

Agricultural and Veterinary Chemicals (New South Wales) Act 1994 No 53

[1994-53]



New South Wales

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Notes—

- **Does not include amendments by**
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Agricultural and Veterinary Chemicals (New South Wales) Act 1994 No 53



New South Wales

An Act to apply certain laws of the Commonwealth relating to agricultural and veterinary chemical products as laws of New South Wales; and for other purposes.

RECOGNISING:

- (a) that the protection of the health and safety of human beings, animals and the environment is essential to the well-being of society and can be enhanced by putting in place a system to regulate agricultural chemical products and veterinary chemical products, and
- (b) that the principle of ecologically sustainable development requires a regulatory system that is designed to ensure that the use of such products today will not impair the prospects of future generations, and
- (c) that the furthering of trade and commerce between Australia and places outside Australia, and the present and future economic viability and competitiveness of primary industry and of a domestic industry for manufacturing and formulating such products, are essential for the well-being of the economy and require a system for regulating such products that is cost effective, efficient, predictable, adaptive and responsive, and
- (d) that it is desirable to establish a regulatory system that is open and accountable and gives opportunity for public input with respect to the regulation of such products, and
- (e) that the system should, so far as practicable, be uniform throughout Australia, and
- (f) that uniformity could best be achieved by the enactment of legislation by the Parliament of the Commonwealth as a law for the government of the Australian Capital Territory and the adoption of that legislation by the Parliaments and legislatures of the States and the Northern Territory:

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Agricultural and Veterinary Chemicals (New South Wales) Act 1994*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act:

Agricultural and Veterinary Chemicals Act means the *Agricultural and Veterinary Chemicals Act 1994* of the Commonwealth.

Agricultural and Veterinary Chemicals (Administration) Act means the *Agricultural and Veterinary Chemicals (Administration) Act 1992* of the Commonwealth.

Agricultural and Veterinary Chemicals Code Act means the *Agricultural and Veterinary Chemicals Code Act 1994* of the Commonwealth.

Agvet Code of New South Wales means the provisions applying because of section 5.

Agvet Regulations of New South Wales means the provisions applying because of section 6.

applicable provision, in relation to a jurisdiction, means a provision of:

- (a) the Agvet Code of that jurisdiction, or
- (b) the Agvet Regulations of that jurisdiction, or
- (c) a law of the Commonwealth that applies in that jurisdiction in relation to a provision of or offence against the Agvet Code or Agvet Regulations of that jurisdiction.

APVMA means the Australian Pesticides and Veterinary Medicines Authority continued in existence by the Agricultural and Veterinary Chemicals (Administration) Act.

authority, in relation to the Commonwealth, has the meaning given in the Agricultural and Veterinary Chemicals Act.

Commonwealth administrative laws means:

- (a) the following Acts:

- (i) the *Administrative Appeals Tribunal Act 1975* of the Commonwealth (excluding Part IVA),
 - (ii) (Repealed)
 - (iii) the *Freedom of Information Act 1982* of the Commonwealth,
 - (iv) the *Ombudsman Act 1976* of the Commonwealth,
 - (v) the *Privacy Act 1988* of the Commonwealth, and
- (b) the regulations in force under those Acts.

Commonwealth ancillary criminal laws has the meaning given by section 8.

Commonwealth Minister means “the Minister” within the meaning of the Agvet Code of the participating Territories.

confer includes impose.

corresponding Act means an Act of another jurisdiction that corresponds to this Act.

corresponding law means:

- (a) a corresponding Act, or
- (b) regulations made under a corresponding Act, or
- (c) the Agvet Code, Agvet Regulations, or another applicable provision, of another jurisdiction, or
- (d) rules of court made under a corresponding Act.

function includes a duty.

instrument means any document whatever, including:

- (a) an Act or an instrument made under an Act, or
- (b) a law of this jurisdiction or an instrument made under such a law, or
- (c) an award or other industrial determination or order, or an industrial agreement, or
- (d) any other order (whether executive, judicial or otherwise), or
- (e) a notice, certificate or licence, or
- (f) an agreement, or
- (g) an application made, information or complaint laid, affidavit sworn, or warrant issued, for any purpose, or

