

Act 1994 No. 53

**AGRICULTURAL AND VETERINARY CHEMICALS
(NEW SOUTH WALES) BILL 1994**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to give effect to this State's part in an agreement reached between the Commonwealth, the States, the Australian Capital Territory and the Northern Territory for the regulation and control of agricultural and veterinary chemicals by means of a uniform legislative scheme. The scheme will be administered by the National Registration Authority for Agricultural and Veterinary Chemicals ("the NRA"), which was established by Commonwealth legislation passed in 1992 and commenced to operate on 15 June 1993.

The Commonwealth has enacted legislation for a scheme for the approval and registration of agricultural and veterinary chemicals and for the licensing of manufacturers of those chemicals. The object of the scheme is to ensure that the legislation in each State and Territory on these matters is, and will continue to be, uniform. The control of the use of chemicals will remain with the States and is not affected by the proposed legislation.

The essence of the legislative scheme is that the law passed by the Commonwealth Parliament establishing an Agricultural and Veterinary Chemicals Code (referred to as the "Agvet Code") is to have effect in certain Commonwealth Territories (referred to as the "participating Territories"). The Agvet Code is to be applied by the legislatures of other Australian jurisdictions as the law of those jurisdictions. The relevant Commonwealth, State and Territory Ministers have agreed that the applied laws will have the characteristics of, and will be treated for most practical purposes within each jurisdiction as if they were, Commonwealth rather than State laws.

The Commonwealth Acts Interpretation Act will apply for the purposes of interpreting the Agvet Codes as applied in the States and the Northern Territory so that there will be a uniform interpretation regime. Also, the Commonwealth administrative law package will apply to the legislation. This package of laws consists of the Administrative Decisions (Judicial Review) Act 1977, the Administrative Appeals Tribunal Act 1975, the Freedom of Information Act 1982, the Ombudsman Act 1976, and the Privacy Act 1988. These Acts will provide exclusive rights of review of decisions of the NRA taken under the applied legislation. The State legislation applying

the Commonwealth law will confer full administrative authority in relation to the applied laws on the NRA.

Offences against the legislation will continue to be offences against laws of the States or Territories concerned, although the Commonwealth Director of Public Prosecutions is to be empowered to prosecute for any such offences. However, certain Commonwealth ancillary criminal laws, which apply in relation to the Agvet Code of the participating Territories, will also apply as laws of the States and the Northern Territory in relation to offences against the Agvet Codes of those States and that Territory.

RECITALS

The Recitals refer to the need to regulate agricultural and veterinary chemical products on a uniform basis throughout Australia and state the reason for the proposed regulatory scheme that has been devised.

PART 1—PRELIMINARY

Clause 1—Short title

This clause specifies the short title of the proposed Act.

Clause 2—Commencement

This clause provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3—Definitions

This clause defines expressions used in the proposed Act.

Clause 4—Jervis Bay Territory

This clause has the effect of treating the Jervis Bay Territory and the Australian Capital Territory as a single Territory for the purposes of the proposed Act.

PART 2—THE AGVET CODE, AND THE AGVET REGULATIONS, OF THIS JURISDICTION

Clause 5—Application of Agvet Code in this jurisdiction

The purpose of this clause is to apply, as a law of the State, the Agvet Code that is set out in the Schedule to the Agricultural and Veterinary Chemicals Code Act 1994 of the Commonwealth.

The clause provides that the Code, as it applies as a law of this State, may be referred to as the Agvet Code of New South Wales.

Clause 6—Application of Agvet Regulations in this jurisdiction

The purpose of this clause is to apply the regulations for the time being in force under section 6 of the Agricultural and Veterinary Chemicals Code Act 1994 of the Commonwealth as regulations in force for the purpose of the Agvet Code of this State.

The clause provides that the regulations, as they apply for the purpose of the Agvet Code of this State, may be referred to as the Agvet Regulations of New South Wales.

Clause 7—Interpretation of Agvet Code and Agvet Regulations of this jurisdiction

This clause contains some interpretative provisions that are applicable to the Agvet Code and Agvet Regulations of this State.

The Code uses the neutral expression “jurisdiction”. Accordingly this clause defines “this jurisdiction”, as referring to New South Wales and “the Minister for this jurisdiction” as referring to the Minister who will be administering the proposed Act.

The clause also provides that the Acts Interpretation Act 1901 of the Commonwealth is to apply for the purpose of interpreting the Agvet Code and the Agvet Regulations of this State and that the Interpretation Act 1987 of this State is not to apply.

Clause 8—Ancillary offences (aiding, abetting, accessories, attempts, incitement or conspiracy)

This clause applies certain Commonwealth ancillary criminal laws as laws of this State in relation to offences against the Agvet Code or the Agvet Regulations of this State. Corresponding ancillary State criminal laws will not apply to those offences. The clause ensures that actions constituting certain ancillary offences that are related to offences against the Code or the Regulations will receive uniform treatment throughout Australia. Accordingly, anything done in a State or the Northern Territory by way of aiding or abetting, being an accessory to, attempting to commit, inciting the commission of, or conspiring to commit, an offence against the Code or the Regulations will constitute the same offence against the law of that State or that Territory as if it were done in the participating Territories. References in the Code or the Regulations to an offence against the Code or the Regulations are taken to include a related offence against the Commonwealth ancillary criminal laws.

