

Authorised Version No. 054
Agricultural and Veterinary Chemicals
(Control of Use) Act 1992

No. 46 of 1992

Authorised Version incorporating amendments as at
17 June 2015

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Agricultural and Veterinary Chemicals
(Control of Use) Act 1992

No. 46 of 1992

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PART 1—PRELIMINARY

1 Purposes

The purposes of this Act are—

- (a) to impose controls in relation to the use, application and sale of agricultural and veterinary chemical products, fertilisers and stock foods and the manufacture of fertilisers and stock foods, for the purpose of—
 - (i) protecting the health of the general public and the users of those products; and
 - (ii) protecting the environment; and
 - (iii) protecting the health and welfare of animals; and
 - (iv) protecting domestic and export trade in agricultural produce and livestock; and
 - (v) ensuring that a product is effective for the purposes described on its label; and
 - (vi) promoting uniformity of regulation throughout Australia; and
- (b) to impose controls in relation to agricultural spraying and to provide protection against financial loss caused by damage to plants and stock from agricultural spraying; and

S. 1(a)
amended by
No. 73/1994
s. 39.

S. 1(c)
amended by
No. 55/2001
s. 4.

(c) to impose controls in relation to the production of agricultural produce to avoid the contamination of food for human consumption; and

S. 1(d)
inserted by
No. 55/2001
s. 4.

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

2 Commencement

This Act comes into operation on a day or days to be proclaimed.

3 Act to bind Crown

This Act binds the Crown, not only in right of Victoria but also, so far as the legislative power of Parliament permits, in all its other capacities.

4 Definitions

(1) In this Act—

S. 4(1) def. of
advice note
amended by
Nos 73/1994
s. 40(c),
33/2000
s. 3(a).

advice note means any document (other than a label) that contains any information about a veterinary chemical product, fertiliser, stock food or meal of animal origin or advice on its use, and that is supplied by the seller to the buyer in connection with the sale of the veterinary chemical product, fertiliser, stock food or meal of animal origin;

S. 4(1) def. of
aerial spraying
amended by
No. 73/1994
s. 40(d).

aerial spraying means the spraying, spreading or dispersing of an agricultural chemical product (whether in a solid or liquid form) from an aircraft in flight;

S. 4(1) def. of
agricultural chemical preparation
repealed by
No. 73/1994
s. 40(a).

* * * * *

agricultural chemical product has the same meaning as in the Agvet Code of Victoria;

S. 4(1) def. of *agricultural chemical product* inserted by No. 73/1994 s. 40(b).

agricultural produce means—

- (a) any plant or part of a plant, whether harvested or not; or
- (b) any carcass or commodity obtained from a plant or an animal—

which is ordinarily used as, or manufactured into, food for humans or animals and—

- (c) includes any other commodity that is obtained from a plant or an animal and that is declared under subsection (4) to be agricultural produce; and
- (d) does not include any plant, animal or commodity that is declared under subsection (4) not to be agricultural produce;

agricultural spraying means the spraying, spreading or dispersing of an agricultural chemical product from any machine or piece of equipment, and includes aerial spraying;

S. 4(1) def. of *agricultural spraying* amended by No. 73/1994 s. 40(e).

Agvet Code of Victoria has the same meaning as in the **Agricultural and Veterinary Chemicals (Victoria) Act 1994**;

S. 4(1) def. of *Agvet Code of Victoria* inserted by No. 73/1994 s. 40(b).

aircraft includes a helicopter;

animal has the same meaning as in the Agvet Code of Victoria;

S. 4(1) def. of *animal* substituted by No. 73/1994 s. 40(f).

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approved fee means a fee that is fixed by the Minister by notice published in the Government Gazette;

S. 4(1) def. of *approved insurance policy* repealed by No. 35/2009 s. 3(4).

* * * * *

S. 4(1) def. of *APVMA* inserted by No. 35/2009 s. 3(1).

APVMA means the Australian Pesticides and Veterinary Medicines Authority continued in existence by section 6 of the Agricultural and Veterinary Chemicals (Administration) Act 1992 of the Commonwealth;

authorised officer means an officer appointed under section 53;

S. 4(1) def. of *Board* repealed by No. 73/1994 s. 40(a).

* * * * *

S. 4(1) def. of *Certificate of clearance* repealed by No. 73/1994 s. 40(a).

* * * * *

S. 4(1) def. of *chemical product* inserted by No. 73/1994 s. 40(b).

chemical product means an agricultural chemical product or a veterinary chemical product;

chief administrator means the Department Head of the Department under the **Public Administration Act 2004**;

S. 4(1) def. of *chief administrator* substituted by No. 73/1994 s. 40(g), amended by Nos 55/2001 s. 5(a), 108/2004 s. 117(1) (Sch. 3 item 6.1(a)).

* * * * *

S. 4(1) def. of *clearance authority* repealed by No. 73/1994 s. 40(a).

Committee means the Victorian Agricultural Chemicals Advisory Committee established under section 65;

* * * * *

S. 4(1) def. of *Commonwealth Act* repealed by No. 73/1994 s. 40(a).

contaminant includes a radioactive substance;

constituent includes additive and contaminant;

contaminated, in relation to an animal or to agricultural produce, means an animal or produce in which a contaminant is present—

S. 4(1) def. of *contaminated*, in relation to an animal or to agricultural produce amended by No. 35/2009 s. 3(2).

- (a) in excess of the maximum residue limit; or
- (b) if there is no maximum residue limit for that contaminant at such a level that the produce does not, or that the food produced from the animal or produce is not likely to, comply with the **Food Act 1984**;

S. 4(1) def. of *contaminated*, in relation to a fertiliser or stock food inserted by No. 55/2001 s. 5(e).

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;

contaminated produce notice means a notice issued under section 52;

S. 4(1) def. of *Department* substituted by Nos 73/1994 s. 40(h), 46/1998 s. 7(Sch. 1) (as amended by No. 12/1999 s. 3(Sch. 1 item 2)), amended by Nos 56/2003 s. 11(Sch. item 1.1), 70/2013 s. 4(Sch. 2 item 4.1).