- (h) an indictment, presentment, summons or writ, or
- (i) any other pleading in, or process issued in connection with, a legal or other proceeding.

jurisdiction means a State or the participating Territories.

law, in relation to a participating Territory, means a law of, or in force in, that Territory.

officer, in relation to the Commonwealth, has the meaning given in the Agricultural and Veterinary Chemicals Act.

participating Territory means:

- (a) the Australian Capital Territory, or
- (b) another Territory that is declared by regulations in force under section 25 of the Agricultural and Veterinary Chemicals Act to be a participating Territory.

State includes the Northern Territory of Australia.

Territory means a Territory referred to in section 122 of the Constitution of the Commonwealth, other than the Northern Territory of Australia, Norfolk Island, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands.

this jurisdiction means New South Wales.

- (2) In this Act, a reference to a Commonwealth Act includes a reference to:
 - (a) that Commonwealth Act as amended and in force for the time being, and
 - (b) an Act enacted in substitution for that Act.

4 Jervis Bay Territory

For the purposes of this Act, and the Agvet Code and the Agvet Regulations of this jurisdiction, the Jervis Bay Territory is taken to be part of the Australian Capital Territory.

Part 2 The Agvet Code, and the Agvet Regulations, of this jurisdiction

5 Application of Agvet Code in this jurisdiction

The Code set out in the Schedule to the Agricultural and Veterinary Chemicals Code Act as in force for the time being:

- (a) applies as a law of New South Wales, and
- (b) as so applying, may be cited as the Agvet Code of New South Wales.

6 Application of Agvet Regulations in this jurisdiction

The regulations in force for the time being under section 6 of the Agricultural and Veterinary Chemicals Code Act:

- (a) apply as regulations in force for the purposes of the Agvet Code of New South Wales, and
- (b) as so applying, may be referred to as the Agvet Regulations of New South Wales.

7 Interpretation of Agvet Code and Agvet Regulations of this jurisdiction

(1) In the Agvet Code, and the Agvet Regulations, of this jurisdiction:

the Minister for this jurisdiction means the Minister.

this jurisdiction means New South Wales.

(2) Subject to Part 1 of the Agvet Code of this jurisdiction, the [Acts Interpretation Act 1901](#) of the Commonwealth as in force for the time being applies as a law of this jurisdiction to:

- (a) the Agvet Code, and the Agvet Regulations, of this jurisdiction, and
- (b) any instrument made, granted or issued under that Code or those Regulations.

(3) For the purposes of subsection (2), the Commonwealth Act mentioned in that subsection applies as if:

- (a) the Agvet Code of this jurisdiction were a Commonwealth Act, and
- (b) the Agvet Regulations of this jurisdiction or instruments mentioned in that subsection were regulations or instruments made under a Commonwealth Act.

(4) The [Interpretation Act 1987](#) does not apply to:

- (a) the Agvet Code, or the Agvet Regulations, of New South Wales, or
- (b) any instrument made, granted or issued under that Code or those Regulations.

8 Ancillary offences (aiding, abetting, accessories, attempts, incitement or conspiracy)

(1) In this section, ***Commonwealth ancillary criminal laws*** means:

- (a) section 5, 6, 7 or 7A of the [Crimes Act 1914](#) of the Commonwealth, or
- (b) section 86 (1) of that Act.

(2) The Commonwealth ancillary criminal laws apply as laws of this jurisdiction in relation to an offence against the Agvet Code, or the Agvet Regulations, of this jurisdiction, and so apply:

- (a) as if a reference in the laws to a law of the Commonwealth were a reference to that Code or those Regulations, and
 - (b) to the exclusion of laws of this jurisdiction to the same or a similar effect.
- (3) In the Agvet Code, or the Agvet Regulations, of this jurisdiction, a reference to an offence against that Code or those Regulations includes a reference to a related offence against the Commonwealth ancillary criminal laws.