PART 3—CITING THE AGVET CODES, AND THE AGVET REGULATIONS, OF OTHER JURISDICTIONS

Clause 9—Reference to Agvet Codes and Agvet Regulations of other jurisdictions

This clause enables the Code set out in the Schedule to the Agricultural and Veterinary Chemicals Code Act 1994 of the Commonwealth, and regulations made for the purposes of that Code, as they are applied by the corresponding law of another State or of the Northern Territory, or as they have effect in the participating Territories, to be referred to as the Agvet Code or the Agvet Regulations of that State, of the Northern Territory or of the participating Territories, as the case may be.

Clause 10—References to Agvet Codes and Agvet Regulations

Where it is desired in a law or document to refer to the Agvet Codes or to the Agvet Regulations of the States, the Northern Territory and the participating Territories, this clause will enable the law or document to refer simply to the Agvet Codes or to the Agvet Regulations without the need to specify all the jurisdictions concerned.

PART 4—APPLICATION OF AGVET CODES TO THE CROWN**Clause 11—Agvet Code of this jurisdiction**

This clause provides that the Agvet Code of this State binds the Crown in right of this State and the Crown in all other capacities in respect of which the Parliament of this State has legislative power to bind the Crown.

Clause 12—Agvet Code of other jurisdictions

This clause provides that the Crown in right of this State is bound by the Agvet Codes of each other State, of the Northern Territory and of the participating Territories.

Clause 13—Crown not liable to prosecution

This clause makes it clear that nothing in Part 4, or in the Agvet Code of this State, makes the Crown in any capacity liable to be prosecuted for an offence.

Clause 14—This Part overrides the prerogative

This clause makes it clear that, where the Agvet Code of another State, of the Northern Territory or the participating Territories binds the Crown in right of New South Wales, that Code overrides any prerogative right or privilege of the Crown.

PART 5—APPLICATION OF COMMONWEALTH ADMINISTRATIVE LAWS TO AGVET CODE AND AGVET REGULATIONS OF THIS JURISDICTION**Clause 15—Object**

This clause states that the object of the Part is to help ensure that all the Agvet Codes are administered on a uniform basis.

Clause 16—Application of Commonwealth administrative laws in relation to applicable provisions

This clause applies the Commonwealth administrative laws (which are defined in clause 3) to matters arising under the Agvet Code and Agvet Regulations of this State.

In order to ensure that certain provisions of the Agvet Code of this State do not affect the operation of those administrative laws, the clause provides that:

- (a) obligations imposed on the NRA under that Code to give brief reasons for certain decisions do not affect the obligations of the NRA to give full statements of reasons for its decisions that are required by section 28 of the Administrative Appeals Tribunal Act 1975 of the Commonwealth and section 13 of the Administrative Decisions (Judicial Review) Act 1977 of the Commonwealth; and
- (b) obligations imposed on the NRA under that Code not to disclose confidential commercial information do not affect the obligations of the NRA under the Freedom of Information Act 1982 of the Commonwealth.

Clause 17—Functions and powers conferred on Commonwealth officers and authorities

This clause makes it clear that, in so far as the Commonwealth administrative laws apply to the Agvet Code of this State because of clause 16, those laws confer functions or powers on Commonwealth officers and authorities to the same extent as those laws confer those functions and powers in relation to Commonwealth laws, and the functions and powers are to be exercised as nearly as practicable in the same way as under the Commonwealth laws.

Clause 18—Reference in Commonwealth administrative law to a provision of another law

This clause provides that, for the purpose of the application under clause 16 of the Commonwealth administrative laws to the Agvet Code of this State, a reference in any such administrative law to a provision of that law or of another administrative law is to be treated as a reference to the provision as it applies to that Code under that clause.

PART 6—JURISDICTION OF COURTS**Clause 19—Jurisdiction of Federal Court**

This clause confers jurisdiction on the Federal Court of Australia in all civil matters arising under the Agvet Code or the Agvet Regulations of this State or under Commonwealth laws that apply to that Code or those Regulations. The clause makes it clear that the jurisdiction of State courts is not affected.

Clause 20—Exercise of jurisdiction under cross-vesting provisions

This clause declares that the proposed Act does not affect the operation of the State laws relating to cross-vesting of jurisdiction between courts.

PART 7—THE NATIONAL REGISTRATION AUTHORITY FOR AGRICULTURAL AND VETERINARY CHEMICALS**Clause 21—Conferral of functions and powers on NRA**

This clause declares that the NRA has the functions and powers expressed to be conferred on it under the proposed Act or under the Agvet Code of this State.

