

# Pesticides Act 1999 No 80

[1999-80]



New South Wales

## Status Information

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# Pesticides Act 1999 No 80



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# Pesticides Act 1999 No 80



New South Wales

An Act to regulate and control the use of pesticides; to repeal the *Pesticides Act 1978*; to amend certain other Acts; and for other purposes.

## Part 1 Preliminary

### Note—

The Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* of the Commonwealth (the **Agvet Code**) is the basis of a uniform legislative scheme for the approval and registration of agricultural chemical products (eg pesticides) and veterinary chemical products. Section 5 of the *Agricultural and Veterinary Chemicals (New South Wales) Act 1994* provides that the Agvet Code applies as law of New South Wales.

The Agvet Code controls the manufacture and supply (eg sale) of agricultural and veterinary chemical products. The control of the use of those chemical products (described in this Act as “pesticides”) is generally a matter for the States.

This Act provides the basis for the control of the use of pesticides in New South Wales.

This Act should be read in conjunction with the Agvet Code (particularly the definitions in that Code).

### 1 Name of Act

This Act is the *Pesticides Act 1999*.

### 2 Commencement

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

### 3 Objects of this Act

The objects of this Act are as follows—

- (a) to promote the protection of human health, the environment, property and trade in relation to the use of pesticides, having regard to the principles of ecologically sustainable development within the meaning of the *Protection of the Environment Administration Act 1991*,
- (b) to minimise risks to human health, the environment, property and trade,
- (c) to promote collaborative and integrated policies in relation to the use of pesticides,
- (d) to establish a legislative framework to regulate the use of pesticides.



## 4 Definitions

(1) In this Act—

**agricultural farm land** includes a timber plantation.

**aerial spraying equipment** means equipment attached to, or forming part of, an aircraft, being equipment that is manufactured, adapted or used for the purpose of facilitating the use of pesticides from the aircraft.

**Agvet Code** means the provisions applying because of section 5 of the [Agricultural and Veterinary Chemicals \(New South Wales\) Act 1994](#).

**animal** has the same meaning as in the Agvet Code.

**Note—**

The definition in the Agvet Code is as follows—

“**animal**” means any animal (other than a human being), whether vertebrate or not, and whether a food-producing species or not, and includes—

- (a) mammals, birds, bees, reptiles, amphibians, fish, crustaceans and molluscs, and
- (b) the semen, ova or embryo of an animal (other than a human being) or any other substance or thing directly relevant to the reproduction of an animal (other than a human being), and
- (c) any other prescribed form of animal life, whether prescribed by reference to a species or in any other way.

**approved label**, in relation to a pesticide, means any label approved under Part 2 of the Agvet Code for or in respect of the pesticide.

**Note—**

The term “**label**” in the Agvet Code includes tag, leaflet, brand, stamp, mark, stencil or written statement.

**authorised officer** means a person appointed by the Environment Protection Authority under Part 7.2 of the [Protection of the Environment Operations Act 1997](#) as an authorised officer for the purposes of this Act.

**Chairperson of the EPA Board** means the Chairperson within the meaning of the [Protection of the Environment Administration Act 1991](#).

**container** has the same meaning as in the Agvet Code.

**Note—**

The definition in the Agvet Code is as follows—

**container** includes anything by which or in which a chemical product is, or is to be, covered, enclosed, contained or packaged, but does not include a container (such as a shipping container) in which other containers of chemical products are, or are to be, placed for the purpose of being transported.

**environment** means components of the earth, including—

- (a) land, air and water, and
- (b) any layer of the atmosphere, and
- (c) any organic or inorganic matter and any living organism, and
- (d) human-made or modified structures and areas,

and includes interacting natural ecosystems that include components referred to in paragraphs (a)–(c).

**Environment Protection Authority** (or **Authority**) means the Environment Protection Authority constituted under the [Protection of the Environment Administration Act 1991](#).

**exercise** a function includes perform a duty.

**function** includes a power, authority or duty.

**harm** an animal or plant includes poison, injure, contaminate, infect, distress, maim, impair or kill the animal or plant.

**injury** to a person includes any kind of physical or psychological injury whether temporary or permanent, including conditions such as nausea, allergic reaction, dizziness, headache, stress, and running nose or eyes.

**instruction** has the same meaning as in the Agvet Code.

**Note—**

The definition in the Agvet Code is as follows—

“**instruction**” includes direction, caution, warning or recommendation.

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

**monetary benefits** means monetary, financial or economic benefits.

**non-target animal**, in relation to the use of a pesticide, means any animal that is not specified on an approved label or permit for the pesticide as being an animal in respect of which the pesticide may be used.

**non-target plant**, in relation to the use of a pesticide, means any plant that is not specified on the approved label or permit for the pesticide as being a plant in respect of which the pesticide may be used.

**occupier** of premises means the person who has the management or control of the premises.

**permit** means a permit under Part 7 of the Agvet Code, and includes a permit that is taken to have been issued by operation of section 45B or 47D of the Code.

**Note—**

Sections 45B and 47D of the Agvet Code provide for certain persons to be taken to hold a permit for a transitional period when a notice of suspension or cancellation of a permit has been given, or when a notice of the end of the registration of a chemical product is published.

**pest** has the same meaning as in the Agvet Code.

**Note—**

The definition in the Agvet Code is as follows—

“**pest**” means—

- (a) in relation to an animal plant or thing—any animal, plant or other biological entity that injuriously affects the physical condition, worth or utility of the first-mentioned animal or plant or of that thing, or
- (b) in relation to a place—any animal, plant or other biological entity that injuriously affects the use or enjoyment of that place.

**pesticide**—see section 5.

**pesticide control order** means an order made under Part 4.

**pesticide pollution** means any harm or risk of harm to any person, property, the environment or trade that is caused by the use of a pesticide.

**plant** has the same meaning as in the Agvet Code.

**Note—**

The definition in the Agvet Code is as follows—

“**plant**” means any vegetation or fungus and includes a seed or cutting of a plant, or any other part or product of a plant.

**possession** of a pesticide or other thing includes any case in which a person—

- (a) has custody or control of the pesticide or thing, or
- (b) has the pesticide or thing in the custody of another person, or
- (c) has the pesticide or thing in or on any premises, whether or not belonging to or occupied by the person.

**premises** includes—

- (a) a building or structure, or
- (b) land or a place (whether enclosed or built on or not), or
- (c) a vehicle, vessel or aircraft.

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

**property** (except in Part 10) includes—

- (a) any premises, or
- (b) livestock, or
- (c) agricultural crops or other produce.

**public authority** means a public or local authority constituted by or under an Act, and includes—

- (a) a Public Service agency, or
- (b) a statutory body representing the Crown, a State owned corporation or a local council, or
- (c) a member of staff or other person who exercises functions on behalf of a public authority.

**registered pesticide** means a pesticide that is registered under Part 2 of the Agvet Code.

**related body corporate** has the same meaning as in the [Corporations Act 2001](#) of the Commonwealth.

**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.

**reserved chemical product** has the same meaning as in the Agvet Code.

**Note—**

The term **reserved chemical product** is defined in the Agvet Code to mean a chemical product that is, or is included in a class of chemical products that is, specified in the Reserved Schedule. A reserved chemical product is not required to be registered, but its possession, custody or use is subject to conditions specified by the Reserved Schedule.

**Reserved Schedule** has the same meaning as in the Agvet Code.

**Note—**

The term **Reserved Schedule** is defined in the Agvet Code to mean the schedule contained in the regulations under section 56ZU of the Code.

**restricted pesticide** means a pesticide that is a restricted chemical product within the meaning of the Agvet Code.

**Note—**

The term “**restricted chemical product**” is defined in the Agvet Code as a chemical product declared by regulations made for the purposes of section 93 of the Code to be a restricted chemical product.

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

**substance** has the same meaning as in the Agvet Code.

**Note—**

The definition in the Agvet Code is as follows—

**substance** includes—

- (a) any gas, liquid, mixture or compound of gases, or mixture or compound of liquids, and
- (b) an organism or part of an organism, including a genetically manipulated organism or part of a genetically manipulated organism, and
- (c) material that is produced from an organism, and
- (d) matter whose production involves the use of an organism,

but does not include an excluded organism or part of an excluded organism, or material that is produced from, or matter whose production involves the use of, an excluded organism.

**unregistered pesticide** means a pesticide that is not registered under Part 2 of the Agvet Code, and includes a pesticide the registration or approval of which has been suspended or cancelled under Part 2 of the Code.

**use** a pesticide includes—

- (a) apply, spray, spread or disperse the pesticide by any means (for example by hand or by the use of a machine or any type of equipment including aerial spraying equipment), or
- (b) store the pesticide, or
- (c) prepare the pesticide for use.

(2) Without limiting subsection (1), a word or expression used in the Agvet Code that is used in this Act has the same meaning in this Act as it has in that Code.

(3) Notes included in this Act do not form part of this Act.

## **5 Definition of “pesticide”**

(1) In this Act, **pesticide** means—

- (a) an agricultural chemical product (within the meaning of the Agvet Code), or
- (b) a veterinary chemical product (within the meaning of the Agvet Code) that—

- (i) is represented as being suitable for, or is manufactured, supplied or used for, the external control of ectoparasites of animals, and
- (ii) is concentrated and requires dilution or mixing in water before use, and
- (iii) is not prescribed under the *Stock Medicines Act 1989* as a low-risk veterinary chemical product.

**Note—**

The Agvet Code defines an **agricultural chemical product** to be a substance or a mixture of substances that is represented, imported, manufactured, supplied or used as a means of directly or indirectly—

- (a) destroying, stupefying, repelling, inhibiting the feeding of, or preventing infestation by or attacks of, any pest in relation to a plant, a place or a thing, or
- (b) destroying a plant, or
- (c) modifying the physiology of a plant or pest so as to alter its natural development, productivity, quality or reproductive capacity, or
- (d) modifying an effect of another agricultural chemical product, or
- (e) attracting a pest for the purpose of destroying it.

The term also includes a substance or mixture of substances declared by regulations to be an agricultural chemical product. However, the term does not include a substance or mixture of substances declared by regulations not to be an agricultural chemical product.

- (2) For the purposes of this Act, a pesticide continues to be regarded as a pesticide even when it is mixed with some other substance (whether or not the other substance is a pesticide). However, a pesticide does not include a prescribed mixture or a mixture of a prescribed class or description.

**Note—**

Subsection (2) generally deals with the situation where a pesticide is diluted, or is mixed, before being used. The effect of the provision is that the mixing of a pesticide does not mean that it is no longer a pesticide.

## **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 Eligible laws for purposes of Agvet Code—matters authorised by permit**

Sections 12, 13 and 15 are declared to be eligible laws for the purposes of the definition of **permit** in section 109 of the Agvet Code.

### **Note—**

The effect of a permit issued under section Part 7 of the Agvet Code is that it authorises a person to whom it applies to do (or omit to do) something that is otherwise prohibited by this Act, so long as the person does so in accordance with the conditions of the permit. In other words, a person who wants to do something in respect of a pesticide that would otherwise be prohibited under a provision of this Act that is an eligible law, may obtain a permit in respect of the doing of the thing.



## Part 2 Control of pesticides

### Division 1 Wilful or negligent misuse of pesticides

#### 7 Injury to persons or damage to property resulting from pesticide use

(1) A person is guilty of an offence if the person wilfully or negligently uses a pesticide in a manner that—

- (a) injures or is likely to injure any other person, or
- (b) damages or is likely to damage any property of another person.

Maximum penalty—

- (a) \$250,000 in the case of a corporation, or
- (b) \$120,000 in the case of an individual.

**Note—**

An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

(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) **“On-farm” exception** A person does not commit an offence under subsection (1) if the person establishes—

- (a) that the injury or damage occurred, or is likely to occur, only on the agricultural farm land in respect of which the pesticide was used, and
- (b) that the person is the occupier of that land or is employed or engaged by the occupier of that land.

#### 8 Harm to animals or plants resulting from pesticide use

(1) A person is guilty of an offence if the person wilfully or negligently uses a pesticide in a manner that—

- (a) harms any non-target animal or non-target plant, or

- (b) if there is no approved label or permit for the pesticide—harms any animal or plant.

Maximum penalty—

- (a) \$250,000 in the case of a corporation, or
- (b) \$120,000 in the case of an individual.

**Note—**

An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

- (2) **“On-farm”/residential premises exception** A person does not commit an offence under subsection (1) if the person establishes—
  - (a) that the harm occurred only on the agricultural farm land, or the residential premises, in respect of which the pesticide was used, and
  - (b) that the person is the occupier of that land or those premises, or is employed or engaged by the occupier of that land or those premises.