Part 3 Citing the Agvet Codes, and the Agvet Regulations, of other jurisdictions

9 References to Agvet Codes and Agvet Regulations of other jurisdictions

- (1) This section has effect for the purposes of an Act, a law of this jurisdiction or an instrument made under an Act or such a law.
- (2) If a law of a jurisdiction other than this jurisdiction provides that the Code set out in the Schedule to the Agricultural and Veterinary Chemicals Code Act as in force for the time being applies as a law of that jurisdiction, the Agvet Code of that jurisdiction is the Agvet Code so set out, applying as a law of that jurisdiction.
- (3) If a law of a jurisdiction other than this jurisdiction provides that the regulations in force for the time being under section 6 of the Agricultural and Veterinary Chemicals Code Act apply as regulations in force for the purposes of the Agvet Code of that jurisdiction, the Agvet Regulations of that jurisdiction are those regulations as so applying.

10 References to Agvet Codes and Agvet Regulations

- (1) The object of this section is to help ensure that the Agvet Code of this jurisdiction can operate, in appropriate circumstances, as if that Code, together with the Agvet Code of each other jurisdiction, constituted a single national Agvet Code applying throughout Australia.
- (2) Subject to this section, a reference in an instrument to the Agvet Codes, or to the Agvet Regulations, is taken, for the purposes of the laws of this jurisdiction:
 - (a) to be a reference to the Agvet Code, or to the Agvet Regulations, of this jurisdiction, and
 - (b) to include a separate reference to the Agvet Code, or to the Agvet Regulations, of each other jurisdiction.
- (3) Subsection (2) has effect except so far as the contrary intention appears in the instrument or the context of the reference otherwise requires.

Part 4 Application of Agvet Codes to the Crown

11 Agvet Code of this jurisdiction

The Agvet Code of this jurisdiction binds the Crown in right of this jurisdiction and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

12 Agvet Code of other jurisdictions

The Agvet Code of each jurisdiction other than this jurisdiction binds the Crown in right of this jurisdiction.

13 Crown not liable to prosecution

Nothing in this Part, or in the Agvet Code of this jurisdiction, renders the Crown in any capacity liable to be prosecuted for an offence.

14 This Part overrides the prerogative

If, because of this Part, a provision of the law of another jurisdiction binds the Crown in right of this jurisdiction, the Crown in that right is subject to that provision despite any prerogative right or privilege.

Part 5 Application of Commonwealth administrative laws to Agvet Code and Agvet Regulations of this jurisdiction

15 Object

The object of this Part is to help ensure that the Agvet Code of this jurisdiction and the Agvet Code of each other jurisdiction are administered on a uniform basis.

16 Application of Commonwealth administrative laws in relation to applicable provisions

- (1) The Commonwealth administrative laws apply as laws of this jurisdiction to any matter arising in relation to the applicable provisions of this jurisdiction as if those provisions were laws of the Commonwealth and were not laws of this jurisdiction.
- (2) The provisions of the Agvet Code of this jurisdiction that require the APVMA to give brief particulars of reasons for decisions do not affect the obligations of the APVMA under section 28 of the *Administrative Appeals Tribunal Act 1975* of the Commonwealth as that section applies as a law of this jurisdiction under subsection (1) of this section.
- (3) The provisions of the Agvet Code of this jurisdiction that relate to the disclosure of confidential commercial information do not affect the operation of the *Freedom of Information Act 1982* of the Commonwealth as that Act applies as a law of this jurisdiction under subsection (1) of this section.
- (4) For the purposes of a law of this jurisdiction, a matter arising in relation to the

applicable provisions of this jurisdiction:

(a) is taken to be a matter arising in relation to laws of the Commonwealth in the same way as if those provisions were laws of the Commonwealth, and

(b) is taken not to be a matter arising in relation to laws of this jurisdiction.

(5) Subsection (4) has effect for the purposes of a law of this jurisdiction except as prescribed by regulations under section 32.

17 Functions and powers conferred on Commonwealth officers and authorities

(1) A Commonwealth administrative law applying because of section 16 that confers on a Commonwealth officer or authority a function or power also confers on the officer or authority the same function or power in relation to a matter arising in relation to an applicable provision of this jurisdiction.

