

Passed by both Houses



New South Wales

Primary Industries Legislation Amendment Bill 2012

Contents

	Page
1 Name of Act	2
2 Commencement	2
Schedule 1 Amendment of Apiaries Act 1985 No 16	3
Schedule 2 Amendment of Fisheries Management Act 1994 No 38	11
Schedule 3 Amendment of Pesticides Act 1999 No 80	12
Schedule 4 Amendment of Stock Foods Act 1940 No 19	13
Schedule 5 Amendment of Stock Medicines Act 1989 No 182	14

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2012

Clerk of the Parliaments



New South Wales

Primary Industries Legislation Amendment Bill 2012

Act No , 2012

An Act to make miscellaneous amendments to legislation relating to stock food and medicine, beekeeping and fisheries; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Primary Industries Legislation Amendment Act 2012*.

2 Commencement

- (1) Except as provided by subsection (2), this Act commences on the date of assent to this Act.
- (2) Schedule 1 [1]–[6], [10], [11] and [14] commence on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Apiaries Act 1985 No 16

[1] Section 6 Unregistered persons not to keep bees

Omit section 6 (2)–(5).

[2] Sections 7–13

Omit the sections. Insert instead:

7 Registration of beekeepers

- (1) A person may apply to the Director-General for registration as a beekeeper.
- (2) An application for registration as a beekeeper must:
 - (a) be in the form approved by the Director-General, and
 - (b) be accompanied by the fee (if any) prescribed by the regulations.
- (3) The Director-General may refuse an application for registration as a beekeeper only on the grounds prescribed by the regulations.
- (4) The Director-General must, as soon as practicable after determining an application, by notice in writing served on the applicant:
 - (a) notify the applicant of the fact, and
 - (b) if the application has been granted, issue the applicant a registration number, and
 - (c) if the application has been refused, notify the applicant of the reason for the refusal.
- (5) The Director-General may, by notice in writing served on a registered beekeeper, change the beekeeper's registration number.
- (6) The regulations may prescribe different classes of registration and may prescribe different fees in respect of different classes of registration.

8 Conditions of registration

- (1) The registration of a person as a beekeeper is subject to the conditions (if any) prescribed by the regulations and such other conditions as may be imposed by the Director-General from time to time.

- (2) The conditions imposed on the registration of beekeepers may apply generally, on a specified class of beekeepers or on an individual.
- (3) The Director-General may at any time, by notice in writing served on a registered beekeeper, impose conditions or revoke or vary any conditions imposed by the Director-General on the beekeeper's registration.
- (4) A registered beekeeper must not contravene a condition of the beekeeper's registration.
Maximum penalty: 20 penalty units.

9 Term of registration

- (1) A person's registration as a beekeeper remains in force for the period for which it was granted, unless it is earlier surrendered or cancelled under this Act.
- (2) A person's registration as a beekeeper may be granted for a period not exceeding 2 years.

10 Suspension of registration

- (1) The Director-General may suspend a person's registration as a beekeeper by notice in writing served on the person.
- (2) The Director-General may suspend the registration of a beekeeper only if the Director-General is authorised by the regulations to do so.
- (3) If a person's registration as a beekeeper is suspended, the person must not:
 - (a) sell or attempt to sell apiary products acquired in the course of carrying on the business of a beekeeper, or
 - (b) acquire or attempt to acquire more bees.Maximum penalty: 20 penalty units.
- (4) Notice of the suspension of a person's registration as a beekeeper must specify the date on which the suspension takes effect (being a date after the notice is served) and the period of suspension.
- (5) The suspension of a person's registration as a beekeeper does not affect the term of the person's registration.

11 Cancellation and expiry of registration

- (1) A person ceases to be registered as a beekeeper if:
 - (a) the Director-General cancels a beekeeper's registration by notice in writing served on the person, or
 - (b) the person's term of registration expires, or
 - (c) the person notifies the Director-General, in writing, that he or she is surrendering his or her registration.
- (2) The Director-General may cancel the registration of a beekeeper only if the Director-General is authorised by the regulations to do so.
- (3) Notice of the cancellation of a person's registration as a beekeeper must specify the date on which the cancellation takes effect (being a date after the notice is served).