Department means the Department of Environment and Primary Industries;

destruction notice means a notice issued under section 58;

S. 4(1) def. of *fertiliser* amended by No. 73/1994 s. 40(i).

fertiliser means—

- (a) a substance that is manufactured, represented, sold or used as a means of directly or indirectly—
 - (i) fertilising the soil; or
 - (ii) supplying nutrients to plants; or
 - (iii) conditioning soil by altering the chemical, physical or biological composition of the soil; or

(b) a substance that is declared under subsection (4) to be a fertiliser—

but does not include—

(c) an agricultural chemical product; or

(d) a substance that is declared under subsection (4) not to be a fertiliser;

* * * * *

S. 4(1) def. of *formulate* repealed by No. 73/1994 s. 40(a).

label includes any tag, brand, mark, stamp, stencil, leaflet or statement in writing that is marked on or attached to the package of a chemical product, fertiliser, stock food or meal of animal origin at the time of its sale or delivery to the buyer;

S. 4(1) def. of *label* amended by Nos 73/1994 s. 40(j)(i)(ii), 33/2000 s. 3(a).

land use restriction notice means a notice issued under section 50;

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

S. 4(1) def. of *maximum limit* inserted by No. 55/2001 s. 5(e).

maximum residue limit, in relation to a substance present in an animal or in agricultural produce, means—

S. 4(1) def. of *maximum residue limit* substituted by No. 35/2009 s. 3(3).

(a) the level that is declared under subsection (4) to be the maximum residue limit for that substance in relation to animals or agricultural produce of that type; or

(b) if no maximum residue limit is declared under subsection (4) for that substance, the maximum residue limit specified in an approved standard published by the

APVMA in accordance with section 7A of the Agricultural and Veterinary Chemicals (Administration) Act 1992 of the Commonwealth for that substance in relation to animals or agricultural produce of that type;

S. 4(1) def. of *meal of animal origin* inserted by No. 33/2000 s. 3(b).

meal of animal origin includes a mixture of meals of animal origin;

operator, in relation to an aircraft, means—

- (a) if the aircraft is subject to a hire-purchase agreement or a lease, the person in possession of the aircraft; and
- (b) if the aircraft is borrowed for use (whether or not under a financial arrangement), the person borrowing the aircraft; and
- (c) in any other case, the owner of the aircraft;

S. 4(1) def. of *package* amended by Nos 73/1994 s. 40(k), 33/2000 s. 3(a).

package, in relation to a chemical product, fertiliser, stock food or meal of animal origin, means anything in or by which the chemical product, fertiliser, stock food or meal of animal origin is wholly or partly covered or contained;

pest—

- (a) in relation to any animal, plant or thing, means any animal, plant or other biological entity that injuriously affects the physical condition, worth or utility of that animal, plant or thing; and

(b) in relation to any place, means any animal, plant or other biological entity that injuriously affects the use or enjoyment of that place;

plant includes a seed or cutting of a plant, and any other part or product of a plant that is directly relevant to the production of another plant;

* * * * * S. 4(1) def. of *preparation* repealed by No. 73/1994 s. 40(a).

* * * * * S. 4(1) def. of *preparation to which the Commonwealth Act applies* repealed by No. 73/1994 s. 40(a).

relevant Act means—

(a) this Act, the **Environment Protection Act 1970**, the **Drugs, Poisons and Controlled Substances Act 1981**, the **Dangerous Goods Act 1985**, **Public Health and Wellbeing Act 2008** and the **Occupational Health and Safety Act 2004**; and

S. 4(1) def. of *relevant Act* amended by Nos 55/2001 s. 5(b), 107/2004 s. 178, 46/2008 s. 268(1).

(b) any other Act that is declared under subsection (4) to be a relevant Act;

Secretary to the Department of Health means the Department Head (within the meaning of the **Public Administration Act 2004**) of the Department of Health;

S. 4(1) def. of *Secretary to the Department of Health* inserted by No. 29/2010 s. 43(1).

S. 4(1) def. of
sell
amended by
No. 55/2001
s. 5(c)(d).

sell includes—

- (a) barter; and
- (b) exchange; and
- (c) agree to sell; and
- (d) offer to sell; and
- (e) receive for sale; and
- (f) have in possession for sale; and
- (g) expose for sale; and
- (h) send, forward or deliver for sale; and
- (i) sell for resale; and
- (j) give away for the purpose of advertisement or in furtherance of trade or business or a profession; and
- (k) cause or permit someone to sell; and
- (l) sell or supply under a contract for services or a contract for work or labour;

stock means any animal of which any part is used as, or which produces any product that is ordinarily used as, or manufactured into, food for humans, and includes bees, fish and birds;

S. 4(1) def. of
stock food
substituted by
No. 73/1994
s. 40(l).

stock food means any substance that is used or intended to be used for consumption by stock, other than a substance that is declared under subsection (4) not to be a stock food;

substance includes—

- (a) an organism, including a genetically manipulated organism; and
- (b) material that is produced from an organism; and

- (c) matter the preparation of which involves the use of an organism; and
- (d) a mixture or compound;

target area, in relation to agricultural spraying, means the area within which pests are intended to be controlled by the spraying;

unregistered chemical product means a chemical product which is not registered under Part 2 of the Agvet Code of Victoria;

S. 4(1) def. of *unregistered chemical product* inserted by No. 73/1994 s. 40(b).

* * * * *

S. 4(1) def. of *veterinary chemical preparation* repealed by No. 73/1994 s. 40(a).

veterinary chemical product has the same meaning as in the Agvet Code of Victoria except that, despite section 5(4) of that Code, it includes—

S. 4(1) def. of *veterinary chemical product* inserted by No. 73/1994 s. 40(b), amended by Nos 58/1997 s. 96(Sch. item 1.1), 13/2010 s. 51(Sch. item 4).

- (a) a substance or mixture of substances that is—
 - (i) prepared by a pharmacist registered under the Health Practitioner Regulation National Law in accordance with the instructions of a veterinary practitioner; or
 - (ii) prepared by a veterinary practitioner—

in the course of the practice, by the person preparing the substance or mixture of substances, of his or her profession; and

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(b) a substance declared under subsection (4) of this section to be a veterinary chemical product—

but does not include a substance that is declared under subsection (4) of this section not to be a veterinary chemical product;

S. 4(1) def. of *wholesale dealer* substituted by No. 73/1994 s. 40(m).

wholesale dealer means a person who manufactures or places on the market for sale by wholesale a fertiliser or stock food;

S. 4(2)(3) repealed by No. 73/1994 s. 41(a).

* * * * *

(4) The Governor in Council may, by Order, declare—

S. 4(4)(a)(b) repealed by No. 73/1994 s. 41(b)(i).

* * * * *

(c) a commodity that is obtained from a plant or an animal to be agricultural produce; or

(d) any plant, animal or commodity not to be agricultural produce; or

(e) a substance to be a fertiliser; or

(f) a substance not to be a fertiliser; or

(g) the maximum residue limit (which may be zero) for a substance in relation to any animal or agricultural produce; or

S. 4(4)(ga) inserted by No. 55/2001 s. 6.

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

(h) an Act to be a relevant Act; or

- (i) a substance not to be a stock food; or
- (j) a substance to be a veterinary chemical product; or
- (k) a substance not to be a veterinary chemical product.
- (5) An Order made under subsection (4) must be published in the Government Gazette.
- (6) If under the **Public Administration Act 2004** the name of the Department is changed, the reference in the definition of "Department" in subsection (1) to the "Department of Environment and Primary Industries" must, from the date when the name is changed, be taken to be a reference to the Department by its new name.
- 5 Exemptions**
- The Governor in Council may, by Order published in the Government Gazette, exempt any chemical product, fertiliser or stock food or class of chemical product, fertiliser or stock food, or any class of person, from any of the provisions of this Act or regulations made under this Act, either unconditionally or on specified conditions or in specified circumstances.