(2) In performing a function or exercising a power conferred by subsection (1), the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power under the Commonwealth administrative law.

18 Reference in Commonwealth administrative law to a provision of another law

For the purposes of section 16, a reference in a Commonwealth administrative law to a provision of that or another Commonwealth administrative law is taken to be a reference to that provision as applying because of that section.

18A Construction of references to Part IVA of Commonwealth AAT Act

For the purposes of section 16, a reference in a provision of the *Administrative Appeals Tribunal Act 1975* of the Commonwealth (as that provision applies as a law of this jurisdiction) to the whole or any part of Part IVA of that Act is taken to be a reference to the whole or any part of that Part as it has effect as a law of the Commonwealth.

Part 6

19, 20 (Repealed)

Part 7 The National Registration Authority for Agricultural and Veterinary Chemicals

21 Conferral of functions and powers on APVMA

(1) The APVMA has the functions and powers conferred or expressed to be conferred on it under this Act or the Agvet Code of this jurisdiction.

(2) In addition to the powers mentioned in subsection (1), the APVMA has power to do all things necessary or convenient to be done in connection with the performance of the

functions referred to in subsection (1) and, in particular may:

- (a) enter into contracts, and
- (b) acquire, hold and dispose of real and personal property, and
- (c) occupy, use and control any land or building owned or held under lease by the Commonwealth, a State or a Territory and made available for the purposes of the APVMA, and
- (d) appoint agents and attorneys, and act as agent for other persons, and
- (e) do anything incidental to any of its powers.

22 Agreements and arrangements

- (1) The Minister, or a person authorised in writing by the Minister, may enter into an agreement or arrangement with the Commonwealth Minister for the performance of functions or the exercise of powers by the APVMA as an agent of the State.
- (2) The APVMA has the functions and powers mentioned in the agreement or arrangement.

23 Conferral of other functions and powers for purposes of law in this jurisdiction

The APVMA has power to do acts in this jurisdiction in the performance or exercise of any function or power:

- (a) expressed to be conferred on it by a law of a jurisdiction (other than this jurisdiction) that corresponds to this Act or the Agvet Code of this jurisdiction, or
- (b) referred to in an agreement or arrangement made under a provision of an Act of a jurisdiction other than this jurisdiction corresponding to section 22.

24 Commonwealth Minister may give directions in exceptional circumstances

The power of the Commonwealth Minister to give directions to the APVMA under section 10 of the Agricultural and Veterinary Chemicals (Administration) Act extends to giving directions in relation to functions and powers of the APVMA conferred under the applicable provisions of this jurisdiction, and the section applies accordingly.

Part 8 Miscellaneous

25 Orders

Orders in force for the time being under section 7 of the Agricultural and Veterinary Chemicals Code Act have the same effect for the purposes of the Agvet Code of this jurisdiction as they would have if they were provisions of the Agvet Regulations of this jurisdiction.

26 Manufacturing principles

Subject to the Agvet Code, and the Agvet Regulations, of this jurisdiction, the manufacturing principles in force for the time being under section 23 of the Agricultural and Veterinary Chemicals Act also have effect for the purposes of Part 8 of that Code.

27 Delegation

The power of delegation of the Commonwealth Minister under section 71 of the Agricultural and Veterinary Chemicals (Administration) Act extends to the powers that are expressed to be conferred on the Commonwealth Minister under this Act or the Agvet Code of this jurisdiction, and the section applies accordingly.

28 Conferral of powers on State officers

- (1) If an officer of a Department, administrative unit or authority is authorised, under section 69F of the Agricultural and Veterinary Chemicals (Administration) Act, by the Chief Executive Officer of the APVMA to exercise the powers or perform the functions of an inspector for the purposes of a particular relevant law those powers and functions are conferred on that officer.
- (2) Powers and functions conferred as referred to in subsection (1) are to be exercised or performed in accordance with the authorisation but are taken to have been validly exercised or performed despite any failure to comply with a condition or restriction of the authorisation.
- (3) Words and expressions used in this section have the same meanings as they have in section 69F of the Agricultural and Veterinary Chemicals (Administration) Act.

