

# Pesticides Amendment Act 2015 No 3

[2015-3]



New South Wales

## Status Information

### Currency of version

Historical version for 19 May 2015 to 1 September 2015 (accessed 6 October 2024 at 18:19)

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

### Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

### Notes—

- **Note**

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### Authorisation

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# Pesticides Amendment Act 2015 No 3



New South Wales

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# Pesticides Amendment Act 2015 No 3



New South Wales

An Act to amend the *Pesticides Act 1999* to make further provision with respect to the licensing of activities involving pesticides, to implement certain nationally agreed reforms and to improve the administration and enforceability of the Act; and to make consequential amendments to certain other legislation.

## 1 Name of Act

This Act is the *Pesticides Amendment Act 2015*.

## 2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
- (2) Schedules 1.2, 1.4, 1.5 and 2.2 commence on the date of assent to this Act.

## Schedule 1 Amendment of *Pesticides Act 1999 No 80*

### 1.1 Licensing and restricted pesticide authorisations

#### [1] Whole of Act (except the definition of “certificate of competency” in sections 4 (1) and 107 and Schedule 2 and except as otherwise amended by this Act)

Omit each term or expression specified in Column 1 of the following Table wherever occurring (including definitions, headings and notes) and regardless of capitalisation.

Insert instead the term or expression specified in Column 2 opposite the term or expression specified in Column 1 with capitalisation that corresponds to that of the omitted term or expression:

#### Table

Column 1	Column 2
the certificate (except when occurring in the expression “the certificate of competency”)	the authorisation
a certificate (except when occurring in the expression “a certificate of competency”)	an authorisation

certificate of competency

restricted pesticide authorisation

certificates of competency

restricted pesticide authorisations

**[2] Section 4 Definitions**

Omit the definition of ***certificate of competency*** from section 4 (1).

Insert in alphabetical order:

***relevant legislation*** means:

- (a) this Act and the regulations, and
- (b) the Agvet Code and the regulations applying because of section 6 of the *Agricultural and Veterinary Chemicals (New South Wales) Act 1994*, and
- (c) legislation of any other Australian jurisdiction relating to the use of pesticides, and
- (d) legislation (including legislation that has been repealed or legislation of another jurisdiction) prescribed by the regulations.

***restricted pesticide authorisation*** means a restricted pesticide authorisation in force under this Act.

**[3] Section 4 (1), definition of “licence”**

Omit the definition. Insert instead:

***licence*** means a licence in force under this Act.

**[4] Section 4 (1)**

Insert in alphabetical order:

***prescribed pesticide work***—see section 5A.

**[5] Sections 5A and 5B**

Insert after section 5:

**5A Definition of “prescribed pesticide work”**

- (1) In this Act, ***prescribed pesticide work*** means the carrying out of any of the following kinds of activities in such circumstances, or by such means, if any, as may be prescribed by the regulations:

- (a) the supply or use of pesticides for a fee or reward,
  - (b) the piloting or use of aircraft in connection with the supply or use of pesticides (whether or not for a fee or reward),
  - (c) the carrying on of a business involving any of the activities referred to in paragraph (a) or (b), including the employment or engagement of persons to carry out the activities for the business,
  - (d) the carrying out by a public authority of any of the activities referred to in paragraph (a) or (b), including:
    - (i) the supply or use of pesticides without a fee or reward, and
    - (ii) the employment or engagement of persons to carry out the activities for the public authority.
- (2) For the purposes of subsection (1), the regulations may prescribe circumstances or means in relation to an activity referred to in that subsection by reference to all circumstances or means relating to the activity or by reference to specified classes of circumstances or means relating to the activity.
- (3) The regulations may make provision for or with respect to the training and supervision of trainees in connection with the carrying out of prescribed pesticide work.
- (4) In this section:
- business** includes carrying out an activity as a self-employed person, but not as an employee.