S. 4(4)(j)
amended by
No. 73/1994
s. 41(b)(ii).

S. 4(4)(k)
amended by
No. 73/1994
s. 41(b)(ii).

S. 4(6)
amended by
Nos 73/1994
s. 41(c),
46/1998
s. 7(Sch. 1)
(as amended
by No.
12/1999
s. 3(Sch. 1
item 2)),
amended by
Nos 56/2003
s. 11(Sch.
item 1.2),
108/2004
s. 117(1)
(Sch. 3
item 6.1(b)),
70/2013
s. 4(Sch. 2
item 4.2).

S. 5
amended by
Nos 73/1994
s. 42, 55/2001
s. 7.

Pt 2 (Heading and ss 6–17) substituted as Pt 2 (Heading and s. 6) by No. 73/1994 s. 43.

PART 2—USE OF UNREGISTERED CHEMICAL PRODUCTS

S. 6 substituted by No. 73/1994 s. 43.

6 Offences involving unregistered chemical products

- (1) A person must not use an unregistered chemical product unless—
- (a) the use is in accordance with a permit issued under Schedule 1; or
 - (b) the use takes place not later than 2 years, or such other period as is determined by Order under subsection (2), after the chemical product ceases to be registered and—
 - (i) the chemical product forms part of a stock of that chemical product that was in the possession of that person immediately before the chemical product ceased to be registered; and
 - (ii) use of the chemical product is not prohibited under section 25A; or
 - (c) the use is by, or in accordance with the instructions of, a veterinary practitioner in the course of the practice of his or her profession and the use is not prohibited under section 25A.

S. 6(1)(c) amended by Nos 58/1997 s. 96(Sch. item 1.2), 55/2001 s. 8.

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

In any other case, 200 penalty units.

Note to s. 6(1) inserted by No. 13/2013 s. 5(1).

Note

Section 72B applies to an offence against this subsection.

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(2) The Governor in Council may, by Order published in the Government Gazette, determine a period other than 2 years for the purposes of subsection (1)(b) in relation to a chemical product or class of chemical products.

* * * * *

**Ss 7–17
repealed by
No. 73/1994
s. 43.**

PART 3—LABELLING

Pt 3 (Heading)
amended by
No. 73/1994
s. 45(1).

18 Offences involving labelling requirements

S. 18
substituted by
No. 73/1994
s. 44.

- (1) A person must not sell a veterinary chemical product, fertiliser or stock food unless at the time of sale or delivery the veterinary chemical product, fertiliser or stock food is accompanied by a label or advice note which—
- (a) complies with the regulations; or
 - (b) if the veterinary chemical product, fertiliser or stock food is a prescribed veterinary chemical product, fertiliser or stock food or is included in a prescribed class of veterinary chemical products, fertilisers or stock foods, complies with any requirement that is prescribed.

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

In any other case, 200 penalty units.

Note to
s. 18(1)
inserted by
No. 13/2013
s. 5(2).

Note

Section 72C applies to an offence against this subsection.

- (2) A person is not guilty of an offence under subsection (1) if the sale is in accordance with a permit issued under Schedule 1.
- (3) If a change is made to the requirements for a label or advice note, the chief administrator may direct, by notice to a seller of a veterinary chemical product, fertiliser or stock food, that the veterinary chemical product, fertiliser or stock food must not be sold after the date specified in the notice

without a label or advice note that accords with the new requirements.

- (4) A person who receives a notice under subsection (3) must comply with it.

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

In any other case, 50 penalty units.

Note

Section 72A applies to an offence against this subsection.

Note to
s. 18(4)
inserted by
No. 13/2013
s. 5(3).

19 Off-label use of chemical products

- (1) A person must not, otherwise than in accordance with a permit issued under Schedule 1, use a chemical product, fertiliser or stock food—

S. 19(1)
amended by
No. 73/1994
s. 45(2)(a).

- (a) at a rate that is higher than the maximum application rate for that use, as stated on the label; or
- (b) at intervals more frequent than the intervals for that use, as stated on the label.

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

In any other case, 100 penalty units.

- (2) For the purposes of subsection (1)(a), *rate*, in relation to an agricultural chemical product, means the quantity per unit area, or per item.

S. 19(2)
amended by
No. 73/1994
s. 45(2)(b).

- (3) A person must not, otherwise than in accordance with a permit issued under Schedule 1, use a chemical product, fertiliser or stock food in a particular manner or for a particular purpose or in particular circumstances if the label specifically states that the chemical product, fertiliser or stock food must not be used in that particular manner or

S. 19(3)
amended by
Nos 73/1994
s. 45(2)(c),
55/2001
s. 9(1)(a)(b).

for that particular purpose or in those particular circumstances.

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

In any other case, 100 penalty units.

S. 19(4)
amended by
No. 73/1994
s. 45(2)(c).

(4) A person must not use a prescribed chemical product, fertiliser or stock food otherwise than in accordance with—

(a) the instructions on the label; or

(b) a permit issued under Schedule 1.

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

In any other case, 100 penalty units.

S. 19(5)
repealed by
No. 73/1994
s. 45(2)(d),
new s. 19(5)
inserted by
No. 55/2001
s. 9(2).

(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.

(6) A person must not sell, within the relevant withholding period stated on the label of a chemical product or stock food, any agricultural produce or stock to which the chemical product 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 unless the seller has notified the buyer that the period has not expired.

S. 19(6)
amended by
Nos 73/1994
s. 45(2)(e),
33/2000
s. 6(a),
55/2001
s. 9(3).

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

In any other case, 100 penalty units.

(7) A person must not sell stock or agricultural produce obtained from stock that the seller knows or reasonably ought to know has—

S. 19(7)
inserted by
No. 55/2001
s. 9(4).

(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; or

S. 19(7)(b)
amended by
No. 29/2012
s. 3(a).

(c) consumed agricultural produce derived from any plant or animal to which an agricultural chemical product has been applied if—

S. 19(7)(c)
inserted by
No. 29/2012
s. 3(b).

(i) in the case of agricultural produce derived from a plant, the agricultural produce was harvested from the plant;
or

(ii) in the case of agricultural produce obtained from an animal, the agricultural produce was obtained from the animal—

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.

