesticide.

**Clause 15** prohibits the use of a registered pesticide in contravention of the instructions on an approved label for the pesticide unless the use is authorised by a permit.

**Clause 16** prohibits the keeping of a registered pesticide in a container that does not have the approved label on it.

**Clause 17** prohibits the use or possession of any restricted pesticide unless authorised by a certificate of competency under the proposed Act or a pesticide control order under Part 4 of the proposed Act. *Restricted pesticides* are restricted chemical products declared as such under the Agvet Code.

### **Part 3 Pesticide control notices**

This Division provides for a system of clean-up and prevention notices to enable effective action to deal with pesticide pollution (ie any harm to persons, property, the environment or trade caused by the use of a pesticide) and with situations involving the use of a pesticide in an environmentally unsatisfactory manner (eg where it is used in contravention of the proposed Act).

#### **Division 1 Preliminary**

**Clause 18** contains definitions for the purposes of the proposed Division.

#### **Division 2 Clean-up notices**

**Clauses 19–22** provide that a person who is suspected by the Environment Protection Authority of having caused pesticide pollution, or the occupier of premises in which pesticide pollution has or is occurring, may be directed by the Authority to take such clean-up action as is specified in a clean-up notice. Failure to comply with a clean-up notice is an offence. A public authority may also take such clean-up action as it considers necessary to deal with any pesticide pollution. Clean-up directions may be given orally or by notice in writing. The Environment Protection Authority may recover the administrative costs of preparing and giving clean-up notices.

#### **Division 3 Prevention notices**

**Clauses 23–27** provide that the Environment Protection Authority may, if it suspects that a pesticide is or has been used in an environmentally unsatisfactory manner at any premises or by any person (other than at premises), direct the

occupier of the premises or the person to take such action as is specified in the prevention notice. Failure to comply with a prevention notice is an offence. A prevention notice may be appealed against to the Land and Environment Court (see **clause 114**) and when it begins to operate is subject to the appeal process. The Environment Protection Authority may recover the administrative costs of preparing and giving prevention notices.

#### **Division 4 Compliance cost**

**Clauses 28–31** provide for the recovery of costs in relation to clean-up action irrespective of whether the action taken arises from a clean-up notice or is done voluntarily by a public authority. Such costs may be specified in a compliance cost notice, and any amounts unpaid are recoverable as a debt in court. A compliance cost notice may be registered in relation to any land owned by the person who is the subject of the notice. On registration of a compliance cost notice, a charge is created on the land in relation to which the notice is registered to secure the payment to the Environment Protection Authority or public authority concerned of the amount specified in the notice.

#### **Division 5 Miscellaneous**

**Clauses 32–37** contain miscellaneous provisions relating to clean-up and prevention notices. More than one such notice may be given to the same person. Notices may be issued in respect of matters occurring outside the State which affect the environment of this State. A notice may be revoked or varied by a subsequent notice, by modification of its terms and specifications or by extending the time for compliance. The Environment Protection Authority is authorised to enter any premises for the purposes of exercising its functions under the proposed Part. It is an offence to wilfully delay or obstruct a person carrying out any action in compliance with a clean-up notice or prevention notice. It is also an offence to make a false or misleading statement in any report required under the proposed Part and lodged with the Environment Protection Authority.

### **Part 4 Pesticide control orders**

**Clause 38** provides for the making of pesticide control orders by the Environment Protection Authority. Such orders may be made for the purposes of protecting public health, property, the environment or trade, or in order to implement certain decisions or policies of the National Registration Authority for Agricultural and Veterinary Chemicals. A pesticide control order has no effect unless it is published in the Gazette.

**Clause 39** provides for the operation of pesticide control orders. An order may prohibit or control the use of pesticides, or it may authorise the use of restricted pesticides. It is an offence to contravene a pesticide control order.

