Agricultural and Veterinary Chemicals (Control of Use) (Further Amendment) Act 2001

Act No. 55/2001

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ENDNOTES 27
The Parliament of Victoria enacts as follows:

1. Purpose

The main purpose of this Act is to make miscellaneous amendments to the Agricultural and Veterinary Chemicals (Control of Use) Act 1992 and a consequential amendment to the Agricultural and Veterinary Chemicals (Victoria) Act 1994.
2. Commencement

This Act comes into operation on the day after the day on which it receives the Royal Assent.

3. Principal Act

In this Act, the Agricultural and Veterinary Chemicals (Control of Use) Act 1992 is called the Principal Act.

4. Purposes of Principal Act

In section 1 of the Principal Act, after paragraph (c) insert—

"; and

d) to impose controls in relation to the transport, handling, sale and other dealings with agricultural produce, fertilisers and stock food."

5. Definitions

In section 4(1) of the Principal Act—

(a) in the definition of "chief administrator", for "Public Sector Management Act 1992" substitute "Public Sector Management and Employment Act 1998";

(b) in the definition of "relevant Act", after "Dangerous Goods Act 1985" insert ", Health Act 1958";
(c) in the definition of "sell", in paragraph (j) after "business" insert "or a profession";
(d) in the definition of "sell" after paragraph (k) insert—

"; and
(l) sell or supply under a contract for services or a contract for work or labour;";
(e) insert the following definitions—

"contaminated", in relation to a fertiliser or stock food, means having a contaminant present in the fertiliser or stock food in excess of the maximum limit for that substance;

"maximum limit", in relation to a substance present in a fertiliser or stock food, means the level that is declared under sub-section (4) to be the maximum limit for that substance in relation to fertilisers or stock foods of that type;'.

6. Orders in council

After section 4(4)(g) of the Principal Act insert—

"(ga) the maximum limit (which may be zero) for a substance in a fertiliser or stock food; or".

7. Exemptions from regulations

In section 5 of the Principal Act, after "this Act" insert "or regulations made under this Act".

8. Limiting the use of unregistered chemical products

In section 6(1)(c) of the Principal Act, after "profession" insert "and the use is not prohibited under section 25A".
9. **Off-label use of chemical products**

(1) In section 19(3) of the Principal Act—

   (a) after "a particular purpose" **insert** "or in particular circumstances";

   (b) after "that particular purpose" **insert** "or in those particular circumstances".

(2) After section 19(4) of the Principal Act **insert**—

   "(5) A person must only use a prescribed chemical product, fertiliser or stock food or a chemical product, fertiliser or stock food that contains a prescribed constituent in a particular manner or for particular purposes or in particular circumstances if the label for that chemical product, fertiliser or stock food contains a statement prescribed by the regulations specifying or indicating that the chemical product, fertiliser or stock food must only be used in that manner or for those purposes or in those circumstances, unless otherwise authorised by a permit under Schedule 1.

   Penalty: In the case of a corporation, 200 penalty units.
   In any other case, 100 penalty units.".

(3) In section 19(6) of the Principal Act, for "or stock food has been applied" **substitute** "has been applied, any agricultural produce obtained from stock to which the chemical product has been applied or any stock that has consumed the stock food".

(4) After section 19(6) of the Principal Act **insert**—
'(7) A person must not sell stock or agricultural produce obtained from stock that the seller knows or reasonably ought to know has—

(a) entered on land where an agricultural chemical product has been applied to that land or any plant on that land; or

(b) grazed any plant on that land—

within the relevant withholding period stated on the label of the chemical product unless the seller has notified the buyer of that stock or agricultural produce in writing that the period has not expired.

Penalty: In the case of a corporation, 200 penalty units.

In any other case, 100 penalty units.