S. 19(8)
inserted by
No. 55/2001
s. 9(4).

- (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 subsections (6), (7) and (8) *agricultural produce* includes wool.

S. 19(9)
inserted by
No. 55/2001
s. 9(4).

Note

Section 72B applies to an offence against subsection (1), (3), (4), (5), (6), (7) or (8).

Note to s. 19
inserted by
No. 13/2013
s. 5(4).

20 Labelling of certain meal of animal origin

S. 20
repealed by
No. 73/1994
s. 45(3),
new s. 20
inserted by
No. 33/2000
s. 4.

(1) A person must not sell meal of animal origin to another person unless the meal is accompanied by a label or advice note that complies with the regulations.

S. 20(1)
amended by
No. 69/2004
s. 54(1).

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

In any other case, 200 penalty units.

Note

Section 72C applies to an offence against this subsection.

Note to
s. 20(1)
inserted by
No. 13/2013
s. 5(2).

(2) If a change is made to the requirements for a label or advice note, the chief administrator may direct, by notice to a person who sells meal of animal origin, that the meal must not be sold after the date specified in the notice without a label or advice note that accords with the new requirements.

S. 20(2)
amended by
No. 69/2004
s. 54(2).

(3) A person who receives a notice under subsection (2) must comply with it.

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

In any other case, 50 penalty units.

Note to
s. 20(3)
inserted by
No. 13/2013
s. 5(3).

Note

Section 72A applies to an offence against this subsection.

(4) Nothing in this section applies to a prescribed meal of animal origin.

S. 21
repealed by
No. 73/1994
s. 45(3),
new s. 21
inserted by
No. 55/2001
s.10.

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.

Note to s. 21
inserted by
No. 13/2013
s. 5(5).

Note

Section 72B applies to an offence against this section.

S. 22
repealed by
No. 73/1994
s. 45(3).

* * * * *

23 Warranties

Despite any agreement or notice to the contrary, a statement appearing on a label or in an advice note has effect as a warranty by the wholesale dealer of the accuracy of that statement.

**PART 4—RESTRICTIONS AND PROHIBITIONS ON
MANUFACTURE, SALE AND USE**

Pt 4 (Heading)
amended by
No. 73/1994
s. 46(1).

24 Standards for fertiliser or stock food

S. 24(1)
amended by
No. 73/1994
s. 46(2)(a)(i).

(1) A person must not manufacture or sell any
fertiliser or stock food that—

S. 24(1)(a)
amended by
No. 73/1994
s. 46(2)(a)(ii).

(a) does not comply with a relevant standard in
the regulations; or

S. 24(1)(b)
amended by
No. 73/1994
s. 46(2)(a)(ii).

(b) contains a constituent which does not
comply with a relevant standard in the
regulations.

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

In any other case, 200 penalty units.

Note to
s. 24(1)
inserted by
No. 13/2013
s. 5(1).

Note

Section 72B applies to an offence against this subsection.

S. 24(2)
amended by
No. 73/1994
s. 46(2)(b)(i)(ii).

(2) The Governor in Council may make regulations in
accordance with section 76 for or with respect to
standards relating to composition, quality, purity
and method of manufacture for any fertiliser or
stock food or class of fertilisers or stock foods, or
any constituent contained in a fertiliser or stock
food or class of fertilisers or stock foods.

S. 24(3)–(7)
repealed by
No. 73/1994
s. 46(2)(c).

* * * * *

25 Orders prohibiting or regulating sale

S. 25
substituted by
No. 73/1994
s. 47.

- (1) A person must not sell any veterinary chemical product, fertiliser or stock food in contravention of an Order made by the Governor in Council that prohibits or regulates the sale of a veterinary chemical product, fertiliser or stock food or class of veterinary chemical products, fertilisers or stock foods that—
- (a) is specified in the Order; or
 - (b) contains a constituent that is, or is part of a class that is, specified in the Order; or
 - (c) contains a constituent other than in the proportion specified in the Order in relation to that constituent, or in relation to a class of constituents of which that constituent is a part.

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

In any other case, 200 penalty units.

Note

Section 72C applies to an offence against this subsection.

Note to
s. 25(1)
inserted by
No. 13/2013
s. 5(2).

- (2) The Governor in Council may, by Order—
- (a) prohibit or regulate that sale by reference to any conditions or circumstances specified in the Order; or
 - (b) prohibit that sale except as permitted by a permit issued in accordance with Schedule 1.
- (3) The Order must be published in the Government Gazette and takes effect on the day of publication or any later day specified in the Order.

S. 25A
inserted by
No. 73/1994
s. 47.

25A Orders prohibiting or regulating use

- (1) A person must not use any chemical product, fertiliser or stock food in contravention of an Order made by the Governor in Council that prohibits or regulates the use of a chemical product, fertiliser or stock food or class of chemical products, fertilisers or stock foods that—
- (a) is specified in the Order; or
 - (b) contains a constituent that is, or is part of a class that is, specified in the Order; or
 - (c) contains a constituent other than in the proportion specified in the Order in relation to that constituent, or in relation to a class of constituents of which that constituent is a part.

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

In any other case, 200 penalty units.

Note to
s. 25A(1)
inserted by
No. 13/2013
s. 5(1).

Note

Section 72B applies to an offence against this subsection.

- (2) The Governor in Council may, by Order—
- (a) prohibit or regulate that use by reference to any conditions or circumstances specified in the Order; or
 - (b) prohibit that use except as permitted by a permit issued in accordance with Schedule 1;
or
 - (c) prohibit that use—
 - (i) for all purposes; or
 - (ii) for any purpose specified in the Order;
or

(iii) for any purpose other than one specified in the Order.

(3) The Order must be published in the Government Gazette and takes effect on the day of publication or any later day specified in the Order.

26 Recall

(1) The Governor in Council may, by Order, direct a wholesale dealer—

(a) to withdraw a fertiliser or stock food or a particular batch of a fertiliser or stock food from sale, either immediately or within the time specified in the Order; and

S. 26(1)(a)
amended by
No. 73/1994
s. 48(1)(a).

(b) to take any action specified in the Order to recover all stocks of the fertiliser or stock food or of that batch from any person to whom it was supplied; and

S. 26(1)(b)
amended by
No. 73/1994
s. 48(1)(a).

(c) to destroy those stocks or to deal with them as specified in the Order; and

(d) to report to the chief administrator on the action taken.

(2) An Order may only be made if the Minister advises that it is in the public interest to do so, having regard to the harm that may be caused—

(a) to any person or animal; or

(b) to the environment; or

(c) to trade with any other country.

(3) The Order must be published in the Government Gazette and takes effect on the day of publication or any later day specified in the Order.

S. 26(3)
amended by
No. 73/1994
s. 48(1)(b).

(4) A wholesale dealer must comply with the Order.

