

# Pesticides Regulation 2009

[2009-417]



New South Wales

## Status Information

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### Provisions in force

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

### 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](#).

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New South Wales

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# Pesticides Regulation 2009



New South Wales

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the [Pesticides Act 1999](#).

CARMEL TEBBUTT, MP Minister for Climate Change and the Environment

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the [Pesticides Regulation 2009](#).

### 2 Commencement

This Regulation commences on 1 September 2009 and is required to be published on the NSW legislation website.

**Note—**

This Regulation replaces the [Pesticides Regulation 1995](#) which is repealed on 1 September 2009 by section 10 (2) of the [Subordinate Legislation Act 1989](#).

### 3 Definitions

(1) In this Regulation:

**domestic purposes** includes home gardening.

**Food Standards Code** means the *Australia New Zealand Food Standards Code* as defined in the [Food Standards Australia New Zealand Act 1991](#) of the Commonwealth.

**fumigant** has the same meaning as in clause 265 of the [Occupational Health and Safety Regulation 2001](#).

**MRL Standard** means the document entitled *The MRL Standard—Maximum residue limits in food and animal feedstuff* published by the Australian Pesticides and Veterinary Medicines Authority.

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

**registered training organisation** has the same meaning as in the [Vocational Education and Training Act 2005](#).

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

**the Act** means the [Pesticides Act 1999](#).

**use** does not include store.

(2) Notes included in this Regulation do not form part of this Regulation.

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

### **4 Application for licence**

- (1) For the purposes of section 46 (2) (b) of the Act, \$50 is the prescribed fee to accompany an application for a licence.
- (2) 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 a Territory.

### **5 Particulars to accompany application for licence**

- (1) For the purposes of section 46 (3) (c) of the Act, an application for a licence is to be accompanied by evidence that the applicant holds the qualifications prescribed by clause 6 (1).
- (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 holds the qualifications prescribed by clause 6 (2),
  - (b) if the licence is to be restricted to particular pesticides, details of those pesticides,
  - (c) 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, or the cancellation or suspension of, any such licence or certificate.

### **6 Prescribed qualifications for issue of licence**

- (1) For the purposes of section 48 (2) (b) of the Act, an applicant for an aircraft (pesticide applicator) licence holds the prescribed qualifications if the applicant holds an Air Operator's Certificate endorsed for aerial application operations and issued under Division 2 of Part III of the [Civil Aviation Act 1988](#) 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 pilot (aeroplane) licence or commercial pilot (helicopter) licence issued under the *Civil Aviation Act 1988* of the Commonwealth 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 another State or Territory for the purpose of obtaining a licence equivalent to a pilot (pesticide rating) licence.

## **7 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 the record:

- (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 on which the pesticide was applied.

## **8 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, or
- (b) in the case of an individual—50 penalty units.

## **Part 3 Pesticides to be used by qualified persons**

### **9 Persons qualified to use pesticides**

- (1) In this Part, a person is qualified to use a pesticide if the person holds any one or more of the following:

- (a) a licence under the Act,
- (b) a certificate of competency or recognised qualification (within the meaning of Part 9.1 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,
- (c) a current certificate of completion or statement of attainment on completion:
  - (i) of a kind, and issued by a university, industry body or other organisation, that the Environment Protection Authority has declared, by order published in the Gazette, to be sufficient for the purposes of this subclause, and
  - (ii) that was current immediately before 1 September 2005, and
  - (iii) that was issued within the last 5 years,

**Note—**

This provision will cease to apply on or after 1 September 2010.

- (d) a current certificate of completion or statement of attainment on completion of a course of study with respect to the use of pesticides that was issued to the person within the last 5 years:
  - (i) by a registered training organisation in accordance with the Australian Qualifications Framework, and
  - (ii) 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 in accordance with Schedule 1),
- (e) a pest control operator's licence that:
  - (i) was in force under the *Occupational Health and Safety (Pest Control) Regulation 1988* immediately before its repeal, and
  - (ii) is taken to be a certificate of competency under clause 268 of the *Occupational Health and Safety Regulation 2001*,
- (f) if the pesticide is a fumigant—a fumigation permit that:
  - (i) was in force under the *Occupational Health and Safety (Pest Control) Regulation 1988* immediately before its repeal, and
  - (ii) is taken to be a certificate of competency under clause 268 of the *Occupational Health and Safety Regulation 2001*.