**9 Material harm to endangered, vulnerable or protected animals**

- (1) A person is guilty of an offence if the person wilfully or negligently uses a pesticide in a manner that materially harms—
  - (a) an animal that is a threatened species within the meaning of the *Biodiversity Conservation Act 2016*, or
  - (b) any protected animal within the meaning of the *Biodiversity Conservation Act 2016*.

Maximum penalty—

- (a) \$250,000 in the case of a corporation, or
- (b) \$120,000 in the case of an individual.

**Note—**

An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

- (2) For the purposes of subsection (1), the following matters are taken to be relevant in determining whether the harm to any such animal is material—
  - (a) the number of animals harmed,

- (b) the type of animals harmed,
  - (c) the local population of the type of animal harmed.
- (3) Nothing in subsection (2) limits the matters that may be considered in determining whether harm to an animal that is a threatened species or to a protected animal is material.

## Division 2 Misuse of pesticides

### 10 Injury to persons or damage to property resulting from pesticide use

- (1) A person must not use a pesticide in a manner that—
- (a) injures or is likely to injure any other person, or
  - (b) damages or is likely to damage any property of another person.

Maximum penalty—

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

#### Note—

An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

- (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) **“On-farm” exception** A person does not commit an offence under subsection (1) if the person establishes—
- (a) that the injury or damage occurred, or is likely to occur, only on the agricultural farm land in respect of which the pesticide was used, and
  - (b) that the person is the occupier of that land or is employed or engaged by the occupier of that land.
- (3) **“Due diligence” defence** 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.

#### **11 Harm to animals or plants resulting from pesticide use**

(1) A person must not use a pesticide in a manner that—

- (a) harms any non-target animal or non-target plant, or
- (b) if there is no approved label or permit for the pesticide—harms any animal or plant.

Maximum penalty—

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

#### **Note—**

An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

(2) **“On-farm”/residential premises exception** A person does not commit an offence under subsection (1) if the person establishes—

- (a) that the harm occurred only on the agricultural farm land, or the residential premises, in respect of which the pesticide was used, and
- (b) that the person is the occupier of that land or those premises, or is employed or engaged by the occupier of that land or those premises.

(3) **“Due diligence” defence** 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.

#### **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](#).

## **Division 3 General offences relating to control of pesticides**

### **12 Possession of unregistered pesticide**

(1) A person must not possess an unregistered pesticide unless the person—

- (a) is authorised to do so by a permit, and
- (b) complies with the permit.

Maximum penalty—

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

#### **Note—**

The effect of a permit is explained in the note to section 6. This offence is an “eligible law” for the purposes of Part 7 of the Agvet Code.

An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

(2) A person does not commit an offence against subsection (1) if—

- (a) the person possesses an unregistered pesticide that is a reserved chemical product, and
- (b) the pesticide is possessed in accordance with the conditions specified for the reserved chemical product by the Reserved Schedule.

### **13 Use of unregistered pesticide**

- (1) A person must not use an unregistered pesticide unless the person—
- (a) is authorised to do so by a permit, and
  - (b) complies with the permit.

Maximum penalty—

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

#### **Note—**

The effect of a permit is explained in the note to section 6. This offence is an “eligible law” for the purposes of Part 7 of the Agvet Code.

An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

- (2) A person does not commit an offence against subsection (1) if—
- (a) the person uses an unregistered pesticide that is a reserved chemical product, and
  - (b) the pesticide is used in accordance with the conditions specified for the reserved chemical product by the Reserved Schedule.

### **14 Requirement to read approved label and permit**

- (1) A person must on each occasion before using a registered pesticide—
- (a) read an approved label for the pesticide, or
  - (b) ensure that an approved label for the pesticide is explained to the person.

Maximum penalty—

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

- (2) If a permit is in force in respect of a pesticide, a person to whom the permit applies must on each occasion, before using the pesticide—
- (a) read the permit, or
  - (b) ensure that the permit is explained to the person.

Maximum penalty—

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

**Note—**

An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

- (3) If a pesticide is mixed with any other substance, any requirement under subsection (1) or (2) in relation to that pesticide is not affected.

**Note—**

The mixing of a pesticide with another substance still means that the approved label or permit for the pesticide must be read.

### **15 Using pesticide contrary to approved label**

- (1) A person must not use a registered pesticide in contravention of any instruction on an approved label for the pesticide unless the person—
  - (a) is authorised to do so by a permit, and
  - (b) complies with the permit.

Maximum penalty—

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

**Note—**

The effect of a permit is explained in the note to section 6. This offence is an “eligible law” for the purposes of Part 7 of the Agvet Code.

An offence against subsection (1) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

- (2) If a registered pesticide is mixed with any other substance, the requirement under subsection (1) in relation to the pesticide is not affected.

**Note—**

The mixing of a registered pesticide with another substance still means that the relevant instructions on the approved label for the pesticide must be followed.

- (3) **Defences** It is a defence in any proceedings against a person for an offence under subsection (1) if the person establishes that—
  - (a) (Repealed)

- (b) the person complied with the relevant instructions on an approved label for the pesticide (being an approved label that was, at the time of the alleged offence, affixed or attached to, or appeared on, the container for the pesticide that was used), or
- (c) the person—
  - (i) used the pesticide at a concentration or rate lower than that specified in the instructions on an approved label for the pesticide (provided any such lower concentration or rate was not prohibited by the instructions or by any pesticide control order), and
  - (ii) otherwise complied with the relevant instructions on the approved label.
- (4) For the purposes of subsection (3), a **relevant instruction** means an instruction that relates to any of the following matters—
  - (a) any restriction (however expressed) as to the use of the pesticide (for example a direction not to use the pesticide for any purpose, or in any manner, contrary to the approved label unless authorised by law),
  - (b) the situation in which the use of the pesticide is permitted (for example the type of crop),
  - (c) the pest to be controlled by the pesticide,
  - (d) the rate, concentration, frequency or timing, number, volume, or other similar limitation, in respect of which the pesticide may or may not be used,
  - (e) the equipment by means of which the pesticide may be used,
  - (f) the preparation and mixing of the pesticide,
  - (g) withholding periods,
  - (h) any restraints on the use of the pesticide (for example weather conditions, entry to treated areas, distance restrictions),
  - (i) the protection of livestock, crops, wildlife, non-target animals or non-target plants, fish or other aquatic life,
  - (j) the protection of the environment,
  - (k) avoidance of spray drift, vapour movement and odour,
  - (l) storing or disposal of the pesticide,
  - (m) safety directions and other human-health related matters,



- (n) record keeping, training and notification requirements,
- (o) expiry dates or dates in which use is permitted,
- (p) times during the day when use of the pesticide is permitted,
- (q) any other matter that may be prescribed by the regulations.

#### **16 Keeping pesticides in container without approved label**

- (1) A person must not, without reasonable excuse, keep a registered pesticide in a container that does not have an approved label attached to the container.

Maximum penalty—

- (a) \$20,000 in the case of a corporation, or
  - (b) \$10,000 in the case of an individual.
- (2) If a registered pesticide is mixed with any other substance, the requirement under subsection (1) in relation to the pesticide is not affected.

#### **17 Use or possession of restricted pesticides**

A person must not possess or use a restricted pesticide unless authorised to do so by—

- (a) a restricted pesticide authorisation, or
- (b) a pesticide control order.

Maximum penalty—

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

**Note—**

Failure to comply to comply with the conditions of any such restricted pesticide authorisation, or with a pesticide control order, is an offence under this Act.

An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

## **Part 3 Pesticide control notices**

### **Division 1 Preliminary**

#### **18 Definitions**

In this Part—

***clean-up notice*** means a notice under Division 2.

**clean-up action**, in relation to pesticide pollution, includes—

- (a) action to prevent, minimise, remove or mitigate the pesticide pollution, or
- (b) ascertaining the nature and extent of the pesticide pollution, or
- (c) preparing and carrying out a remedial plan of action.

**compliance cost notice** means a notice under Division 4.

**prevention notice** means a notice under Division 3.

## **Division 2 Clean-up notices**

### **19 Environment Protection Authority may direct clean-up action**

- (1) The Environment Protection Authority may, by notice in writing, do either or both of the following—
  - (a) direct a person who is reasonably suspected by the Authority of causing or having caused any pesticide pollution,
  - (b) direct an occupier of premises at which the Authority reasonably suspects that any pesticide pollution is occurring or has occurred,to take such reasonable clean-up action as is specified in the notice and within a reasonable period that is specified in the notice.
- (2) The clean-up notice may require the person to whom the notice is given to furnish reports to the Environment Protection Authority regarding progress on the carrying out of the clean-up action.
- (3) If the person given a clean-up notice complies with the notice but was not the person who caused the pesticide pollution, the cost of complying with the notice may be recovered by the person who complied with the notice as a debt in a court of competent jurisdiction from the person who caused the pesticide pollution.
- (4) A person who, without reasonable excuse, does not comply with a clean-up notice given to the person is guilty of an offence.

Maximum penalty—

- (a) in the case of a corporation—\$120,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues, or
- (b) in the case of an individual—\$60,000 and, in the case of a continuing offence, a further penalty of \$30,000 for each day the offence continues.

**Note—**

An offence against subsection (4) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

## **20 Clean-up by public authorities**

- (1) If a public authority reasonably suspects, or is advised by the Environment Protection Authority, that any pesticide pollution is occurring or has occurred, the public authority may take such clean-up action as it considers necessary.
- (2) A public authority may take action under this section whether or not a clean-up notice has been given under section 19, and (if such a notice has been given) whether or not the period specified in the notice under that section has ended.
- (3) A public authority may take clean-up action under this section by itself or by its employees, agents or contractors.

## **21 Clean-up directions may be given orally**

- (1) The Environment Protection Authority may, instead of giving a direction under this Division by notice in writing, give the direction orally, but only in such circumstances as the Authority considers to be exceptional.
- (2) A direction that can be given orally under this Division by the Environment Protection Authority can be given orally by a person who is acting under delegated or other authority from the Authority.
- (3) A direction given orally to a person ceases to have effect on the expiration of 72 hours from the time it was given unless confirmed by a written clean-up notice given to the person.
- (4) A direction given orally has the same effect as a direction given by notice in writing, and is taken to be a clean-up notice.

## **22 Fee**

- (1) The purpose of this section is to enable the Environment Protection Authority to recover the administrative costs of preparing and giving clean-up notices.
- (2) A person who is given a clean-up notice must within 30 days pay the prescribed fee (if any) to the Environment Protection Authority.
  - (2A) No fee is payable in relation to the revocation or variation of a clean-up notice.
- (3) The Environment Protection Authority may, on the application of a person to whom subsection (2) applies, extend the time for payment of the fee.
  - (3A) The Environment Protection Authority may waive payment of the whole or any part of the fee.

- (4) A person who does not pay the fee within the time provided under this section is guilty of an offence.

Maximum penalty—\$20,000.

## **Division 3 Prevention notices**

### **23 Meaning of environmentally unsatisfactory manner**

For the purposes of this Division, a pesticide is used in an environmentally unsatisfactory manner if—

- (a) it is used in contravention of, or in a manner that is likely to lead to a contravention of, any provision of this Act or the regulations, or
- (b) pesticide pollution is occurring or has occurred as a result of the use of the pesticide.

### **24 Preventive action**

- (1) This section applies when the Environment Protection Authority reasonably suspects that any pesticide is being, or has been, used in an environmentally unsatisfactory manner at any premises or by any person (otherwise than at premises).
- (2) The Environment Protection Authority may, by notice in writing, do either or both of the following—
  - (a) direct the occupier of the premises,
  - (b) direct the person who is using or who used the pesticide,to take such action, as is specified in the notice and within such period (if any) as is specified in the notice, to ensure that the pesticide, or the pesticide and any other pesticide, is in the future used in an environmentally satisfactory manner.
- (3) The action to be taken may (without limitation) include any of the following—
  - (a) any action relating to the use of a pesticide (for example the method of application, use at a specified time only, use on specified land only, and the climatic conditions in which the pesticide may be used),
  - (b) notification that a pesticide has or is about to be used,
  - (c) ceasing to use a particular pesticide, a particular type of spray equipment or a particular method of application,
  - (d) ceasing to carry on any operation that involves the use of a pesticide,
  - (e) monitoring, sampling, analysing and recording information that is relevant to the use of a pesticide (eg weather conditions),

- (f) preparing and carrying out a plan of action to prevent any pesticide from being used in an environmentally unsatisfactory manner,
  - (g) installing, repairing, altering, replacing, maintaining or operating equipment or other machinery used in the application of any pesticide.
- (4) If the occupier who is given a notice is not the person who is using or who used the pesticide, the notice is taken to require the occupier to take all available steps to cause the action to be taken.
- (5) A prevention notice may require the person to whom the notice is given to furnish reports to the Environment Protection Authority regarding progress on carrying out the action required to be taken by the notice.

