

Pesticides Amendment Act 2015 No 3

[2015-3]



New South Wales

Status Information

Currency of version

Repealed version for 2 September 2015 to 1 December 2015 (accessed 18 November 2024 at 23:19)

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**

The Act was repealed by sec 30C of the [Interpretation Act 1987 No 15](#) with effect from 2.12.2015.

Authorisation

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

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Contents

Long title	3
1 Name of Act	3
2 Commencement	3
Schedule 1 Amendment of Pesticides Act 1999 No 80	3
Schedule 2 Consequential amendment of other legislation	7

Pesticides Amendment Act 2015 No 3



New South Wales

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

1 Name of Act

This Act is the *Pesticides Amendment Act 2015*.

2 Commencement

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

Schedule 1 Amendment of *Pesticides Act 1999 No 80*

1.1, 1.2

(Repealed)

1.3 Administration and enforcement

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

Insert after section 7 (1):

- (1A) For the purposes of subsection (1) (b) in its application to any part of premises used for agricultural operations (including farming, horticultural or aquacultural operations), damage, or likely damage, from the use of a pesticide includes when the use of a pesticide:
- (a) prevents, or is likely to prevent, that part of the premises from being used for such operations (whether temporarily or permanently), or
 - (b) reduces, or is likely to reduce, the capacity of that part of the premises to be

used for such operations (whether temporarily or permanently).

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

Insert after section 10 (1):

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

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

[3] Section 11A

Insert after section 11:

11A Harm to companion animals resulting from pesticide use

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

Maximum penalty:

- (a) \$120,000 in the case of a corporation, or
 - (b) \$60,000 in the case of an individual.
- (2) It is a defence in any proceedings against a person for an offence under this section if the person establishes:
- (a) that the commission of the offence was due to causes over which the person had no control, and
 - (b) that the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence.

(3) In this section:

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

[4] Section 38 Making of pesticide control order

Insert at the end of section 38 (1):

Note—

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

[5] Section 38 (5B)

Insert after section 38 (5A):

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

[6] Section 64 Prohibited residue notices

Insert after section 64 (1) (a):

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

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

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

, or

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

(v) to arrange for analysis to be undertaken, at the person's own cost, by an appropriately qualified laboratory of prohibited residue in the produce and to report the findings to the Authority.

[8] Section 65 Prohibited residue orders

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

, or

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

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

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

[9] Section 65 (4) (a)

Omit the paragraph. Insert instead:

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

[10] Section 110

Insert after section 109:

110 Enforcement of undertakings

- (1) The Environment Protection Authority may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to which the Authority has a function under this Act.
- (2) The person may withdraw or vary the undertaking at any time, but only with the consent in writing of the Authority. The consent of the Authority is required even if the undertaking purports to authorise withdrawal or variation of the undertaking without that consent.
- (3) The Authority may apply to the Land and Environment Court for an order under subsection (4) if the Authority considers that the person who gave the undertaking has breached any of its terms.
- (4) The Court may make all or any of the following orders if it is satisfied that the person has breached a term of the undertaking:
 - (a) an order directing the person to comply with that term of the undertaking,
 - (b) an order directing the person to pay to the State an amount not exceeding the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach,
 - (c) any order that the Court thinks appropriate directing the person to compensate any other person who has suffered loss or damage as a result of

the breach,

- (d) an order suspending or revoking any licence held by the person,
- (e) an order requiring the person to prevent, control, abate or mitigate any actual or likely harm to the environment caused by the breach,
- (f) an order requiring the person to make good any actual or likely harm to the environment caused by the breach,
- (g) any other order the Court considers appropriate.

[11] Section 119 Regulations

Insert after section 119 (2) (g):

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

1.4, 1.5

(Repealed)

Schedule 2 Consequential amendment of other legislation

2.1 Land and Environment Court Act 1979 No 204

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

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

2.2

(Repealed)