

# Pesticides Regulation 1995

[1995-510]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Note**

The [Pesticides Regulation 1995](#) made under the [Pesticides Act 1978](#) is on and from 1.7.2000 taken to be a regulation under the [Pesticides Act 1999 No 80](#). See clause 11 of Schedule 2 to the [Pesticides Act 1999](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 31 August 2008

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New South Wales

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# Pesticides Regulation 1995



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation may be cited as the *Pesticides Regulation 1995*.

### 2 Commencement

This Regulation commences on 1 September 1995.

### 3 Definitions

(1) In this Regulation:

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

**the Act** means the *Pesticides Act 1999*.

(2) The explanatory note, notes in the text of this Regulation, and table of contents do not form part of this Regulation.

## Part 2 Licences and approvals for the application of pesticides from aircraft

### 4 Application for licence: section 46

(1) (Repealed)

(2) For the purposes of section 46 (2) (b) of the Act:

(a) \$50 is the prescribed fee to accompany an application for an aircraft (pesticide applicator) licence, and

(b) \$50 is the prescribed fee to accompany an application for a pilot (pesticide rating) licence.

(3) The fee to accompany an application for a pilot (pesticide rating) licence may be waived if the applicant is the holder of a current equivalent licence issued in another State or Territory.

## **5 Particulars to accompany application for licence: section 46**

- (1) For the purposes of section 46 (3) (c) of the Act, the following particulars are required to accompany an application for an aircraft (pesticide applicator) licence:
  - (a) evidence that the applicant is the holder of an air operator's certificate endorsed for agricultural operations and issued under the Air Navigation Regulations of the Commonwealth,
  - (b) the date of expiry of the insurance policy referred to in section 46 (3) (b).
- (2) For the purposes of section 46 (4) (b) of the Act, the following particulars are required to accompany an application for a pilot (pesticide rating) licence:
  - (a) evidence that the applicant is the holder of a current commercial or senior commercial pilot licence issued under the Air Navigation Regulations of the Commonwealth and endorsed with an agricultural rating,
  - (b) evidence that the applicant:
    - (i) is the holder of a certificate of approval issued under the Spray Safe Accreditation Program conducted by the Aerial Agricultural Association of Australia, or
    - (ii) has passed an examination conducted in accordance with the requirements of Schedule 2 or has passed an equivalent examination in another State or Territory,
  - (c) details of any pesticide to which the licence should be restricted,
  - (d) particulars of any licence or certificate issued to the applicant in New South Wales or any other State or Territory in relation to the aerial application of pesticides or of any refusal to issue any such licence or certificate or the cancellation or suspension of any such licence or certificate.

## **6 Prescribed qualifications for issue of licence: section 48**

- (1) For the purposes of section 48 (2) (b) of the Act, an applicant for an aircraft (pesticide applicator) licence has the prescribed qualifications if the applicant holds an air operator's certificate endorsed for agricultural operations and issued under the Air Navigation Regulations of the Commonwealth.
- (2) For the purposes of section 48 (3) (b) of the Act, an applicant for a pilot (pesticide rating) licence has the prescribed qualifications if:
  - (a) the applicant holds a current commercial or senior commercial pilot licence issued under the Air Navigation Regulations of the Commonwealth and endorsed with an agricultural rating, and

(b) the applicant:

- (i) is the holder of a certificate of approval issued under the Spray Safe Accreditation Program conducted by the Aerial Agricultural Association of Australia, or
- (ii) has passed an examination conducted in accordance with the requirements of Schedule 2 or has passed an equivalent examination in another State or Territory.

#### **6A Records of aerial application of pesticides**

For the purposes of section 54 (2) (g) of the Act, the following additional particulars are required to be contained in a record made under that section:

- (a) a description of the crop in respect of which the pesticide was applied or other situation in which it was used,
- (b) the rate of application of the pesticide and the quantity applied,
- (c) the name, address and contact details of the owner or occupier of the land in respect of which the pesticide was applied.