In addition it confers certain specified powers on the NRA, which mirror the powers presently conferred on the NRA under section 7 (3) of the Agricultural and Veterinary Chemicals (Administration) Act 1992 of the Commonwealth.

Clause 22—Agreements and arrangements

This clause authorises the Minister or a person authorised by the Minister to enter into an agreement or an arrangement with the Commonwealth Minister responsible for the administration of the agricultural and veterinary chemicals legislation under which the NRA may act as an agent of this State. A corresponding provision exists in section 9 of the Agricultural and Veterinary Chemicals (Administration) Act 1992 of the Commonwealth.

Clause 23—Conferral of other functions and powers for purposes of law in this jurisdiction

This clause empowers the NRA to exercise functions and powers in this State that are conferred on it by the Agvet legislation of another jurisdiction or are referred to in an agreement or arrangement made under a provision of an Act of another jurisdiction that corresponds to clause 22.

Clause 24—Commonwealth Minister may give directions in exceptional circumstances

This clause provides that the power of the Commonwealth Minister who is responsible for the administration of the agricultural and veterinary chemicals legislation to give directions to the NRA under section 10 of the Agricultural and Veterinary Chemicals (Administration) Act 1992 of the Commonwealth extends to giving directions in relation to functions and powers conferred on the NRA under the Agvet Code and Agvet Regulations of this State and Commonwealth laws applying to that Code and those Regulations.

PART 8—MISCELLANEOUS

Clause 25—Orders

This clause provides that orders made under section 7 of the Agricultural and Veterinary Chemicals Code Act 1994 of the Commonwealth are to have the same effect as if they were provisions of the Agvet Regulations of this State.

Clause 26—Manufacturing principles

This clause provides that the manufacturing principles determined by the NRA under section 23 of the Agricultural and Veterinary Chemicals Act 1994 of the Commonwealth are to have effect for the purposes of Part 8 of the Agvet Code of this State.

Clause 27—Delegation

This clause provides that the powers of delegation vested in the Commonwealth Minister responsible for the agricultural and veterinary chemicals legislation of the Commonwealth may also be exercised in relation to powers expressed to be conferred on that Minister under the proposed Act or the Agvet Code of this State.

Clause 28—Conferral of powers on State officers

This clause confers the powers and functions of inspectors on certain State officers.

Clause 29—Application of fees and taxes

As the Commonwealth will be meeting the cost of administering the Agvet Code and Agvet Regulations of this State, this clause provides that all fees, taxes and other money (other than penalties and fines) that are payable under that Code or those Regulations are to be paid to the Commonwealth.

Clause 30—Documents or substances held by previous registering authority may be given to NRA

This clause ensures that the existing registering authority of this State for agricultural and veterinary chemicals will not be prevented by anything in any existing law from giving to the NRA those documents or substances in the authority's possession or custody that relate to the functions to be performed by the NRA.

Clause 31—Exemptions from liability for damages

This clause provides that this State and any co-ordinator nominated by this State for the purposes of the Agvet Code of this State is not liable if a person suffers loss or injury as a result of the use of an approved active constituent for a proposed chemical product, or the use of a registered chemical product. The co-ordinator is a person nominated by the State to perform certain functions under the Agvet Code.

The clause also provides that the fact that a constituent has been approved or a product has been registered by the NRA or that the manufacturer of a product has been licensed by the NRA is not to be a defence in a proceeding brought against the importer, manufacturer, supplier or distributor of the product by a person who has suffered loss or injury as a result of the use of a product.

Clause 32—Regulations

This clause empowers the Governor-in-Council to make regulations for the purposes of the proposed Act.

Clause 33—Eligible laws

This clause enables the regulations to declare laws of this State to be eligible laws for the purposes of the definition of "permit" in section 109 of the Agvet Code. This will allow a permit to be granted under the Agvet Code authorising the doing of something that would otherwise be an offence against that law.

PART 9—IMPOSITION OF FEES AND TAXES**Clause 34—Fees (including taxes)**

This clause is the provision that formally imposes the fees and taxes that are prescribed by the Agvet Regulations of this State for the purposes of applications and other matters under the Agvet Code of this State.

PART 10—CONFERRAL OF FUNCTIONS ON COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**Clause 35—Conferral of functions on Commonwealth Director of Public Prosecutions**

This clause empowers the Director of Public Prosecutions of the Commonwealth to institute and carry on prosecutions for offences against the Agvet Code or the Agvet Regulations of the State.

PART 11—RELATIONSHIP WITH OTHER STATE LAWS

Clause 36—Regulations relating to savings and transitional provisions

This clause will enable regulations to be made with respect to savings and transitional provisions.

Clause 37—Consequential amendment of other State laws

This clause gives effect to Schedule 1 which contains consequential amendments to the Pesticides Act 1978 and the Stock Medicines Act 1989.

SCHEDULE 1—CONSEQUENTIAL AMENDMENT OF OTHER STATE LAWS

This Schedule contains consequential amendments to the Pesticides Act 1978 and the Stock Medicines Act 1989.