**fee or reward** includes remuneration paid to a person as an employee.

## **5B Fit and proper persons**

- (1) In determining, for the purposes of this Act, whether a person is a fit and proper person to hold a licence, the Authority may take into consideration any one or more of the following:
- (a) whether the person (or any director of the person in the case of a body corporate) has contravened relevant legislation, or has held a regulatory authorisation that has been suspended or cancelled under relevant legislation,
  - (b) whether, if the person is a body corporate, a director of the body corporate is or has been the director of another body corporate that has contravened relevant legislation, or has held a regulatory authorisation that has been suspended or cancelled under relevant legislation,

- (c) the record of compliance with relevant legislation of the person (and each director of the person in the case of a body corporate),
  - (d) whether, in the opinion of the Authority, any dealings of the person with pesticides under a licence will or will not be in the hands of a technically competent person,
  - (e) whether, in the opinion of the Authority, the person (and each director of the person in the case of a body corporate) is of good repute, having regard to character, honesty and integrity,
  - (f) whether the person (or any director of the person in the case of a body corporate), in the previous 10 years, has in this or any other Australian jurisdiction been convicted of an offence involving fraud, dishonesty or other behaviour that the Authority considers would render the person unfit to hold a licence,
  - (g) whether the person, during the previous 3 years, was an undischarged bankrupt or applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors or made an assignment of his or her remuneration for their benefit,
  - (h) if the person is an individual, whether he or she is or was a director of a body corporate that is the subject of a winding up order or for which a controller or administrator has been appointed during the previous 3 years,
  - (i) if the person is a body corporate, whether the body corporate is the subject of a winding up order or has had a controller or administrator appointed during the previous 3 years,
  - (j) whether the person has demonstrated to the Authority the financial capacity to comply with the person's obligations under the licence or the proposed licence,
  - (k) whether the person is in partnership with a person, whom the Authority does not consider to be a fit and proper person under this section, in connection with dealings with pesticides authorised (or sought to be authorised) by a licence,
  - (l) any other ground that the Authority considers appropriate.
- (2) In this section:
- cancelled** includes revoked.
- director** of a body corporate includes a person involved in the management of the affairs of the body corporate.

**regulatory authorisation**, in relation to relevant legislation, means any licence, permit, consent, approval or other authority under the legislation.

**[6] Part 6, Division 1**

Omit the Division. Insert instead:

## **Division 1 Licensing of prescribed pesticide work**

### **45 Requirement for licence**

- (1) A person must not carry out prescribed pesticide work unless the person is the holder of a licence that authorises the person to carry out that kind of work.

Maximum penalty: \$60,000.

- (2) A person must not employ or engage any other person (an **agent**) to carry out prescribed pesticide work unless the agent also holds a licence that authorises the agent to carry out the work that the agent is employed or engaged to carry out.

Maximum penalty:

- (a) \$120,000 in the case of a corporation, or
- (b) \$60,000 in the case of an individual.

### **46 Authority granted by licence**

- (1) The kinds of licences that are prescribed by the regulations may be granted and held under this Act.
- (2) A licence authorises the holder of the licence to carry out, in accordance with this Act and the conditions of the licence, the kind of prescribed pesticide work specified by the regulations for that kind of licence.
- (3) The authorisation conferred by a licence is subject to this Act and the regulations.

### **47 Application for licence**

- (1) A person may apply to the Environment Protection Authority for a licence.
- (2) An application must:
  - (a) be in the form and manner approved by the Authority or prescribed by the regulations, and
  - (b) be accompanied by the fee prescribed by the regulations.

- (3) An application for a licence must:
- (a) specify the name and address of the applicant, and
  - (b) specify the kind of licence that is being sought, and
  - (c) if required by the regulations—be accompanied by evidence that the applicant holds an insurance policy of a class prescribed by the regulations (or is eligible to hold such an insurance policy), and
  - (d) be accompanied by such other information or particulars as are required by the regulations.

#### **48 Further information**

- (1) The Environment Protection Authority may, by written notice served on the applicant for the licence, require the applicant to provide the Authority with such information as it considers necessary or relevant to the application, and that is specified in the notice, by a date so specified.
- (2) If an applicant fails to comply with the requirements of a notice served under subsection (1) or, in purported compliance with a notice so served, provides information that, in the opinion of the Authority, is inadequate, the Authority may refuse to grant the licence.