## **25 Offence**

A person who does not comply with a prevention notice given to the person is guilty of an offence.

Maximum penalty—

- (a) in the case of a corporation—\$120,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues, or
- (b) in the case of an individual—\$60,000 and, in the case of a continuing offence, a further penalty of \$30,000 for each day the offence continues.

### **Note—**

An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

## **26 Commencement of operation of prevention notice or variation of prevention notice**

A prevention notice, or a variation of a prevention notice, does not operate—

- (a) until the period within which an appeal under this Act can be lodged against the notice or variation has expired without an appeal being lodged, or
- (b) if such an appeal is lodged within that period, until the Land and Environment Court confirms the notice or variation or the appeal is withdrawn, or
- (c) until the person who has the right to lodge such an appeal notifies the Environment Protection Authority in writing that no appeal is to be made against the notice or variation,

whichever first occurs.

## **27 Fee**

- (1) The purpose of this section is to enable the Environment Protection Authority to recover the administrative costs of preparing and giving prevention notices.
- (2) A person who is given a prevention notice by the Environment Protection Authority must within 30 days pay the prescribed fee (if any) to the Authority.
- (2A) No fee is payable in relation to the revocation or variation of a prevention notice.
- (3) The Environment Protection Authority may, on the application of a person to whom subsection (2) applies, extend the time for payment of the fee.
- (3A) The Environment Protection Authority may waive payment of the whole or any part of the fee.
- (4) The fee is not payable during the currency of an appeal against the prevention notice.
- (5) If the decision of the Land and Environment Court on an appeal does not invalidate the prevention notice, the fee is payable within 30 days of the decision.
- (6) A person who does not pay the fee within the time provided under this section is guilty of an offence.

Maximum penalty—\$20,000.

## **Division 4 Compliance cost**

### **28 Compliance cost notices**

- (1) If the Environment Protection Authority gives a clean-up notice under section 19 to a person, the Authority may, by notice in writing, require the person to pay all or any reasonable costs and expenses incurred by the Authority in connection with—
  - (a) monitoring action under the notice, and
  - (b) ensuring that the notice is complied with, and
  - (c) any other associated matters.
- (2) A public authority that takes clean-up action under section 20 may, by notice in writing, require—
  - (a) the person who is reasonably suspected by the public authority of having caused the pesticide pollution concerned, or
  - (b) the occupier of the premises at which the public authority reasonably suspects that the pesticide pollution occurred,or both, to pay all or any reasonable costs and expenses incurred by the public

authority in connection with the clean-up action.

### **29 Recovery of amounts**

- (1) The Environment Protection Authority or public authority concerned may recover any unpaid amounts specified in a compliance cost notice as a debt in a court of competent jurisdiction.
- (2) If the person given a compliance cost notice complies with the notice but was not the person who caused the pesticide pollution, the cost of complying with the notice may be recovered by the person who complied with the notice as a debt in a court of competent jurisdiction from the person who caused the pesticide pollution.

### **30 Registration of compliance cost notices in relation to land**

- (1) If a compliance cost notice has been given by the Environment Protection Authority or a public authority to a person, the Authority or public authority may apply to the Registrar-General for registration of the notice in relation to any land owned by the person.
- (2) An application under this section must define the land to which it relates.
- (3) The Registrar-General must, on application under this section and lodgment of a copy of the compliance cost notice, register the notice in relation to the land in such manner as the Registrar-General thinks fit.
- (4) If the notice relates to land under the provisions of the *Real Property Act 1900*, the notice is to be registered under that Act.

### **31 Charge on land subject to compliance cost notice**

- (1) This section applies where a compliance cost notice is registered under section 30, on the application of the Environment Protection Authority or a public authority, in relation to particular land owned by a person.
- (2) There is created by force of this section, on the registration of the notice, a charge on the land in relation to which the notice is registered to secure the payment to the Environment Protection Authority or public authority of the amount specified in the notice.
- (3) Such a charge ceases to have effect in relation to the land—
  - (a) on payment to the Environment Protection Authority or public authority of the amount concerned, or
  - (b) on the sale or other disposition of the land with the written consent of the Environment Protection Authority or public authority, or
  - (c) on the sale of the land to a purchaser in good faith for value who, at the time of

the sale, has no notice of the charge,

whichever first occurs.

- (4) Such a charge is subject to every charge or encumbrance to which the land was subject immediately before the notice was registered.
- (5) Such a charge is not affected by any change of ownership of the land, except as provided by subsection (3).
- (6) If—
  - (a) such a charge is created on land of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, land of that kind, and
  - (b) the charge is so registered,a person who purchases or otherwise acquires the land after the registration of the charge is, for the purposes of subsection (3), taken to have notice of the charge.
- (7) The regulations may make provision for or with respect to the removal of a charge under this section.

## **Division 5 Miscellaneous**

### **32 Multiple notices**

More than one notice under a provision of this Part may be given to the same person.

### **33 Extraterritorial application**

A notice may be given under this Part to a person in respect of a matter or thing even though the person is outside the State or the matter or thing occurs or is located outside the State, so long as the matter or thing affects the environment of this State.

### **34 Revocation or variation**

- (1) A notice given under this Part may be revoked or varied by a subsequent notice or notices.
- (2) A notice may be varied by modification of, or addition to, its terms and specifications.
- (3) Without limiting the above, a notice may be varied by extending the time for complying with the notice.
- (4) A notice may only be revoked or varied by the Environment Protection Authority.



### **35 Power to enter land**

- (1) The Environment Protection Authority or a public authority may, by its employees, agents or contractors, enter any premises at any reasonable time for the purpose of exercising its functions under this Part.
- (2) For the purpose of entering or leaving any such premises, the power conferred by this section extends to entering other premises.
- (3) A power to enter premises conferred by this section authorises entry by foot or by means of a motor vehicle or other vehicle, or in any other manner.
- (4) Entry may be effected under this section by the Environment Protection Authority or a public authority with the aid of such authorised officers or police officers as the Environment Protection Authority or public authority considers necessary and with the use of reasonable force.
- (5) This section does not empower a person to enter any part of premises used only for residential purposes without the permission of the occupier of the premises or the authority of a search warrant under section 199 of the *Protection of the Environment Operations Act 1997*.

#### **Note—**

Chapter 7 of the *Protection of the Environment Operations Act 1997*, which contains a search warrant power, extends to the exercise of powers under this Act.

### **36 Obstruction of persons**

A person who wilfully delays or obstructs—

- (a) a person who is carrying out any action in compliance with a notice under this Part, or another person authorised by the person to carry it out, or
- (b) a public authority that is taking clean-up action under Division 2, or another person authorised by the authority to carry it out,

is guilty of an offence.

Maximum penalty—

- (a) in the case of a corporation—\$120,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues, or
- (b) in the case of an individual—\$60,000 and, in the case of a continuing offence, a further penalty of \$30,000 for each day the offence continues.

### **37 False or misleading statements in reports**

A person who in a report required under this Part and lodged with the Environment

Protection Authority makes a statement that the person knows is false or misleading in a material particular is guilty of an offence.

Maximum penalty—

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

## Part 4 Pesticide control orders

### 38 Making of pesticide control order

- (1) The Environment Protection Authority may make a pesticide control order.

**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.

- (2) A pesticide control order may be made—
  - (a) for any purpose relating to the protection of public health, property, the environment or trade, or
  - (b) in order to implement a decision or policy of the APVMA in relation to any pesticide.
- (3) A pesticide control order has no effect unless it is published in the Gazette.
- (4) A pesticide control order takes effect on and from the date specified in the order (being a date that is not earlier than the date the order is published in the Gazette).
- (5) The Environment Protection Authority is to cause a pesticide control order to be published in such manner as the Authority thinks appropriate.
- (5A) A pesticide control order may refer to or incorporate, with or without modification, a standard or other document prepared or published by a body specified in the order, as in force at a particular time or from time to time.
- (5B) (Repealed)
- (6) In this section—

**APVMA** has the same meaning as it has in [Agricultural and Veterinary Chemicals \(New South Wales\) Act 1994](#).

### 39 Operation of pesticide control order

- (1) A pesticide control order may—

- (a) prohibit or control the use of a pesticide or class of pesticide that is specified in the order, or
  - (b) authorise the use or possession of a restricted pesticide or class of restricted pesticide that is specified in the order,
- subject to such conditions as may be specified in the order.
- (2) A pesticide control order may prohibit or control the use of a pesticide, or authorise the use or possession of a restricted pesticide, by reference to any one or more of the following—
- (a) the manner in which the pesticide to which the order relates may or may not be used (including the equipment by means of which the pesticide may or may not be used),
  - (b) the class of persons who may or may not use the pesticide,
  - (c) the climatic conditions under which the pesticide may or may not be used,
  - (d) the land in respect of which the pesticide may or may not be used,
  - (e) the occasions (whether by reference to particular days of the year or particular times of the day or the year) on which the pesticide may or may not be used,
  - (f) the concentration or application rate in which the pesticide may or may not be used,
  - (g) requiring training in the use of the pesticide,
  - (h) requiring records to be kept in relation to the use of the pesticide,
  - (i) requiring notification to be given, in a specified manner, to persons in the area where a pesticide is proposed to be used,
  - (j) requiring the erection of signs, in or about the area in which a pesticide is proposed to be used,
  - (k) any other circumstances in which the pesticide may or may not be used,
  - (l) any other factor or condition specified in the order.
- (3) A pesticide control order may impose additional requirements to those appearing on an approved label or specified in a permit. In the event of any inconsistency between the requirements imposed by an order and those appearing on an approved label or specified in a permit, the terms of the order prevail.
- (4) A person must not contravene a pesticide control order.

Maximum penalty—

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

**Note—**

An offence against subsection (4) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

## **Part 5 Miscellaneous powers and offences**

### **40 Application of Chapter 7 of *Protection of the Environment Operations Act 1997***

Chapter 7 (Investigation) of the *Protection of the Environment Operations Act 1997* extends to the exercise of powers in connection with this Act and the regulations.

**Note—**

Section 186 of the *Protection of the Environment Operations Act 1997* provides that Chapter 7 of that Act extends to the exercise of powers in connection with certain other legislation, including this Act. Chapter 7 of the *Protection of the Environment Operations Act 1997* deals with such matters as the appointment of authorised officers, powers to require information and records, powers of entry and search, powers to question and to identify persons, and powers with respect to certain things such as vehicles.

### **41 Destruction of pesticides**

- (1) An authorised officer may, with the written approval of the Environment Protection Authority, give directions for the destruction of, or rendering harmless of, any pesticide if the authorised officer is of the opinion that—
  - (a) it is necessary in the interest of public health or of any person to do so, or
  - (b) it is necessary to do so because of any harm or risk of harm to any person, property, the environment or trade.
- (2) A person to whom any such direction is given must comply with the direction.

Maximum penalty—

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

**Note—**

An offence against subsection (2) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

- (3) An authorised officer may give a direction under subsection (1) without the approval of the Environment Protection Authority in an emergency situation where there is an

imminent danger to public health (or of any person) or imminent harm to property, the environment or trade.

- (4) An authorised officer may destroy or render harmless any pesticide, or cause any pesticide to be destroyed or rendered harmless, if the owner of the pesticide authorises the authorised officer to do so.
- (5) The owner of the pesticide is liable for the expenses incurred in the destruction or rendering harmless of the pesticide concerned. Any such expense may be recovered by the Environment Protection Authority as a debt in a court of competent jurisdiction.

## 42 Defective equipment

- (1) This section applies where an authorised officer is of the opinion that any equipment being used in the application of a pesticide is defective to such an extent that, were it to be used, a breach of this Act might reasonably be expected to occur.
- (2) The authorised officer may, by notice in writing given to such person as appears to the authorised officer to have possession for the time being of the defective equipment, direct the person to cease using the equipment until—
  - (a) such time as the equipment is repaired or serviced in accordance with the notice, or
  - (b) such time as any other requirement specified in the notice is carried out, or
  - (c) such other time as is specified in the notice.
- (3) A notice given under this section may be revoked or varied by an authorised officer by further notice in writing given to the person.
- (4) If a notice is given under this section in respect of any equipment, a person must not use the equipment in contravention of the notice.