#### **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.

### **Part 3 Compulsory training for certain pesticide users**

#### **Division 1 Preliminary**

##### **7 Definitions**

(1) In this Part:

***Australian Qualifications Framework*** means the Australian Qualifications Framework developed under instructions from the Ministerial Council on Education, Employment, Training and Youth Affairs.

***former authority (fumigation permit)*** means a fumigation permit in force under the *Occupational Health and Safety (Pest Control) Regulation 1988* immediately

before its repeal.

**former authority (pest control operator's licence)** means a pest control operator's licence in force under the *Occupational Health and Safety (Pest Control) Regulation 1988* immediately before its repeal.

**fumigant** has the same meaning as in clause 265 of the *Occupational Health and Safety Regulation 2001*.

**prescribed qualification** means a qualification with respect to the use of pesticides that is granted to a person by a registered training organisation:

- (a) in accordance with the Australian Qualifications Framework, and
- (b) in recognition of the person's satisfactory achievement of specified units of competency or parts of units of competency (being units of competency, or parts of units of competency, that, at the time the prescribed qualification is issued, are approved by the Environment Protection Authority under clause 8).

**registered training organisation** has the same meaning as in the *Vocational Education and Training Act 2005*.

(2) In this Part, a reference to evidence of a qualification is a reference to:

- (a) in the case of a permit or licence, the permit or licence concerned, and
- (b) in the case of any other qualification:
  - (i) a document that is issued to a person as the qualification concerned achieved by that person, or
  - (ii) a document (including a card) that is issued to the holder of the qualification concerned by a registered training organisation, or other person or body approved by the Authority, as a record or evidence (or both) of the person's achievement of that qualification.

(3) For the purposes of this Part, a prescribed qualification ceases to have effect in relation to a person at the end of 5 years after the person last obtained the qualification (unless sooner cancelled or revoked).

**Note—**

In order to remain qualified, a person will therefore need to requalify every 5 years.

## **Division 2 Requirement for pesticide users to hold prescribed qualification**

### **7A Only qualified persons to use pesticides in certain circumstances**

(1) A person must not use a pesticide in any of the following circumstances unless he or



she holds a prescribed qualification:

- (a) in the course of acting as, or for or on behalf of, the landlord of any premises,
- (b) in the course of acting for or on behalf of a public authority,
- (c) in the course of carrying out pest control operations on a golf course, sporting field or bowling green,
- (d) in connection with any agricultural operations (including farming, horticultural or aquacultural operations) or forestry operations,
- (e) in the course of carrying on, or working in, a business, educational institution or hospital (whether as principal, contractor or employee, and regardless of whether, in the case of a business, the use of pesticides is a purpose of the business concerned).

Maximum penalty: 200 penalty units.

- (2) A person must not employ or engage a person to use a pesticide in any circumstance referred to in subclause (1) unless the second-mentioned person holds a prescribed qualification and evidence of the prescribed qualification.

Maximum penalty: 200 penalty units (in the case of an individual) or 400 penalty units (in the case of a corporation).

- (3) This clause does not apply to the storage of pesticides.
- (4) This clause commences on 1 September 2005.

#### **7B Exceptions to clause 7A (1) offence**

- (1) Clause 7A (1) does not apply to any person who:
  - (a) holds a licence under the Act, or
  - (b) 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 in clause 11 (Application of pesticides) or 12 (Use of fumigants) of the Schedule to clause 266 of that Regulation, or
  - (c) is a trainee doing work of the type referred to in paragraph (b) 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
  - (d) holds a former authority (pest control operator's licence) that is taken to be a certificate of competency under clause 268 of that Regulation.

- (2) Clause 7A (1), to the extent only to which it prohibits a person from using a fumigant unless he or she holds a prescribed qualification, does not apply to any person who holds a former authority (fumigation permit) that is taken to be a certificate of competency under clause 268 of the *Occupational Health and Safety Regulation 2001*.
- (3) Clause 7A (1) does not apply in relation to the use of a pesticide in public baths or in any swimming pool or spa.

