

# Pesticides Regulation 2009

[2009-417]



New South Wales

## Status Information

### Currency of version

Repealed version for 27 June 2017 to 31 August 2017 (accessed 17 July 2024 at 14:25)

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

### Provisions in force

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

### Notes—

- **Repeal**

This Regulation was repealed by sec 10 (2) of the [Subordinate Legislation Act 1989 No 146](#) with effect from 1.9.2017.

### Authorisation

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

File last modified 1 September 2017

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New South Wales

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# Pesticides Regulation 2009



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Pesticides Regulation 2009*.

### 2 Commencement

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

**Note—**

This Regulation replaces the *Pesticides Regulation 1995* which is repealed on 1 September 2009 by section 10 (2) of the *Subordinate Legislation Act 1989*.

### 3 Definitions

(1) In this Regulation:

**domestic purposes** includes home gardening.

**Food Standards Code** means the *Australia New Zealand Food Standards Code* as defined in the *Food Standards Australia New Zealand Act 1991* of the Commonwealth.

**fumigant** means any of the following chemicals:

- (a) methyl bromide,
- (b) phosphine,
- (c) ethylene oxide (except single dose canisters),
- (d) ethylene dichloride,
- (e) carbon disulphide,
- (f) chloropicrin,
- (g) hydrogen cyanide.

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

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

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

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

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

**use** does not include store.

**Note—**

The Act and the [Interpretation Act 1987](#) contain definitions and other provisions that affect the interpretation and application of this Regulation.

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

## Part 2 Licences

**Note—**

This Part commenced on 1 September 2015, being the day on which amendments to the Act made by Schedule 1.1 to the [Pesticides Amendment Act 2015](#) commenced. Those amendments enabled the regulations to establish a new licensing scheme for pesticides.

## Division 1 Interpretation

### 4 Definitions

In this Part:

**aerial applicator business**—see clause 5.

**aerial applicator pilot work**—see clause 5.

**approved** means approved by the Environment Protection Authority from time to time.

**continued OHS Regulation** means the [Occupational Health and Safety Regulation 2001](#) (as continued in force immediately before 1 September 2015 by clause 65 of Schedule 18B to the [Work Health and Safety Regulation 2011](#) with respect to the application of pesticides and use of fumigants).

**course of training**, in relation to prescribed pesticide work, means a course of training the completion of which is required in order for a person to obtain the prescribed licence

qualification for a licence to carry out the work.

**fumigation work**—see clause 5.

**National Standard for Licensing Pest Management Technicians** means the document entitled *National Standard for Licensing Pest Management Technicians* published in 1999 by the National Environmental Health Forum (National Environmental Health Monographs General Series No 4).

**person responsible** for a trainee carrying out fumigation work or pest management technician work means:

- (a) in the case of a trainee who is carrying out the work as an employee—the person’s employer, or
- (b) in the case of a trainee who is carrying out the work under contract as an independent contractor—the person for whom he or she is carrying out the work under that contract, or
- (c) in the case of a trainee who is carrying out the work while engaged in a course of training for that work—the person by whom that course is being conducted, or
- (d) in the case of a trainee who is carrying out the work under an arrangement with some other person (whether or not for reward) otherwise than as referred to in paragraph (a), (b) or (c)—that other person.

**pest management technician work**—see clause 5.

**prescribed licence qualification**, in relation to a kind of licence, means the qualification prescribed by, or determined in accordance with, clause 8F for that licence.

**supervisor**, in relation to a trainee, means a person who is designated as the trainee’s supervisor under clause 8B (2).

**trainee**, in relation to fumigation work or pest management technician work, means an unqualified person who is:

- (a) engaged in a course of training for the work, and
- (b) of or above the age of 17 years.

**UAV applicator business**—see clause 5.

**UAV applicator controller work**—see clause 5.

**unqualified person**, in relation to prescribed pesticide work, means a person who does not hold the prescribed licence qualification for a licence to carry out such work.

## Division 2 Licensing requirements

## 5 Kinds of prescribed pesticide work

- (1) Each of the following is prescribed for the purposes of section 5A of the Act as **prescribed pesticide work**:
  - (a) aerial applicator pilot work,
  - (b) aerial applicator business,
  - (c) UAV applicator controller work,
  - (d) UAV applicator business,
  - (e) fumigation work,
  - (f) pest management technician work.
- (2) **Aerial applicator pilot work** is the piloting by an individual of an aircraft that is being used to apply a pesticide to property.
- (3) An **aerial applicator business** is:
  - (a) a business carried on by a person (other than a public authority) where:
    - (i) the person employs or engages an individual to carry out aerial applicator pilot work for the business, or
    - (ii) the person carries out aerial applicator pilot work as a self-employed individual, or
  - (b) a public authority employing or engaging individuals to carry out aerial applicator pilot work for it.
- (4) **UAV applicator controller work** is the remote piloting by an individual of an unmanned aircraft that is being used to apply a pesticide to property.
- (5) A **UAV applicator business** is:
  - (a) a business carried on by a person (other than a public authority) where:
    - (i) the person employs or engages an individual to carry out UAV applicator controller work for the business, or
    - (ii) the person carries out UAV applicator controller work as a self-employed individual, or
  - (b) a public authority employing or engaging individuals to carry out UAV applicator controller work for it.
- (6) **Fumigation work** is the use of fumigants for the prevention, control or eradication of pests by an individual:



- (a) for a fee or reward, or
  - (b) for a public authority (whether or not for a fee or reward).
- (7) **Pest management technician work** is the use of pesticides (other than fumigants) for the prevention, control or eradication of pests by an individual:
- (a) for a fee or reward, or
  - (b) for a public authority (whether or not for a fee or reward).
- (8) However, pest management technician work does not include any of the following:
- (a) the use of pesticides by an individual in connection with agricultural activities of the person,
  - (b) the use of pesticides by an individual for amenity horticulture purposes,
  - (c) the application of pesticides by means of aircraft (whether manned or unmanned),
  - (d) the use of pesticides by an individual for the purposes of water treatment (including the treatment of water in pools and spas),
  - (e) the application of paint by an individual that contains anti-fouling pesticides,
  - (f) the use of pesticides by an individual to treat or prevent an ectoparasitic infestation,
  - (g) the use of pesticides by an individual to treat or preserve timber at a treatment plant.
- (9) In this clause:
- agricultural activity** of an individual includes:
- (a) horticulture activities carried on by the individual, and
  - (b) the use by the individual of premises for any purpose of husbandry (such as the keeping or breeding of livestock, poultry or bees), and
  - (c) the growing of fruit, vegetables or other crops by the individual, and
  - (d) the processing or storing of agricultural products by the individual, but only when undertaken in connection with another agricultural purpose carried out by the individual.
- amenity horticulture purposes** includes for the purposes of:
- (a) ground or garden maintenance, or
  - (b) landscaping, or

- (c) bush care, or
- (d) floriculture, or
- (e) arboriculture, or
- (f) the operations of a nursery.