Maximum penalty—

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

### Note—

An offence against subsection (4) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

- (5) If an authorised officer has given a notice under this section in respect of any equipment, the authorised officer may affix to the equipment a notice (a **defect notice**) to the effect that the equipment is defective and must not be used.

- (6) A person (other than an authorised officer or person acting with the authority of such an officer) who removes a defect notice, or who obliterates or interferes with a defect notice, is guilty of an offence.

Maximum penalty—\$60,000.

#### **43 Attachment of aerial spraying equipment to aircraft**

A person must not attach any aerial spraying equipment to an aircraft unless the aircraft is approved by the Civil Aviation Safety Authority for agricultural operations.

Maximum penalty—

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

#### **44 Disclosure of information**

- (1) A person is guilty of an offence if the person discloses any information relating to any agricultural, manufacturing or commercial secrets or working processes and obtained by the person in connection with the administration or execution of this Act or the regulations, unless the disclosure—

- (a) is made with the consent of the person from whom the information was obtained, or  
(b) is made in connection with the administration or execution of this Act or the regulations, or  
(c) is made with the prior permission of the Minister, or  
(d) is ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing and determination by that court, body or person of any matter or thing, or  
(e) is made under subsection (3).

Maximum penalty—\$20,000.

- (2) The Minister may grant the permission referred to in subsection (1) (c) only if the Minister is satisfied that to do so would be in the public interest.
- (3) The Environment Protection Authority may communicate any matter which comes to the knowledge of the Authority in the exercise or performance of its functions under this Act or the regulations—
- (a) to an officer or authority engaged in administering or executing a law of the Commonwealth or of another State or a Territory relating to pesticides, or

- (b) to any person, when communication of the matter to that person is, in the opinion of the Environment Protection Authority, reasonably related to the prevention of harm that may be, or the amelioration of harm that has been, caused by a pesticide to any person, property, the environment or trade.

#### **44A Receiving monetary benefits**

- (1) Any of the following persons who receives, acquires or accrues a monetary benefit as a result of the commission by a corporation of a proved offence under this Act or the regulations (the **underlying offence**) is guilty of an offence—
  - (a) a person who is, or was, at the time of the commission of the underlying offence, a director of the corporation,
  - (b) a related body corporate,
  - (c) a person who is, or was, at the time of the commission of the underlying offence, a director of a related body corporate.

Maximum penalty—

- (a) for a corporation—the maximum penalty that applies to a corporation for the underlying offence, or
  - (b) for an individual—the maximum penalty that applies to an individual for the underlying offence.
- (2) Proceedings for an offence under this section may be commenced—
    - (a) after the date on which the underlying offence is alleged to have been committed, but
    - (b) despite section 72, no later than the later of the following—
      - (i) the date that is 12 months after the date on which a court finds the underlying offence proved,
      - (ii) the date by which the proceedings may be commenced under section 72(3).
  - (3) Despite section 71, proceedings for an offence under this section may not be dealt with before the Local Court.
  - (4) Without limiting subsection (1) or (2)(b), a court finds an offence proved if—
    - (a) the court convicts the offender of the offence, or
    - (b) the court makes an order under the *Crimes (Sentencing Procedure) Act 1999*, section 10 against the offender in relation to the offence.
  - (5) A reference in subsection (1) to a director of a corporation or related body corporate

extends to a person involved in the management of the affairs of the corporation or related body corporate.

## **Part 6 Licences and restricted pesticide authorisations**

### **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.

**54, 55 (Repealed)**

**Division 2 Restricted pesticide authorisations**

**56 Application for restricted pesticide authorisation**

- (1) A person may apply to the Environment Protection Authority for a restricted pesticide authorisation authorising the person to use or possess a restricted pesticide to which the authorisation relates.
- (2) An application for an authorisation must—

- (a) be in the form approved by the Authority, and
- (b) be accompanied by the fee (if any) prescribed by the regulations.

### **57 Granting of restricted pesticide authorisation**

- (1) The Environment Protection Authority may determine an application for a restricted pesticide authorisation by granting an authorisation to the applicant.
- (2) The Environment Protection Authority may refuse to grant a restricted pesticide authorisation if it is of the opinion that the applicant for the authorisation is not competent to use or possess the restricted pesticide in respect of which the application relates without unintended harm being caused by the pesticide. The Authority may refuse to grant an authorisation for any other reasons it thinks fit.
- (3) In granting a restricted pesticide authorisation, the Environment Protection Authority may impose conditions on the use or possession of the restricted pesticide in respect of which the authorisation relates.
- (4) The Environment Protection Authority may at any time by notice in writing served on the holder of a restricted pesticide authorisation—
  - (a) revoke or vary any condition to which the authorisation is subject, or
  - (b) impose new conditions to which the authorisation is subject.
- (5) A restricted pesticide authorisation must specify—
  - (a) the person to whom it is granted, and
  - (b) the restricted pesticide in respect of which it relates, and
  - (c) the period of time for which it is granted, and
  - (d) the conditions to which it is subject.
- (6) (Repealed)
- (7) A restricted pesticide authorisation remains in force for the period specified in the authorisation unless it is sooner suspended or revoked by the Environment Protection Authority or is surrendered to the Authority.

### **58 Suspension or revocation of restricted pesticide authorisation**

- (1) The Environment Protection Authority may, for such reasons as it thinks fit, suspend a restricted pesticide authorisation by notice in writing given to the holder of the authorisation for such period as is specified in the notice. The Authority may, by further notice given to the authorisation holder, rescind the suspension or vary the period of suspension.

- (2) The Environment Protection Authority may, by notice in writing given to the holder of a restricted pesticide authorisation, revoke the authorisation for any of the following reasons—
- (a) the holder of the authorisation 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 authorisation,
  - (b) the holder of the authorisation has contravened any provision of this Act or the regulations, whether or not the holder has been convicted of an offence for the contravention,
  - (c) the holder of the authorisation has contravened any condition to which the authorisation is subject,
  - (d) if the Authority receives information about the holder of the authorisation and the Authority is of the opinion that, had the information been received at the time when an application for the authorisation was made, it would have refused the application,
  - (e) if the Authority receives information about a restricted pesticide and the Authority is of the opinion that, had the information been received at the time when an application for the authorisation was made, it would have refused the application.
- (3) The suspension or revocation of a restricted pesticide authorisation takes effect on the day on which the notice of the suspension or revocation is given to the holder of the authorisation (or on such later date as may be specified in the notice).

### **Division 3 General provisions relating to licences and restricted pesticide authorisations**

#### **59 Contravention of conditions**

A person who is the holder of a licence or restricted pesticide authorisation must not contravene any condition to which the licence or authorisation is subject.

Maximum penalty—

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

**Note—**

An offence against this section committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

## **60 Offences relating to false or misleading statements and holding out**

(1) A person must not, in connection with—

- (a) an application for a licence or a restricted pesticide authorisation, or
- (b) a notice of any proposed change in the particulars specified in a licence or restricted pesticide authorisation,

make any statement that the person knows to be false or misleading in a material particular.

Maximum penalty—\$60,000.

(2) A person must not make any representation to the effect that the person is the holder of a licence or restricted pesticide authorisation if the person does not hold the licence or authorisation concerned.

Maximum penalty—\$60,000.

## **61 Misuse of licences or restricted pesticide authorisations**

(1) A person other than the holder of a licence or restricted pesticide authorisation must not, without reasonable excuse, have a licence or restricted pesticide authorisation in the person's possession.

Maximum penalty—\$60,000.

(2) A person must not forge or alter a licence or restricted pesticide authorisation with intent to deceive.

Maximum penalty—\$60,000.

(3) The holder of a licence or restricted pesticide authorisation must not lend the licence or authorisation to, or allow it to be used by, any other person for any purpose for which the licence or authorisation was granted.

Maximum penalty—\$60,000.

## **62 Application to Civil and Administrative Tribunal for administrative review of certain decisions**

(1) A person may apply to the Civil and Administrative Tribunal for an administrative review under the [Administrative Decisions Review Act 1997](#) of any of the following decisions—

- (a) the refusal or failure by the Environment Protection Authority to grant a licence or restricted pesticide authorisation to the person,
- (b) a condition imposed by the Environment Protection Authority in relation to a

licence or restricted pesticide authorisation granted to the person,

(c) the suspension or revocation of a licence or restricted pesticide authorisation granted to the person.

(2) For the purposes of this section, an application for the grant of a licence or restricted pesticide authorisation is taken to have been refused if the licence is not granted within 90 days after the application is made in accordance with this Act.

## **Part 7 Control of prohibited residues in agricultural produce**

### **63 Definitions**

(1) In this Part—

**agricultural produce** means any produce that—

(a) is, or may become, capable of being used as food for any form of life, and

(b) is prescribed by the regulations,

but does not include any produce that is the result of a manufacturing process.

**metabolite**, in relation to a pesticide, includes any substance resulting from the breakdown, conversion or reaction of the pesticide.

**pesticide residue**, in relation to agricultural produce, means any substance or organism (including a pesticide or any metabolite of a pesticide) that is present in or on the produce as a result of the use of a pesticide or contact between a pesticide and the produce.

(2) For the purposes of this Part, agricultural produce contains a prohibited residue when—

(a) a concentration of a prescribed substance that is in excess of the maximum permissible concentration of that substance prescribed by the regulations in respect of the produce is present in or on the produce, or

(b) any concentration of a pesticide residue is present in or on the produce and a maximum permissible concentration for that pesticide residue has not been prescribed by the regulations in respect of the produce.

(3) If the regulations prescribe the method by which the concentration of any relevant substance or pesticide residue is to be ascertained, the concentration of the relevant substance or pesticide residue is, for the purposes of this Part, to be the concentration ascertained by the use of that method.

(4) For the purposes of this Part, if the quantity of any agricultural produce is to be specified, described or prescribed, it may be specified, described or prescribed by



reference to its weight or volume, any container in which it is situated, or the premises on which it is situated.

#### **64 Prohibited residue notices**

- (1) If an authorised officer reasonably suspects that any agricultural produce contains a prohibited residue, the authorised officer may, with the approval of the Environment Protection Authority, serve a notice in the form approved by that Authority on—
  - (a) the owner of the produce, or
    - (a1) a person involved in growing or supplying the produce, or
  - (b) the occupier of the premises in or on which the produce is situated, or
  - (c) the person who appears to the authorised officer to be the person in charge of any premises in or on which the produce is situated.
- (2) A notice served under this section in relation to any agricultural produce—
  - (a) must—
    - (i) describe the produce, and
    - (ii) describe where the produce is situated at the time of service of the notice, and
    - (iii) specify or describe the quantity of the produce, and
    - (iv) specify the expiry date of the notice, being a date occurring not more than 14 days after the date of service of the notice, and
  - (b) may contain provisions requiring any person on whom it is to be served and who has possession or control of the agricultural produce—
    - (i) not to part with possession or control of the produce, or
    - (ii) to retain the produce at the premises on which it is situated at the time the notice is served or on premises that are under the control of that person (or another person specified in the notice) where the produce will, in the opinion of the authorised officer, least endanger the health of the public or of any person, or
    - (iii) to deal with the produce or to do anything in relation to the produce (other than requiring the destruction of the produce) in accordance with the directions set out in the notice, being directions that are reasonably necessary for the preservation of the health of the public or of any person, 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.
- (3) The Environment Protection Authority or any authorised officer may revoke a notice served under this section by giving notice of its revocation to the person on whom it was served.
- (4) A notice issued under this section in relation to any agricultural produce is in force from the time of service of the notice until the expiry date specified in the notice unless it is sooner revoked—
  - (a) by service of an order made by the Minister under section 65 in relation to the whole or any part of the produce, or
  - (b) by the Environment Protection Authority or an authorised officer under subsection (3).
- (5) While a notice under this section is in force, the person on whom it was served must not fail to comply with any requirement of the notice that is applicable to the person.  
Maximum penalty—
  - (a) \$120,000 in the case of a corporation, or
  - (b) \$60,000 in the case of an individual.