12 Renewal of beekeeper's registration

- (1) A registered beekeeper may, before the expiry of the beekeeper's term of registration, apply to the Director-General for the renewal of the beekeeper's registration.
- (2) An application for the renewal of a beekeeper's registration must:
 - (a) be in the form approved by the Director-General, and
 - (b) be accompanied by the fee (if any) prescribed by the regulations.
- (3) The regulations may prescribe different fees in respect of the renewal of different classes of registration.
- (4) The Director-General may refuse an application for the renewal of a beekeeper's registration only on the grounds prescribed by the regulations.
- (5) The Director-General must, as soon as practicable after determining an application, by notice in writing served on the applicant:
 - (a) notify the applicant of the fact, and
 - (b) if the application has been refused, notify the applicant of the reason for the refusal.
- (6) If a beekeeper's term of registration (in respect of which an application has been made under this section) would expire before the Director-General determines the application, the registration does not expire until the date on which the application is determined.

- (7) Section 9 applies to the renewal of a beekeeper's registration in the same way as it applies to the granting of registration as a beekeeper and, for that purpose, the term of the renewal of a beekeeper's registration commences on the date on which the beekeeper's registration would, but for this section, have expired.

13 Director-General to keep register of beekeepers

- (1) The Director-General is to maintain a register of beekeepers, in such form as the Director-General considers appropriate.
- (2) The register is to contain:
- (a) the information required by the regulations to be included in the register, and
 - (b) such other information as the Director-General considers, having regard to the purposes of the register, should be kept in the register.
- (3) The purposes for which the register is to be used and maintained under this section include the following:
- (a) to facilitate and assist the operation of this Act and the *Animal Diseases and Animal Pests (Emergency Outbreaks) Act 1991*,
 - (b) to protect public health and safety,
 - (c) to assist in controlling disease and residues in bees and apiary products,
 - (d) to assist in enabling the disease and residue risk or status of bees, beehives, appliances and apiary products to be ascertained,
 - (e) to facilitate the determination of ownership of bees, beehives, appliances and apiary products,
 - (f) to assist in tracing the movement of bees, beehives, appliances and apiary products,
 - (g) to assist in the investigation of the theft of bees, beehives, appliances and apiary products,
 - (h) to facilitate the dissemination of information in relation to the production and marketing of bees and apiary products,
 - (i) to assist with the management of land on which apiaries are located,
 - (j) any other purpose prescribed by the regulations.
- (4) The Director-General must, on the request of an authorised person, at any time allow an authorised person to have access to the information recorded in the register.

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- (5) The Director-General may, subject to section 57 of the *Privacy and Personal Information Protection Act 1998*, allow any other person, on payment of the fee (if any) prescribed by the regulations, to have access at any reasonable time to the information recorded in the register.
- (6) A person who has access to the information recorded in the register is entitled to make notes or obtain a copy of that information.
- (7) A copy of an entry in the register, purporting to be certified by the Director-General as a true copy of the entry, is admissible in evidence in any proceedings under this Act and, in the absence of evidence to the contrary, is proof of its contents.
- (8) In this section, *authorised person* means:
- (a) an inspector, or
 - (b) a police officer, or
 - (c) an employee of a local council, or
 - (d) any other person, or a member of a class of persons, prescribed by the regulations for the purposes of this definition.

[3] Section 15

Omit the section. Insert instead:

15 Beehives to be identified

A registered beekeeper must cause each beehive that is kept by the beekeeper to be identified:

- (a) with the beekeeper's registration number, and
- (b) in accordance with any conditions to which the beekeeper's registration is subject.

Maximum penalty: 20 penalty units.

[4] Section 15A Forfeiture of beehives in certain cases

Omit section 15A (2).

[5] Section 15A (6)

Omit "or before the expiry of the period specified in section 15 (1) (as the case may require)".

[6] Section 15A (7)

Omit the subsection. Insert instead:

- (7) The notice must state that the beehive will be forfeited to the Crown unless, by the date specified in the notice (being a date that is at least 28 days after the notice is first displayed in the immediate vicinity of the hive), the owner of the hive causes the hive to be identified before the expiry of that period.