(2) In this clause:

***Australian Qualifications Framework*** has the same meaning as in section 7 of the *Higher Education Act 2001*.

**10 Person must not use pesticide unless qualified**

- (1) A person must not use, or employ or engage a person to use, a pesticide in any of the following circumstances unless the person using the pesticide is qualified to use the pesticide:
- (a) 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),
  - (b) in the course of acting as, or for or on behalf of, the landlord of any premises,
  - (c) in the course of acting for or on behalf of a public authority,
  - (d) in the course of carrying out pest control operations on a golf course, sporting field or bowling green,
  - (e) in connection with any agricultural operations (including farming, horticultural or aquacultural operations) or forestry operations.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, or
  - (b) in the case of an individual—200 penalty units.
- (2) Subclause (1) does not apply in any of the following circumstances:
- (a) if the pesticide is being used in public baths or in any swimming pool or spa,
  - (b) if the person is a trainee doing work of the type referred to in clause 11 (Application of pesticides) or 12 (Use of fumigants) of the Schedule to clause 266 of the *Occupational Health and Safety Regulation 2001* 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,
  - (c) if the pesticide is, or is part of, a product that is widely available to the general public at retail outlets, is ordinarily used for domestic purposes, is being applied by hand or hand-held applicator and:
    - (i) if the product is being used outside a building—no more than 20 litres or 20 kilograms of “ready-to-use” product or 5 litres or 5 kilograms of concentrated product is being used, or



- (ii) if the product is being used inside a building—no more than 5 litres or 5 kilograms of “ready-to-use” product or 1 litre or 1 kilogram of concentrated product is being used,
- (d) if the pesticide is used in connection with agricultural operations or forestry operations and the person used the pesticide:
  - (i) by means of hand-held and hand-powered equipment, and
  - (ii) on no more than 12 days in the previous 12 months and on no more than 4 days in the previous month (excluding any use to which paragraph (c) applies), and
  - (iii) under the direct supervision of a supervisor who was qualified to use the pesticide and who selected and prepared the pesticide, tested and calibrated the equipment before it was used, and instructed the person in how to apply the pesticide.

### **11 Supervision of persons**

A person must not supervise a person in the use of a pesticide in connection with any agricultural operations or forestry operations unless the person supervising or the person being supervised is qualified to use the pesticide.

Maximum penalty: 200 penalty units.

### **12 Offences with respect to qualifications**

- (1) A person who is required to be qualified in respect of the use, or 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) A person must not forge or alter evidence of a qualification.

Maximum penalty: 100 penalty units.

- (3) A person must not falsely represent, whether in writing, by word or by conduct, that he or she is qualified to use a pesticide.

Maximum penalty: 100 penalty units.

- (4) In this clause, 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.

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

### **13 Pesticides used for commercial, agricultural or occupational purposes**

- (1) A person must cause a record to be made, in accordance with this Part, 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) in the course of acting as, or for or on behalf of, the landlord of any premises, or
  - (c) in the course of acting for or on behalf of a public authority, or
  - (d) in the course of carrying out pest control operations on a golf course, sporting field or bowling green, or
  - (e) while treating livestock for ectoparasites by means of a dip bath or by the use of powered spray equipment that is not hand-held, or
  - (f) while treating harvested horticultural crops by means of a dip bath, or
  - (g) while using any spray equipment to apply a pesticide for horticultural purposes (including the spraying of fallow crop land), but not if:
    - (i) the application consists of spot spraying that is confined to a small and restricted area on or within a tree crop, and
    - (ii) the pesticide is applied by hand-held and hand-powered equipment only, and
    - (iii) the pesticide is applied no closer than 20 metres to a property boundary, or
  - (h) while using any powered spray equipment to spray crops, fallow crop land or trees in a plantation (including in or around such trees), or
  - (i) while using powered spray equipment that is mounted on or attached to a vehicle and is not hand-held, or
  - (j) while applying baits to control vertebrate pests (other than baits that are used to control rodents in or around buildings).