#### **7C Defence to clause 7A offences**

- (1) It is a defence in any proceedings against a person for an offence under clause 7A (1) or (2) if the person establishes that the pesticide concerned:
  - (a) was being applied by hand or by a hand-held applicator, and
  - (b) was being used in a quantity that:
    - (i) in the case of outdoor use, is appropriate for outdoor domestic purposes (so long as it does not exceed 20 litres or 20 kilograms of “ready-to-use” product or 5 litres or 5 kilograms of concentrated product), or
    - (ii) in the case of indoor use, is appropriate for indoor domestic purposes (so long as it does not exceed 5 litres or 5 kilograms of “ready-to-use” product or 1 litre or 1 kilogram of concentrated product).
- (2) Subclause (1) does not apply unless the pesticide concerned:
  - (a) is ordinarily used for domestic purposes (including home gardening), and
  - (b) is widely available to the general public at retail outlets (for example, at supermarkets).

#### **7D Additional defence and other provisions relating to clause 7A (1) (d) offence**

- (1) It is a defence in any proceedings against a person for an offence under clause 7A (1) (d) if the person establishes, in connection with the agricultural operations or forestry operations concerned:
  - (a) that the person used the pesticide under the direct supervision of the holder of a relevant qualification, and
  - (b) that the holder of the relevant qualification:
    - (i) selected the pesticide as the pesticide to be used, and
    - (ii) prepared the pesticide for use, and
    - (iii) tested and calibrated the equipment used to apply the pesticide before it was so used, and

- (iv) instructed the person in how to apply the pesticide, and
  - (c) that the person applied the pesticide by hand-held and hand-powered equipment, and
  - (d) that the person applied pesticide in connection with the agricultural operations or forestry operations concerned on no more than 12 days in the previous 12 months and on no more than 4 days in the previous month.
- (2) A person must not supervise a person, who does not hold a prescribed qualification, in the use of a pesticide in connection with any agricultural operations or forestry operations unless:
- (a) if the pesticide is a fumigant, the first-mentioned person holds a relevant qualification, or
  - (b) in any other case, the first-mentioned person holds a relevant qualification referred to in paragraph (a), (b), (c) or (e) of the definition of that term in subclause (3).

Maximum penalty: 200 penalty units.

- (3) For the purposes of this clause:

**relevant qualification** means:

- (a) a prescribed qualification, or
  - (b) a licence, certificate of competency or recognised qualification referred to in clause 7B (1) (a) or (b), or
  - (c) a former authority (pest control operator's licence) that is taken to be a certificate of competency as referred to in clause 7B (1) (d), or
  - (d) in connection only with the supervision of the use of a fumigant, a former authority (fumigation permit) that is taken to be a certificate of competency as referred to in clause 7B (2), or
  - (e) a certificate of completion or a statement of attainment referred to in clause 8A.
- (4) Subclause (2) commences on 1 September 2005.

### **Division 3 Other requirements relating to qualifications**

#### **7E Evidence of qualification must be produced on request**

- (1) A person who:
- (a) under clause 7A (1), is required to hold a prescribed qualification in respect of the use of a pesticide, or

(b) under clause 7D (2), is required to hold a relevant qualification in respect of the supervision of the use of a pesticide,

must, if requested to do so by an authorised officer, produce evidence of the qualification concerned for inspection by the authorised officer.

Maximum penalty: 200 penalty units.

(2) This clause commences on 1 September 2005.

#### **7F False representations and fraudulent misuse of evidence of prescribed qualification**

(1) A person must not forge or alter evidence of a prescribed qualification.

Maximum penalty: 100 penalty units.

(2) A person must not falsely represent, whether in writing, by word or by conduct, that he or she is the holder of a prescribed qualification.