#### **49 Grant of licence**

- (1) The Environment Protection Authority may determine an application for a licence by granting a licence to the applicant.
- (2) The Authority may refuse to grant a licence to an applicant for a licence:
- (a) if the Authority is of the opinion that the applicant is not a fit and proper person to hold the licence, or
  - (b) if the applicant does not hold the qualifications prescribed by, or determined in accordance with, the regulations for the kind of licence, or
  - (c) if the applicant does not hold an insurance policy of a class prescribed by the regulations (or is not eligible to hold such a policy) for the licence concerned, or
  - (d) in such other circumstances as may be prescribed by the regulations.

#### **50 Licence conditions**

- (1) A licence is subject to the following conditions:
- (a) any condition prescribed by the regulations,



- (b) any condition imposed on the licence by the Environment Protection Authority under this Act at the time the licence is granted or subsequently.
- (2) The Authority may, at any time, by notice in writing served on the holder of the licence:
  - (a) revoke or vary any condition to which the licence is subject that it has imposed, or
  - (b) impose new conditions to which the licence is subject.
- (3) The Authority may impose, revoke or vary conditions on a licence for such reasons, and in such circumstances, as the Authority considers appropriate or necessary.

## **51 Duration and renewal of licence**

- (1) Subject to the regulations, a licence may be granted for a fixed term or for no fixed term.
- (2) If a licence is granted for a fixed term, the licence remains in force for the term specified in the licence, unless sooner surrendered to or revoked by the Environment Protection Authority or it otherwise ceases to be in force.
- (3) If a licence is granted for no fixed term, it remains in force until it is surrendered to or revoked by the Authority or it otherwise ceases to be in force.
- (4) In any case, a licence is taken not to be in force for the purposes of this Act during any period in which it is suspended.
- (5) A licence is, while it remains in force, subject to any variations made to the licence under this Act.
- (6) A person may apply to the Authority for the renewal of a licence in accordance with the regulations.

## **52 Suspension or revocation of licence**

- (1) The Environment Protection Authority may, for such reasons as it thinks fit, suspend a licence.
- (2) The Authority may revoke a licence:
  - (a) if the holder of the licence ceases to have the qualifications prescribed by the regulations for the type of licence concerned, or
  - (b) if the holder of the licence ceases to hold an insurance policy prescribed by the regulations for the licence, or

- (c) if the holder of the licence supplied information that was, to the holder's knowledge, false or misleading in a material particular in, or in connection with, the application for the licence, or
  - (d) if the holder of the licence has contravened any provision of relevant legislation, whether or not the holder has been convicted of an offence for the contravention, or
  - (e) if the holder of the licence has contravened any condition to which the licence is subject, or
  - (f) if the Authority is of the opinion that the holder of the licence is no longer a fit and proper person to hold the licence, or
  - (g) if the Authority receives information about the holder of the licence and the Authority is of the opinion that, had the information been received at the time when an application for the licence was made, it would have refused the application, or
  - (h) if the holder of the licence voluntarily surrenders the licence to the Authority, or
  - (i) on such other grounds as may be prescribed by the regulations.
- (3) Before suspending or revoking a licence, the Authority:
- (a) must cause written notice of the proposed suspension or revocation to be given to the holder of the licence, and
  - (b) must give the holder of the licence a reasonable opportunity to make representations to the Authority in relation to the proposed suspension or revocation, and
  - (c) must have regard to any representations so made.
- (4) If, after having regard to any representations made by the holder of the licence, the Authority decides to proceed with the proposed suspension or revocation, the Authority must give to the holder of the licence a written notice:
- (a) stating that the licence is suspended or revoked, and
  - (b) in the case of a suspension, specifying the period for which the licence is suspended, and
  - (c) giving reasons for the suspension or revocation.
- (5) The suspension or revocation of a licence takes effect on the day on which the notice of the suspension or revocation is given to the holder of the licence (or on

such later date as may be specified in the notice).