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, or
- (b) in the case of an individual—200 penalty units.

(2) Subclause (1) does not apply in the following circumstances:

- (a) if the pesticide is being used in public baths or in any swimming pool or spa,
- (b) if the pesticide is being used in aerial pesticide operations for which a licence is required under the Act,

**Note—**

See section 54 of the Act and clause 7 of this Regulation for the requirement to make records with respect to the aerial application of pesticides.

- (c) if the pesticide is, or is part of, a product that is widely available to the general public at retail outlets, is ordinarily used for domestic purposes, is being applied by hand or hand-held applicator and:
  - (i) if the product is being used outside a building—no more than 20 litres or 20 kilograms of “ready-to-use” product or 5 litres or 5 kilograms of concentrated product is being used, or
  - (ii) if the product is being used inside a building—no more than 5 litres or 5 kilograms of “ready-to-use” product or 1 litre or 1 kilogram of concentrated product is being used.

(3) If a pesticide is being applied by a person on behalf of a public authority by hand or hand-held applicator under the supervision or direction of a supervisor who has responsibility for the operations, the supervisor is taken to be the person using the pesticide for the purposes of subclause (1).

(4) In this clause:

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

#### **14 Information to be contained in record**

(1) A record required to be made under this Part 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 13 (1) (g)-(j), the order in which areas (such as paddocks or sheds) were treated,

- (f) the date and time 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, if 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) if, because of clause 13 (3), the record is required to be made by a supervisor—the name of each person who used the pesticide under the supervision or direction of the supervisor,
- (j) if the pesticide is applied outdoors by means of any spray equipment:
  - (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 written legibly in the English language.

## **15 Keeping and provision of records**

- (1) A person who is required to make a record under clause 13 (1), or who is provided with a record or copy under subclause (2) or (3), must keep the record or copy for a period of not less than 3 years after the date on which the record was made.
- (2) A person, employed under a contract of employment and who carries out operations involving the use of pesticides in the course of that employment, who is required to make a record under clause 13 (1) (c)-(j) is not required to keep the record but must provide the record to the person's employer.
- (3) 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, who is required to make a record under clause 13 (1) (c)–(j) must provide a copy of the record to the owner or occupier of the land on which the pesticide was applied.

- (4) A person must not, in any record required to be made under this Part, make any statement, or include any information, that is false or misleading in a material particular.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, or  
(b) in the case of an individual—200 penalty units.

## **16 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 14.
- (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).

## **17 Integration with other record keeping requirements**

The Environment Protection Authority may approve, either in a particular case or generally, 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 5 Notification of proposed use of pesticide**

## **Division 1 Preliminary**

### **18 Definitions**

In this Part:

***pest management technician*** means a person who holds a qualification referred to in clause 9 (1) (b), (e) or (f) or who is a trainee referred to in clause 10 (2) (b).

***pesticide use notification plan***—see clause 19 (1) (a).

***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) a public garden, picnic area, playground, park, sporting field or oval,
- (ii) 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),
- (iii) 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.

**sensitive place** means any of the following:

- (a) a school, pre-school, kindergarten or childcare centre,
- (b) a hospital, community health centre or nursing home,
- (c) any place declared to be a sensitive place by the Environment Protection Authority by order published in the Gazette.

## Division 2 Notification by public authorities

### 19 Obligations on public authorities concerning use of pesticide

(1) A public authority must not use, 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 plan (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, or
- (b) in the case of an individual—200 penalty units.

(2) A public authority may satisfy a requirement 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.