## **Part 5 Miscellaneous powers and offences**

**Clause 40** refers to the fact that Chapter 7 (Investigation) of the *Protection of the Environment Operations Act 1997* extends the exercise of powers under the proposed Act. That Chapter deals with such matters as the appointment of authorised officers of the Environment Protection Authority, powers to require information and records, powers of entry and search, powers to question and to identify persons, and powers with respect to certain things such as vehicles.

**Clause 41** enables an authorised officer to give directions for the destruction or rendering harmless of a pesticide in certain situations (eg if the authorised officer is of the opinion that it is necessary to do so because of a risk to the environment). It is an offence not to comply with any such direction. An authorised officer may also destroy or render harmless a pesticide if authorised by the owner of the pesticide.

**Clause 42** enables an authorised officer to direct, by notice in writing, a person to cease using equipment used in the application of a pesticide if the officer is of the opinion that the equipment is defective. If such a notice is given, it is an offence to use the equipment in contravention of the notice. It is also an offence to remove or interfere with any defect notice that is affixed to the equipment by the authorised officer.

**Clause 43** prohibits the attachment of aerial spraying equipment to an aircraft that is not approved by the Civil Aviation Safety Authority for agricultural operations.

**Clause 44** provides that it is an offence to disclose any information relating to any agricultural, manufacturing or commercial secrets or working processes and obtained in connection with the administration or execution of the proposed Act.

## **Part 6 Licences and certificates of competency**

### **Division 1 Licensing of aerial pesticide operations**

**Clauses 45–55** deal with the licensing of aerial pesticide operations. A person who pilots an aircraft that is being used in the application of a pesticide is required to hold a pilot (pesticide rating) licence, and is also required to hold an aircraft (pesticide applicator) licence (or be employed or engaged by a person who holds

such a licence). A person must not employ or engage a person to pilot an aircraft that is being used in the application of a pesticide unless the employer holds an aircraft (pesticide applicator) licence and the pilot is the holder of a pilot (pesticide rating) licence.

An application for a licence is made to the Environment Protection Authority and must be in the approved form and accompanied by the prescribed application fee. The Authority may require further information from the applicant. The Authority may grant the licence (subject to such conditions as it thinks fit to impose) or refuse to grant a licence on certain grounds. Licence conditions may be revoked or varied. A licence holder is required to pay an annual licence fee prescribed by the regulations. A licence remains in force until it is suspended or revoked by the Authority or is surrendered. A licence holder must notify the Authority of any changes in the licence particulars, and must also provide the Authority with certain information received by the holder (eg if the holder ceases to hold the prescribed qualifications for a licence).

The holder of an aircraft (pesticide applicator) licence is required to make a record about each occasion on which the holder has caused an aircraft to be used in the application of a pesticide. The Environment Protection Authority may suspend a licence for a period of up to 6 months, and it may revoke a licence for certain reasons (such as the holder of the licence contravening a provision of the proposed Act).

## **Division 2      Certificates of competency**

**Clauses 56–58** deal with certificates of competency (which authorise persons to use restricted pesticides). An application for a certificate of competency is made to the Environment Protection Authority and must be in the approved form and accompanied by the prescribed application fee. The Authority may grant the certificate (subject to such conditions as it thinks fit to impose), or it may refuse to grant the certificate if the applicant is not competent to use the restricted pesticide without causing harm. The Authority may suspend or revoke a certificate of competency.

## **Division 3      General provisions relating to licences and certificates of competency**

**Clause 59** makes it an offence to contravene the conditions of a licence or certificate of competency.

**Clause 60** makes it an offence to make a false or misleading statement in connection with an application for a licence or a certificate of competency. It is also an offence for a person to falsely represent that the person is the holder of a licence or certificate of competency.

**Clause 61** provides that a person may apply to the Administrative Decisions Tribunal for a review of the Environment Protection Authority's decision to refuse to grant a licence or certificate of competency, to impose a condition on the licence or certificate, or to suspend or revoke the licence or certificate.