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

In any other case, 250 penalty units.

Note to
s. 26(4)
inserted by
No. 13/2013
s. 5(1).

Note

Section 72B applies to an offence against this subsection.

27 Regulations about manufacture, sale and use

The Governor in Council may make regulations in accordance with section 76 for or with respect to—

S. 27(a)
amended by
No. 73/1994
s. 48(2)(a).

(a) prohibiting the possession of a chemical product, fertiliser or stock food;

S. 27(b)
amended by
No. 73/1994
s. 48(2)(b).

(b) regulating the manufacture of a fertiliser or stock food;

S. 27(c)
amended by
No. 73/1994
s. 48(2)(b).

(c) regulating the packaging of a fertiliser or stock food;

S. 27(d)
amended by
No. 73/1994
s. 48(2)(c).

(d) prohibiting the sale of an agricultural chemical product, a fertiliser or a stock food if the seller does not hold a permit under this Act or a prescribed qualification;

S. 27(e)
amended by
No. 73/1994
s. 48(2)(a).

(e) prohibiting the sale of a chemical product, fertiliser or stock food if the buyer does not hold a permit under this Act or a prescribed qualification;

S. 27(f)
amended by
No. 73/1994
s. 48(2)(d).

(f) regulating the mixing together of chemical products, fertilisers or stock foods;

- | | |
|---|---|
| (g) requiring a seller to keep records of the sale of a chemical product, fertiliser or stock food; | S. 27(g) amended by No. 73/1994 s. 48(2)(a). |
| (h) requiring a user to keep records of the use of a chemical product, fertiliser or stock food; | S. 27(h) amended by No. 73/1994 s. 48(2)(a). |
| (i) prescribing— | |
| (i) particulars that must be written on labels or advice notes and the manner in which, and method by which, they must be written; | |
| (ii) matters or things that must not be written on labels or advice notes; | |
| (iii) the manner in which advice notes must be supplied to buyers of veterinary chemical products, fertilisers, stock foods or meal of animal origin; | S. 27(i)(iii) amended by Nos 73/1994 s. 48(2)(e), 33/2000 s. 5. |
| (iv) the manner in which labels must accompany veterinary chemical products, fertilisers, stock foods or meal of animal origin. | S. 27(i)(iv) amended by Nos 73/1994 s. 48(2)(e), 33/2000 s. 5. |

28 Offence of use without certificate

A person must not—

- | | |
|--|--|
| (a) use a prescribed chemical product, fertiliser or stock food, or a chemical product, fertiliser or stock food of a class that is prescribed; or | S. 28(a) amended by No. 73/1994 s. 48(3). |
| (b) use in a prescribed manner a prescribed chemical product, fertiliser or stock food, or a chemical product, fertiliser or stock food of a class that is prescribed— | S. 28(b) amended by No. 73/1994 s. 48(3). |

unless—

- (c) that person—
 - (i) holds an applicator (chemical rating) certificate; and
 - (ii) complies with any conditions of that certificate; or
- (d) that person acts under the direct supervision of a person who complies with paragraph (c).

Penalty: 100 penalty units.

Note to s. 28
inserted by
No. 13/2013
s. 5(6).

Note

Section 72A applies to an offence against this section.

29 Applicator (chemical rating) certificates

An applicator (chemical rating) certificate may be applied for, granted or refused only in accordance with Schedule 1.

S. 30
amended by
No. 33/2001
s. 13 (ILA
s. 39B(1)).

30 Offence of commercial use without licence

- (1) A person must not carry on a business, or offer a service for fee or reward, which involves—

S. 30(1)(a)
amended by
No. 73/1994
s. 48(4).

- (a) the use of a prescribed chemical product, fertiliser or stock food; or

S. 30(1)(b)
amended by
No. 73/1994
s. 48(4).

- (b) the use of a chemical product, fertiliser or stock food of a class that is prescribed; or

S. 30(1)(c)
amended by
No. 73/1994
s. 48(4).

- (c) the use of a chemical product, fertiliser or stock food in a prescribed manner—

unless that person—

- (d) holds a commercial operator licence; and
- (e) complies with any conditions of that licence.

Penalty: 200 penalty units.

Note

Section 72B applies to an offence against this subsection.

Note to s. 30(1)
inserted by
No. 13/2013
s. 5(1).

- (2) Despite subsection (1), a person who carries on a business or offers a service for fee or reward which involves the use of a prescribed chemical product or a chemical product of a class that is prescribed is not required to hold a commercial operator licence if the person ensures that the chemical product is used by a person authorized by a licence granted under Division 2 of Part 7 of the **Public Health and Wellbeing Act 2008** to use that chemical product.

S. 30(2)
inserted by
No. 33/2001
s. 13,
amended by
No. 46/2008
s. 268(2).

* * * * *

S. 30A
inserted by
No. 33/2001
s. 14,
repealed by
No. 46/2008
s. 268(3).

31 Commercial operator licences

A commercial operator licence may be applied for, granted or refused only in accordance with Schedule 1.

32 Prohibiting misuse of registered chemical products

New s. 32
inserted by
No. 55/2001
s. 11.

- (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.

Note to s. 32
inserted by
No. 13/2013
s. 5(7).

Note

Section 72B applies to an offence against subsection (1) or (2).

Pt 5 (Heading
and ss 32–36)
repealed by
No. 73/1994
s. 49.

* * * * *

S. 37
repealed by
No. 31/1994
s. 4(Sch. 2
item 4).

* * * * *

**PART 6—CONTROLS OVER SPRAYING OF
AGRICULTURAL CHEMICAL PRODUCTS**

Pt 6 (Heading)
amended by
No. 73/1994
s. 50(1).

38 Orders regulating or prohibiting agricultural spraying

- (1) The Governor in Council may by Order control or prohibit agricultural spraying for the purpose of protecting susceptible plants and stock, public health and the environment.
- (2) Before recommending to the Governor in Council that an Order be made, the Minister must publish notice of the proposal to make the Order, in the Government Gazette and, twice in not less than 14 days, in a newspaper circulating generally in the area that would be affected by the Order.
- (3) The notice must—
 - (a) specify the general purpose of the proposed Order; and
 - (b) state where a copy of the proposed Order can be purchased, and where it can be inspected; and
 - (c) state that public comment is invited.
- (4) The Minister must allow at least 28 days after the later publication of the notice in the newspaper for public comment.
- (5) If after complying with subsections (2) and (3) and considering any comments made under subsection (3)(c) the Minister decides to recommend the making of the Order, he or she must publish notice of that decision in the Government Gazette and in the same newspaper.

S. 38(6)
amended by
No. 73/1994
s. 50(2).

- (6) The Order must be published in the Government Gazette and takes effect on the day of publication or any later day specified in the Order.