- (3) Subclause (1) does not apply in respect of the use of pesticide in a prescribed public place that is owned by or is under the control of a public authority if the pesticide is used by another public authority and that other public authority has:
  - (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 in accordance with that plan.
- (4) Subclause (1) does not apply in relation to the use of pesticide in public baths or in any swimming pool or spa.

## **20 Contents of pesticide use notification plans**

- (1) A public authority's pesticide use notification plan:
  - (a) must set out how and when the public authority will give public notice of the proposed use of pesticides in any prescribed public places, and
  - (b) must identify where the plan 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
  - (c) 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
  - (d) 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
  - (e) must identify the categories of people (the **affected persons**) who regularly use the categories of prescribed public places identified in the plan, and
  - (f) must estimate the degree of use by affected persons of those categories of prescribed public places, and
  - (g) 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 (l)), and
  - (h) must specify the information that will be provided to the affected persons that are notified, which must include at least the following:
    - (i) the full product name of the pesticide to be used,

- (ii) the purpose for which the pesticide is to be used,
  - (iii) the dates on which, or the range of dates during which, the pesticide is to be used,
  - (iv) the places where the pesticide is to be used,
  - (v) 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,
  - (vi) a contact telephone number or email address for the officer of the public authority whom the affected persons can contact to discuss the notice, and
- (i) 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
  - (j) 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
  - (k) must, subject to clauses 21 and 22, set out provisions for future reviews of the pesticide use notification plan, including arrangements for public involvement in those reviews, and
  - (l) must specify the prescribed public places or class of prescribed public places (if any) for which the public authority does not intend to provide notification, and
  - (m) may 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.
- (2) Without limiting subclause (1) (g), a pesticide use notification plan may provide that the public authority will provide information to affected persons of the proposed use of pesticide in the prescribed public places by a combination of methods and, if the plan does so provide, must specify the information that will be provided by each method.

## **21 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 advising that the plan has been prepared:
  - (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.

(2) 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 plan (which must be at least 4 weeks after the notice is published).

(3) The public authority must make the draft plan available for inspection free of charge at its head office and on its internet website.

(4) The draft plan must be on display for at least the period commencing on the date on which notice is first given under this clause and ending on the date of the deadline for public comments.

(5) 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 before the deadline.

## **22 Giving notice of finalised pesticide use notification plans**

(1) A public authority that has prepared a 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:

(a) in writing to the Environment Protection Authority, and

(b) by publishing a notice in the Gazette and in a newspaper in accordance with clause 21 (1) (a)–(c) specifying the area in which the plan is to operate and where copies of the plan will be displayed.

(2) The public authority must make the plan available for inspection free of charge at its head office and on its internet website.

## **23 Amendments to pesticide use notification plans**

A pesticide use notification plan may be amended by another pesticide use notification plan, and any such amending plan must comply with clauses 21 and 22 unless the public authority considers on reasonable grounds that the amendment is not of sufficient substance to warrant public consultation.

## Division 3 Notification by persons other than public authorities

### 24 Definitions

In this Division:

**common area** of a residential complex means:

- (a) common property within the meaning of the *Strata Schemes (Freehold Development) Act 1973*, or
- (b) association property within the meaning of the *Community Land Development Act 1989*, or
- (c) in relation to land under company title—land used as common property by the residents or land that no person has an exclusive right to occupy.

**pesticide use notice** means a notice to a person about the use of a pesticide that includes the following:

- (a) the full product name of the pesticide to be used,
- (b) the purpose for which the pesticide is to be used,
- (c) the dates on which, or the range of dates during which, the pesticide is to be used,
- (d) the places where the pesticide is to be used,
- (e) the period (if any) during which any 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 who is to use the pesticide or of his or her office.

**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 within the meaning of the *Community Land Development Act 1989*,

but does not include residential premises that comprise only two dwellings.