- (6) Subsections (3)–(5) do not apply if the Authority revokes a licence that has been voluntarily surrendered to it by the holder of the licence.

### **53 Register of licences**

- (1) The Environment Protection Authority is to keep a Register of Licences.
- (2) The Register may be kept in such form as the Authority considers appropriate.
- (3) The Authority is to record on the Register:
- (a) in relation to each licence that is in force:
    - (i) the name and address of the holder of the licence and the date it was granted, and
    - (ii) the type and number of the licence, and
    - (iii) the expiry date of the licence (if any), and
    - (iv) the status of the licence, and
    - (v) such other information as may be prescribed by the regulations, and
  - (b) in relation to each suspended or revoked licence:
    - (i) the name and address of the holder of the licence and the date it was suspended or revoked, and
    - (ii) the type and number of the licence, and
    - (iii) such other information as may be prescribed by the regulations.
- (4) The Authority is to ensure that information kept on the Register is up to date.
- (5) The Authority may correct any error in or omission from the Register.
- (6) Subject to the regulations, the Authority may arrange for such information recorded in the Register as it considers appropriate to be published on the Internet for public access.
- (7) The information referred to in subsection (6) may also be provided to members of the public in any other manner approved by the Authority.
- (8) The regulations may make provision for or with respect to the information that may be provided to the members of the public under this section (including the kind of information that may or may not be provided).
- (9) Section 57 of the *Privacy and Personal Information Protection Act 1998* does not

apply to the Register or to information in the Register that is published or provided to members of the public under this section.

**[7] Section 57 Granting of restricted pesticide authorisation**

Omit section 57 (6).

**[8] Sections 59, 60 (2) and 61 (3)**

Omit “the licence or certificate” wherever occurring.

Insert instead “the licence or authorisation”.

**[9] Section 119 Regulations**

Omit section 119 (2) (a)–(d). Insert instead:

- (a) any matter connected with licences and restricted pesticide authorisations and applications for licences and restricted pesticide authorisations, including (without limitation) the following:
  - (i) qualifications for licences and authorisations,
  - (ii) tests for applicants for licences and authorisations,
  - (iii) duration of licences and authorisations,
  - (iv) conditions of licences and authorisations,
  - (v) record keeping and the provision of returns and other information by the holders (or former holders) of licences and authorisations,
  - (vi) grounds for the refusal, suspension or revocation of licences or authorisations,
  - (vii) the renewal of licences,
  - (viii) the surrender of licences and authorisations,

**[10] Section 119 (2) (h)**

Insert “(including application fees, licence and restricted pesticide authorisation fees, and fees for the provision of information)” after “regulations”.

**1.2**

(Repealed)

## **1.3 Administration and enforcement**

### **[1] Section 7 Injury to persons or damage to property resulting from pesticide use**

Insert after section 7 (1):

(1A) For the purposes of subsection (1) (b) in its application to any part of premises used for agricultural operations (including farming, horticultural or aquacultural operations), damage, or likely damage, from the use of a pesticide includes when the use of a pesticide:

- (a) prevents, or is likely to prevent, that part of the premises from being used for such operations (whether temporarily or permanently), or
- (b) reduces, or is likely to reduce, the capacity of that part of the premises to be used for such operations (whether temporarily or permanently).

### **[2] Section 10 Injury to persons or damage to property resulting from pesticide use**

Insert after section 10 (1):

(1A) For the purposes of subsection (1) (b) in its application to any part of premises used for agricultural operations (including farming, horticultural or aquacultural operations), damage, or likely damage, from the use of a pesticide includes when the use of a pesticide:

- (a) prevents, or is likely to prevent, that part of the premises from being used for such operations (whether temporarily or permanently), or
- (b) reduces, or is likely to reduce, the capacity of that part of the premises to be used for such operations (whether temporarily or permanently).