39 Effect of order

S. 39(1)(a)
amended by
No. 73/1994
s. 50(3)(a)(b).

- (1) An Order under section 38 applies as specified in the Order—
- (a) to all agricultural chemical products, a specified agricultural chemical product or a specified class of agricultural chemical products; and
 - (b) to all agricultural spraying or any specified method or methods of application; and
 - (c) in specified climatic or seasonal conditions; and
 - (d) in any other specified circumstance or on any other specified condition.
- (2) An Order applies to the area specified in it to be the agricultural chemical control area, whether that area is the whole of Victoria or a particular area.
- (3) An Order may prohibit an activity except in accordance with a permit issued under Schedule 1.
- (4) A person must comply with an Order, unless the person acts in accordance with a permit.

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

In any other case, 200 penalty units.

Note to
s. 39(4)
inserted by
No. 13/2013
s. 5(1).

Note

Section 72B applies to an offence against this subsection.

40 Damage by spray drift

- (1) A person must not carry out agricultural spraying which injuriously affects—
- (a) any plants or stock outside the target area; or
 - (b) any land outside the target area so that growing plants or keeping stock on that land can be reasonably expected to result in the contamination of the stock or of agricultural produce derived from the plants or stock.

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

In any other case, 200 penalty units.

Note

Section 72B applies to an offence against this subsection.

Note to s. 40(1)
inserted by
No. 13/2013
s. 5(1).

- (2) It is a defence to a prosecution under subsection (1)(a) to prove that the plants or stock have no economic value.

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.

Note

Section 72B applies to an offence against this subsection.

S. 41
repealed by
No. 55/2001
s. 12,
new s. 41
inserted by
No. 55/2001
s. 13.

Note to s. 41(1)
inserted by
No. 13/2013
s. 5(1).

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

42 Requirements for pilots

- (1) A person must not pilot an aircraft to carry out aerial spraying unless he or she—
- (a) holds a pilot (chemical rating) licence; and
 - (b) complies with any conditions of that licence.

Penalty: 200 penalty units.

- (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.

- (3) A person who does not—
- (a) hold an agricultural aircraft operator licence; and
 - (b) comply with all conditions (if any) of that licence—

must not allow an employee or agent of that person to pilot an aircraft to carry out aerial spraying.

Penalty: 200 penalty units.

Note

Section 72C applies to an offence against this subsection.

S. 42(2)
substituted by
Nos 73/1994
s. 50(4),
55/2001 s. 14.

S. 42(3)
substituted by
No. 73/1994
s. 50(4).

Note to
s. 42(3)
inserted by
No. 13/2013
s. 5(2).

- (4) A pilot (chemical rating) licence and an agricultural aircraft operator licence may be applied for, granted or refused only in accordance with Schedule 1.

S. 42(4)
substituted by
No. 73/1994
s. 50(4).

43 Requirements for aircraft operators

* * * * *

S. 43(1)
repealed by
No. 35/2009
s. 4.

- (2) The operator of an aircraft must not allow aerial spraying to be carried out from that aircraft unless the operator—
- (a) holds an agricultural aircraft operator licence; and
 - (b) complies with the conditions attached to that licence.

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

In any other case, 200 penalty units.

- (3) The operator of an aircraft must not allow aerial spraying to be carried out from that aircraft unless the pilot of the aircraft holds a pilot (chemical rating) licence.

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

In any other case, 200 penalty units.

Note

Section 72C applies to an offence against subsection (2) or (3).

Note to s. 43
inserted by
No. 13/2013
s. 5(8).

* * * * *

S. 44
repealed by
No. 35/2009
s. 4.

45 Information and notice

- (1) The Minister may issue codes of practice dealing with information to be provided about agricultural spraying and notice to be given of proposed agricultural spraying.
- (2) A person is not guilty of an offence only because of a contravention of a code of practice issued under subsection (1).
- (3) The Governor in Council may, not earlier than 2 years after the commencement of this subsection, make regulations in accordance with section 76 for or with respect to—

- (a) requiring the occupier of land to provide the prescribed information to any person who is employed or contracted to carry out agricultural spraying on that land—

- (i) of a prescribed agricultural chemical product; or

- (ii) in a prescribed manner; and

- (b) requiring the person who is employed or contracted to carry out agricultural spraying on land—

- (i) of a prescribed agricultural chemical product; or

- (ii) in a prescribed manner—

to provide the prescribed information to the occupier of that land; and

- (c) prohibiting the person who is employed or contracted to carry out agricultural spraying on land—

S. 45(3)(a)(i)
amended by
No. 73/1994
s. 50(5).

S. 45(3)(b)(i)
amended by
No. 73/1994
s. 50(5).

(i) of a prescribed agricultural chemical product; or

S. 45(3)(c)(i)
amended by
No. 73/1994
s. 50(5).

(ii) in a prescribed manner—

from starting the spraying without first having received the prescribed information; and

(d) requiring the occupier of land who intends to have agricultural spraying carried out on that land—

(i) of a prescribed agricultural chemical product; or

S. 45(3)(d)(i)
amended by
No. 73/1994
s. 50(5).

(ii) in a prescribed manner—

to make every reasonable effort to inform the prescribed persons, or persons of the prescribed class, of the proposed time of spraying and any other prescribed information.

(4) The regulations may impose a penalty not exceeding 200 penalty units for a contravention.

46 Notices to owners of defective spraying equipment

S. 46
(Heading)
inserted by
No. 55/2001
s. 15.

(1) An authorised officer may, by notice in writing, direct the owner of any equipment that is used or to be used for the purpose of agricultural spraying—

(a) not to use the equipment until the repairs specified in the notice have been made; or

(b) to make the repairs specified in the notice before the date specified in the notice.

- (2) The owner of the equipment must comply with the notice.

Penalty: 200 penalty units.

Note to
s. 46(2)
inserted by
No. 13/2013
s. 5(3).

Note

Section 72A applies to an offence against this subsection.

S. 46A
inserted by
No. 55/2001
s 16.

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.

Note to
s. 46A(2)
inserted by
No. 13/2013
s. 5(3).

Note

Section 72A applies to an offence against this subsection.

- (3) An authorised officer may revoke or vary a notice under subsection (1) by further notice to the operator or person in possession of the equipment.

47 Regulations for spraying equipment

The Governor in Council may make regulations in accordance with section 76 for or with respect to regulating equipment used or to be used for the purpose of agricultural spraying, including but not limited to regulations prescribing—

- (a) specifications for the equipment; and
 - (b) testing of the equipment; and
 - (c) maintenance of the equipment.
-

**PART 7—CONTROLS OVER CONTAMINATED LAND,
STOCK AND AGRICULTURAL PRODUCE**

48 Contaminated stock order

- (1) The Governor in Council may, by Order, regulate the identification, treatment, transport, sale or handling of contaminated stock.
- (2) A person to whom an Order applies must comply with the Order.