**business** and **fee or reward** have the same meanings as in section 5A of the Act.

## 6 Kinds of licences

For the purposes of section 46 of the Act, each of the licences referred to in Column 1 of the following Table is prescribed as a kind of licence that authorises its holder to carry out the kind of prescribed pesticide work specified in Column 2 next to the licence concerned.

### Table

Column 1	Column 2
Licence name	Work authorised
1 Aerial applicator pilot licence	Aerial applicator pilot work
2 Aerial applicator business licence	Aerial applicator business
3 UAV applicator controller licence	UAV applicator controller work
4 UAV applicator business licence	UAV applicator business
5 Fumigator licence	Fumigation work
6 Pest management technician licence	Pest management technician work

## Division 3 Exemptions

### 7 Environment Protection Authority may grant exemptions from licensing requirements

- (1) The Environment Protection Authority may, by order in writing, exempt a specified person or class of persons from any of the licensing requirements.
- (2) An order that exempts a class of persons from any of the licensing requirements must be published in the Gazette.
- (3) An exemption from licensing requirements granted under this clause is subject to such conditions (if any) as may be specified in the order.
- (4) An exemption from any provisions of Part 9.1 of the continued OHS Regulation granted to a person under clause 684 of the *Work Health and Safety Regulation 2011* that was in force immediately before 1 September 2015 has effect, on and from that day, as if it were an exemption granted under this clause with respect to the licensing requirements, if any, that correspond (or substantially correspond) to the provisions of

Part 9.1.

(5) An exemption continued in force by subclause (4) has effect until it expires or is sooner revoked.

(6) In this clause:

***licensing requirements*** means:

(a) the provisions of Division 1 of Part 6 of the Act, and

(b) the provisions of this Part.

**8 Exemptions with respect to fumigation work and pest management technician work**

(1) A person who has obtained the prescribed licence qualification for a fumigator licence referred to in clause 6 is exempted from the requirement under section 45 (1) of the Act to hold a fumigator licence to carry out fumigation work until the expiration of 60 days after the qualification is obtained.

(2) A person who has obtained the prescribed licence qualification for a pest management technician licence referred to in clause 6 is exempted from the requirement under section 45 (1) of the Act to hold a pest management technician licence to carry out pest management technician work until the expiration of 60 days after the qualification is obtained.

(3) If a person referred to in subclause (1) or (2) applies to the Environment Protection Authority for a fumigator licence or pest management technician licence within the 60-day period, the person may continue to do work authorised by such a licence:

(a) until the person is issued with a licence, or

(b) until 14 days after the person receives notice that the application has been refused.

(4) An unqualified person is exempt from the requirement under section 45 (1) of the Act to hold a fumigator licence or pest management technician licence to carry out fumigation work or pest management technician work if the work carried out by the person is carried out solely for the purpose of:

(a) selling plant, or

(b) the testing, trialing, maintaining, servicing, repairing, or disposing of plant.

(5) Subclauses (1)–(3) extend to a person who obtained a prescribed licence qualification before 1 September 2015 and, for the purpose of applying those subclauses, the person is taken to have obtained the qualification on that day.

(6) In this clause:

**plant** includes any machinery, equipment or appliance.

#### **8A Exemption for certain trainees**

- (1) A person is exempt from the requirement under section 45 (1) of the Act to hold a licence to carry out fumigation work or pest management technician work if the person:
  - (a) carries out the work as a trainee for the purposes of a course of training, and
  - (b) carries out the work under the supervision of a supervisor, and
  - (c) keeps and maintains a record of training in accordance with the requirements of this clause.

- (2) A trainee must keep a record of training.

Maximum penalty: 20 penalty units.

- (3) The record must contain the following information in relation to the fumigation work or pest management technician work to which the training relates:
  - (a) the name and address of the trainee,
  - (b) the name and address of each employer for whom the trainee does that work,
  - (c) the name of each person who supervises the trainee while the trainee is doing that work,
  - (d) a description of that work as it is actually carried out by the trainee in the course of training,
  - (e) a record of the dates on which that work was done.

#### **8B Obligations of person responsible for trainee**

- (1) The person responsible for a trainee carrying out fumigation work or pest management technician work must ensure that the following requirements are complied with:
  - (a) the trainee must at all times be directly supervised by a supervisor designated by the person in accordance with subclause (2), unless the supervisor or the person responsible for the trainee has established:
    - (i) that the trainee's competency makes direct supervision unnecessary, and
    - (ii) that a lesser degree of supervision would not endanger the health or safety of the trainee or any other person,
  - (b) the trainee must receive directions, demonstrations, training and monitoring

appropriate to the work and commensurate with the competence of the trainee,

- (c) immediate remedial action must be taken in the event of an emergency that arises from the trainee carrying out the work.

Maximum penalty: 100 penalty units.

- (2) The person responsible for a trainee may designate a supervisor for the trainee only if the supervisor is a person who holds a licence authorising the person to carry out work of the kind being done by the trainee.
- (3) The person responsible for a trainee must ensure that the trainee keeps and maintains a record of training in accordance with clause 8A.

Maximum penalty (subclause (3)): 20 penalty units.

### **8C Obligations of supervisor of trainee**

- (1) The supervisor of a trainee who is carrying out fumigation work or pest management technician work must directly supervise the trainee while the trainee is carrying out the work, unless the supervisor or person responsible for the trainee has established:
  - (a) that the trainee's competency makes direct supervision unnecessary, and
  - (b) that a lesser degree of supervision would not endanger the health or safety of the trainee or any other person.

Maximum penalty: 100 penalty units.

- (2) A supervisor designated to supervise a trainee by the person responsible for the trainee:
  - (a) must ensure that the trainee keeps and maintains a record of training in accordance with clause 8A, and
  - (b) must check the record on each date on which the work is carried out by the trainee, and:
    - (i) if satisfied that the record is correct in respect of that date, must sign the record on that date, or
    - (ii) if not so satisfied, must make and sign on that date a note to that effect on the record.

Maximum penalty (subclause (2)): 20 penalty units.