## **65 Prohibited residue orders**

- (1) The Minister may—
  - (a) make an order under this section in respect of the whole or part of any agricultural produce that is specified or described in a notice that has been served under section 64, and
  - (b) cause the order to be served as provided by subsection (4) (a).
- (2) An order made and served under this section in relation to any agricultural produce—
  - (a) must—
    - (i) describe the name of the produce, and
    - (ii) describe where the produce was situated at the time of service of the notice under section 64 in respect of which the order is made, and
    - (iii) specify or describe the quantity of the produce, and
    - (iv) specify the date on which the order is made, and

- (v) specify the expiry date of the order, being a date occurring not more than 6 months after the date on which the order is made, and
- (b) may contain provisions requiring any person on whom it is to be served and who has possession or control of the produce—
  - (i) not to part with possession or control of the produce, or
  - (ii) to retain the produce in or on the premises specified in the order and that are under the control of that person, or
  - (iii) to deal with the produce or to do anything in relation to the produce in accordance with the directions set out in the order, being directions that are reasonably necessary for the preservation of the health of the public or of any person, or
  - (iv) subject to subsection (3), within a time specified in the order, to destroy the produce in a manner described in the order or in accordance with the directions of an authorised officer, 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.
- (3) The Minister may not cause an order under this section to be served, being an order requiring the destruction of a quantity of agricultural produce, unless—
  - (a) at the time the Minister made the order, the Minister was satisfied that—
    - (i) at least one sample of the produce from each prescribed portion of the quantity of produce contains a prohibited residue, or
    - (ii) if the quantity of the produce is less than or equal to the prescribed portion in relation to the produce, at least one sample of the produce contains a prohibited residue, and
  - (b) the requirement to destroy the agricultural produce does not take effect before 90 days after the date of service of the order, and
  - (c) the Minister is of the opinion that there is no reasonable likelihood of the agricultural produce ceasing to contain a prohibited residue within the period of 3 years following the date on which the Minister made the order.
- (4) An order made under this section—
  - (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
- (b) remains in force from the time it is served until the expiry date specified in the order, unless it is sooner revoked by the Minister, and
- (c) revokes any notice issued under section 64 that relates to the agricultural produce to which the order relates.
- (5) If an order under this section is in force, the person on whom it was served must not fail to comply with any requirement of the order that is applicable to the person.

Maximum penalty—

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

**Note—**

An offence against subsection (5) committed by a corporation is an executive liability offence attracting executive liability for a director or other person involved in the management of the corporation—see section 112.

- (6) In this section—

***prescribed portion***, in relation to a quantity of agricultural produce, means—

- (a) if the quantity is specified or described in the order by reference to its weight—50 tonnes, or
- (b) if the quantity is specified or described in the order by reference to its volume—
  - (i) if the produce is not in liquid form—100 cubic metres, or
  - (ii) if the produce is in liquid form—5,000 litres, or
- (c) if the quantity is specified or described in the order by reference to the premises on which it is situated—150 hectares, or
- (d) such smaller portion as may be prescribed by the regulations in relation to the produce.

**66 Destruction of agricultural produce by authorised officer in default**

- (1) If a person fails to comply with a requirement of an order under section 65 to destroy

any agricultural produce, the Environment Protection Authority may authorise an authorised officer to destroy the produce.

- (2) The authorised officer may—
  - (a) comply with the requirement to destroy the agricultural produce as if the authorised officer were the person to whom the requirement relates, and
  - (b) for the purpose of complying with that requirement, enter any premises on which the agricultural produce to which the requirement relates is situated.
- (3) Any expenses incurred by an authorised officer under this section may be recovered as a debt due to the Crown by the person to whom the requirement relates.

## **Part 8**

### **67, 68 (Repealed)**

## **Part 9 Pesticide codes of practice**

### **69 Nature of pesticide codes of practice**

- (1) Pesticide codes of practice may be made by the Minister—
  - (a) for the purposes of providing guidance on the use and management of pesticides, or
  - (b) for any other purpose that is consistent with the objects of this Act.
- (2) Without limiting subsection (1), a pesticide code of practice may apply to any one or more of the following—
  - (a) any specified pesticide or class of pesticide,
  - (b) any specified industry or sector of an industry,
  - (c) the use of pesticides in a particular manner (eg ground application or aerial spraying operations).
- (3) A pesticide code of practice may refer to or incorporate, with or without modification, a standard or other document prepared or published by a body specified in the code, as in force at a particular time or from time to time.
- (4) Pesticide codes of practice are in the nature of guidelines and compliance is not mandatory.

### **70 Making of pesticide codes of practice**

- (1) The Minister may make a pesticide code of practice on the recommendation of the Environment Protection Authority.

- (2) If the Minister decides to make a pesticide code of practice, the Minister is to cause the code to be published in the Gazette.
- (3) A copy of each pesticide code of practice is to be available for public inspection, without charge, at the principal office of the Environment Protection Authority during ordinary office hours. A copy of each code is to be available for purchase from the Authority and be posted on the Internet site maintained by the Authority.
- (4) A pesticide code of practice may, by notice published in the Gazette, be amended or revoked at any time by the Minister on the recommendation of the Environment Protection Authority.

## **Part 10 Procedural provisions**

### **Division 1 Proceedings for offences**

#### **71 Manner in which proceedings for offences may be dealt with**

- (1) Proceedings for an offence under Division 1 of Part 2 may be dealt with summarily before the Land and Environment Court in its summary jurisdiction.
- (2) Proceedings for an offence under this Act or the regulations (other than under Division 1 of Part 2) may be dealt with—
  - (a) summarily before the Local Court, or
  - (b) summarily before the Land and Environment Court in its summary jurisdiction.
- (3) If proceedings are brought in the Local Court, the maximum monetary penalty that the Local Court may impose for the offence is \$20,000 despite any other higher monetary penalty provided in respect of the offence.

#### **72 Time within which summary proceedings may be commenced**

- (1) This section applies only to proceedings that are to be dealt with summarily.
- (2) Proceedings for an offence under this Act or the regulations may be commenced—
  - (a) in the case of a prescribed offence—within but not later than 3 years after the date on which the offence is alleged to have been committed, or
  - (b) in any other case—within but not later than 12 months after that date.
- (3) Proceedings for an offence under this Act or the regulations may also be commenced—
  - (a) in the case of a prescribed offence—within but not later than 3 years after the date on which evidence of the alleged offence first came to the attention of any relevant authorised officer, or

(b) in any other case—within but not later than 12 months after that date.

- (4) If subsection (3) is relied on for the purpose of commencing proceedings for an offence, the information or application must contain particulars of the date on which evidence of the offence first came to the attention of any authorised officer and need not contain particulars of the date on which the offence was committed. The date on which evidence first came to the attention of any authorised officer is the date specified in the information or application, unless the contrary is established.
- (5) This section applies despite anything in the *Criminal Procedure Act 1986* or any other Act.
- (6) In this section—

**authorised officer** means any person who is an authorised officer for the purposes of this Act, whether or not the person has the functions of an authorised officer in connection with the offence concerned.

**evidence** of an offence means evidence of any act or omission constituting the offence.

**prescribed offence** means—

- (a) an offence under Division 1 of Part 2, or
- (b) an offence under section 45, or
- (c) an offence under this Act that is declared by the regulations to be a prescribed offence for the purposes of this section.

### **73 Environment Protection Authority may institute proceedings**

Proceedings for an offence under this Act or the regulations may be instituted only by the Environment Protection Authority.

### **74 Penalty notices and related proceedings excluded**

- (1) This Division does not affect the issue of a penalty notice under Division 2 or enforcement proceedings consequent on the failure to pay the amount of the penalty notice.
- (2) Enforcement proceedings include proceedings under Part 3 or 4 of the *Fines Act 1996* or proceedings instituted by an officer authorised to issue such a penalty notice.

## **Division 2 Penalty notices**

### **75 (Repealed)**

## **76 Penalty notices**

- (1) An authorised officer may issue a penalty notice to a person if it appears to the authorised officer that the person has committed a penalty notice offence.
- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (3) The *Fines Act 1996* applies to a penalty notice issued under this section.

### **Note—**

The *Fines Act 1996* provides that, if a person issued with a penalty notice does not wish to have the matter determined by a court, the person may pay the amount specified in the notice and is not liable to any further proceedings for the alleged offence.

- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations, not exceeding \$1,500 or the maximum amount of penalty that could be imposed for the offence by a court.
- (5) In addition to any manner of issuing a penalty notice provided for by the *Fines Act 1996*, a penalty notice may be issued under this section by leaving the notice on a vehicle or at premises in respect of which the offence was committed.

## **77, 78 (Repealed)**

## **79 Withdrawal of penalty notice**

- (1) An authorised officer—
  - (a) may withdraw the notice within 28 days after the date on which the notice was issued, and
  - (b) must withdraw the notice immediately if directed to do so by the Environment Protection Authority.
- (2) The following provisions have effect in relation to an alleged offence if a penalty notice for the alleged offence is withdrawn in accordance with this section—
  - (a) The amount that was payable under the notice ceases to be payable.
  - (b) Any amount that has been paid under the notice is repayable to the person by whom it was paid.
  - (c) Further proceedings in respect of the alleged offence may be taken against any person (including the person to whom the notice was issued) as if the notice had never been issued.

## **80 Effect on other provisions**

This Division does not limit the operation of any other provision of, or made under, this or



any other Act in relation to proceedings that may be taken in relation to offences.

## **Division 3 Restraining orders**

### **81 Application of Division**

(1) This Division applies where—

- (a) proceedings have been commenced against a person for an offence under this Act or the regulations and, as a result of those proceedings, the person may be required to pay an amount referred to in section 95, or
- (b) proceedings have been commenced against a person under section 96.

(2) In this Division—

***the defendant*** means the person referred to in subsection (1) (a) or (b).

### **82 Nature of restraining order**

A restraining order is an order of a court directing that any property of the defendant is not to be disposed of, or otherwise dealt with, by the defendant or by any other person, except in such manner and in such circumstances (if any) as are specified in the order.

### **83 Application for restraining order**

- (1) The person bringing the proceedings (as referred to in section 81) may apply for a restraining order in relation to property of the defendant.
- (2) An application under this section may be made—
  - (a) in the case of proceedings taken before the Local Court—to the Land and Environment Court, and
  - (b) in the case of other proceedings—to the court before which the proceedings are brought.
- (3) On an application under this section—
  - (a) the court may, if it thinks fit, require the person making the application to give notice of the application to a person who the court has reason to believe has an interest in the property or part of the property, and
  - (b) a person to whom the court requires notice to be given under paragraph (a) is entitled to appear and to adduce evidence at the hearing of the application.

### **84 Making of restraining order**

On an application under section 83, the court may make a restraining order in relation to the defendant's property, if it is satisfied (on the information contained in or

accompanying the application) that—

- (a) the defendant has committed the relevant offence, and
- (b) amounts are or are likely to be payable under section 95 or 96, and
- (c) it is appropriate to make an order under this section in the circumstances of the case.

### **85 Undertakings**

The court may refuse to make a restraining order if the person making the application refuses or fails to give to the court such undertakings as the court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making or operation of the order.

### **86 Ancillary orders**

- (1) A court that makes a restraining order may make any ancillary orders that the court considers appropriate.
- (2) Without limiting the generality of subsection (1), ancillary orders may include any one or more of the following—
  - (a) an order for the examination on oath of—
    - (i) the defendant, or
    - (ii) another person,before the court, or an officer of the court prescribed by rules of court, concerning the affairs of the defendant, including the nature and location of any property of the defendant,
  - (b) an order varying the restraining order in respect of the property to which it relates,
  - (c) an order varying any conditions to which the restraining order was subject.
- (3) An ancillary order may be made on application—
  - (a) by the applicant for the restraining order, or
  - (b) by the defendant, or
  - (c) with the leave of the court, by any other person.
- (4) Ancillary orders may be made when or at any time after the restraining order is made. An ancillary order referred to in subsection (2) (a) may be made in advance of the restraining order.

## **87 Charge on property subject to restraining orders**

(1) If—

(a) a court has made a restraining order in respect of particular property or all of the property of the defendant, and

(b) the court orders the payment of an amount referred to in section 95 or 96,

there is created by force of this section, on the making of the order referred to in paragraph (b), a charge on all the property to which the restraining order applies to secure the payment to the Environment Protection Authority or a person of the amount referred to in section 95 or 96.

(2) Such a charge ceases to have effect in respect of the property—

(a) on payment by the defendant to the Environment Protection Authority or person of the amount concerned, or

(b) on the sale or other disposition of the property with the consent of the court, or

(c) on the sale of the property to a purchaser in good faith for value who, at the time of the sale, has no notice of the charge,

whichever first occurs.

(3) Such a charge is subject to every charge or encumbrance to which the property was subject immediately before the order referred to in subsection (1) (b) was made and, in the case of land under the provisions of the *Real Property Act 1900*, is subject to every mortgage, lease or other interest recorded in the Register kept under that Act.

(4) Such a charge is not affected by any change of ownership of the property, except as provided by subsection (2).