Maximum penalty: 100 penalty units.

(3) This clause commences on 1 September 2005.

### **Division 4 Miscellaneous provisions relating to prescribed qualifications**

#### **8 Approval of units of competency for prescribed qualification**

(1) The Environment Protection Authority may from time to time approve of units of competency, or parts of units of competency, for the purposes of the definition of ***prescribed qualification*** in clause 7.

(2) The Authority may only approve of units of competency, or parts of units of competency, if the units of competency are specified in a current Training Package endorsed by the National Training Framework Committee of the Australian National Training Authority (being an Authority established under the [Australian National Training Authority Act 1992](#) of the Commonwealth).

(3) Before approving units of competency, or parts of units of competency, under this clause, the Authority:

(a) must consult relevant groups, including registered training organisations and environmental and industry representatives, and

(b) must be satisfied that the proposed units of competency, or parts of units of competency, are relevant to the objects of the Act.

(4) An approval under this clause:

(a) must clearly identify all units of competency, or parts of units of competency,

required to be achieved for the issue of a prescribed qualification, and

- (b) may specify that particular units of competency, or particular parts of units of competency, must be achieved by particular pesticide users or classes of pesticide users (including, for example, the users of a particular type of pesticide).
- (5) An approval under this clause is to be published in the Gazette and takes effect on the day that it is so published or on such later date as may be specified in the approval.
- (6) The Authority must ensure that copies of any approval in force under this clause are available for public inspection, without charge and during ordinary business hours, at each of its offices.

**8A Transitional provision concerning certificates of competency and statements of attainment**

(1) A person who holds:

- (a) a certificate of completion under the ChemCert (NSW) Ltd Farm Chemical User Training Program (also known as the Farmcare Australia Farm Chemical User Training Program), or
- (b) a statement of attainment on completion of the SMARTtrain Chemical Application Course, the SMARTtrain Managing Chemical Use Course or the SMARTtrain Chemical Risk Management Course,

that is current immediately before 1 September 2003 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 of attainment, as the case may be (unless sooner cancelled or revoked).

(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 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.

**Note—**

Accordingly, before the date that such a certificate or statement ceases to be a prescribed qualification for the purposes of this Part, the person who holds the certificate or statement must ensure that he or she undertakes the training and assessment necessary for the award of a prescribed qualification.

## **Part 4 Prohibited residues and restricted pesticides**

### **9 (Repealed)**

### **10 Prohibited residues: section 63**

- (1) For the purposes of paragraph (b) of the definition of ***agricultural produce*** in section 63 of the Act, the following are prescribed produce:
  - (a) any produce of a kind referred to in Schedule 1 or 2 to General Food Standard 1.4.2 of the Food Standards Code, and
  - (b) any vegetation from which produce of a kind so referred to is obtained.
- (2) For the purposes of section 63 (2) (a) of the Act:
  - (a) a substance referred to in the shaded boxes in Schedule 1 or 2 to General Food Standard 1.4.2 of the Food Standards Code is a prescribed substance, and
  - (b) the concentration of the substance specified in Schedule 1 or 2 to General Food Standard 1.4.2 in respect of any agricultural produce is prescribed as the maximum permissible concentration of that substance in respect of that produce.

### **11 Certificates authorising preparation and use of restricted pesticides: section 56**

- (1) (Repealed)
- (2) For the purposes of section 56 (2) (b) of the Act, \$10 is the prescribed fee for an

application for a certificate to authorise the use or possession of a restricted pesticide.

(3) (Repealed)

## **Part 4A Records relating to use of pesticides**

### **11A Application of Part**

This Part does not apply to or in respect of aerial pesticide operations for which a licence is required under the Act.