## **Division 4 Applications for licences**

### **8D Licence application fees**

The following fees are prescribed for the purposes of section 47 (2) (b) of the Act:

- (a) for an application made on or after 1 September 2015 but before 1 July 2016—\$189,
- (b) for an application made on or after 1 July 2016 but before 1 July 2017—\$191,
- (c) for an application made on or after 1 July 2017—\$196.

### **8E Additional information and particulars to accompany application**

The following information and particulars are prescribed for the purposes of section 47 (3) (d) of the Act:

- (a) evidence of an approved kind of the applicant's identity and age,
- (b) evidence of an approved kind that the applicant has the prescribed licence qualification for the licence being sought,
- (c) any other information or particulars specified by the approved application form.

## **Division 5 Granting of licences**

### **8F Prescribed qualifications for licences**

- (1) **When a person has qualification to hold a licence** The object of this clause is to provide for the qualifications for kinds of licences for the purposes of section 49 (2) (b) of the Act.
- (2) A person is qualified to hold a kind of licence if the person has the qualification or qualifications specified by, or determined by the Environment Protection Authority in accordance with, this clause for the licence.
- (3) **Aerial applicator pilot licence** A person is qualified to hold an aerial applicator pilot licence if:
  - (a) the person holds a current commercial pilot (aeroplane) licence or commercial pilot (helicopter) licence issued under the *Civil Aviation Act 1988* of the Commonwealth endorsed with an agricultural rating or aerial application rating, and
  - (b) the person:
    - (i) is the holder of a certificate of approval issued under the Spraysafe Accreditation Program conducted by the Aerial Agricultural Association of Australia, or
    - (ii) has passed an examination conducted in accordance with the requirements of another State or Territory for the purpose of obtaining a licence equivalent to

an aerial applicator pilot licence.

- (4) **Aerial applicator business licence** A person is qualified to hold an aerial applicator business licence if the person holds an Air Operator's Certificate endorsed for aerial application operations and issued under Division 2 of Part III of the *Civil Aviation Act 1988* of the Commonwealth.
- (5) **UAV applicator controller licence** A person is qualified to hold a UAV applicator controller licence if the person holds a certification as a UAV controller under the *Civil Aviation Safety Regulations 1998* of the Commonwealth.
- (6) **UAV applicator business licence** A person is qualified to hold a UAV applicator business licence if the person holds a UAV operator's certificate issued under the *Civil Aviation Safety Regulations 1998* of the Commonwealth.
- (7) **Fumigator licences or pest management technician licences** A person is qualified to hold a fumigator licence or pest management technician licence if the person's competency to do the work authorised by the licence is of a standard equal to or better than the appropriate competency standard for the work.
- (8) The appropriate competency standard for fumigation work or pest management technician work is:
  - (a) the standard of competency set out in relation to that work in the National Standard for Licensing Pest Management Technicians, or
  - (b) any other standard of competency that the Environment Protection Authority considers to be equivalent to that Standard.
- (9) **Additional or alternative qualifications** The Environment Protection Authority may, by notice published in the Gazette (a **qualification determination notice**), determine that:
  - (a) a qualification specified in the notice is an alternative qualification for a kind of licence to a qualification specified by, or previously determined in accordance with, this clause for the licence, or
  - (b) a qualification specified in the notice is a qualification required for a kind of licence in addition to a qualification specified by, or previously determined in accordance with, this clause for the licence.
- (10) The Authority may revoke or amend a qualification determination notice by a further notice published in the Gazette.
- (11) The determination of a qualification specified by a qualification determination notice takes effect on the day on which the notice is published or on such later day as may be specified in the notice.

(12) If an alternative qualification for a kind of licence is specified by a qualification determination notice, a person who has that qualification is taken to hold an appropriate qualification for the licence concerned.

(13) If an additional qualification for a kind of licence is specified by a qualification determination notice, a person must hold both the qualification specified by (or previously determined in accordance with) this clause for the licence and the additional qualification in order to be appropriately qualified to hold the licence.

#### **8G Additional ground for licence refusal**

That the applicant is under 18 years of age is prescribed as a circumstance for the purposes of section 49 (2) (d) of the Act.

### **Division 6 Conditions of licences**

#### **8H Object of Division**

- (1) The object of this Division is to prescribe conditions for certain kinds of licences for the purposes of section 50 (1) (a) of the Act.
- (2) The conditions prescribed by this Division do not limit any conditions that are imposed on such licences by the Environment Protection Authority under the Act.

#### **8I Special condition for all applicator licences concerning cessation of prescribed licence qualification**

- (1) This clause applies to the following kinds of licences:
  - (a) an aerial applicator pilot licence,
  - (b) an aerial applicator business licence,
  - (c) a UAV applicator controller licence,
  - (d) a UAV applicator business licence.
- (2) It is a condition of a licence to which this clause applies that the holder of the licence must notify the Environment Protection Authority if the person ceases to have the prescribed licence qualification for the licence concerned.
- (3) Any such notice must be given as soon as practicable after the holder of the licence becomes aware that the holder has ceased to hold the qualification.
- (4) If there is an approved form for the notice, the notice must be in that form.

#### **8J Special condition for applicator business licences concerning pesticide leakages or spills**

- (1) This clause applies to the following kinds of licences:



- (a) an aerial applicator business licence,
  - (b) a UAV applicator business licence.
- (2) It is a condition of a licence to which this clause applies that the holder of the licence must notify the Environment Protection Authority of any incident where a pesticide leakage or spill has occurred as the result of a crash or forced landing of an aircraft that is operated under the authority of the licence.
- (3) Any such notice must be given as soon as practicable after the incident occurs.
- (4) If there is an approved form for the notice, the notice must be in that form.

## **Division 7 Renewal of licences**

### **8K Renewal of licences**

- (1) The Environment Protection Authority may, on the application of the holder of a licence, renew the licence.
- (2) An application for the renewal of a licence may be made before expiry of the current licence, but no later than 3 months after its expiry.
- (3) An application for the renewal of a licence must be:
- (a) in the approved form, and
  - (b) accompanied by such material or information to support the application (such as qualifications and proof of age and identity) as the Authority may require, and
  - (c) accompanied by the applicable renewal fee.
- (4) The Authority may require the holder of a licence to surrender the holder's existing licence before renewing the licence.
- (5) The **applicable renewal fee** for the renewal of a licence is:
- (a) for an application made on or after 1 September 2015 but before 1 July 2016—\$146, and
  - (b) for an application made on or after 1 July 2016 but before 1 July 2017—\$149, and
  - (c) for an application made on or after 1 July 2017—\$153.

