

Agricultural and Veterinary Chemicals (Control of Use) Amendment Bill 2011

CLAUSE NOTES

Clause 1 This Act may be sited as the *Agricultural and Veterinary Chemicals (Control of Use) Amendment Act 2011*.

Clause 2 **Commencement**

The Act will commence on a day to be proclaimed.

Clause 3 **Principal Act**

The Act being amended i.e. the *Agricultural and Veterinary Chemicals (Control of Use) Act 1995*.

Clause 4 **Section 3 amended (Interpretation)**

Section 3(1) of the Principal Act is amended by inserting after the definition of “Registrar” the following definition:

“**regulations**” means regulations made under this Act;

Inserted definition due to the new infringement notice provisions.

Clause 5 **Section 20 amended (Orders prohibiting or regulating handling, &c.)**

Section 20 of the Principal Act is amended by inserting the following subsections after subsection (3):

(4) Nothing in this section prevents regulations being made in respect of prohibiting or regulating the handling, using or otherwise dealing with a chemical product or a class of chemical products.

(5) If a provision of the regulations is inconsistent with an order made under this section, the order prevails to the extent of the inconsistency.

This amendment broadens the regulation-making capabilities of the Act by allowing regulations to be made about the same matters that are currently allowed to be dealt with by order. This is necessary because some of those matters would be more appropriately dealt with through regulation. However, in urgent circumstances, matters may be addressed more speedily by order and in this case if there is an inconsistency between a regulation and an order, the latter prevails.

Clause 6 **Section 26 amended (Regulations with respect to use, &c., of certain chemical products)**

Section 26(2) of the Principal Act is amended by omitting paragraph (e) and substituting the following paragraph:

- (e) providing for the grant of certificates of competency in relation to –
 - (i) the prescribed manner of handling, or use, of the chemical product or class of chemical product; and
 - (ii) prohibiting that prescribed manner of handling or use, or any work or operation in connection with that handling or use, except by or under the supervision of a person holding such a certificate; and

This amendment inserts the words “prescribed manner of” before the word “handling” broadening the regulation-making capabilities to enable differentiation between different types of handling or use (e.g. storage, spraying etc) instead of competency requirements being general in nature.

Clause 7 Section 27 amended (Orders controlling or prohibiting agricultural spraying or use of chemical products)

Section 27 of the Principal Act is amended by inserting after subsection (2) the following subsections:

- (3) Nothing in this section prevents regulations being made in respect of controlling or prohibiting of agricultural spraying for the purpose of protecting susceptible plants and stock, public health, the environment and trade.
- (4) If a provision of the regulations is inconsistent with an order made under this section, the order prevails to the extent of the inconsistency.

This amendment broadens the regulation-making capabilities of the Act by allowing regulations to be made about the same matters that are currently allowed to be dealt with by order. This is necessary because some of those matters would be more appropriately dealt with through regulation. However, in urgent circumstances, matters may be addressed more speedily by order and in this case if there is an inconsistency between a regulation and an order, the latter prevails.

Clause 8 Sections 30 and 31 repealed

Sections 30 and 31 of the Principal Act are repealed. Provisions relating to damage by spray drift and notification to neighbours of agricultural spraying are better suited to be included at regulation level. Hence, this amendment to the Act enables the implementation of detailed regulations to cover these areas.

Clause 9 Section 37 repealed

Section 37 of the Principal Act is repealed. It would be more appropriate to deal with requirements relating to the provision of information at regulation level and this amendment enables the removal of the associated provisions in the Act so that this can occur.

Clause 10 Section 39 repealed

Section 39 of the Principal Act is repealed. These provisions have been removed and inserted into section 67(1A) of the Act, for consolidation purposes.

Clause 11 Part 5A repealed

Part 5A of the Principal Act is repealed. Requirements relating to infringement notices have been removed and re-written in section 56A to ensure consistency with the *Monetary Penalties Enforcement Act 2005*.

Clause 12 Section 56A inserted

The following section has been inserted after section 56 of the Principal Act:

56A. Infringement notices

(1) In this section –

“**infringement offence**” means an offence against this Act, the regulations or orders made under this Act to be an infringement offence.

(2) The Registrar, or an inspector, may issue and serve an infringement notice on a person if he or she reasonably believes that the person has committed an infringement offence.

(3) An infringement notice may not be served on an individual who has not attained the age of 16 years.

(4) An infringement notice –

(a) is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*; and

(b) is not to relate to more than 3 offences.

(5) The regulations –

(a) may prescribe, for infringement offences, the penalties payable under infringement notices; and

(b) may prescribe different penalties for bodies corporate and individuals.

(6) In the application of the *Monetary Penalties Enforcement Act 2005* to an infringement notice issued and served under this section –

(a) the issuer and server of the infringement notice is taken to be a public sector body within the meaning of the Act; and

(b) a penalty prescribed under subsection (5) is taken to be the prescribed penalty applicable to that offence for the purposes of section 14(a)(ii) of that Act.

Requirements relating to infringement notices have been re-written and inserted here to ensure consistency with the *Monetary Penalties Enforcement Act 2005*.

Clause 13 Section 62 amended (Offences by employers and contractors)

Section 62 of the Principal Act is amended by inserting after subsection (2) the following subsection:

- (3) Nothing in this section prevents an employee, or person providing service under a contract, from being found guilty of an offence, whether or not the employer, or the person who contracted with the person providing services, have proceedings brought against them by virtue of this section for the same offence.

This amendment clarifies that both the employee and their employer can be prosecuted in the event that an offence is committed by the employee.

Clause 14 Section 67 amended (Regulations)

Section 67 of the Principal Act is amended as follows:

(a) by inserting the following subsection after subsection (1):

(1A) Without limiting the generality of subsection (1), regulations may be made in relation to one or more of the following:

- (a) the prescribing of residue levels for one or more of the following:
- (i) a chemical, or class of chemical;
 - (ii) the distribution method for a chemical or class of chemical;
 - (iii) the item which is being tested for residue;
- (b) the procedures for testing residue levels in specified circumstances, or generally;
- (c) the prohibiting or regulating of the handling, storing, using or otherwise dealing with a chemical product or a class of chemical products;
- (d) the controlling or prohibiting of agricultural spraying for the purpose of protecting susceptible plants and stock, public health, the environment and trade;
- (e) to regulate the equipment used, or to be used, for the purpose of agricultural spraying including, but not limited to, the specifications, testing and maintenance of such equipment.

(b) by omitting from subsection (5) “applied” and substituting “applied, approved”.

This amendment broadens the regulation-making capabilities of the Act ensuring that there is a power under the Act to make all the regulations required for the Act to operate as intended.

Clause 15 Schedule 5 amended (Permits, certificates and licences)

Schedule 5 to the Principal Act is amended by omitting “due date” from clause 7 of Part 1 and substituting “prescribed due date”.

This amendment provides the power to actually prescribe a due date.

Clause 16 Repeal of Act

This Act is repealed on the ninetieth day from the day on which it commences.

This is for administrative purposes to remove the Amendment Bill once the amendments have been incorporated into the Principal Act.