(8) A person must not sell stock food or agricultural produce derived from any plant or animal if the person knows or reasonably ought to know that the plant or animal—

(a) has had a chemical product applied to it; and

(b) in the case of stock food or agricultural produce derived from a plant, the stock food or agricultural produce was harvested from the plant before the relevant withholding period stated on the label of the chemical product had expired; and

(c) in the case of stock food or agricultural produce obtained from an animal, the stock food or agricultural produce was
obtained from the animal before the relevant withholding period stated on the label of the chemical product had expired—

unless the seller has notified the buyer of the stock food or agricultural produce in writing that the withholding period had not expired before the stock food or agricultural produce was harvested or obtained.

Penalty: In the case of a corporation, 200 penalty units.

In any other case, 100 penalty units.

(9) In sub-sections (6), (7) and (8) "agricultural produce" includes wool.'.

10. **New section 21 inserted**

After section 20 of the Principal Act insert—

"21. **Application of chemical products to agricultural produce**

A person who transports or handles agricultural produce and is not the owner of that agricultural produce must not apply a chemical product to the agricultural produce unless the person has the written permission of the owner of the agricultural produce for that application.

Penalty: In the case of a corporation, 200 penalty units.

In any other case, 100 penalty units.".

11. **New section 32 inserted**

In Part 4 of the Principal Act, after section 31 insert—
"32. Prohibiting misuse of registered chemical products

(1) A person must not administer or apply a registered agricultural chemical product to an animal unless—

(a) the use is in accordance with a permit issued under Schedule 1; or

(b) the use is by a veterinary practitioner acting in the course of the practice of his or her profession and the use is not prohibited by an Order under section 25A; or

(c) the use is in accordance with the written instructions of a veterinary practitioner acting in the course of the practice of his or her profession and the use is not prohibited by an Order under section 25A.

Penalty: In the case of a corporation, 200 penalty units. In any other case, 100 penalty units.

(2) A person must not administer or apply a registered veterinary chemical product to a plant, place or thing or use a registered veterinary chemical product in relation to a plant, place or thing except in accordance with a permit issued under Schedule 1.

Penalty: In the case of a corporation, 200 penalty units. In any other case, 100 penalty units."
12. **Repeal of section 41—statement as to damage**

Section 41 of the Principal Act is **repealed**.

13. **New section 41 inserted**

After section 40 of the Principal Act **insert**—

"**41. Contamination by spray drift**

(1) A person must not carry out agricultural spraying—

(a) which contaminates any stock outside the target area; or

(b) which is likely to contaminate any agricultural produce derived from plants or stock outside the target area.

Penalty: In the case of a corporation, 200 penalty units.

In any other case, 100 penalty units.

(2) It is a defence to a prosecution under sub-section (1)(b) if the agricultural produce is not to be used as stock food or sold as, or manufactured into, food or stock food."

14. **Requirement for pilots**

For section 42(2) of the Principal Act **substitute**—

"(2) A person must not pilot an aircraft to carry out aerial spraying unless he or she—

(a) holds an agricultural aircraft operator licence and complies with all conditions (if any) of that licence; or

(b) is an employee or agent of a person who holds an agricultural aircraft operator licence.

Penalty: 200 penalty units."
15. **New heading inserted**

**Insert** the following heading to section 46 of the Principal Act—

"Notices to owners of defective spraying equipment".

16. **New section 46A inserted**

After section 46 of the Principal Act **insert**—

"46A. Notice to operators of defective spraying equipment"

(1) An authorised officer who is satisfied on reasonable grounds that equipment that is used or to be used for agricultural spraying would be likely to harm the operator of the equipment or other persons, or cause the contamination of any stock or agricultural produce outside the target area, if so used may, by notice in writing, direct that the operator or a person in possession of the equipment—

(a) not use the equipment; and

(b) take all reasonable steps to ensure that no other person uses the equipment.

(2) The operator or person in possession of the equipment must comply with a notice issued in accordance with this section.