## **Division 8 Provision of information and record keeping**

### **8L Licensees to provide certain information**

- (1) The holder of a licence must supply the Environment Protection Authority with the particulars of any information received by the holder that contradicts or modifies any

information provided by the holder in connection with the application for the licence.

Maximum penalty: 90 penalty units.

- (2) If the holder of a licence ceases to hold the prescribed licence qualification for the kind of licence concerned, the holder must supply the Environment Protection Authority with particulars of that fact as soon as practicable.

Maximum penalty: 90 penalty units.

### **8M Records of aerial application of pesticides**

- (1) This clause applies in relation to:

- (a) an aerial applicator business licence, and
- (b) a UAV applicator business licence.

- (2) The holder of a licence to which this clause applies must cause a record to be made in accordance with subclause (3) in respect of each occasion on which the holder of the licence has caused an aircraft to be used in the application of a pesticide.

Maximum penalty:

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

- (3) The record must be made immediately after the application of the pesticide and must contain:

- (a) the name and address of the person who piloted the aircraft, and
- (b) a description of the pesticide that was applied (including product name and active constituents), and
- (c) the date and time of the application of the pesticide (including the start and finish time), and
- (d) if the aircraft has a registration mark, the registration mark of the aircraft, and
- (e) if the aircraft does not have a registration mark, the serial number of the aircraft, and
- (f) a description of the manner in which, the climatic conditions under which and the equipment by means of which the pesticide was applied, and
- (g) a description of the land over which the pesticide was applied (including the address of the land or the particular paddock or part of a paddock), and
- (h) a description of the crop in respect of which the pesticide was applied or other

situation in which it was used, and

- (i) the rate of application of the pesticide and the quantity applied, and
- (j) the name, address and contact details of the owner or occupier of the land on which the pesticide was applied.

- (4) A record required to be made under this clause must be kept by the holder (or former holder) of the licence for a period of not less than 3 years after the date of the occasion to which the record relates.

Maximum penalty:

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

#### **8N Provision of record to land owner or occupier**

The holder of an aerial applicator business licence or UAV applicator business licence must provide a copy of a record required to be made under clause 8M to the owner or occupier of the land on which the pesticide was applied as soon as practicable after the application of the pesticide.

Maximum penalty:

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

### **Division 9 General**

#### **8O Form of licence**

A licence must be in the approved form and must:

- (a) specify the following:
  - (i) the name (and, in the case of a licence granted to an individual, the date of birth) of the person to whom it is granted,
  - (ii) the date of its issue,
  - (iii) a description of the kind of prescribed pesticide work that the licence authorises its holder to do,
  - (iv) a unique identifying number,
  - (v) the expiry date of the licence,
  - (vi) any conditions attached to the licence (other than conditions prescribed by this

Regulation), and

- (b) in the case of a licence granted to an individual, contain a photograph of the person to whom it is granted.

**8P Duration of licence**

For the purposes of section 51 (1) of the Act, the maximum period for which a licence may be granted or renewed is 5 years.

**8Q Surrender of licence**

The holder of a licence may, by notice in the approved form given to the Environment Protection Authority and accompanied by the licence, voluntarily surrender the licence.

**8R Replacement of lost, stolen, damaged or destroyed licences**

- (1) The holder of a licence that is lost, stolen, damaged or destroyed may apply to the Environment Protection Authority for a replacement licence.
- (2) The application:
  - (a) must be in the approved form, and
  - (b) (Repealed)
  - (c) must be accompanied by a fee of \$23.
- (3) The Authority may issue a replacement licence if satisfied that the applicant's licence has been lost, stolen, damaged or destroyed.
- (4) A licence that is replaced under this clause must provide for the same expiry date as the licence it replaces.
- (5) If an application is refused, the Authority must give a written notice of the refusal, and of the reasons for the refusal, to the applicant.
- (6) The holder of a licence that is replaced under this clause:
  - (a) must surrender the original licence if it is recovered, or
  - (b) in the case of a damaged licence that is replaced, must surrender the damaged licence.

Maximum penalty (subclause (6)): 20 penalty units.
- (7) Nothing in this clause prevents the Authority from issuing a replacement licence in such other circumstances as it considers appropriate.
- (8) Without limiting subclause (2) (a), the approved form may be an electronic form

accessible on a publicly available website.

- (9) A person who provides the Authority with a statutory declaration containing the particulars required by the approved form is taken to have done so in the approved form.

**8S Conversion of existing licences and OHS certificates of competency**

- (1) Subject to this clause, a person who holds a licence or certificate of competency (the **former licence or certificate**) specified in Column 1 of the following Table that was in force, or suspended (but not revoked or cancelled), immediately before 1 September 2015 is taken, on and from that day, to hold the kind of licence under the Act referred to in clause 6 (the **replacement licence**) specified in Column 2 next to the former licence or certificate.

**Table**

<b>Column 1</b>	<b>Column 2</b>
<b>Former licence or certificate</b>	<b>Replacement licence</b>
Pilot (pesticide rating) licence that is not subject to a UAV controller condition	Aerial applicator pilot licence
Pilot (pesticide rating) licence that is subject to a UAV controller condition	UAV applicator controller licence
Aircraft (pesticide applicator) licence that is not subject to a UAV business condition	Aerial applicator business licence
Aircraft (pesticide applicator) licence that is subject to a UAV business condition	UAV applicator business licence
A certificate of competency issued under Part 9.1 of the continued OHS Regulation with respect to scheduled work listed in item 11 (Application of pesticides) of the Schedule to clause 266 of that Regulation	Pest management technician licence
A certificate of competency issued under Part 9.1 of the continued OHS Regulation with respect to scheduled work listed in item 12 (Use of fumigants) of the Schedule to clause 266 of that Regulation	Fumigator licence

- (2) A replacement licence may be renewed, surrendered, suspended or revoked (and conditions on the licence may be imposed, revoked or varied) in the same way as a licence granted by the Environment Protection Authority under the Act.
- (3) Any period of suspension of a former licence or certificate that is converted into a replacement licence by operation of this clause in force immediately before 1

September 2015 continues in force with respect to the replacement licence until the day it would have expired if the amending Act had not been enacted, unless sooner varied or revoked.