[7] Section 18 Power of Director-General to restrict beekeeping on certain premises

Insert after section 18 (1):

- (1A) If the Director-General makes an order under subsection (1) directing a person to remove an apiary or one or more beehives, the Director-General may also specify the premises to which the apiary or beehives are to be moved.
- (1B) If the Director-General makes an order directing a person to move an apiary or beehives to specified premises, the person may instead destroy the apiary or beehive and, if they do so, is taken to have complied with the order.

[8] Section 18 (7)

Omit the subsection. Insert instead:

- (7) If the Director-General is satisfied that:
 - (a) a person has failed to comply with a direction under subsection (1) (e), or
 - (b) a person has removed the apiary or beehives concerned from particular premises in purported compliance with such a direction to other premises in respect of which an order under subsection (1) or (2) is in force,the Director-General may direct an inspector to remove the apiary or one or more beehives, or to destroy or otherwise dispose of the apiary or one or more beehives, in such manner as the inspector considers appropriate.

[9] Section 27A

Insert after section 27:

27A Permits

- (1) An inspector may, on application or on the inspector's own initiative, issue a permit authorising the movement or keeping of

bees, beehives, apiary products or appliances that would otherwise contravene a provision of this Act.

- (2) A permit may apply generally or may apply to a specified class of persons.
- (3) An application for a permit must:
 - (a) be in the form approved by the Director-General, and
 - (b) be accompanied by the fee (if any) prescribed by the regulations.The regulations may prescribe different fees in respect of different permits.
- (4) A permit has effect for the period of time, and is subject to any conditions, specified in the permit.
- (5) The inspector may specify such conditions as the inspector thinks fit having regard to the reason for the permit being issued.
- (6) An inspector may, at any time, revoke or vary a permit or a condition of a permit issued to a particular person by notice in writing to the person.
- (7) An inspector may, at any time, revoke or vary a permit or a condition of a permit issued to a class of persons by means of an instrument in writing published on the Department's internet website or published in any other manner that, in the opinion of the Director-General, is most likely to bring it to the attention of the persons who will be affected by it.
- (8) A person who moves or keeps bees, beehives, apiary products or appliances under the purported authority of a permit issued under this section must not contravene a condition to which the permit is subject.

Maximum penalty: 20 penalty units.
- (9) A person is not guilty of an offence under this Act in respect of the movement or keeping of bees, beehives, apiary products or appliances in accordance with a permit issued under this section.
- (10) The regulations may make provision for or with respect to permits under this section.

[10] Section 35 Applications for review

Omit "12 (3) or (4)" from section 35 (1) (c). Insert instead "11".

[11] Section 35 (1) (d)

Omit the paragraph. Insert instead:

- (d) a decision of the Director-General under section 10 to suspend that person's registration,

[12] Section 44 Evidentiary provisions

Omit "prohibited area" from section 44 (3) (d).

Insert instead "prohibited zone".

[13] Schedule 5 Savings and transitional provisions

Insert at the end of clause 6 (1):

any other Act that amends this Act

[14] Schedule 5

Insert after clause 11:

12 Registration of beekeepers

- (1) The registration of a person as a beekeeper that was in force, immediately before the substitution of sections 7–13 by the *Primary Industries Legislation Amendment Act 2012*:
 - (a) is taken to have been granted under, and is subject to, those sections as so substituted, and
 - (b) expires on the day on which the registration would have expired but for that substitution (unless the registration is renewed in accordance with section 12 as so substituted), and
 - (c) is subject to the conditions, if any, to which it was subject immediately before that substitution (unless the conditions are varied in accordance with those sections as so substituted).
- (2) The registration number of a beekeeper who is taken to have been granted registration by subclause (1) is the same as the beekeeper's registration number immediately before the substitution of sections 7–13 by the *Primary Industries Legislation Amendment Act 2012*.

13 Register of beekeepers

The register of beekeepers kept under section 13 immediately before the substitution of that section by the *Primary Industries Legislation Amendment Act 2012* is taken to be the register required to be kept under that section as so substituted.

Schedule 2 Amendment of Fisheries Management Act 1994 No 38

[1] Section 256 Production of records relating to commercial fishing activities and fish receivers

Insert “to do one or more of the following” after “require a person” in section 256 (1).

[2] Section 256 (1) (a) (iii)

Omit “business, and”. Insert instead “business,”.