**Penalty:** 200 penalty units.

(3) An authorised officer may revoke or vary a notice under sub-section (1) by further notice.
17. New section 52 substituted and 52A inserted

For section 52 of the Principal Act substitute—

"52. Contaminated produce notice

(1) An authorised officer may, by notice in writing, regulate the sale, handling, use, transport or disposal of, or other dealing with, any agricultural produce, fertiliser or stock food if he or she believes on reasonable grounds that the agricultural produce, fertiliser or stock food is contaminated.

(2) Without limiting sub-section (1), the notice may—

(a) prohibit the sale, handling, use, transport or disposal of, or other dealing with, any agricultural produce, fertiliser or stock food except—

(i) in accordance with the notice; or
(ii) with the approval of an authorised officer;

(b) require that the agricultural produce, fertiliser or stock food be treated as specified in the notice;

(c) require that the agricultural produce, fertiliser or stock food be labelled, marked or otherwise identified—

(i) in the manner specified in the notice; and
(ii) before the date, if any, specified in

The authorised officer may give the notice to—

(a) the owner or occupier of the land on which the stock or plants from which agricultural produce or stock food is produced is kept or are grown; or

(b) the owner of the agricultural produce, fertiliser or stock food; or

(c) the person in possession of the agricultural produce, fertiliser or stock food; or

(d) the driver of any vehicle in which the agricultural produce, fertiliser or stock food is being transported; or

(e) if the agricultural produce, fertiliser or stock food is in transit, the person into whose possession it is to be delivered; or

(f) one or more of the persons specified in paragraphs (a) to (e).

A person who receives a notice under subsection (3) must take reasonable steps to comply with it.

Penalty: 100 penalty units.

52A. Regulations relating to contaminated agricultural produce

The Governor in Council may make regulations in accordance with section 76 for or with respect to—
(a) prohibiting or regulating the sale of contaminated agricultural produce;
(b) regulating the handling of contaminated agricultural produce;
(c) regulating the transport of contaminated agricultural produce;
(d) requiring the identification of contaminated agricultural produce."

18. Authorisation and identification of authorised officers

(1) In section 53(1) of the Principal Act, after "this Act" insert "or any regulations or Orders made under this Act".

(2) For section 53(3) of the Principal Act substitute—

"(3) An authorised officer must produce his or her identity card for inspection—

(a) before exercising a power under this Act; and

(b) at any time during the exercise of a power under this Act, if asked to do so.

Penalty: 10 penalty units.".

19. Powers of authorised officers

(1) In section 54(1)(f) of the Principal Act, after "this Act" insert "or any regulations or Orders made under this Act".

(2) After section 54(1)(g) of the Principal Act insert—

"(ga) to take any photographs or make any audio or visual recordings as he or she considers necessary; and".
(3) After section 54(1)(i) of the Principal Act

insert—

"(ia) if the authorised officer is satisfied that it would pose a risk to public health or safety (including the health or safety of the authorised officer) to open a sealed package or container to take a sample of any substance in the package or container that the authorised officer reasonably suspects is a chemical product, fertiliser or stock food or of any agricultural produce in the package or container, to take and remove for examination the package or container and its contents; and ".

(4) After section 54(1)(j) of the Principal Act

insert—

"(ja) to take and remove for analysis and examination any equipment used for or in connection with the application of any chemical product or fertiliser; and".

20. New sections 54A to 54I inserted

After section 54 of the Principal Act insert—

"54A. Powers of entry and inspection with consent

(1) If an authorised officer believes, on reasonable grounds, that a person is contravening or has contravened this Act, the regulations or an Order under this Act, the authorised officer, with the consent of the occupier of the premises, may—

(a) enter and search any premises;

(b) seize anything found on the premises which the inspector believes on
reasonable grounds, to be connected with the alleged contravention;

(c) examine and take and keep samples of any goods found on the premises which the inspector believes on reasonable grounds to be connected with the alleged contravention;

(d) inspect and make copies of, or take extracts from, any document found on the premises;

(e) take any photographs or make any audio or visual recordings as he or she considers necessary.