## 25 Prior notice of use of pesticide in residential complex

- (1) A person who engages a pest management technician to use pesticides in any common area of a residential complex must ensure that a pesticide use notice is given at least 5 working days before the proposed use:
  - (a) to each resident in person or by telephone, post, facsimile transmission or email or by placing the notice in the resident's letter box or under the resident's front door, or
  - (b) by placing the notice in writing:
    - (i) on the main notice boards at the residential complex (if available), and
    - (ii) if the pesticide is to be used in a common area within a building—at each entrance to the building concerned, and
    - (iii) if the pesticide is to be used in a common area outside a building—at each entrance to each building adjoining the common area concerned.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, or
  - (b) in the case of an individual—200 penalty units.
- (2) Notice is not required to be given under this clause if:
    - (a) the pesticide is to be used by a pest management technician 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), and
    - (b) the technician displays a notice under clause 26 and makes records of the emergency and the use of pesticide.
  - (3) 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.

## 26 Notice during use of pesticide in residential complex

- (1) A pest management technician who uses a pesticide in the common area of a

residential complex must ensure a pesticide use notice is displayed while the pesticide is being used and for any period during which the affected area should not be entered (as set out in the notice):

- (a) on the main notice boards at the residential complex (if practicable), and
- (b) if the pesticide is to be used in a common area within a building—at each entrance to the building concerned, and
- (c) if the pesticide is to be used in a common area outside a building—at each entrance to each building adjoining the common area concerned.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, or
  - (b) in the case of an individual—200 penalty units.
- (2) 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.

## **27 Prior notice of use of pesticide near sensitive place**

- (1) A pest management technician must ensure that a pesticide use notice is given, at least 5 working days before using a pesticide within 20 metres of a sensitive place (other than a hospital), to the person having the care, control or management of the sensitive place, or to the person's agent.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, or
  - (b) in the case of an individual—200 penalty units.
- (2) For the purposes of this clause, pesticide is used within 20 metres of a sensitive place if it is used:
- (a) within 20 metres of any common boundary between the land on which the pesticide is used and the sensitive place, or
  - (b) if the sensitive place consists only of a building or part of a building—within 20 metres of the building or part of the building.
- (3) A pest management technician does not commit an offence under subclause (1) if he or she could not have reasonably known that the place where the pesticide is to be used is within 20 metres of a sensitive place.
- (4) Despite subclause (1), a pesticide use notice may be given under this clause immediately before the use of the pesticide if:

- (a) the pesticide is to be used by a pest management technician 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), and
  - (b) the pest management technician makes records of the emergency and the use of pesticide.
- (5) For the purposes of this clause, a pesticide use notice must be given in person or by post, facsimile transmission, email or telephone or by placing the notice in the person's letter box.
- (6) Nothing in this clause prevents a pest management technician from giving any other notice before using a pesticide whether or not within 20 metres of a sensitive place.
- (7) In this clause:

**using a pesticide** means spraying a pesticide outdoors, or injecting a pesticide directly into the ground outdoors.

## 28 Provision of material safety data sheet

- (1) A pest management technician must ensure that any person who is required to be notified under this Division in relation to the use of a pesticide is given a copy of the material safety data sheet for the pesticide as soon as practicable after the person requests that sheet.

Maximum penalty:

- (a) in the case of a corporation—30 penalty units, or
  - (b) in the case of an individual—15 penalty units.
- (2) In this clause:

**material safety data sheet** means a material safety data sheet prepared under clause 150 of the *Occupational Health and Safety Regulation 2001*.

## 29 Records that must be kept

- (1) If a pesticide use notice is given in person or by telephone, the pest management technician must make a record of the giving of the notice.
- (2) A person who is required by this Division to give or display any pesticide use notice or make any record must keep a paper copy of the notice or record for at least 3 years.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, or
- (b) in the case of an individual—50 penalty units.

## Part 6 Miscellaneous

### 30 Records to be provided to authorised officer on request

A person required to keep a record under this Regulation must, on the request of an authorised officer, provide the authorised officer with a copy of the record within a reasonable period that is specified in the request.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, or
- (b) in the case of an individual—200 penalty units.