## **Part 7 Control of pesticide residues in agricultural produce**

**Clause 63** defines certain terms for the purposes of the proposed Part.

**Clause 64** provides that if an authorised officer reasonably suspects that any agricultural produce contains a pesticide residue, the officer may serve a notice in the approved form on the owner of the agricultural produce, or on the occupier of the premises on which the produce is situated, or on another person who is in charge of the any vehicle, aircraft or vessel in or on which the produce is situated. The notice may contain provisions requiring the person on whom it is served to do certain things in relation to the produce (eg not to part with possession or control of the produce or to deal with it in some specified way). A pesticide residue notice may only operate for a maximum of 14 days. It is an offence for the person to fail to comply with any such notice.

**Clause 65** enables the Minister to make a pesticide residue order in respect of any agricultural produce that is specified or described in a notice under proposed section 64. Such an order may require the destruction of the produce concerned, and the order may remain in force for up to 6 months. A person on whom a pesticide residue order is served must comply with the requirements of the order.

**Clause 66** enables the Environment Protection Authority to authorise the destruction of any agricultural produce in default of a requirement of a pesticide residue order.

## **Part 8 Pesticides Implementation Committee**

**Clause 67** provides for the establishment of a Pesticides Implementation Committee. The Implementation Committee is to be chaired by a person appointed by the Minister and will have up to 12 other members appointed by the Minister. Those members may be representatives of community and industry interests and



representatives of relevant government agencies. The Implementation Committee ceases operations, and is abolished, when it reports to the Minister under proposed section 68 (ie sometime before July 2003).

**Clause 68** specifies the functions of the Implementation Committee. The Committee is to provide a report to the Minister, by July 2003, on the implementation of the proposed Act.

## **Part 9 Pesticide codes of practice**

**Clause 69** provides for the making of pesticide codes of practice by the Minister for the purposes of providing guidance on the use and management of pesticides or for any other purpose that is consistent with the objects of the proposed Act.

**Clause 70** deals with the manner in which codes are made.

## **Part 10 Procedural provisions**

### **Division 1 Proceedings for offences**

**Clauses 71–74** deal with the manner in which proceedings for offences under the proposed Act are to be dealt with, and the time within which summary proceedings may be commenced. Only the Environment Protection Authority may institute proceedings for an offence under the proposed Act.

### **Division 2 Penalty notices**

**Clauses 75–80** deal with penalty notice offences under the proposed Act (the regulations are to prescribe which offences are penalty notice offences). A penalty notice is a notice informing a person that the penalty payable may be paid within the time specified in the notice, otherwise the offence will be dealt with by a court. The manner in which penalty notices are to be served, and the consequences of paying a penalty in accordance with the proposed Division, are outlined. The regulations may prescribe the penalty payable, but any such penalty may not exceed \$1,500 nor the maximum amount that may be imposed by a court on conviction for the offence. The proposed Division does not limit the operation of the proposed Act or any other Act in relation to proceedings undertaken for offences.

### **Division 3      Restraining orders**

**Clauses 81–91** outline the nature of restraining orders, the procedure for applying for and the making of restraining orders in relation to the defendant's property. A restraining order if registered is a charge on the defendant's property.

### **Division 4      Court orders in connection with offences**

**Clauses 92–98** provide that a court may order a person who is found to have committed an offence under the proposed Act or the regulations to take such steps as are specified in the order to stop any injury, damage or harm caused by the commission of the offence, to make good any resulting environmental damage or to prevent the continuance or recurrence of the offence. If a public authority or person has, directly or indirectly, by reason of the commission of the offence, incurred costs and expenses, the court may order the offender to pay those costs and expenses or pay compensation. The court may also order an offender to pay any costs and expenses of investigation and a penalty of an amount not greater than the amount of any monetary benefits acquired by the offender as a result of the commission of the offence.

**Clause 99** provides that the court may make additional orders regarding an offence, fix a period for compliance, and impose any other necessary requirements.

**Clause 100** provides for the forfeiture to the Crown of pesticides and other things that are connected with the commission of an offence under the proposed Act or the regulations, or that have been seized by an authorised officer.