(2) An authorised officer must not enter and search any premises with the consent of the occupier unless, before the occupier consents to that entry, the authorised officer has—

(a) produced his or her identity card for inspection; and

(b) informed the occupier—

(i) of the purpose of the search; and

(ii) that the occupier may refuse to give consent to the entry and search or to the seizure of anything found during the search; and

(iii) that the occupier may refuse to consent to the taking of any sample of goods or any copy of, or extract from, a document found on the premises during the search; and

(iv) that the occupier may refuse to consent to the making of any
recordings on the premises during the search; and

(v) that anything seized or taken or recordings made during the search with the consent of the occupier may be used in evidence in proceedings.

(3) If an occupier consents to an entry and search, the authorised officer who requested consent must before entering the premises ask the occupier to sign an acknowledgment in the prescribed form stating—

(a) that the occupier has been informed of the purpose of the search and that anything seized or taken or recordings made in the search with the consent of the occupier may be used in evidence in proceedings; and

(b) that the occupier has been informed that he or she may refuse to give consent to the entry and search; and

(c) that the occupier has consented to such an entry and search; and

(d) the date and time that the occupier consented.

(4) If an occupier consents to the seizure or taking of any thing or the making of any recording during a search under this section, the inspector must before seizing or taking the thing or making the recording ask the occupier to sign an acknowledgment stating—

(a) that the occupier has consented to the seizure or taking of the thing or the making of a recording; and
(b) the date and time that the occupier consented.

(5) An occupier who signs an acknowledgment must be given a copy of the signed acknowledgment before the authorised officer leaves the premises.

(6) If, in any proceeding, an acknowledgment is not produced to the court or a tribunal, it must be presumed, until the contrary is proved, that the occupier did not consent to the entry and search or to the seizure or the taking of the thing or the making of the recording.

54B. Search warrants

(1) An authorised officer, with the written approval of the chief administrator, may apply to a magistrate for the issue of a search warrant in relation to particular premises, if the authorised officer believes on reasonable grounds that there is on the premises evidence that a person or persons may have contravened this Act or the regulations or an Order made under this Act.

(2) If a magistrate is satisfied, by the evidence, on oath or by affidavit, of the authorised officer that there are reasonable grounds to believe that there is a thing or things of a particular kind connected with a contravention of this Act, the regulations or an Order on any premises, the magistrate may issue a search warrant, in accordance with the Magistrates' Court Act 1989, authorising an authorised officer named in the warrant, together with any other person or persons named or otherwise identified in

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the warrant and with any necessary equipment—

(a) to enter the premises specified in the warrant, if necessary by force; and

(b) to do all or any of the following—

(i) search for;

(ii) seize;

(iii) secure against interference;

(iv) examine, inspect and take and keep samples of;

(v) inspect and make copies of, or take extracts from—

a thing or things of a particular kind named or described in the warrant and which the authorised officer believes, on reasonable grounds, to be connected with the alleged contravention.

(3) A search warrant issued under this section must state—

(a) the purpose for which the search is required and the nature of the alleged contravention; and

(b) any conditions to which the warrant is subject; and

(c) whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and

(d) a day, not later than 28 days after the issue of the warrant, on which the warrant ceases to have effect.

(4) Except as provided by this Act, the rules to be observed with respect to search warrants
under the **Magistrates’ Court Act 1989** extend and apply to warrants under this section.

54C. Announcement before entry

(1) On executing a search warrant, the authorised officer executing the warrant—

(a) must announce that he or she is authorised by the warrant to enter the premises; and

(b) if the authorised officer has been unable to obtain unforced entry, must give any person at the premises an opportunity to allow entry to the premises.

(2) An authorised officer need not comply with sub-section (1) if he or she believes, on reasonable grounds, that immediate entry to the premises is required to ensure—

(a) the safety of any person; or

(b) that the effective execution of the search warrant is not frustrated.

54D. Details of warrant to be given to occupier

(1) If the occupier is present at premises where a search warrant is being executed, the authorised officer must—

(a) identify himself or herself to the occupier; and

(b) produce his or her identity card for inspection; and

(c) give to the occupier a copy of the warrant.