### **11B Requirement to make records relating to use of pesticides for commercial and occupational purposes**

(1) A person must make (or cause to be made) a record, in accordance with clause 11D, that relates to each occasion on which the person uses a pesticide:

- (a) in the course of carrying on a business involving the use of pesticides (regardless of whether that use is the primary purpose of the business concerned), or
- (b) while acting in the capacity as, or while carrying out pest control operations for, the landlord of the premises on which the pesticide is used, or
- (c) while carrying out pest control operations for or on behalf of a public authority, or
- (d) while carrying out pest control operations on a golf course or bowling green.

Maximum penalty: 400 penalty units in the case of a corporation, or 200 penalty units in the case of an individual.

(2) Subclause (1) does not apply in relation to the use of a pesticide that:

- (a) is ordinarily used for domestic purposes (including home gardening), and
- (b) is widely available to the general public at retail outlets (for example, at supermarkets), and
- (c) is being applied by hand or hand-held applicator, and
- (d) is being used in a quantity that:
  - (i) in the case of outdoor use—is appropriate for outdoor domestic purposes (so long as it does not exceed 20 litres or 20 kilograms of “ready-to-use” product or 5 litres or 5 kilograms of concentrated product), or
  - (ii) in the case of indoor use—is appropriate for indoor domestic purposes (so long as it does not exceed 5 litres or 5 kilograms of “ready-to-use” product or 1 litre or 1 kilogram of concentrated product).

(3) Subclause (1) does not apply in relation to the use of a pesticide in public baths or in

any swimming pool or spa.

(4) Subclause (1) does not apply to persons to whom clause 11C applies.

(5) If:

(a) a pesticide is used by a person individually (or as part of a team) while carrying out pest control operations for or on behalf of a public authority, and

(b) the pest control operations:

(i) involve the use of hand-held equipment only, and

(ii) are carried out under the supervision or direction of a person who has on-site responsibility for the operations (***the responsible person***),

the requirement to make a record in relation to the use of the pesticide applies to the responsible person and not to the individual person or to each member of the team.

(6) In subclause (5):

**team** means a group of workers (including a group of workers who are members of a volunteer organisation) who are assigned to carry out a specific operation and who are working separately from any other group of workers.

**11C Requirement to make records relating to use of pesticides in connection with agricultural, farming or forestry operations**

(1) This clause applies to persons who use pesticides in connection with any agricultural, farming or forestry operations.

(2) A person to whom this clause applies must make (or cause to be made) a record, in accordance with clause 11D, that relates to each occasion on which the person uses a pesticide in any of the circumstances described in subclause (3).

Maximum penalty: 400 penalty units in the case of a corporation, or 200 penalty units in the case of an individual.

(3) The circumstances in which a record is required to be made are as follows:

(a) whenever livestock are treated for ectoparasites by means of a dip bath or by the use of powered spray equipment that is not hand held,

(b) whenever harvested horticultural crops are treated by means of a dip bath,

(c) whenever any spray equipment is used to apply a pesticide for horticultural purposes (including the spraying of fallow crop land),

(d) whenever any powered spray equipment is used to spray crops, fallow crop land or trees in a plantation (including in or around such trees),



- (e) whenever ground driven powered spray equipment that is not hand held is used,
  - (f) whenever baits are applied to control vertebrate pests (other than baits that are used to control rodents in or around buildings).
- (4) A record is not required to be made in the circumstances referred to in subclause (3) (c) if:
- (a) the application consists of spot spraying that is confined to a small and restricted area on or within a tree crop, and
  - (b) the pesticide is applied by hand held and hand powered equipment only, and
  - (c) the pesticide is applied no closer than 20 metres to a property boundary.
- (5) In this clause:

**ground driven powered spray equipment** means powered spray equipment that is mounted on or attached to a vehicle.

**horticultural crops** means fruit, vegetables, flowers, nuts and herbs.

**powered spray equipment** means spray equipment that is powered otherwise than by human energy.

**spray equipment** means any device or apparatus that distributes pesticide through the air, and includes ground driven powered spray equipment and powered spray equipment.