- (4) Unless sooner surrendered, revoked or renewed, a replacement licence expires on:
  - (a) in the case where the former licence or certificate expired on a specified day—on that day, or
  - (b) in any other case—on the fifth anniversary of 1 September 2015.
- (5) Any conditions specified in a former licence or certificate continue in force as conditions of the replacement licence, unless sooner altered or revoked under the Act.
- (6) An application for a former licence or certificate 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 replacement licence.
- (7) Any application under section 62 of the Act for an administrative review under the [Administrative Decisions Review Act 1997](#) of a decision concerning a former licence may be dealt with under the Act on or after 1 September 2015 as if it were an application for the administrative review of a decision concerning a replacement licence.
- (8) Clause 80 does not apply to a replacement licence until it is renewed or replaced under the Act and this Part.
- (9) In this clause:

**aircraft (pesticide applicator) licence** means an aircraft (pesticide applicator) licence within the meaning of the Act as in force immediately before 1 September 2015.

**pilot (pesticide rating) licence** means a pilot (pesticide rating) licence within the meaning of the Act as in force immediately before 1 September 2015.

**UAV business condition**, in relation to an aircraft (pesticide applicator) licence, means a condition of the licence the effect of which is to limit the authority conferred by the licence to the use of unmanned aerial vehicles (UAV) to apply pesticides.

**UAV controller condition**, in relation to a pilot (pesticide rating) licence, means a condition of the licence the effect of which is to limit the authority conferred by the licence to being the controller of unmanned aerial vehicles (UAV) that apply pesticides.

## **8T Cessation of transitional work health and safety regulations concerning application of**

## **pesticides and use of fumigants**

It is declared that clause 65 of Schedule 18B to the *Work Health and Safety Regulation 2011* ceases to apply on 1 September 2015 in relation to the application of pesticides and use of fumigants.

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

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

- (1) In this Part, a person is qualified to use a pesticide if the person holds any one or more of the following:
- (a) a licence under the Act,
  - (b), (c) (Repealed)
  - (d) a current certificate of completion or statement of attainment on completion of a course of study with respect to the use of pesticides that was issued to the person within the last 5 years:
    - (i) by a registered training organisation in accordance with the Australian Qualifications Framework, and
    - (ii) in recognition of the person's satisfactory achievement of specified units of competency or parts of units of competency (being units of competency, or parts of units of competency, that, at the time the prescribed qualification is issued, are approved by the Environment Protection Authority in accordance with Schedule 1),
  - (e), (f) (Repealed)
  - (g) if the pesticide is the subject of a pesticide control order that authorises the use of the pesticide by persons who hold specified qualifications—those qualifications.

(2) In this clause:

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

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

- (1) A person must not use, or employ or engage a person to use, a pesticide in any of the following circumstances unless the person using the pesticide is qualified to use the pesticide:
- (a) in the course of carrying on, or working in, a business, educational institution or hospital (whether as principal, contractor or employee, and regardless of whether, in the case of a business, the use of pesticides is a purpose of the business

concerned),

- (b) in the course of acting as, or for or on behalf of, the landlord of any premises,
- (c) in the course of acting for or on behalf of a public authority,
- (d) in the course of carrying out pest control operations on a golf course, sporting field or bowling green,
- (e) in connection with any agricultural operations (including farming, horticultural or aquacultural operations) or forestry operations.

Maximum penalty:

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

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

- (a) if the pesticide is being used in public baths or in any swimming pool or spa,
- (b) if the person is a trainee carrying out prescribed pesticide work who is exempted under clause 8A from the requirement to hold a licence to carry out that work,
- (b1) if the person is carrying out fumigation work or pest management technician work and the person is exempted under clause 8 (1) or (2) from the requirement under section 45 (1) of the Act to hold a licence to carry out the work,
- (b2) if the pesticide is anti-fouling pesticide that is contained in a paint that is being applied by the person,
- (c) if the pesticide is, or is part of, a product that is widely available to the general public at retail outlets, is ordinarily used for domestic purposes, is being applied by hand or hand-held applicator and:
  - (i) if the product is being used outside a building—no more than 20 litres or 20 kilograms of “ready-to-use” product or 5 litres or 5 kilograms of concentrated product is being used, or
  - (ii) if the product is being used inside a building—no more than 5 litres or 5 kilograms of “ready-to-use” product or 1 litre or 1 kilogram of concentrated product is being used,
- (d) if the pesticide is used in connection with agricultural operations or forestry operations and the person used the pesticide:
  - (i) by means of hand-held and hand-powered equipment, and
  - (ii) on no more than 12 days in the previous 12 months and on no more than 4



days in the previous month (excluding any use to which paragraph (c) applies), and

- (iii) under the direct supervision of a supervisor who was qualified to use the pesticide and who selected and prepared the pesticide, tested and calibrated the equipment before it was used, and instructed the person in how to apply the pesticide.

## **11 Supervision of persons**

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

Maximum penalty: 200 penalty units.

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

- (1) A person who is required to be qualified in respect of the use, or supervision of the use, of a pesticide must, if requested to do so by an authorised officer, produce evidence of the qualification concerned for inspection by the authorised officer.

Maximum penalty: 200 penalty units.

- (2) A person must not forge or alter evidence of a qualification.

Maximum penalty: 100 penalty units.

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

Maximum penalty: 100 penalty units.

- (4) In this clause, a reference to evidence of a qualification is a reference to:

- (a) in the case of a permit or licence, the permit or licence concerned, and

- (b) in the case of any other qualification:

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

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

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

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

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, or
  - (b) in the case of an individual—200 penalty units.
- (2) Subclause (1) does not apply in the following circumstances:
- (a) if the pesticide is being used in public baths or in any swimming pool or spa,

- (b) if a record of the use of the pesticide is required to be kept under clause 8M,
- (c) if the pesticide is, or is part of, a product that is widely available to the general public at retail outlets, is ordinarily used for domestic purposes, is being applied by hand or hand-held applicator and:
  - (i) if the product is being used outside a building—no more than 20 litres or 20 kilograms of “ready-to-use” product or 5 litres or 5 kilograms of concentrated product is being used, or
  - (ii) if the product is being used inside a building—no more than 5 litres or 5 kilograms of “ready-to-use” product or 1 litre or 1 kilogram of concentrated product is being used.
- (3) If a pesticide is being applied by a person on behalf of a public authority by hand or hand-held applicator under the supervision or direction of a supervisor who has responsibility for the operations, the supervisor is taken to be the person using the pesticide for the purposes of subclause (1).
- (4) In this clause:

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

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

- (1) A record required to be made under this Part must contain the following information:
  - (a) the full product name of the pesticide applied,
  - (b) a description of the crop in respect of which the pesticide was applied or other situation in which it was used,
  - (c) the rate of application of the pesticide and the quantity applied,
  - (d) a description of the equipment used to apply the pesticide,
  - (e) the address of the property and the delineation of the area in which the pesticide was released and, in the case of a record under clause 13 (1) (g)-(j), the order in which areas (such as paddocks or sheds) were treated,
  - (f) the date and time of the application of the pesticide (including the start and finish time),
  - (g) the name, address and contact details of the person who applied the pesticide or, if the pesticide was applied by a person employed to apply the pesticide, the name of the employee and the name, address and contact details of the employer,
  - (h) the name, address and contact details of the owner or occupier of the land in respect of which the pesticide was applied (if the information is not the same as

the information required by paragraph (g)),

- (i) if, because of clause 13 (3), the record is required to be made by a supervisor—the name of each person who used the pesticide under the supervision or direction of the supervisor,
- (j) if the pesticide is applied outdoors by means of any spray equipment:
  - (i) the estimated wind speed and direction at the start of the application and whenever there is any significant change during the application, and
  - (ii) if other weather conditions (such as temperature, humidity or rainfall conditions) are specified on the pesticide label as being relevant for the proper use of the pesticide—a description of those conditions at the start of the application and whenever there is any significant change during the application.

(2) The record must:

- (a) be made as soon as practicable after the use of the pesticide concerned and, in any event, no later than 24 hours after the pesticide is used, and
- (b) be written legibly in the English language.

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

- (1) A person who is required to make a record under clause 13 (1), or who is provided with a record or copy under subclause (2) or (3), must keep the record or copy for a period of not less than 3 years after the date on which the record was made.
- (2) A person, employed under a contract of employment and who carries out operations involving the use of pesticides in the course of that employment, who is required to make a record under clause 13 (1) (c)-(j) is not required to keep the record but must provide the record to the person's employer.
- (3) A person, who is engaged (other than under a contract of employment) for fee or reward to carry out operations involving the use of pesticides, who is required to make a record under clause 13 (1) (c)-(j) must provide a copy of the record to the owner or occupier of the land on which the pesticide was applied.
- (4) A person must not, in any record required to be made under this Part, make any statement, or include any information, that is false or misleading in a material particular.

Maximum penalty:

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

## 16 Exemption from record keeping requirements

- (1) The Environment Protection Authority may, by notice published in the Gazette, exempt a specified person or specified class of persons from any requirement under this Part.
- (2) Without limiting subclause (1), an exemption may relate to particular kinds of information referred to in clause 14.
- (3) Before making an exemption under this clause, the Environment Protection Authority is required to consult with such persons or bodies as the Authority considers appropriate (including the representatives of any relevant environmental or industry group).

## 17 Integration with other record keeping requirements

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

# Part 5 Notification of proposed use of pesticide

## Division 1 Preliminary

### 18 Definitions

In this Part:

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

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

**prescribed public place** means:

- (a) any of the following to which the public is entitled to have access (whether or not on payment of a fee):
  - (i) a public garden, picnic area, playground, park, sporting field or oval,
  - (ii) public land owned or controlled by a public authority (for example, a road verge, rail easement or an easement for electricity purposes or for the purposes of other utilities),
  - (iii) land reserved under the [National Parks and Wildlife Act 1974](#) or any State forest or Crown land, or
- (b) the grounds of any government school (within the meaning of the [Education Act 1990](#)) or any establishment maintained by the Technical and Further Education Commission,

but does not include the inside of any building or structure located at such a place.

**public authority**, in addition to the meaning given by the Act, includes a Minister.

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

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

## **Division 2 Notification by public authorities**

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

(1) A public authority must not use, or allow any person to use, any pesticide in a prescribed public place that is owned by or is under the control of the public authority unless the public authority has first:

- (a) prepared, finalised and notified the Environment Protection Authority of a plan (a **pesticide use notification plan**) in accordance with this Division, and
- (b) given public notice of the proposed use of pesticide in accordance with that plan.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, or
  - (b) in the case of an individual—200 penalty units.
- (2) A public authority may satisfy a requirement under this clause if it prepares and notifies one or more pesticide use notification plans that apply to all prescribed public places that it owns or controls.
- (3) Subclause (1) does not apply in respect of the use of pesticide in a prescribed public place that is owned by or is under the control of a public authority if the pesticide is used by another public authority and that other public authority has:
- (a) prepared, finalised and notified the Environment Protection Authority of a pesticide use notification plan in accordance with this Division, and
  - (b) given public notice in accordance with that plan.
- (4) Subclause (1) does not apply in relation to the use of pesticide in public baths or in any swimming pool or spa.

## 20 Contents of pesticide use notification plans

- (1) A public authority's pesticide use notification plan:
  - (a) must set out how and when the public authority will give public notice of the proposed use of pesticides in any prescribed public places, and
  - (b) must identify where the plan operates, that is, it must identify the categories of prescribed public places in which the public authority proposes to use pesticide or allow its use, and
  - (c) must identify the categories of, or specific, prescribed public places in respect of which the public authority intends to provide notification of:
    - (i) all proposed uses of pesticides under the plan, or
    - (ii) only some proposed uses of pesticides under the plan, and what those uses are, and
  - (d) must indicate, as a separate item, the special protection measures that will be taken if the pesticide is proposed to be used in a prescribed public place that is adjacent to a sensitive place, and
  - (e) must identify the categories of people (the **affected persons**) who regularly use the categories of prescribed public places identified in the plan, and
  - (f) must estimate the degree of use by affected persons of those categories of prescribed public places, and
  - (g) must specify how and when the public authority will notify the affected persons of the proposed use of pesticide in the prescribed public places (other than a prescribed public place referred to in paragraph (l)), and
  - (h) must specify the information that will be provided to the affected persons that are notified, which must include at least the following:
    - (i) the full product name of the pesticide to be used,
    - (ii) the purpose for which the pesticide is to be used,
    - (iii) the dates on which, or the range of dates during which, the pesticide is to be used,
    - (iv) the places where the pesticide is to be used,
    - (v) any warnings about limitations on the subsequent use of or entry onto the land if such warnings are specified on the approved label for the pesticide or in the permit for use of the pesticide,

- (vi) a contact telephone number or email address for the officer of the public authority whom the affected persons can contact to discuss the notice, and
  - (i) must specify how and when the public authority will inform the general public (and not just the affected persons) of the plan and its contents, and
  - (j) must identify by job title or description, and provide the telephone number or email address of, the officer of the public authority whom any member of the public can contact to discuss the plan, and
  - (k) must, subject to clauses 21 and 22, set out provisions for future reviews of the pesticide use notification plan, including arrangements for public involvement in those reviews, and
  - (l) must specify the prescribed public places or class of prescribed public places (if any) for which the public authority does not intend to provide notification, and
  - (m) may set out how and when the public authority will give public notice of its use, or its allowing of the use, of pesticide in places other than prescribed public places.
- (2) Without limiting subclause (1) (g), a pesticide use notification plan may provide that the public authority will provide information to affected persons of the proposed use of pesticide in the prescribed public places by a combination of methods and, if the plan does so provide, must specify the information that will be provided by each method.