**Clause 101** makes it an offence to fail to comply with an order under the proposed Division.

### **Division 5      Evidentiary provisions**

**Clause 102** defines certain terms for the purposes of the proposed Division.

**Clause 103** provides that the occupier of premises at or from which pesticide pollution has occurred is presumed to have caused the pollution.

**Clause 104** provides that proof of a reasonable excuse lies on the defendant.

**Clause 105** provides that no proof is required of the appointment of certain persons (including authorised officers) and also deals with the admissibility of documentary evidence.

**Clause 106** provides that certain signed documents certifying certain matters are admissible as evidence and are prima facie evidence of the matters so certified.

**Clause 107** deals with the appointment of appropriately qualified persons as analysts and the admissibility of certificates prepared by such analysts in evidence.

## **Division 6      Other procedural provisions**

**Clause 108** provides that the Environment Protection Authority may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach or threatened breach of the proposed Act or the regulations.

**Clauses 109** and **110** specify the matters to be taken into account by a court in imposing a penalty for an offence under the proposed Act and set out other sentencing powers of the court.

**Clause 111** makes it an offence to cause or permit another person to commit an offence under the proposed Act.

**Clause 112** deals with offences by corporations.

**Clause 113** provides that a person is guilty of an offence in respect of any act or omission occurring outside the State if any substance has been caused to come into the State, if that substance causes or is likely to cause harm to the environment and if the act or omission would have constituted an offence if it had occurred in the State.

## **Part 11   Miscellaneous**

**Clause 114** enables a person who is aggrieved by certain decisions under the proposed Act (such as a prevention notice under Division 3 of Part 3) to appeal to the Land and Environment Court against the decision.

**Clause 115** provides that the Environment Protection Authority may exempt any person or class of persons from any specified provisions of the proposed Act or the regulations.

**Clause 116** provides that acts or omissions committed by members of a fire brigade, a bush fire brigade, the State Emergency Service or other rescue units are exempt from the proposed Act.

**Clause 117** provides that the regulations under the proposed Act may also provide for exemptions.

**Clause 118** outlines the methods by which any notice or document under the proposed Act may be served on a person.

**Clause 119** empowers the making of regulations for the purposes of the proposed Act (including specific regulation-making powers). These specific powers include such matters as record keeping, training in the use of pesticides, and the provision of information in relation to the supply, distribution, use and disposal of pesticides.

**Clause 120** provides that the proposed Act binds the Crown.

**Clause 121** repeals the *Pesticides Act 1978*.

**Clause 122** gives effect to the savings and transitional provisions set out in Schedule 2.

**Clause 123** gives effect to the amendment of the Acts set out in Schedule 3.

**Clause 124** provides for a review of the proposed Act after 5 years.

## **Schedule 1 Members and procedure of Implementation Committee**

The Schedule contains provisions relating to the members and procedure of the Pesticides Implementation Committee (such as provisions dealing with terms of office, remuneration, appointment of deputies, the manner in which vacancies of office occur, disclosure of pecuniary interests and the quorum for meetings).

## **Schedule 2 Savings and transitional provisions**

The Schedule contains relevant savings and transitional provisions consequent on the enactment of the proposed Act (including the power to make regulations of a savings or transitional nature).

## **Schedule 3 Amendment of other Acts**

The Schedule contains amendments to Acts that are mainly consequential on the enactment of the proposed Act. A number of more substantive amendments are made to the *Protection of the Environment Operations Act 1997*, including the following:

- (a) to extend Chapter 7 of the Act (which deals with investigation powers) to the exercise of powers under the proposed Act (and also to the investigation of offences under the *Pesticides Act 1978*),

- (b) to provide that an authorised officer may exercise entry and search powers in relation to aircraft,
- (c) to enable an authorised officer, if the officer has seized something, to direct the occupier of the premises to retain it at those premises,
- (d) to enable authorised officers to be accompanied by another person for the purpose of providing assistance to the authorised officer.