(5) If—

(a) such a charge is created on property of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, property of that kind, and

(b) the charge is so registered,

a person who purchases or otherwise acquires the property after the registration of the charge is, for the purposes of subsection (2), taken to have notice of the charge.

(6) If such a charge relates to land under the provisions of the *Real Property Act 1900*, the charge has no effect until it is registered under that Act.

## **88 Registration of restraining orders**

- (1) If a restraining order applies to property of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, property of that kind, the authority responsible for administering the provisions is required, on application by any person, to record the particulars of the order in the register kept under those provisions.
- (2) If the particulars of a restraining order are so recorded, a person who afterwards deals with the property is, for the purposes of section 87 (2), taken to have notice of the charge created by this Act on the making of the order.
- (3) If a restraining order applies to land under the provisions of the *Real Property Act 1900*, a caveat may be lodged under that Act in relation to the order.

## **89 Contravention of restraining orders**

- (1) A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the order is guilty of an offence.

Maximum penalty—A fine equivalent to the value of the property (as determined by the court) or imprisonment for 2 years, or both.

- (2) If—

- (a) a restraining order is made against property, and
- (b) the property is disposed of, or otherwise dealt with, in contravention of the restraining order, and
- (c) the disposition or dealing was either not for sufficient consideration or not in favour of a person who acted in good faith,

the person who applied for the restraining order may apply to the court that made the restraining order for an order that the disposition or dealing with the property be set aside.

- (3) If an application is made under subsection (2), the court may make an order—
  - (a) setting aside the disposition or dealing as from the day on which the disposition or dealing took place or as from the day of the order under this subsection, and
  - (b) (if appropriate) declaring the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place and before the day of the order.

## **90 Court may revoke restraining order**

- (1) The court that made a restraining order may revoke the order, on application made to

it by the person in relation to whose property it was made.

- (2) The court may refuse to revoke the order if the person does not—
  - (a) give security satisfactory to the court for the payment of any amount referred to in section 95 or 96 that may be imposed on or ordered to be paid by the person under this Act in respect of the person's conviction for the offence, or
  - (b) give undertakings satisfactory to the court concerning the person's property.
- (3) Subsection (2) does not limit the discretion of the court to revoke or refuse to revoke a restraining order.

### **91 Time when restraining order ceases to be in force**

If, after a restraining order was made in reliance on the charging of a person with an offence under this Act or the regulations—

- (a) the charge is withdrawn and the person is not charged with a related offence by the time of the withdrawal—the restraining order ceases to be in force when the charge is withdrawn, or
- (b) the person is acquitted of the charge and the person is not charged with a related offence by the time of the acquittal—the restraining order ceases to be in force when the acquittal occurs.

## **Division 4 Court orders in connection with offences**

### **92 Operation of Division**

- (1) This Division (other than section 100 (2)) applies where a court finds an offence under this Act or regulations proved.
- (2) Without limiting the generality of subsection (1), a court finds an offence proved if—
  - (a) the court convicts the offender of the offence, or
  - (b) the court makes an order under section 10 of the [Crimes \(Sentencing Procedure\) Act 1999](#) against the offender in relation to the offence (in which case the order is not a punishment for the purposes of that section).
- (3) In this Division—

**the court** means the court that finds the offence proved.

**the offender** means the person who is found to have committed the offence.

### **93 Orders generally**

- (1) One or more orders may be made under this Division against the offender.

- (2) Orders may be made under this Division in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.
- (3) Orders may be made under this Part regardless of whether a penalty is imposed, or other action taken, in relation to the offence.

#### **94 Orders for restoration and prevention**

The court may order the offender to take such steps as are specified in the order, within such time as is so specified (or such further time as the court on application may allow)—

- (a) to prevent, control, abate or mitigate any pesticide pollution caused by the commission of the offence, or
- (b) to make good any resulting environmental damage, or
- (c) to prevent the continuance or recurrence of the offence.

#### **95 Orders for costs, expenses and compensation at time offence proved**

- (1) The court may, if it appears to the court that—
  - (a) a public authority has incurred costs and expenses in connection with—
    - (i) the prevention, control, abatement or mitigation of any pesticide pollution caused by the commission of the offence, or
    - (ii) making good any resulting environmental damage, or
  - (b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

order the offender to pay to the public authority or person the costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be, in such amount as is fixed by the order.

- (2) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the [Land and Environment Court Act 1979](#).
- (3) The Local Court may not make an order under subsection (1) for the payment of an amount that exceeds the amount for which an order may be made by the court when exercising jurisdiction under the [Civil Procedure Act 2005](#). An order made by the court is enforceable as if it were an order made by the court when exercising jurisdiction under that Act.

## 96 Recovery of costs, expenses and compensation after offence proved

- (1) If, after the court finds the offence proved—
  - (a) a public authority has incurred costs and expenses in connection with—
    - (i) the prevention, control, abatement or mitigation of any pesticide pollution caused by the commission of the offence, or
    - (ii) making good any resulting environmental damage, or
  - (b) a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,

the person or public authority may recover from the offender the costs and expenses incurred or the amount of the loss or damage in the Land and Environment Court.
- (2) The amount of any such costs and expenses (but not the amount of any such loss or damage) may be recovered as a debt.

## 97 Orders regarding costs and expenses of investigation

- (1) The court may, if it appears to the court that the Environment Protection Authority has reasonably incurred costs and expenses during the investigation of the offence, order the offender to pay to the Authority the costs and expenses so incurred in such amount as is fixed by the order.
- (2) An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the [Land and Environment Court Act 1979](#). An order made by the Local Court under subsection (1) is enforceable as if it were an order made by the court when exercising jurisdiction under the [Civil Procedure Act 2005](#).
- (3) In this section—

**costs and expenses**, in relation to the investigation of an offence, means the costs and expenses—

  - (a) incurred in taking any sample or conducting any inspection, test, measurement or analysis during the investigation of the offence, or
  - (b) of transporting, storing or disposing of evidence during the investigation of the offence.

## 98 Orders regarding monetary benefits

- (1) The court may order the offender to pay, as part of the penalty for committing the

offence, an additional penalty of an amount not exceeding the court's estimation of the amount of any monetary benefits acquired by the offender, or accrued or accruing to the offender, as a result of the commission of the offence.

- (2) The amount of an additional penalty for an offence is not subject to any maximum amount of penalty provided elsewhere by or under this Act.
- (3) In this section—

**monetary benefits** means monetary, financial or economic benefits.

**the court** does not include the Local Court.

### 99 Additional orders

- (1) The court may do 1 or more of the following—
  - (a) order the offender not to use a particular pesticide or a pesticide of a particular class,
  - (b) order the offender to take specified action to publicise 1 or more of the following—
    - (i) the offence, including the circumstances of the offence,
    - (ii) the environmental and other consequences of the offence,
    - (iii) any other orders made against the person in relation to the offence,
  - (c) order the offender to take specified action to notify specified persons, or specified classes of persons of 1 or more of the following—
    - (i) the offence, including the circumstances of the offence,
    - (ii) the environmental and other consequences of the offence,
    - (iii) orders made against the person in relation to the offence,

#### **Examples of specified action to notify specified persons—**

Publishing of the information in an annual report or other notice to the shareholders of a company, or giving written notice to persons aggrieved or affected by the offender's conduct.

- (d) order the offender to carry out a specified project for the restoration or enhancement of the environment in a public place or for the public benefit,
- (e) order the offender to carry out a specified environmental audit of activities carried on by the offender,
- (f) order the offender to pay a specified amount to the Environmental Trust established under the *Environmental Trust Act 1998*, or a specified organisation, for—



- (i) the purposes of a specified project for the restoration or enhancement of the environment, or
    - (ii) general environmental purposes,
  - (g) order the offender to attend, or to cause employees or contractors of the offender to attend, a training or other course specified by the court,
  - (h) order the offender to establish, for employees or contractors of the offender, a training course of a kind specified by the court,
  - (i) if the Environment Protection Authority is a party to the proceedings and the court orders the offender to carry out a specified work or program for the restoration or enhancement of the environment—order the offender to provide a financial assurance, of a form and amount specified by the court, to the Environment Protection Authority.
- (2) Without limiting subsection (1)(d), the court may order the offender to carry out a social or community activity for the benefit of the community or persons that are adversely affected by the offence (a **restorative justice activity**) that the offender has agreed to carry out.
- (3) The Local Court is not authorised to make an order referred to in subsection (1)(d), (e), (f) or (i) or (2).
- (4) The court may, in an order under this section—
- (a) fix a period for compliance with the requirements under the order, and
  - (b) impose other requirements the court considers necessary or expedient for enforcement of the order.
- (5) If the offender fails to comply with an order under subsection (1)(b) or (c), the prosecutor, or a person authorised by the prosecutor, may take action to carry out the order as far as practicable, including action to publicise or notify—
- (a) the original contravention, the environmental and other consequences of the contravention, and any other penalties imposed on the offender, and
  - (b) the failure of the offender to comply with the order.
- (6) The reasonable cost of taking action referred to in subsection (5) is recoverable by the prosecutor or person taking the action, in a court of competent jurisdiction, as a debt from the offender.

### **100 Forfeiture to Crown**

- (1) If a person is convicted of an offence under this Act or the regulations, the court may order that any pesticide, substance, agricultural produce, container or other thing in

respect of which the offence was committed is to be forfeited to the Crown.

- (2) A court may, on application by the Environment Protection Authority, order that any pesticide, substance, agricultural produce, container or other thing seized by an authorised officer in exercising powers in connection with this Act or the regulations is to be forfeited to the Crown.
- (3) Any such pesticide, agricultural produce, container or other thing forfeited to the Crown may be sold, destroyed or disposed of as directed by the Environment Protection Authority.
- (4) The relevant person must pay to the Crown the reasonable costs of destruction, sale or other disposal. The **relevant person** is the person referred to in subsection (1), the owner of the thing seized as referred to in subsection (2), or the occupier of the premises in or on which the thing was seized.

### 101 Offence

A person who fails to comply with an order under this Division (except an order under section 95, 96, 97 or 100) is guilty of an offence.

Maximum penalty—

- (a) in the case of a corporation—\$120,000 for each day the offence continues, or
- (b) in the case of an individual—\$60,000 for each day the offence continues.

## Division 5 Evidentiary provisions

### 102 Definitions

In this Division—

**designated officer** means an officer of the Environment Protection Authority designated in writing by the CEO of the Authority for the purposes of this Division.

**information** relating to an offence includes an application referred to in section 41 of the [Land and Environment Court Act 1979](#).

**instrument** includes a notice, order or written direction.

### 103 Evidence relating to occupier of premises

In any proceedings for an offence under section 19 (4) or 25, no proof is required (until evidence is given to the contrary) of the fact that a person is, or at any relevant time was, the occupier of any premises to which the proceedings relate.

### 104 Onus of proof concerning reasonable excuse

In any proceedings under this Act, the onus of proving that a person had a reasonable

excuse (as referred to in any provision of this Act or the regulations) lies with the defendant.

### **105 Proof of certain things not required**

- (1) In any proceedings under this Act, no proof is required, until evidence is given to the contrary, of the appointment of any of the following persons—
  - (a) the Chairperson of the Board of the Environment Protection Authority,
  - (b) the CEO of the Environment Protection Authority,
  - (c) another member of the staff of the Environment Protection Authority.
- (2) Any instrument purporting—
  - (a) to be an instrument issued, made or given for the purposes of this Act or the *Protection of the Environment Operations Act 1997*, and
  - (b) to have been signed by the person authorised to issue, make or give the instrument, or by another person acting as delegate or on behalf of the person,is admissible in any proceedings under this Act and (in the absence of evidence to the contrary) is to be taken to be such an instrument and to have been so signed.

### **106 Certificate evidence of certain matters**

- (1) A document signed by the CEO of the Environment Protection Authority or a designated officer and certifying any one or more of the matters specified in subsection (2) is admissible in any proceedings under this Act and is prima facie evidence of the matters so certified.
- (2) The matters referred to in subsection (1) are as follows—
  - (a) that a pesticide was or was not, at a specified time or during a specified period, a registered pesticide,
  - (b) that a label was or was not, at a specified time, the approved label for a pesticide,
  - (c) that a permit was or was not, at a specified time, in force,
  - (d) that a person was or was not, at a specified time or during a specified period, authorised by a permit to do, or omit to do, something,
  - (e) that a pesticide control order was or was not, at a specified time, in force,
  - (f) that a person was or was not, at a specified time or during a specified period, the holder of a licence or restricted pesticide authorisation,
  - (g) that a licence or restricted pesticide authorisation was or was not, at a specified

time, subject to specified conditions,

- (h) that a licence or restricted pesticide authorisation was, at a specified time, revoked or suspended for a specified period,
- (i) that the matter appearing on an approved label, permit or restricted pesticide authorisation described in the document is identical to the matter set out in, or in an instrument annexed to, the document,
- (j) that a person was or was not, at a specified time or during a specified period, an authorised officer,
- (k) that a person was or was not, at a specified time or during a specified period, a member of staff of the Environment Protection Authority,
- (l) that an exemption was or was not given under this Act in relation to any specified matter,
- (m) that any such exemption was or was not, at a specified time or during a specified period, in force or subject to specified conditions,
- (n) that any exemption was or was not, or that any such conditions were or were not, varied or revoked at a specified time,
- (o) any other matter prescribed by the regulations.