#### **11D Information to be contained in record**

- (1) A record required to be made under clause 11B or 11C must contain the following information:
- (a) the full product name of the pesticide applied,
  - (b) a description of the crop in respect of which the pesticide was applied or other situation in which it was used,
  - (c) the rate of application of the pesticide and the quantity applied,
  - (d) a description of the equipment used to apply the pesticide,
  - (e) the address of the property and the delineation of the area in which the pesticide was released and, in the case of a record under clause 11C, the order in which areas (such as paddocks or sheds) were treated,
  - (f) the date and times of the application of the pesticide (including the start and finish time),

- (g) the name, address and contact details of the person who applied the pesticide or, in the case where the pesticide was applied by a person employed to apply the pesticide, the name of the employee and the name, address and contact details of the employer,
  - (h) the name, address and contact details of the owner or occupier of the land in respect of which the pesticide was applied (if the information is not the same as the information required by paragraph (g)),
  - (i) in the case where the record is required to be made by a responsible person (as referred to in clause 11B (5))—the name of each worker who used the pesticide under the on-site supervision or direction of the responsible person,
  - (j) if the pesticide is applied outdoors by means of any spray equipment within the meaning of clause 11C:
    - (i) the estimated wind speed and direction at the start of the application and whenever there is any significant change during the application, and
    - (ii) if other weather conditions (such as temperature, humidity or rainfall conditions) are specified on the pesticide label as being relevant for the proper use of the pesticide—a description of those conditions at the start of the application and whenever there is any significant change during the application.
- (2) The record must:
- (a) be made as soon as practicable after the use of the pesticide concerned and, in any event, no later than 24 hours after the pesticide is used, and
  - (b) be in writing and in the English language, and
  - (c) be legible.

### **11E Keeping and provision of records**

- (1) A person who is required to make a record under clause 11B (1) (a) or (b) must keep the record for a period of not less than 3 years after the date on which the record was made.

Maximum penalty: 400 penalty units in the case of a corporation, or 200 penalty units in the case of an individual.

- (2) A person who is required to make a record under clause 11B (1) (c) or (d) or 11C must:
- (a) if the person is the owner or occupier of the land on which the pesticide was applied—keep the record for a period of not less than 3 years after the date on

which the record was made, or

(b) if the person is an employee—provide the record to the person’s employer, or

(c) if the person is a contractor:

(i) keep the record for a period of not less than 3 years after the date on which the record was made, and

(ii) provide a copy of the record to the owner or occupier of the land on which the pesticide was applied.

Maximum penalty: 400 penalty units in the case of a corporation, or 200 penalty units in the case of an individual.

(3) A person who is provided with a record or a copy of a record under this clause must keep it for a period of at least 3 years after the date on which the person is provided with the record or copy.

Maximum penalty: 300 penalty units in the case of a corporation, or 150 penalty units in the case of an individual.

(4) In this clause:

**contractor** means a person who is engaged (other than under a contract of employment) for fee or reward to carry out operations involving the use of pesticides.

**employee** means a person employed under a contract of employment and who carries out operations involving the use of pesticides in the course of that employment.

#### **11F False or misleading information in record**

A person must not, in any record required to be made under clause 11B or 11C, make any statement, or include any information, that is false or misleading in a material particular.

Maximum penalty: 400 penalty units in the case of a corporation, or 200 penalty units in the case of an individual.

#### **11G Exemption from record keeping requirements**

(1) The Environment Protection Authority may, by notice published in the Gazette, exempt a specified person or specified class of persons from any requirement under this Part.

(2) Without limiting subclause (1), an exemption may relate to particular kinds of information referred to in clause 11D.

(3) Before making an exemption under this clause, the Environment Protection Authority is required to consult with such persons or bodies as the Authority considers

appropriate (including the representatives of any relevant environmental or industry group).

### **11H Integration with other record keeping requirements**

The Environment Protection Authority may approve, either in a particular case or generally, of the integration of records that are required to be made and kept under this Part with other records that are required to be made and kept under any other law.