(2) If the occupier is not present at premises where a search warrant is being executed, the authorised officer must—
(a) identify himself or herself to a person at the premises; and
(b) produce his or her identity card for inspection; and
(c) give to the person a copy of the warrant.

54E. Authorised officer may seek Court order

(1) If an authorised officer believes, on reasonable grounds, that a person or persons has contravened this Act or the regulations or an Order under this Act, the authorised officer, with the written approval of the chief administrator, may apply to the Magistrates' Court for an order requiring any person at a time and place specified by an authorised officer—

(a) to answer orally or in writing any questions put by an authorised officer in relation to the alleged contravention;

(b) to supply orally or in writing information required by an authorised officer in relation to the alleged contravention;

(c) to produce to an authorised officer specified documents or documents of a specified class relating to the alleged contravention.

(2) If the Magistrates' Court is satisfied on the basis of evidence presented by the authorised officer that there are reasonable grounds to believe that a person or persons has contravened this Act or the regulations or an Order under this Act, the Court may grant the order sought.
(3) An order under this section must state a day, not later than 28 days after the making of the order, on which the order ceases to have effect.

(4) If any documents are produced to an authorised officer under an order made under this section the authorised officer may—

(a) inspect the documents or authorise a person to inspect the documents;

(b) make copies of, or take extracts from, the documents;

(c) seize the documents if the authorised officer considers the documents necessary for the purpose of obtaining evidence for the purpose of any proceedings against any person under this Act or the regulations or an Order under this Act;

(d) secure any seized documents against interference;

(e) retain possession of the documents in accordance with this Part.

(5) An authorised officer who executes an order under this section must as soon as practicable after that execution notify the Magistrates' Court in writing of—

(a) the time and place of execution; and

(b) the documents or classes of documents seized; and

(c) if documents were seized under subsection (4)(c) in respect of a contravention other than a contravention for which the order was
granted, the contravention in respect of which the documents were seized.

(6) The Magistrates' Court may direct the authorised officer to bring before the Court a document to which sub-section (5)(c) applies so that the matter may be dealt with according to law.

(7) The Magistrates' Court may direct that a document brought before it under sub-section (6) be returned to its owner, subject to any condition the Court thinks fit, if in the opinion of the Court it can be returned consistently with the interests of justice.

54F. Copies of seized documents

(1) If an authorised officer retains possession of a document seized from a person under this Part, the authorised officer must give the person, within 21 days of the seizure, a copy of the document certified as correct by the authorised officer.

(2) A copy of a document certified under sub-section (1) shall be received in all courts and tribunals to be evidence of equal validity to the original.

54G. Retention and return of seized documents or things

(1) If an authorised officer seizes a document or other thing under this Part, the authorised officer must take reasonable steps to return the document or thing to the person from whom it was seized if the reason for its seizure no longer exists.
(2) If the document or thing seized has not been returned within 3 months after it was seized, the inspector must take reasonable steps to return it unless—

(a) proceedings for the purpose for which the document or thing was retained have commenced within that 3 month period and those proceedings (including any appeal) have not been completed; or

(b) the Magistrates' Court makes an order under section 54H extending the period during which the document or thing may be retained.

(3) This section does not apply to—

(a) a sample taken by an authorised officer in the exercise of a power under this Part; or

(b) a chemical product, fertiliser or stock food seized under section 57 if the sale or use of the chemical product, fertiliser or stock food is prohibited under this Act or the regulations or an Order under this Act.

54H. Magistrates' Court may extend 3 month period

(1) An authorised officer may apply to the Magistrates' Court within 3 months after seizing a document or other thing under this Part for an extension of the period for which the authorised officer may retain the document or thing.
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(2) The Magistrates' Court may order such an extension if it is satisfied that retention of the document or other thing is necessary—

(a) for the purposes of an investigation into whether a contravention of this Act or the regulations or an Order under this Act has occurred; or

(b) to enable evidence of a contravention of this Act or the regulations or an Order under this Act to be obtained for the purposes of a proceeding under this Act.