28A Inspectors and analysts

- (1) In this section:

officer means:

- (a) an inspector appointed under section 69F (1) of the Agricultural and Veterinary Chemicals (Administration) Act, or
 - (b) an analyst approved under section 69G of the Agricultural and Veterinary Chemicals (Administration) Act.
- (2) An officer has, in respect of a matter arising in relation to an applicable provision of this jurisdiction, the functions and powers conferred or expressed to be conferred on him or her under the applicable provisions of this jurisdiction.

28B Validation of actions of inspectors and analysts

- (1) In this section:

officer has the same meaning as in section 28A.

relevant provision means Schedule 1 [3] of the *Agricultural and Veterinary Chemicals (New South Wales) Amendment Act 2001*.

relevant time, in relation to a thing, means the time at which the thing was done or omitted to be done or purported to have been done or omitted to be done.

- (2) Anything done or omitted to be done by an officer before the commencement of the relevant provision that would have been validly done or omitted had the relevant provision commenced before the relevant time has, and is taken always to have had, the same force and effect as it would have had if the relevant provision had commenced before the relevant time.

Note—

Part 2 of the *Co-operative Schemes (Administrative Actions) Act 2001* applies to administrative actions taken by an officer as affected by this section.

29 Application of fees and taxes

All fees, taxes and other money (other than penalties and fines) that, under the applicable provisions of this jurisdiction, are authorised or directed to be payable by or imposed on any person must be paid to the Commonwealth.

30 Documents or substances held by previous registering authority may be given to APVMA

Despite anything in any other law of this jurisdiction, any authority of this jurisdiction that, immediately before the commencement of this section, performed functions under a provision of the law of this jurisdiction that corresponded to a provision of the Agvet Code of this jurisdiction may give to the APVMA any documents or substances in its possession or custody that were received by it in the performance of those functions or otherwise relate to the performance of those functions.

31 Exemptions from liability for damages

- (1) No action, suit or other proceeding for damages lies against the State or a person who is or has been a co-ordinator of this jurisdiction for any loss or injury directly or indirectly suffered as a result of:
- (a) the handling of an approved active constituent for a proposed or existing chemical product, or
 - (b) the handling of a registered chemical product, or
 - (c) the handling of an active constituent for a proposed or existing chemical product, or of a chemical product, in respect of which a permit or exemption has been issued or given by the APVMA, or

- (d) an inability to use, or to use in a particular manner, an active constituent for a proposed or existing chemical product:
 - (i) because an approval, permit or exemption permitting its use, or permitting its use in that manner, has been refused by the APVMA or such an approval, permit or exemption that was previously granted by the APVMA has been suspended or cancelled, or
 - (ii) because its use, or its use in that manner, is precluded by the conditions of an approval, permit or exemption, or
- (e) an inability to use, or to use in a particular manner, a chemical product:
 - (i) because a registration, permit or exemption permitting its use, or permitting its use in that manner, has been refused by the APVMA or such a registration, permit or exemption that was previously granted by the APVMA has been suspended or cancelled, or
 - (ii) because its use, or its use in that manner, is precluded by the conditions of a registration, permit or exemption, or
- (f) the carrying out of a step in the manufacture of a chemical product in respect of which a licence has been issued by the APVMA, or
- (g) an inability to carry out, or to carry out in a particular manner or at particular premises, a step in the manufacture of a chemical product:
 - (i) because a licence to carry out that step, or to carry out that step in that manner or at those premises, has been refused by the APVMA or such a licence that was previously granted by the APVMA has been suspended or cancelled, or
 - (ii) because the carrying out of that step, or the carrying out of that step in that manner or at those premises, is precluded by the conditions of a licence.
- (2) If an action, suit or other proceeding is brought against a person responsible for the importation, manufacture, supply or handling of:
 - (a) an approved active constituent for a proposed or existing chemical product, or
 - (b) a registered chemical product, or
 - (c) an active constituent for a proposed or existing chemical product, or a chemical product, in respect of which the APVMA has issued a permit or given an exemption, or
 - (d) a chemical product in respect of a step in the manufacture of which the APVMA has issued a licence,

in relation to any loss or injury directly or indirectly suffered because of the importation, manufacture, supply or handling of the constituent or product, it is not a defence to that action, suit or other proceeding that the APVMA had approved the constituent, registered the product, issued a permit or given an exemption in relation to the constituent or the product, or issued a licence in relation to a step in the manufacture of the product.