Penalty: 100 penalty units.

Note

Section 72B applies to an offence against this subsection.

Note to
s. 48(2)
inserted by
No. 13/2013
s. 5(1).

S. 48(3)
amended by
No. 73/1994
s. 50(6).

- (3) The Order must be published in the Government Gazette and takes effect on the day of publication or any later day specified in the Order.

49 Contaminated stock notice

- (1) An authorised officer may, by notice in writing, regulate the identification, transport, sale, management and handling of any stock on any premises or in any vehicle, if he or she believes on reasonable grounds that stock on those premises or in that vehicle is contaminated.
- (2) Without limiting subsection (1), the notice may—
 - (a) prohibit the movement or sale of the stock, except—
 - (i) in accordance with the notice; or
 - (ii) with the approval of an authorised officer; and
 - (b) impose requirements relating to the treatment of the stock.

- (3) The authorised officer may give the notice to—
- (a) the owner or occupier of the land on which the stock is; or
 - (b) the person in possession of the stock; or
 - (c) the owner of the stock; or
 - (d) if the stock is in transit, the person into whose possession the stock is to be delivered; or
 - (e) one or more of the persons specified in paragraphs (a) to (d).
- (4) A person who is given a notice under subsection (3) must comply with it.

Penalty: 100 penalty units.

Note

Section 72A applies to an offence against this subsection.

**Note to
s. 49(4)
inserted by
No. 13/2013
s. 5(3).**

50 Land use restriction notice

- (1) The chief administrator may, by notice in writing, regulate the use of any land for the growing of plants or the keeping of stock, if he or she believes on reasonable grounds, after considering a report by an authorised officer, that the growing of plants or the keeping of stock on that land would be likely to result in the production of contaminated agricultural produce or the contamination of the stock.
- (2) Without limiting subsection (1), the notice may—
- (a) prohibit the growing on the land of specified plants, or plants of a specified class—
 - (i) before the date, if any, specified in the notice; or

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- (ii) except in accordance with the conditions of the notice; or
- (iii) except with the approval of an authorised officer; or
- (b) prohibit the keeping on the land of specified stock, or stock of a specified class—
 - (i) before the date, if any, specified in the notice; or
 - (ii) except in accordance with the conditions of the notice; or
 - (iii) except with the approval of an authorised officer; or
- (c) impose requirements relating to—
 - (i) the treatment of agricultural produce or stock;
 - (ii) the fencing of the land; or
 - (iii) notification to be given of the planting of crops on the land or the restocking of it.
- (3) The authorised officer may give the notice to the owner or the occupier of the land or to both.
- (4) A person who receives a notice under subsection (3) must comply with it.

Penalty: 200 penalty units.

**Note to
s. 50(4)
inserted by
No. 13/2013
s. 5(3).**

Note

Section 72A applies to an offence against this subsection.

51 Information about notices

- (1) The chief administrator must provide details of any current land use restriction notice issued in respect of any land to any person who applies in an approved form for information about that land and who pays the relevant approved fee.
- (2) The chief administrator must not provide details under subsection (1) unless the owner of the land has given consent in writing.
- (3) The chief administrator does not incur any liability in respect of any errors or omissions in relation to information that is provided in good faith under subsection (1).

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 subsection (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;

S. 52
substituted by
No. 55/2001
s. 17.

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

Penalty: 100 penalty units.

**Note to
s. 52(4)
inserted by
No. 13/2013
s. 5(3).**

Note

Section 72A applies to an offence against this subsection.

52AA Offence to sell contaminated agricultural produce

A person who produces agricultural produce must not sell or offer to sell that produce if it is contaminated.

Penalty: 60 penalty units.

Note

Section 72A applies to an offence against this section.

S. 52AA
inserted by
No. 35/2009
s. 5.

Note to
s. 52AA
inserted by
No. 13/2013
s. 5(6).

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.

S. 52A
inserted by
No. 55/2001
s. 17.

PART 8—GENERAL

53 Authorised officers

S. 53(1)
amended by
Nos 73/1994
s. 51(1),
46/1998
s. 7(Sch. 1)
(as amended
by No.
12/1999
s. 3(Sch. 1
item 2)),
55/2001
s. 18(1).

- (1) The chief administrator may appoint any person employed in the public service to be an authorised officer for the purposes of all or any provisions of this Act or any regulations or Orders made under this Act.

S. 53(2)
amended by
No. 29/2012
s. 4.

- (2) The chief administrator must issue an identification card to each authorised officer.

S. 53(3)
substituted by
No. 55/2001
s. 18(2).

- (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.

54 Powers of authorised officers

- (1) An authorised officer has the power—
- (a) to enter at any reasonable time any land or premises (other than premises that are used mainly as residential premises) on or at which the authorised officer reasonably suspects that—
 - (i) any fertiliser or stock food is manufactured; or

S. 54(1)(a)(i)
substituted by
No. 73/1994
s. 51(2)(a).

- (ii) any chemical product, fertiliser or stock food is sold, kept, stored, or prepared for use, or has been, is being or will be used; or **S. 54(1)(a)(ii) substituted by No. 73/1994 s. 51(2)(a).**
 - (iii) there is any equipment that is used or intended to be used in connection with the use of a chemical product, fertiliser or stock food; or **S. 54(1)(a)(iii) amended by No. 73/1994 s. 51(2)(b).**
 - (iv) there is an aircraft that is used or intended to be used for aerial spraying; or
 - (v) agricultural spraying has been or is being carried on; or
 - (vi) there is or are any contaminated stock, any contaminated agricultural produce or any plants from which contaminated produce is likely to be derived; or
 - (vii) there is or are any stock or plants which has or have been injuriously affected by the spraying of an agricultural chemical product; and **S. 54(1)(a)(vii) amended by No. 73/1994 s. 51(2)(c).**
- (b) to enter at any reasonable time any land or premises (other than residential premises) occupied by a person who holds a licence, certificate or permit under this Act, or who the authorised officer reasonably suspects is required to hold a licence or certificate under this Act; and
- (c) to enter at any reasonable time any land or premises, if the authorised officer reasonably suspects that entry may assist in ascertaining possible sources of agricultural spraying or the cause of stock or agricultural produce being contaminated; and

S. 54(1)(d)(i)
amended by
No. 73/1994
s. 51(2)(d).

(d) to stop and search any vehicle which is used, or which the authorised officer reasonably suspects is used, to transport—

(i) chemical products, fertilisers or stock foods; or

(ii) contaminated stock or agricultural produce; or

(iii) stock or plants from which contaminated agricultural produce is likely to be derived; and