(3) The Magistrates' Court may adjourn an application to enable notice of the application to be given to any person.

54I. Protection against self-incrimination

(1) It is a reasonable excuse for a natural person to refuse or fail to give information or do any other thing that the person is required to do by or under this Part, if the giving of the information or the doing of that other thing would tend to incriminate the person.

(2) Despite sub-section (1), it is not a reasonable excuse for a natural person to refuse or fail to produce a document that the person is required to produce by or under this Part, if the production of the document would tend to incriminate the person."

21. New section 56A inserted

After section 56 of the Principal Act insert—

"56A. Notification by commercial laboratories

If the result of the testing of any prescribed agricultural produce for fee or reward shows that the agricultural produce is contaminated
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with a prescribed constituent or a constituent of a prescribed class of constituents, the person who carried out the test of that agricultural produce must notify the Secretary or an authorised officer of that contamination within the prescribed time and in the prescribed manner.”.

22. Providing documents with false information

For section 59(2) of the Principal Act substitute—

"(2) A person must not make any statement or provide any document or other information about a chemical product, fertiliser, or stock food or its use (including in the case of a registered chemical product, the circumstances of its use) that is false or misleading and likely to cause a person who relies on the statement, document or other information to—

(a) commit an offence under this Act or the regulations under this Act; or

(b) contaminate stock or agricultural produce; or

(c) injuriously affect plants that are to be applied with the chemical product or fertiliser.

Penalty: In the case of a corporation, 100 penalty units.

In any other case, 50 penalty units.

(3) A person must not make any statement or provide any document or other information in relation to the target area, or the area
contiguous to the target area, of agricultural spraying to be carried out on behalf of that person that is false or misleading and likely to cause a person who carries out the agricultural spraying who relies on the statement, document or other information to commit an offence under this Act or the regulations under this Act.

Penalty: In the case of a corporation, 100 penalty units.
In any other case, 50 penalty units.”.

23. Evidentiary provisions

(1) In section 71(2)(a) of the Principal Act, for "officer" substitute "authorised officer or any other person authorised in writing by the chief administrator to prosecute under this Act".

(2) In section 71(3) of the Principal Act, after "analyst of a" insert "plant, animal, ".

24. New section 75A inserted

After section 75 of the Principal Act insert—

"75A. Use of money available for the purposes of this Act

Any money available for the purposes of this Act must be used for the following purposes—

(a) consideration of applications for authorities under the Act;
Agricultural and Veterinary Chemicals (Control of Use) (Further Amendment) Act 2001
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(b) monitoring standards and performance of holders of authorities under the Act;
(c) monitoring compliance with the Act;
(d) generally administering the Act.”.

25. **Consequential amendments to section 76**

In section 76(2) of the Principal Act after "45," insert "52A".

26. **Consequential amendments to Schedule 1**

In Schedule 1 to the Principal Act, after paragraph (f) of the definition of "authority" in clause 1 of Part 1 insert—

"(fa) a permit under section 32;".

27. **Consequential amendments to Agricultural and Veterinary Chemicals (Victoria) Act 1994**

In section 33(1)(a) of the Agricultural and Veterinary Chemicals (Victoria) Act 1994 for "and 19(1), (3) and (4)" substitute ", 19(1), (3), (4) and (5) and 32".
Agricultural and Veterinary Chemicals (Control of Use)  
(Further Amendment) Act 2001
Act No. 55/2001

ENDNOTES

† Minister's second reading speech—
Legislative Assembly: 23 August 2001
Legislative Council: 25 September 2001

The long title for the Bill for this Act was "to make miscellaneous amendments to the Agricultural and Veterinary Chemicals (Control of Use) Act 1992 and a consequential amendment to the Agricultural and Veterinary Chemicals (Victoria) Act 1994 and for other purposes."