[3] Section 256 (1) (b)

Omit “records, and”. Insert instead “records,”.

[4] Section 256 (1) (c)

Omit “, immediately or within a specified period,”.

[5] Section 256 (2A)

Insert after section 256 (2):

(2A) If a fisheries officer requires a person to answer a question under subsection (1) (c), the officer may specify one or more of the following:

- (a) that the answer be given either orally or in writing,
- (b) that the answer be given immediately, at a specified time or within a specified period,
- (c) that the answer be given at a specified place.

[6] Section 258B Provisions relating to requirements to provide information or answer questions

Omit “258,” from section 258B (3).

[7] Section 258B (6)

Omit “258 or”.

[8] Schedule 7 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

any other Act that amends this Act

Schedule 3 Amendment of Pesticides Act 1999 No 80

Section 5 Definition of “pesticide”

Omit section 5 (1). Insert instead:

- (1) In this Act, *pesticide* means:
 - (a) an agricultural chemical product (within the meaning of the Agvet Code), or
 - (b) a veterinary chemical product (within the meaning of the Agvet Code) that:
 - (i) is represented as being suitable for, or is manufactured, supplied or used for, the external control of ectoparasites of animals, and
 - (ii) is concentrated and requires dilution or mixing in water before use, and
 - (iii) is not prescribed under the *Stock Medicines Act 1989* as a low-risk veterinary chemical product.

Note. The Agvet Code defines an **agricultural chemical product** to be a substance or a mixture of substances that is represented, imported, manufactured, supplied or used as a means of directly or indirectly:

- (a) destroying, stupefying, repelling, inhibiting the feeding of, or preventing infestation by or attacks of, any pest in relation to a plant, a place or a thing, or
- (b) destroying a plant, or
- (c) modifying the physiology of a plant or pest so as to alter its natural development, productivity, quality or reproductive capacity, or
- (d) modifying an effect of another agricultural chemical product, or
- (e) attracting a pest for the purpose of destroying it.

The term also includes a substance or mixture of substances declared by regulations to be an agricultural chemical product.

Schedule 4 Amendment of Stock Foods Act 1940 No 19

[1] Section 6 Packages of stock food and supplement to be labelled

Omit section 6 (2).

**[2] Section 6A Supplier of bulk stock foods to provide customer with
information statement**

Omit “However, this section does not apply to a supply by retail of a portion of the contents of a package labelled as required by section 6 when the supply is without alteration of, or addition to, that portion of the contents.” from section 6A (3).

[3] Section 20 Authorisation of inspectors and analysts

Omit section 20 (2).

[4] Schedule 1 Savings and transitional provisions

Insert at the end of clause 1 (1):

any other Act that amends this Act

Schedule 5 Amendment of Stock Medicines Act 1989 No 182

[1] Section 3 Definitions

Omit the definition of *stock medicine* from section 3 (1). Insert instead:
stock medicine—see section 3A.

[2] Section 3A

Insert after section 3:

3A Definition of “stock medicine”

- (1) In this Act, *stock medicine* has the same meaning as veterinary chemical product in the Agvet Code, except as provided by this section.
- (2) *Stock medicine* also includes a substance or mixture of substances that is:
 - (a) prepared by a pharmacist in accordance with the instructions of a veterinary practitioner, or
 - (b) prepared by a veterinary practitioner in the course of the practice of his or her profession.
- (3) *Stock medicine* does not include a veterinary chemical product (within the meaning of that Code) that:
 - (a) is represented as being suitable for, or is manufactured, supplied or used for, the external control of ectoparasites of stock, and
 - (b) is concentrated and requires dilution or mixing in water before use,unless it is prescribed by the regulations to be a low-risk veterinary chemical product.

[3] Section 39E Records to be kept by veterinary practitioners

Insert “registered stock medicine that is a” after “of any” in section 39E (c).

[4] Section 50 Powers of inspectors

Omit “prescribed” from section 50 (1) (d).

[5] Section 52 Retention and disposal of seized property

Omit “in the prescribed manner” from section 52 (3) (b).

[6] Section 55 Certificate of analyst to be evidence

Omit “in or to the effect of the form prescribed” from section 55 (1).

[7] Schedule 2 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

any other Act that amends this Act