### **107 Evidence of analysts**

- (1) The Environment Protection Authority may, by instrument in writing, appoint appropriately qualified persons to be analysts for the purposes of this Act.
- (2) A certificate of such an analyst stating the result of an analysis or examination is admissible in evidence in any proceedings under this Act as evidence of the facts stated in the certificate and the correctness of the result of the analysis or examination.
- (3) A certificate of an analyst that a container containing a sample was received at a specified laboratory and that the container was sealed by an authorised officer or another person is admissible in proceedings under this Act as evidence—
  - (a) of the facts stated in the certificate, and
  - (b) that the sample was the same sample as the sample obtained by the authorised officer or other person, and
  - (c) that the sample had not been tampered with since the time the container was sealed by the authorised officer or other person.
- (4) For the purposes of this section, a document purporting to be a certificate under this

section is, unless the contrary is proved, to be taken to be such a certificate.

## **Division 6 Other procedural provisions**

### **108 Remedy or restraint of breaches of this Act or regulations**

- (1) The Environment Protection Authority may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act or the regulations.
- (2) Any such proceedings may be brought whether or not proceedings have been instituted for an offence under this Act or the regulations.
- (3) If the Court is satisfied that a breach has been committed or that a breach will, unless restrained by an order of the Court, be committed, it may make such orders as it thinks fit to remedy or restrain the breach.
- (4) In this section—

***breach*** includes a threatened or apprehended breach.

### **109 Matters to be considered in imposing penalty**

- (1) In imposing a penalty for an offence under this Act or the regulations, the court is to take into consideration the following (so far as they are relevant)—
  - (a) the extent of the injury, damage or harm caused or likely to be caused by the commission of the offence,
  - (b) the practical measures that may be taken to prevent, control, abate or mitigate any such injury, damage or harm,
  - (c) the extent to which the person who committed the offence could reasonably have foreseen the injury, damage or harm caused or likely to be caused by the commission of the offence,
  - (d) the extent to which the person who committed the offence had control over the causes that gave rise to the offence,
  - (e) whether, in committing the offence, the person was complying with orders from an employer or supervising employee,
  - (f) in any case where the defendant is a corporation, the type of corporation concerned (eg whether it is a sole trader or a family-owned business),
  - (g) whether the person who committed the offence complied with any relevant pesticide code of practice.
- (2) The court may take into consideration other matters that it considers relevant.

### **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.

### **111 Causing or permitting offence**

- (1) A person who causes or permits, by act or omission, another person to commit an offence under a provision of this Act or the regulations is guilty of an offence under that provision and is liable, on conviction, to the same penalty applicable to an offence under that provision.
- (2) A person does not commit an offence because of this section for any act or omission that is an offence under section 112A.

### **112 Liability of directors etc for offences by corporation—offences attracting executive**

**liability**

- (1) For the purposes of this section, an **executive liability offence** is an offence against any of the following provisions of this Act that is committed by a corporation—
- (a) section 7 (1),
  - (b) section 8 (1),
  - (c) section 9 (1),
  - (d) section 10 (1),
  - (e) section 11 (1),
  - (f) section 12,
  - (g) section 13,
  - (h) section 14 (2),
  - (i) section 15 (1),
  - (j) section 17,
  - (k) section 19 (4),
  - (l) section 25,
  - (m) section 39 (4),
  - (n) section 41 (2),
  - (o) section 42 (4),
  - (p) section 59,
  - (q) section 65 (5).
- (2) A person commits an offence against this section if—
- (a) a corporation commits an executive liability offence, and
  - (b) the person is—
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the executive liability offence, and
  - (c) the person—

(i) knows or ought reasonably to know that the executive liability offence (or an offence of the same type) would be or is being committed, and

(ii) fails to take all reasonable steps to prevent or stop the commission of that offence.

**Maximum penalty**—The maximum penalty for the executive liability offence if committed by an individual.

(3) The prosecution bears the legal burden of proving the elements of the offence against this section.

(4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the executive liability offence.

(5) This section does not affect the liability of the corporation for the executive liability offence, and applies whether or not the corporation is prosecuted for, or convicted of, the executive liability offence.

(6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are accessories to the commission of the executive liability offence or are otherwise concerned in, or party to, the commission of the executive liability offence.

(7) In this section—

**director** has the same meaning it has in the [Corporations Act 2001](#) of the Commonwealth.

**reasonable steps**, in relation to the commission of an executive liability offence, includes, but is not limited to, such action (if any) of the following kinds as is reasonable in all the circumstances—

(a) action towards—

(i) assessing the corporation's compliance with the provision creating the executive liability offence, and

(ii) ensuring that the corporation arranged regular professional assessments of its compliance with the provision,

(b) action towards ensuring that the corporation's employees, agents and contractors are provided with information, training, instruction and supervision appropriate to them to enable them to comply with the provision creating the executive liability offence so far as the provision is relevant to them,

(c) action towards ensuring that—

(i) the plant, equipment and other resources, and



- (ii) the structures, work systems and other processes, relevant to compliance with the provision creating the executive liability offence are appropriate in all the circumstances,
- (d) action towards creating and maintaining a corporate culture that does not direct, encourage, tolerate or lead to non-compliance with the provision creating the executive liability offence.

**112A Liability of directors etc for offences by corporation—accessory to the commission of the offences**

- (1) For the purposes of this section, a **corporate offence** is an offence against this Act or the regulations that is capable of being committed by a corporation, whether or not it is an executive liability offence referred to in section 112.
- (2) A person commits an offence against this section if—
  - (a) a corporation commits a corporate offence, and
  - (b) the person is—
    - (i) a director of the corporation, or
    - (ii) an individual who is involved in the management of the corporation and who is in a position to influence the conduct of the corporation in relation to the commission of the corporate offence, and
  - (c) the person—
    - (i) aids, abets, counsels or procures the commission of the corporate offence, or
    - (ii) induces, whether by threats or promises or otherwise, the commission of the corporate offence, or
    - (iii) conspires with others to effect the commission of the corporate offence, or
    - (iv) is in any other way, whether by act or omission, knowingly concerned in, or party to, the commission of the corporate offence.

Maximum penalty—The maximum penalty for the corporate offence if committed by an individual.

- (3) The prosecution bears the legal burden of proving the elements of the offence against this section.
- (4) The offence against this section can only be prosecuted by a person who can bring a prosecution for the corporate offence.
- (5) This section does not affect the liability of the corporation for the corporate offence,

and applies whether or not the corporation is prosecuted for, or convicted of, the corporate offence.

- (6) This section does not affect the application of any other law relating to the criminal liability of any persons (whether or not directors or other managers of the corporation) who are concerned in, or party to, the commission of the corporate offence.

**112B Evidence as to state of mind of corporation**

- (1) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular state of mind, is evidence that the corporation had that state of mind.
- (2) In this section, the ***state of mind*** of a person includes—
- (a) the knowledge, intention, opinion, belief or purpose of the person, and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

**112C Recovery of monetary benefits from related persons after offence proved**

- (1) This section applies if a court convicts a corporation of an offence against this Act or the regulations.
- (2) The Environment Protection Authority may apply to the court for an order (a ***monetary benefits order***) that any of the following persons pay an amount representing the amount of monetary benefits acquired by the person, or accrued or accruing to the person, as a result of the commission of the offence by the corporation—
- (a) a person who is, or was, at the time of the commission of the offence, a director of the corporation,
  - (b) a related body corporate,
  - (c) a person who is, or was, at the time of the commission of the offence, a director of a related body corporate.
- (3) The court may make a monetary benefits order in relation to a person only if the court is satisfied, on the balance of probabilities, that the person acquired, or accrued or will accrue, the monetary benefits as a result of the commission of the offence by the corporation.
- (4) When making a monetary benefits order, the court may order that the person pay the amount—
- (a) into the Environment Protection Authority Fund or another fund the court considers appropriate, or

(b) to an entity the court considers appropriate in the circumstances.

- (5) The regulations may prescribe a protocol to be used in determining the amount that represents the monetary benefit acquired by the person or accrued or accruing to the person.
- (6) A monetary benefits order made by the court is enforceable as if it were an order made by the court in Class 4 proceedings under the *Land and Environment Court Act 1979*.
- (7) A reference in subsection (2) to a director of a corporation or related body corporate extends to a person involved in the management of the affairs of the corporation or related body corporate.
- (8) In this section—

**Environment Protection Authority Fund** means the Environment Protection Authority Fund established under the *Protection of the Environment Administration Act 1991*, section 34A.

**the court** does not include the Local Court.

### 113 Extra-territoriality

A person is guilty of a particular offence under this Act or the regulations in respect of any act or omission done or omitted by the person outside the State—

- (a) if the act or omission causes any substance to come into the State, and
- (b) if the substance causes harm or is likely to cause harm to the environment of the State, and
- (c) if (apart from this section) the act or omission would have constituted that offence if it had been done or omitted within the State.

## Part 11 Miscellaneous

### 114 Appeals to Land and Environment Court against certain decisions

- (1) A person who is aggrieved by—
- (a) a prevention notice under Division 3 of Part 3 (or the variation of such a notice), or
- (b) a direction under section 42, or
- (c) a notice under section 64, or
- (d) an order under section 65,
- that is given to or served on the person may appeal to the Land and Environment

Court against the notice, order or direction within 21 days (or such other period as may be prescribed by the regulations) after the giving or serving of the notice, direction or order concerned.

- (2) The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay action on the matter appealed against.
- (3) The decision of the Land and Environment Court on an appeal under this section is final and binding on the appellant and the person whose decision is the subject of the appeal.

### **115 Exemptions by Environment Protection Authority in emergencies and other situations**

- (1) The Environment Protection Authority may exempt any person or class of persons from any specified provision or provisions of this Act or the regulations, in the circumstances referred to in subsection (2).
- (2) An exemption may be granted in—
  - (a) an emergency (including, for example, where an area is being plagued by pests), or
  - (b) circumstances where—
    - (i) the Authority is satisfied that it is not practicable to comply with the relevant provision or provisions, and
    - (ii) the Authority is satisfied that non-compliance with the provision or provisions will not have any significant adverse effect on public health, property, the environment or trade, and
    - (iii) the Board of the Environment Protection Authority approves the granting of the exemption.
- (3) If the regulations prescribe the manner in which an exemption is to be applied for, the exemption must be applied for in that manner.
- (4) An exemption—
  - (a) is effected by order made by the Environment Protection Authority and published in the Gazette, and
  - (b) takes effect from the date the order is published in the Gazette or a later date specified in the order, and
  - (c) has effect for the period specified in the order.
- (5) In the case of an exemption granted in an emergency, the order may take effect when

it is made or on a later date specified in the order. The order is to be published in the Gazette as soon as practicable after it is made.

- (6) An exemption may be unconditional or may be subject to conditions specified in the order.
- (7) An exemption may be revoked, varied or renewed by a further order made and published in accordance with this section.
- (8) An exemption may not be granted or renewed so as to have effect for a total period exceeding 5 years. A further exemption granted within 5 years after the expiry of an earlier exemption (being a further exemption that is the same in substance as the earlier exemption) is to be treated as a renewed exemption for the purposes of this subsection.
- (9) If an exemption is granted, any person may make a written request to the Environment Protection Authority for the reasons for the exemption and the Authority is to provide a written statement of the reasons to the person. The regulations may make provision with respect to any such statement of reasons, including—
  - (a) the time within which a request for reasons must be made or within which the statement of reasons must be provided, and
  - (b) the matters to be set out in a statement of reasons, and
  - (c) the cases in which a statement of reasons is not required to be provided.