## **21 Public consultation on draft pesticide use notification plans**

- (1) A public authority that has prepared a draft pesticide use notification plan must publish a notice advising that the plan has been prepared:
- (a) in the case of a public authority that operates throughout the State—in at least one newspaper circulating generally in the State, and
  - (b) in the case of a public authority that operates only in a particular local area or local areas—in at least one newspaper circulating generally in that local area or those local areas, and
  - (c) in the case of a public authority that is a local council—in at least one newspaper circulating generally in the local government area of that council.
- (2) The notice must specify:
- (a) the area in which the plan is to operate, and
  - (b) where a copy of the draft plan will be displayed for the purposes of public inspection, and
  - (c) the way in which the public may comment on the draft plan, and



- (d) the deadline for public comment on the draft plan (which must be at least 4 weeks after the notice is published).
- (3) The public authority must make the draft plan available for inspection free of charge at its head office and on its internet website.
- (4) The draft plan must be on display for at least the period commencing on the date on which notice is first given under this clause and ending on the date of the deadline for public comments.
- (5) As soon as practicable after the date of the deadline for submissions for public comment, the public authority must prepare a final version of the plan, taking into consideration any comments made before the deadline.

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

- (1) A public authority that has prepared a pesticide use notification plan in accordance with this Division must, as soon as practicable after the finalisation of the plan, give notice of the plan:
  - (a) in writing to the Environment Protection Authority, and
  - (b) by publishing a notice in the Gazette and in a newspaper in accordance with clause 21 (1) (a)–(c) specifying the area in which the plan is to operate and where copies of the plan will be displayed.
- (2) The public authority must make the plan available for inspection free of charge at its head office and on its internet website.

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

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

## **Division 3 Notification by persons other than public authorities**

### **24 Definitions**

In this Division:

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

- (a) common property within the meaning of the *Strata Schemes (Freehold Development) Act 1973*, or
- (b) association property within the meaning of the *Community Land Development Act 1989*, or

- (c) in relation to land under company title—land used as common property by the residents or land that no person has an exclusive right to occupy.

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

- (a) the full product name of the pesticide to be used,
- (b) the purpose for which the pesticide is to be used,
- (c) the dates on which, or the range of dates during which, the pesticide is to be used,
- (d) the places where the pesticide is to be used,
- (e) the period (if any) during which any affected area should not be entered (but only if the approved label for the pesticide or the permit for use of the pesticide requires that such a period be observed),
- (f) the contact details of the pest management technician who is to use the pesticide or of his or her office.

**residential complex** means any multiple occupancy medium-density or high-density residential premises, and includes:

- (a) any block of home units, or
- (b) any caravan park used for, amongst other purposes, residencies of over 8 weeks' duration, or
- (c) multiple occupancy land under a strata scheme (whether or not the dwellings are separate from each other), or
- (d) a community scheme within the meaning of the [Community Land Development Act 1989](#),

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

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

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

(ii) if the pesticide is to be used in a common area within a building—at each entrance to the building concerned, and

(iii) if the pesticide is to be used in a common area outside a building—at each entrance to each building adjoining the common area concerned.

Maximum penalty:

(a) in the case of a corporation—400 penalty units, or

(b) in the case of an individual—200 penalty units.

(2) Notice is not required to be given under this clause if:

(a) the pesticide is to be used by a pest management technician in an emergency so as to deal with biting or dangerous pests (such as rodents, wasps, bees, venomous spiders, fleas, bird mites or similar creatures), and

(b) the technician displays a notice under clause 26 and makes records of the emergency and the use of pesticide.

(3) Without limiting the meaning of the term, a ***person who engages a pest management technician*** includes:

(a) a managing agent of an owners corporation for a strata scheme, or

(b) a managing agent for an association for a community scheme, or

(c) a park manager for a caravan park,

where that agent or manager, or a member of his or her staff, arranges for a pest management technician to use the pesticide.

## **26 Notice during use of pesticide in residential complex**

(1) A pest management technician who uses a pesticide in the common area of a residential complex must ensure a pesticide use notice is displayed while the pesticide is being used and for any period during which the affected area should not be entered (as set out in the notice):

(a) on the main notice boards at the residential complex (if practicable), and

(b) if the pesticide is to be used in a common area within a building—at each entrance to the building concerned, and

(c) if the pesticide is to be used in a common area outside a building—at each entrance to each building adjoining the common area concerned.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, or
  - (b) in the case of an individual—200 penalty units.
- (2) This clause does not apply to any second or subsequent installation of pesticide in baits as part of an ongoing baiting program of which notice has been given under this clause.

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

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

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, or
  - (b) in the case of an individual—200 penalty units.
- (2) For the purposes of this clause, pesticide is used within 20 metres of a sensitive place if it is used:
- (a) within 20 metres of any common boundary between the land on which the pesticide is used and the sensitive place, or
  - (b) if the sensitive place consists only of a building or part of a building—within 20 metres of the building or part of the building.
- (3) A pest management technician does not commit an offence under subclause (1) if he or she could not have reasonably known that the place where the pesticide is to be used is within 20 metres of a sensitive place.
- (4) Despite subclause (1), a pesticide use notice may be given under this clause immediately before the use of the pesticide if:
- (a) the pesticide is to be used by a pest management technician in an emergency so as to deal with biting or dangerous pests (such as rodents, wasps, bees, venomous spiders, fleas, bird mites or similar creatures), and
  - (b) the pest management technician makes records of the emergency and the use of pesticide.
- (5) For the purposes of this clause, a pesticide use notice must be given in person or by post, facsimile transmission, email or telephone or by placing the notice in the person's letter box.
- (6) Nothing in this clause prevents a pest management technician from giving any other

notice before using a pesticide whether or not within 20 metres of a sensitive place.

(7) In this clause:

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

## 28 Provision of safety data sheet

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

Maximum penalty:

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

(2) In this clause:

**safety data sheet** has the same meaning as in the [Work Health and Safety Regulation 2011](#).

## 29 Records that must be kept

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

Maximum penalty:

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

## Part 6 Miscellaneous

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

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

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, or

(b) in the case of an individual—200 penalty units.