- (3) Expressions used in this section have the same meanings as in the Agvet Code of this jurisdiction.

32 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

33 Eligible laws

The regulations may declare any law, or provision of a law, to be an eligible law for the purposes of the definition of **permit** in section 109 of the Agvet Code of this jurisdiction.

33A Transitional provision—Agricultural and Veterinary Chemicals (New South Wales) Amendment Act 2001

- (1) In this section:

substitution provision means Schedule 1 [2] of the *Agricultural and Veterinary Chemicals (New South Wales) Amendment Act 2001*.

- (2) Part 5 of this Act, as substituted by the substitution provision, applies in relation to matters arising in relation to the applicable provisions of this jurisdiction, and decisions made or other things done or omitted to be done under the Commonwealth administrative laws in respect of such matters, before, on or after the commencement of the substitution provision.

Part 9 Imposition of fees and taxes

34 Fees (including taxes)

This section imposes the fees (including fees that are taxes) that the Agvet Regulations of this jurisdiction prescribe.

Part 10 Conferral of functions on Commonwealth Director of Public Prosecutions

35 Conferral of functions on Commonwealth Director of Public Prosecutions

The Director of Public Prosecutions of the Commonwealth (**the Director**) may:

- (a) institute prosecutions on indictment for indictable offences against the Agvet Code, or the Agvet Regulations, of this jurisdiction, and
- (b) carry on prosecutions of the kind referred to in paragraph (a) (except prosecutions instituted by the Attorney-General or the Director of Public Prosecutions of the State), whether or not instituted by the Director, and
- (c) if the Attorney-General or the Director of Public Prosecutions of the State requests the Director in writing to carry on a prosecution of the kind referred to in paragraph (a) that was instituted by the Attorney-General or the Director of Public Prosecutions of the State—carry on the prosecution, and
- (d) institute proceedings for the commitment of persons for trial in respect of indictable offences against the Agvet Code, or the Agvet Regulations, of this jurisdiction, and
- (e) institute proceedings for the summary conviction of persons in respect of offences against the Agvet Code, or the Agvet Regulations, of this jurisdiction, and
- (f) carry on proceedings of a kind referred to in paragraph (d) or (e) (whether or not instituted by the Director), and
- (g) do anything incidental or conducive to the performance of any of the functions referred to in paragraphs (a) to (f).

Part 11 Relationship with other State laws

36 Regulations relating to savings and transitional provisions

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) In particular, the regulations may make provision for or with respect to:
 - (a) treating the registration or approval of a chemical product or constituent of a chemical product under the Agvet Code to be registration or approval of the chemical product or constituent for the purposes of any of the provisions of the *Stock Medicines Act 1989*, or
 - (b) treating a label approved under the Agvet Code to be a label registered under or required or permitted by any of the provisions of the *Stock Medicines Act 1989*, or
 - (c) suspending the operation of provisions of the *Stock Medicines Act 1989* specified in the regulations to the extent (if any) so specified.
- (3) Any such savings or transitional provision may, if the regulations so provide, take effect from the commencement of this section or a later date.
- (4) To the extent to which any such savings or transitional provision takes effect from a

date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than this State or an authority of this State), the rights of that person existing before the date of its publication, or
- (b) to impose liabilities on any person (other than this State or an authority of this State) in respect of anything done or omitted to be done before the date of its publication.

(5) In this section, ***chemical product***, ***constituent*** and ***label*** have the same meanings as in the Agvet Code.

37 (Repealed)

Schedule 1 (Repealed)