## **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.

### **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
- (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
  - (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
  - (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.
- (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 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

(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.

**115 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.
- (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.

### **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.

## **Part 5 Miscellaneous provisions**

### **12 (Repealed)**

### **13 Penalty notice offences: section 75**

Each offence created by a provision specified in Column 1 of Schedule 1 is prescribed as a penalty notice offence for the purposes of Division 2 of Part 10 of the Act.

### **14 Amounts of penalty payable: section 78**

The prescribed penalty payable under a penalty notice in relation to a penalty notice offence is:

- (a) the amount specified in Column 2 of Schedule 1, or
- (b) if the person alleged to have committed the offence is a corporation, and if a greater amount is specified in Column 3 of Schedule 1, the amount specified in Column 3 of Schedule 1.

### **15 (Repealed)**

### **16 Repeal**

- (1) The *Pesticides Regulation 1979* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Pesticides*

*Regulation 1979*, had effect under that Regulation continues to have effect under this Regulation.

## Schedule 1 Penalty notice offences

(Clauses 13 and 14)

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision of the Act</b>	<b>Penalty \$ (indivs)</b>	<b>Penalty \$ (corpns)</b>
Section 10 (1) (a)	400	800
Section 10 (1) (b)	400	800
Section 11 (1) (a)	400	800
Section 11 (1) (b)	400	800
Section 12	400	800
Section 13	400	800
Section 14 (1)	200	400
Section 14 (2)	200	400
Section 15	400	800
Section 16	200	400
Section 17	400	800
Section 19 (4)	400	800
Section 25	400	800
Section 39 (4)	400	800
Section 41 (2)	400	800
Section 42 (4)	400	800
Section 42 (6)	400	800
Section 43	400	800
Section 45 (1) (a)	400	800
Section 45 (1) (b)	400	800
Section 45 (2) (a)	400	800
Section 45 (2) (b)	400	800
Section 52	200	400
Section 53 (1)	200	400
Section 53 (2)	200	400

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Section 53 (3)	200	400
Section 54 (1)	400	800
Section 54 (3)	400	800
Section 59	400	800
Section 61 (1)	400	800
Section 61 (2)	400	800
Section 61 (3)	400	800

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision of this Regn</b>	<b>Penalty \$ (indivs)</b>	<b>Penalty \$ (corpns)</b>
Clause 6B	100	200
Clause 7A (1) (a)	400	—
Clause 7A (1) (b)	400	—
Clause 7A (1) (c)	400	—
Clause 7A (1) (d)	400	—
Clause 7A (1) (e)	400	—
Clause 7A (2)	400	800
Clause 7D (2)	400	—
Clause 7E (1) (a)	400	—
Clause 7E (1) (b)	400	—
Clause 7F (1)	400	—
Clause 11B (1)	400	800
Clause 11C (2)	400	800
Clause 11E (1)	200	400
Clause 11E (2) (a)	200	400
Clause 11E (2) (b)	200	—
Clause 11E (2) (c) (i)	200	400
Clause 11E (2) (c) (ii)	200	400
Clause 11E (3)	150	300
Clause 11F	200	400
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

## **Schedule 2 Qualifying examination**

(CII 5, 6)

- 1** The Environment Protection Authority is responsible for conducting examinations.
- 2** A person may apply to sit for an examination by making a request in writing to the Environment Protection Authority.
- 3** A candidate for examination must be notified by the Environment Protection Authority of the time and place and conditions of the examination.
- 4** A candidate for examination must be the holder of a current commercial or senior commercial pilot licence issued under the Air Navigation Regulations of the Commonwealth and endorsed with an agricultural rating.
- 5** The Environment Protection Authority must determine from time to time the percentage of marks required to be obtained by a candidate to pass the examination.
- 6** In the case of a failure to pass an examination, a person must not sit for a further examination within 7 days of failing.