### **31 Prohibited residues**

(1) For the purposes of paragraph (b) of the definition of **agricultural produce** in section 63 of the Act, the following are prescribed as agricultural produce:

- (a) any produce of a kind referred to in Schedule 1 or 2 to Standard 1.4.2 of the Food Standards Code and any vegetation from which produce of a kind so referred to is obtained,
- (b) any produce, other than produce referred to in paragraph (a), of a kind referred to in the second column of Table 1 or 4 of the MRL Standard and any vegetation from which produce of a kind so referred to is obtained.

(2) For the purposes of section 63 (2) (a) of the Act, the following are **prescribed substances**:

- (a) a substance referred to in the shaded boxes in Schedule 1 or 2 to Standard 1.4.2 of the Food Standards Code,
- (b) a substance specified in the first column of Table 1 or 4 of the MRL Standard.

(3) For the purposes of section 63 (2) (a) of the Act:

- (a) the concentration of a prescribed substance specified in Schedule 1 or 2 to Standard 1.4.2 of the Food Standards Code in respect of any agricultural produce is prescribed as the maximum permissible concentration of that substance in respect of that produce, and
- (b) the concentration of a prescribed substance specified in the third column of Table 1 or 4 to the MRL standard in respect of any agricultural produce is prescribed as the maximum permissible concentration of that substance in respect of that produce.

(4) If there is an inconsistency between the maximum permissible concentration prescribed by subclause (3) (a) and the maximum permissible concentration prescribed by subclause (3) (b) in respect of the same prescribed substance and agricultural produce, the maximum permissible concentration prescribed by subclause (3) (a) prevails.

### **31A Exemption for using pesticide contrary to approved label: section 15 (1) of Act**

A person is exempt from the requirement under section 15 (1) of the Act not to use a registered pesticide in contravention of an instruction on an approved label for the pesticide if:

- (a) the pesticide is used to control a pest other than a pest of a kind specified by the label, and

- (b) the pest being controlled is neither a weed nor a vertebrate animal, and
- (c) the pesticide is used to control the pest in or on a plant or crop of a kind specified by the label, and
- (d) the pesticide is used in compliance with any other instructions on the label.

### **31B Prescribed fees for clean up and prevention notices**

- (1) The purpose of this clause is to prescribe fees for the purposes of sections 22 (2) and 27 (2) of the Act.
- (2) The prescribed fees are as follows:
  - (a) for notices given on or after 1 September 2015 but before 1 July 2016—\$506,
  - (b) for notices given on or after 1 July 2016 but before 1 July 2017—\$520,
  - (c) for notices given on or after 1 July 2017 but before 1 July 2018—\$535,
  - (d) for notices given on or after 1 July 2018—\$550.

### **32 Penalty notices**

- (1) For the purposes of section 75 (1) of the Act, each offence created by a provision specified in Column 1 of Schedule 2 is prescribed as a penalty notice offence for the purposes of Division 2 of Part 10 of the Act.
- (2) For the purposes of section 78 (1) of the Act, the prescribed penalty payable under a penalty notice in relation to a penalty notice offence is:
  - (a) the amount specified in Column 2 of Schedule 2, or
  - (b) if the person alleged to have committed the offence is a corporation, and if a greater amount is specified in Column 3 of Schedule 2, the amount specified in Column 3 of Schedule 2.

### **33 Savings**

Any act, matter or thing that, immediately before the repeal of the [Pesticides Regulation 1995](#), had effect under that Regulation continues to have effect under this Regulation.

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

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

- 1** The Environment Protection Authority may from time to time approve of units of competency, or parts of units of competency, for the purposes of clause 9 (1) (d) (ii).
- 2** The Authority may only approve of units of competency, or parts of units of competency, if the units of competency are specified in a current Training Package endorsed by the National Quality

Council, a committee of the Ministerial Council for Vocational and Technical Education.

- 3** Before approving units of competency, or parts of units of competency, the Authority:
- (a) must consult relevant groups, including registered training organisations and environmental and industry representatives, and
  - (b) must be satisfied that the proposed units of competency, or parts of units of competency, are relevant to the objects of the Act.
- 4** An approval:
- (a) must clearly identify all units of competency, or parts of units of competency, required to be achieved for the issue of a prescribed qualification, and
  - (b) may specify that particular units of competency, or particular parts of units of competency, must be achieved by particular pesticide users or classes of pesticide users (including, for example, the users of a particular type of pesticide).
- 5** An approval is to be published in the Gazette and takes effect on the day that it is so published or on such later date as may be specified in the approval.
- 6** The Authority must ensure that copies of any approval in force are available for public inspection, without charge and during ordinary business hours, at each of its offices.
- 7** The Authority may revoke an approval at any time by notice published in the Gazette. Any such revocation takes effect on the day that it is so published or on such later date as may be specified in the notice.

## Schedule 2 Penalty notice offences

(Clause 32)

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision</b>	<b>Penalty \$ (individual)</b>	<b>Penalty \$ (corporation)</b>
<b>Offences against the Act</b>		
Section 10 (1)	400	800
Section 11 (1)	400	800
Section 12	400	800
Section 13	400	800
Section 14 (1)	200	400
Section 14 (2)	200	400
Section 15 (1)	400	800
Section 16 (1)	200	400
Section 17	400	800



Section 19 (4)	400	800
Section 25	400	800
Section 39 (4)	400	800
Section 41 (2)	400	800
Section 42 (4)	400	800
Section 42 (6)	400	800
Section 43	400	800
Section 45 (1)	400	800
Section 45 (2)	400	800
Section 59	400	800
Section 61 (1)	400	800
Section 61 (2)	400	800
Section 61 (3)	400	800

**Offences against this Regulation**

Clause 8A (2)	200	—
Clause 8B (1)	400	800
Clause 8B (3)	200	400
Clause 8C (1)	400	—
Clause 8C (2)	200	—
Clause 8L (1)	200	400
Clause 8L (2)	200	400
Clause 8M (2)	400	800
Clause 8M (4)	400	800
Clause 8N	100	200
Clause 8R (6)	200	400
Clause 10 (1)	400	800
Clause 11	400	—
Clause 12 (1)	400	—
Clause 12 (2)	400	—
Clause 12 (3)	400	—
Clause 13 (1)	750	1,500

Clause 15 (1)	200	400
Clause 15 (2)	200	400
Clause 15 (3)	200	400
Clause 15 (4)	750	1,500
Clause 19 (1)	400	800
Clause 25 (1)	400	800
Clause 26 (1)	400	800
Clause 27 (1)	400	800
Clause 28 (1)	100	200
Clause 29 (2)	100	200
Clause 30	200	400