### **[3] Section 11A**

Insert after section 11:

#### **11A Harm to companion animals resulting from pesticide use**

(1) A person must not use a pesticide in a manner that harms a companion animal that is in or on premises with the consent of the owner or occupier of the premises.

Maximum penalty:

- (a) \$120,000 in the case of a corporation, or
- (b) \$60,000 in the case of an individual.

(2) It is a defence in any proceedings against a person for an offence under this section if the person establishes:

- (a) that the commission of the offence was due to causes over which the person had no control, and
- (b) that the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence.

(3) In this section:

**companion animal** has the same meaning as in the [Companion Animals Act 1998](#).

**[4] Section 38 Making of pesticide control order**

Insert at the end of section 38 (1):

**Note—**

Section 43 (2) of the [Interpretation Act 1987](#) provides that if an Act confers a power on any person or body to make an order (whether or not the order must be in writing), the power includes power to amend or repeal any order made in the exercise of that power. Section 43 (3) of that Act also requires the Authority to obtain the approval of the Minister before amending or repealing an order under this section.

**[5] Section 38 (5B)**

Insert after section 38 (5A):

(5B) The Minister may delegate the Minister's function of granting approvals under this section to the Chairperson of the Environment Protection Authority.

**[6] Section 64 Prohibited residue notices**

Insert after section 64 (1) (a):

(a1) a person involved in growing or supplying the produce, or

**[7] Section 64 (2) (b) (iv) and (v)**

Insert at the end of section 64 (2) (b) (iii):

, or

(iv) to report on and monitor prohibited residue in the produce in accordance with procedures specified in the regulations, or

(v) to arrange for analysis to be undertaken, at the person's own cost, by an

appropriately qualified laboratory of prohibited residue in the produce and to report the findings to the Authority.

**[8] Section 65 Prohibited residue orders**

Insert at the end of section 65 (2) (b) (iv):

, or

- (v) to report on and monitor prohibited residue in the produce in accordance with procedures specified in the regulations, or
- (vi) to arrange for analysis to be undertaken, at the person's own cost, by an appropriately qualified laboratory of prohibited residue in the produce and to report the findings to the Authority.

**[9] Section 65 (4) (a)**

Omit the paragraph. Insert instead:

- (a) may be served on:
  - (i) the owner of the agricultural produce in relation to which it was made, or
  - (ii) a person involved in growing or supplying the agricultural produce in relation to which it was made, or
  - (iii) the occupier of any premises on which the produce is situated at the time of service of the order, and

**[10] Section 110**

Insert after section 109:

**110 Enforcement of undertakings**

- (1) The Environment Protection Authority may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to which the Authority has a function under this Act.
- (2) The person may withdraw or vary the undertaking at any time, but only with the consent in writing of the Authority. The consent of the Authority is required even if the undertaking purports to authorise withdrawal or variation of the undertaking without that consent.
- (3) The Authority may apply to the Land and Environment Court for an order under subsection (4) if the Authority considers that the person who gave the

undertaking has breached any of its terms.

- (4) The Court may make all or any of the following orders if it is satisfied that the person has breached a term of the undertaking:
- (a) an order directing the person to comply with that term of the undertaking,
  - (b) an order directing the person to pay to the State an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach,
  - (c) any order that the Court thinks appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach,
  - (d) an order suspending or revoking any licence held by the person,
  - (e) an order requiring the person to prevent, control, abate or mitigate any actual or likely harm to the environment caused by the breach,
  - (f) an order requiring the person to make good any actual or likely harm to the environment caused by the breach,
  - (g) any other order the Court considers appropriate.

#### **[11] Section 119 Regulations**

Insert after section 119 (2) (g):

- (g1) the analysis, reporting and monitoring of pesticide residues by growers and suppliers of produce,

#### **1.4, 1.5**

(Repealed)

### **Schedule 2 Consequential amendment of other legislation**

#### **2.1 Land and Environment Court Act 1979 No 204**

##### **Section 20 Class 4—environmental planning and protection and development contract civil enforcement**

Insert “or 110” after “section 108” in section 20 (1) (cbb).

#### **2.2**

(Repealed)