### 31 Prohibited residues

- (1) For the purposes of paragraph (b) of the definition of **agricultural produce** in section 63 of the Act, the following are prescribed as agricultural produce:
  - (a) any produce of a kind referred to in Schedule 1 or 2 to Standard 1.4.2 of the Food Standards Code and any vegetation from which produce of a kind so referred to is obtained,
  - (b) any produce, other than produce referred to in paragraph (a), of a kind referred to in the second column of Table 1 or 4 of the MRL Standard and 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, the following are **prescribed substances**:
  - (a) a substance referred to in the shaded boxes in Schedule 1 or 2 to Standard 1.4.2 of the Food Standards Code,
  - (b) a substance specified in the first column of Table 1 or 4 of the MRL Standard.
- (3) For the purposes of section 63 (2) (a) of the Act:
  - (a) the concentration of a prescribed substance specified in Schedule 1 or 2 to Standard 1.4.2 of the Food Standards Code in respect of any agricultural produce is prescribed as the maximum permissible concentration of that substance in respect of that produce, and
  - (b) the concentration of a prescribed substance specified in the third column of Table 1 or 4 to the MRL standard in respect of any agricultural produce is prescribed as the maximum permissible concentration of that substance in respect of that produce.
- (4) If there is an inconsistency between the maximum permissible concentration prescribed by subclause (3) (a) and the maximum permissible concentration

prescribed by subclause (3) (b) in respect of the same prescribed substance and agricultural produce, the maximum permissible concentration prescribed by subclause (3) (a) prevails.

### **32 Penalty notices**

- (1) For the purposes of section 75 (1) of the Act, each offence created by a provision specified in Column 1 of Schedule 2 is prescribed as a penalty notice offence for the purposes of Division 2 of Part 10 of the Act.
- (2) For the purposes of section 78 (1) of the Act, 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 2, 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 2, the amount specified in Column 3 of Schedule 2.

### **33 Savings**

Any act, matter or thing that, immediately before the repeal of the *Pesticides Regulation 1995*, had effect under that Regulation continues to have effect under this Regulation.

## **Schedule 1 Approval of units of competency by EPA**

(Clause 9 (1) (d) (ii))

- 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 clause 9 (1) (d) (ii).
- 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 Quality Council, a committee of the Ministerial Council for Vocational and Technical Education.
- 3** Before approving units of competency, or parts of units of competency, 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:
  - (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 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 are available for public inspection, without charge and during ordinary business hours, at each of its offices.
- 7 The Authority may revoke an approval at any time by notice published in the Gazette. Any such revocation takes effect on the day that it is so published or on such later date as may be specified in the notice.

## Schedule 2 Penalty notice offences

(Clause 32)

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision</b>	<b>Penalty \$ (individual)</b>	<b>Penalty \$ (corporation)</b>
<b>Offences against the Act</b>		
Section 10 (1)	400	800
Section 11 (1)	400	800
Section 12	400	800
Section 13	400	800
Section 14 (1)	200	400
Section 14 (2)	200	400
Section 15 (1)	400	800
Section 16 (1)	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)	400	800
Section 45 (2)	400	800



Section 52	200	400
Section 53 (1)	200	400
Section 53 (2)	200	400
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>Offences against this Regulation</b>		
Clause 8	100	200
Clause 10 (1)	400	800
Clause 11	400	—
Clause 12 (1)	400	—
Clause 12 (2)	400	—
Clause 12 (3)	400	—
Clause 13 (1)	750	1,500
Clause 15 (1)	200	400
Clause 15 (2)	200	400
Clause 15 (3)	200	400
Clause 15 (4)	750	1,500
Clause 19 (1)	400	800
Clause 25 (1)	400	800
Clause 26 (1)	400	800
Clause 27 (1)	400	800
Clause 28 (1)	100	200
Clause 29 (2)	100	200
Clause 30	200	400