#### **116 Exemption for fire brigades and other emergency services**

- (1) A person is not guilty of an offence under this Act or the regulations for any act or omission if it was done or omitted in good faith as a member of a fire brigade, a rural fire brigade, the State Emergency Service or other accredited rescue unit.
- (2) This section has effect despite anything in this Act.
- (3) In this section—

**accredited rescue unit** has the same meaning as it has in the *State Emergency and Rescue Management Act 1989*.

#### **117 Exemptions by regulation**

- (1) The regulations may exempt, or provide for the exemption of—
  - (a) any person or class of persons, or
  - (b) any premises or class of premises, or
  - (c) any area or class of areas, or

(d) any other matter or thing or class of matters or things,

from any specified provision or provisions of this Act or the regulations, in such circumstances (if any) and subject to such conditions (if any) as may be specified or referred to in the regulations.

(2) The power to make regulations under this section is not limited by section 115.

### **118 Service of notices**

(1) For the purposes of this Act, any notice or other document may be issued or given to a person, or may be served on a person—

(a) by delivering it personally to the person, or

(b) by delivering it to the place of residence or business of the person and by leaving it there for the person with some other person, or

(c) by posting it duly stamped and addressed to the person at the place last shown in the records of the Environment Protection Authority as the person's place of residence or business, or

(d) by posting it duly stamped and addressed to the person at the place indicated by the person as an address to which correspondence may be posted (including for example a post office box), or

(e) by sending it by facsimile or electronic transmission (including for example the Internet) to the person in accordance with arrangements indicated by the person as appropriate for transmitting documents to the person, or

(f) by leaving it addressed to the person at a document exchange or other place (in accordance with usual arrangements for the exchange or other place) indicated by the person as an exchange or place through which correspondence may be forwarded to the person.

(2) This section does not affect any other mode of issuing, giving or serving a notice or other document under any other law.

### **118A Continuing effect of notices, orders and conditions**

(1) A notice given or order made, or a condition of a licence or restricted pesticide authorisation, under this Act or the regulations that specifies a time by which, or a period within which, it must be complied with continues to have effect until it is complied with even though the time has passed or the period has expired.

(2) A notice or order that does not specify a time by which, or period within which, the notice or order must be complied with continues to have effect until the notice or order is complied with.

- (3) This section does not apply to the extent that any requirement under a notice or order is revoked or a condition of a licence or restricted pesticide authorisation is revoked.
- (4) Nothing in this section affects the powers of the Environment Protection Authority with respect to the enforcement of a notice or order.
- (5) This section extends to a condition of a licence or a restricted pesticide authorisation in force on the commencement of this section.

### **119 Regulations**

- (1) 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.
- (2) Without affecting the generality of subsection (1), the regulations may make provision for or with respect to the following—
  - (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,
  - (b)-(d) (Repealed)
  - (e) the making and keeping of records in relation to the use of pesticides,
  - (f) training and qualification requirements for persons engaged in the use of pesticides,
  - (g) the approval by the Environment Protection Authority of training courses and qualifications in relation to the use of pesticides,
  - (g1) the analysis, reporting and monitoring of pesticide residues by growers and

suppliers of produce,

- (h) fees payable under this Act or the regulations (including application fees, licence and restricted pesticide authorisation fees, and fees for the provision of information),
  - (i) the waiving, remittal, reduction or refund of fees payable under this Act or the regulations,
  - (j) standards for the application of pesticides,
  - (k) standards in relation to the design and construction of aerial spraying equipment and in relation to the attachment of such equipment to, and the installation of such equipment in, aircraft,
  - (l) the recognition in this State of licences or other authorities issued by any other State or Territory that correspond or are similar to licences under this Act,
  - (m) the circumstances in which any such recognised licence or other authority is taken to be a licence granted under this Act,
  - (n) requiring notification to be given of the proposed use of pesticides,
  - (o) requiring records to be kept, and information to be provided, in relation to the supply, distribution, use and disposal of pesticides,
  - (p) requiring any application or other information provided under this Act or the regulations to be verified by statutory declaration.
- (3) The regulations may create an offence punishable by a penalty not exceeding 400 penalty units in the case of a corporation or 200 penalty units in the case of an individual.
- (4) The regulations may apply, adopt or incorporate any publication as in force at a particular time or from time to time.

## **120 Act to bind Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

## **121 Repeal of [Pesticides Act 1978](#)**

The [Pesticides Act 1978](#) is repealed.

## **122 Savings, transitional and other provisions**

Schedule 2 has effect.

## **123 (Repealed)**



## **124 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **Schedule 1 (Repealed)**

## **Schedule 2 Savings, transitional and other provisions**

(Section 122)

### **Part 1 Preliminary**

#### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act and the following Acts—
  - Protection of the Environment Operations Amendment Act 2005* (but only to the extent that it amends this Act)
  - any other Act that amends this Act
- (2) If the regulations so provide, any such provision may—
  - (a) have effect despite any specified provisions of this Act (including a provision of this Schedule), and
  - (b) take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as—
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
- (4) Regulations made for the purposes of this clause may make separate savings and

transitional provisions or amend this Schedule to consolidate the savings and transitional provisions.

## **Part 2 Provisions consequent on enactment of this Act**

### **2 Definitions**

In this Part—

**former Act** means the *Pesticides Act 1978*.

### **3 Pesticide control notices may be issued with respect to existing pesticide pollution**

Part 3 of this Act extends to any pesticide pollution that occurred before the commencement of that Part.

### **4 Continuation of existing licences**

(1) In this clause—

**existing licence** means a licence that—

(a) was issued under section 22F of the former Act, and

(b) was in force immediately before the repeal of the former Act by this Act.

(2) Subject to the regulations, an existing licence is taken to be a licence granted under this Act.

(3) Subject to the regulations, an application for a licence made under the former Act that was not finally determined before the repeal of the former Act by this Act is taken to be an application for a licence under this Act and is to be dealt with in accordance with this Act.

### **5 Continuation of existing certificates of competency for restricted pesticides**

(1) In this clause—

**existing certificate** means a certificate of competency that—

(a) was issued under section 47 of the former Act, and

(b) was in force immediately before the repeal of the former Act by this Act.

(2) Subject to the regulations, an existing certificate—

(a) is taken to be a certificate of competency granted under this Act, and

(b) continues in force for the unexpired portion of its term (unless it is sooner suspended or revoked or otherwise ceases to be in force under this Act), and

(c) cannot be renewed.

- (3) Subject to the regulations, an application for a certificate of competency made under the former Act that was not finally determined before the repeal of the former Act by this Act is taken to be an application for a certificate of competency under this Act and is to be dealt with in accordance with this Act.

## **6 Approved insurance policies**

Until such time as regulations are made to prescribe classes of insurance policies for the purposes of Division 1 of Part 6 of this Act, any insurance policy that was, immediately before the repeal of the former Act by this Act, an approved insurance policy is taken to be of a class prescribed by the regulations.

## **7 Continuation of existing pesticide orders**

Subject to the regulations, a pesticide order made under section 27 of the former Act, or an order made under section 49A of the former Act, and that was in force immediately before the repeal of the former Act by this Act is taken to be a pesticide control order made under this Act.

## **8 Pending appeals under former Act**

Any appeal made under section 58 of the former Act that was made before the repeal of the former Act but not determined before that repeal is to be determined as if this Act had not been enacted.

## **9 Existing pesticide inspectors and analysts of pesticides**

- (1) Subject to the regulations, a person appointed as an inspector under section 7 of the former Act and holding office as such immediately before the repeal of the former Act by this Act is taken to be appointed as an authorised officer for the purposes of this Act.
- (2) Subject to the regulations, a person appointed as an analyst of pesticides under section 7 of the former Act and holding office as such immediately before the repeal of the former Act by this Act is taken to be appointed as an analyst for the purposes of this Act.

## **10 Criminal and other proceedings**

- (1) Divisions 1 and 5 of Part 10 of this Act extend to proceedings in connection with the former Act in respect of offences committed under the former Act before its repeal or in respect of any related matter that continues to have force or effect. This subclause applies whether the proceedings were pending on the commencement of this clause or whether the proceedings are instituted after that commencement.
- (2) Divisions 1 and 5 of Part 10 of this Act apply with such modifications as are necessary for the purposes of applying those Divisions to any such proceedings. In particular, the reference in section 73 to the Environment Protection Authority is to be read as

including a reference to a person who is acting with the authority of the Minister to institute proceedings for an offence under the former Act.

### **11 Saving of existing regulation and regulation-making powers**

- (1) The *Pesticides Regulation 1995* is, on the repeal of the former Act by this Act, taken to be a regulation under this Act to the extent that it may be made under this Act.
- (2) For the purposes of Part 3 of the *Subordinate Legislation Act 1989*, the *Pesticides Regulation 1995* is taken to have been published on the repeal of the former Act.
- (3) Until the end of 3 years after the repeal of the former Act by this Act, regulations may be made under this Act for or with respect to any matter that could be prescribed by regulations under the former Act but for its repeal.

### **12 Existing notices, exemptions etc**

A notice, direction, order, requirement or exemption given, issued or made under the former Act and in force on the repeal of the former Act by this Act continues to have effect to the extent provided by the regulations under this Schedule.

### **13 General saving**

Any thing done under the former Act that has any force or effect immediately before its repeal by this Act is taken to have been done under the corresponding provision of this Act, subject to any express or implied provision to the contrary in this Act or the regulations made under this Act.

## **Part 3 Provisions consequent on enactment of *Pesticides Amendment Act 2015***

### **14 Definition**

In this Part—

***amending Act*** means the *Pesticides Amendment Act 2015*.

### **15 Abolition of Pesticides Implementation Committee**

- (1) The Pesticides Implementation Committee established by Part 8 of this Act is abolished on the day on which that Part is repealed by the amending Act (the ***abolition day***).
- (2) A person who, immediately before the abolition day, held office as the Chairperson or Deputy Chairperson, or as a member, of the Pesticides Implementation Committee—
  - (a) ceases to hold that office on that day, and
  - (b) is not entitled to be paid any remuneration or compensation because of ceasing to

hold that office.

- (3) Nothing in this clause prevents the Minister from convening one or more committees (including committees constituted with former members of the Pesticides Implementation Committee) to advise the Minister in relation to matters arising under this Act.

## **16 Enforcement of undertakings**

Section 110 (3) and (4), as inserted by the amending Act, apply in relation to the enforcement of undertakings given on or after the commencement of those provisions.

## **17 Transfer of information from WorkCover concerning certificates of competency**

The WorkCover Authority may, despite section 271 of the *Work Health and Safety Act 2011*, provide such information and documents as it has obtained in connection with the exercise of its powers or functions under Part 9.1 of the former *Occupational Health and Safety Regulation 2001* (as continued in force by clause 65 of Schedule 18B to the *Work Health and Safety Regulation 2011*) as the Environment Protection Authority may require to assist the Authority to establish and maintain the licensing system under this Act.

## **18 Specifying day on which clause 65 of Schedule 18B to Work Health and Safety Regulation 2011 ceases to have effect**

The regulations may declare the day on which clause 65 of Schedule 18B to the *Work Health and Safety Regulation 2011* ceases to apply in relation to the application of pesticides and the use of fumigants.

## **19 Conversion of certificates of competency into restricted pesticide authorisations**

- (1) For the purposes of this clause, an **existing certificate of competency** means—
  - (a) a certificate of competency in force under this Act immediately before the day on which Schedule 1.1 [1] to the amending Act commences (the **conversion day**), and
  - (b) a certificate of competency that had been suspended (but not revoked) immediately before the conversion day.
- (2) Subject to subclause (3), an existing certificate of competency has effect for the unexpired balance of its period of duration as if it were a restricted pesticide authorisation granted under this Act on or after the conversion day, and may be renewed, varied, revoked or suspended accordingly.
- (3) Any period of suspension of an existing certificate of competency in force immediately before the conversion day continues in force until the day it would have expired if the amending Act had not been enacted, unless sooner varied or rescinded.

- (4) An application for a certificate of competency made (but not determined) before the conversion day may be determined by the Environment Protection Authority on or after the conversion day as if it were an application for a restricted pesticide authorisation.
- (5) Any application under section 62 (whether made before, on or after the conversion day) for an administrative review under the *Administrative Decisions Review Act 1997* of a decision concerning a certificate of competency may be dealt with under this Act on or after that day as if it were an application for the administrative review of a decision concerning a restricted pesticide authorisation.

## **Part 4 Provision consequent on enactment of [Environment Legislation Amendment Act 2022](#)**

### **20 Court orders in connection with offences**

- (1) Amended sections 93, 97 and 99 extend to proceedings commenced, but not finally determined, before the date this clause commences.
- (2) In this clause—

***amended***, in relation to a provision, means the provision as in force on and from the date this clause commences.

### **Schedule 3 (Repealed)**