

[Act 2001 No 45]



New South Wales

Co-operative Schemes (Administrative Actions) Bill 2001

Explanatory note

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

This Bill is cognate with the *Agricultural and Veterinary Chemicals (New South Wales) Amendment Bill 2001*.

Overview of Bill

This Bill is part of a legislative response to the decision of the High Court in *The Queen v Hughes* (2000) 171 ALR 155 and other related matters, which includes the *Agricultural and Veterinary Chemicals (New South Wales) Amendment Bill 2001* and the *Commonwealth Agricultural and Veterinary Chemicals Legislation Amendment Bill 2001*.

The explanatory note to the *Agricultural and Veterinary Chemicals (New South Wales) Amendment Bill 2001* sets out the relevant background in respect of the matter.

The object of this Bill is to deal with doubts cast by the decision in *Hughes* on the ability of Commonwealth authorities or officers to exercise powers and perform functions under State laws in relation to the following inter-governmental legislative schemes:

- (a) the co-operative scheme for agricultural and veterinary chemicals, or
- (b) any other co-operative scheme to which the proposed Act is applied by proclamation.

This Bill ensures that functions or powers are not imposed on Commonwealth authorities and officers in connection with administrative actions under the schemes if their imposition would exceed the legislative powers of the State, and validates any such previous invalid administrative action.

In relation to the co-operative scheme for agricultural and veterinary chemicals, this Bill is supported by the *Commonwealth Agricultural and Veterinary Chemicals Legislation Amendment Bill 2001*, which seeks to authorise the conferral of duties on Commonwealth authorities and officers by State law to the fullest extent that is constitutionally possible.

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 defines certain words and expressions used in the proposed Act. The expression *invalid administrative action* is defined as an administrative action taken by a Commonwealth authority or officer pursuant to a function or power conferred under a co-operative scheme established by a relevant State Act to which the proposed Act applies, and that is invalid because its conferral on the Commonwealth authority or officer is not supported by a head of power in the Commonwealth Constitution.

Clause 4 defines the relevant State Acts to which the proposed Act applies, namely, the *Agricultural and Veterinary Chemicals (New South Wales) Act 1994* and any other State Act declared by proclamation of the Governor. The clause enables the relevant commencement time for the validation under the proposed Act to be declared by proclamation.

Clause 5 ensures that a relevant State Act is construed as not conferring a duty on a Commonwealth authority or officer to perform a function or exercise a power if the conferral of the duty would be beyond the legislative power of the Parliament of the State. In the case of the co-operative scheme for agricultural and veterinary chemicals, the clause complements the Commonwealth *Agricultural and Veterinary Chemicals Legislation Amendment Bill 2001* (which seeks to authorise the conferral of duties on Commonwealth authorities and officers by State law to the fullest extent that is constitutionally possible).

Part 2 Validation of invalid administrative actions

Clause 6 provides that the proposed Part applies to previous invalid administrative actions, namely any such action taken or purportedly taken under a relevant State Act at or before the commencement time in relation to that Act (the relevant commencement time).

Clause 7 deals with the operation of the proposed Part. Clause 7 (1) provides that the proposed Part extends to affect rights and liabilities that are or have been the subject of legal proceedings. Clause 7 (2) provides that the proposed Part does not affect rights and liabilities arising between parties to legal proceedings heard and finally determined at or before the relevant commencement time to the extent to which they arise from, or are affected by, an invalid administrative action. Clause 7 (3) ensures that the proposed Part extends to certain previous administrative action that is to be validated by the cognate *Agricultural and Veterinary Chemicals (New South Wales) Amendment Bill 2001*.

Clause 8 provides that every invalid administrative action to which the proposed Part applies has (and is deemed always to have had) the same force and effect as it would have had if it had been taken by a duly authorised State authority or officer of the State. The clause does not in terms validate administrative actions taken by Commonwealth authorities and officers, but rather attaches to the actions retrospectively the same force and effect as would have ensued had the actions been taken by State authorities and officers (a similar distinction was drawn in *The Queen v Humby, Ex parte Rooney* (1973) 129 CLR 231).

Clause 9 complements clause 8 and does not affect the generality of clause 8. The clause declares that the rights and liabilities of all persons are (and always have been) for all purposes the same as if every invalid administrative action to which the proposed Part applies had been taken by a duly authorised State authority or officer of the State.

Clause 10 ensures that the proposed Part does not reinstate administrative actions that, since the action was taken, have been affected by another action or process. For example, if a decision has been altered on review, the proposed Part does not reinstate the decision in its original form. The proposed Part applies to the decision as it is affected by later actions from time to time.

Part 3 Miscellaneous

Clause 11 provides that the proposed Act binds the Crown.

Clause 12 provides that it is immaterial for the purposes of the proposed Act that a Commonwealth authority or officer does not have a counterpart in the State, or that the powers and functions of State authorities or officers do not correspond to the powers and functions of Commonwealth authorities or officers.

Clause 13 provides that the proposed Act does not give rise to any liability against the State.

Clause 14 empowers the making of regulations for the purposes of the proposed Act.