(e) to search any aircraft which is used, or which the authorised officer reasonably suspects is used, for aerial spraying; and

S. 54(1)(f)
amended by
No. 55/2001
s. 19(1).

(f) to search for, inspect and examine any substance, material, plant, animal or equipment if it is reasonably necessary to do so for the purpose of ascertaining whether this Act or any regulations or Orders made under this Act is being complied with; and

S. 54(1)(g)
amended by
No. 29/2012
s. 5.

(g) to require a person to produce any document that the authorised officer reasonably requires for ascertaining whether this Act or any regulation or Order made under this Act is being complied with, and—

(i) to examine that document; and

(ii) to make copies of it or take extracts from it; and

(iii) to remove the document for as long as is reasonably necessary to make copies or take extracts; and

S. 54(1)(ga)
inserted by
No. 55/2001
s. 19(2).

(ga) to take any photographs or make any audio or visual recordings as he or she considers necessary; and

- (h) to open any package, container or receptacle which the authorised officer reasonably suspects contains a chemical product, fertiliser or stock food; and **S. 54(1)(h) amended by No. 73/1994 s. 51(2)(e).**
- (i) to take and remove for analysis or examination—
- (i) samples of any substance that the authorised officer reasonably suspects is a chemical product, fertiliser or stock food; and **S. 54(1)(i)(i) amended by No. 73/1994 s. 51(2)(e).**
- * * * * *
- S. 54(1)(i)(ii)(iii) repealed by No. 22/2004 s. 3(1).**
- (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 **S. 54(1)(ia) inserted by No. 55/2001 s. 19(3).**
- (j) to conduct any analysis or examination of a sample or specimen to determine its composition; and
- (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 **S. 54(1)(ja) inserted by No. 55/2001 s. 19(4).**
- (k) to remove any label or advice note, or any document purporting to be a label or an advice note; and

S. 54(1A)
inserted by
No. 22/2004
s. 3(2).

- (l) to require an owner to provide adequate facilities and assistance to allow the safe and efficient handling of animals during inspection and during the taking of specimens; and
 - (m) to require the owner or occupier of premises entered by the authorised officer to provide the authorised officer with all reasonable assistance necessary to enable the authorised officer to perform his or her functions.
- (1A) An authorised officer has the power to take and remove for analysis or examination—
- (a) samples of any agricultural produce;
 - (b) samples of a plant (whether alive or dead) that is not agricultural produce;
 - (c) specimens from an animal, or the carcass of an animal that is not agricultural produce;
 - (d) samples of soil or water;
 - (e) samples of material deposited in or on an object—
- for the following purposes—
- (f) to ascertain whether this Act or any regulations or Orders made under this Act are being complied with; or
 - (g) if an officer reasonably believes that the taking and removing of the specimens or samples will assist, to ascertain—
 - (i) possible sources of agricultural spraying; or
 - (ii) the cause of stock or agricultural produce being contaminated.

- (2) An authorised officer may, in performing any function under this Act, make use of any assistants whose help is reasonably required to perform that function.
- (3) A person must not—
- (a) fail or refuse to comply with a request of an authorised officer; or
 - (b) assault or obstruct an authorised officer or a person assisting an authorised officer under subsection (2)—

if the authorised officer is in the course of performing his or her functions under this Act.

Penalty: 50 penalty units.

Note

Section 72A applies to an offence against this subsection.

Note to s. 54(3) inserted by No. 13/2013 s. 5(3).

- (4) An authorised officer who takes a sample or specimen under subsection (1)(i) or (1A) must, if requested to do so by the owner or the person in possession of the chemical product, fertiliser, stock food, agricultural produce, plant, animal or object, or the owner or occupier of the land, give that person a portion of the sample or specimen.

S. 54(4) amended by Nos 73/1994 s. 51(3), 22/2004 s. 3(3)(a)(b).

* * * * *

S. 54A inserted by No. 55/2001 s. 20, repealed by No. 35/2009 s. 6.

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

S. 54B inserted by No. 55/2001 s. 20.

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 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

S. 54C
inserted by
No. 55/2001
s. 20.

- (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 subsection (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.

S. 54D
inserted by
No. 55/2001
s. 20.

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.

S. 54E
inserted by
No. 55/2001
s. 20.

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 subsection (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 subsection (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.

S. 54F
inserted by
No. 55/2001
s. 20.

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 subsection (1) shall be received in all courts and tribunals to be evidence of equal validity to the original.

S. 54G
inserted by
No. 55/2001
s. 20.

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

S. 54H
inserted by
No. 55/2001
s. 20.

- (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.
- (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.

S. 54I
inserted by
No. 55/2001
s. 20.

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 subsection (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.

55 Testing of sub-standard fertiliser or stock food

S. 55(1)
substituted by
No. 73/1994
s. 51(4).

- (1) The chief administrator may, by notice in writing, require a wholesale dealer to have any fertiliser or stock food tested if the chief administrator, on the advice of an authorised officer, reasonably suspects that the fertiliser or stock food does not comply with standards set under this Act.
- (2) Without limiting subsection (1), the notice may require—

S. 55(2)(a)
amended by
No. 73/1994
s. 51(5)(a).

- (a) that samples of the fertiliser or stock food are taken—
 - (i) under the supervision of an authorised officer; or
 - (ii) in the manner specified in the notice; and

- (b) that the testing is carried out—
 - (i) under the supervision of an authorised officer; or
 - (ii) in the manner specified in the notice; and
- (c) that the testing is carried out at a laboratory that is approved by the chief administrator; and
- (d) that the testing is carried out within the time specified in the notice; and
- (e) that the testing is carried out at the expense of the wholesale dealer if—
 - (i) it is being carried out for a prescribed reason; or
 - (ii) the result of the testing shows that the fertiliser or stock food does not comply with standards set under this Act.

S. 55(2)(e)(ii) amended by No. 73/1994 s. 51(5)(a)(b).

* * * * *

S. 55(2)(e)(iii) repealed by No. 73/1994 s. 51(5)(c).

- (3) A wholesale dealer who is given a notice must comply with it.

Penalty: 50 penalty units.

Note

Section 72A applies to an offence against this subsection.

Note to s. 55(3) inserted by No. 13/2013 s. 5(3).

56 Testing of contaminated stock or agricultural produce

- (1) An authorised officer may, by notice in writing, require the owner of any stock, land or agricultural produce to have that stock, land or agricultural produce tested if the authorised officer reasonably suspects that—
 - (a) the stock is contaminated; or
 - (b) the growing of plants or the grazing of stock on the land would be likely to result in the production of contaminated agricultural produce or the contamination of the stock; or
 - (c) the agricultural produce is contaminated.
- (2) Without limiting subsection (1), the notice may require—
 - (a) that samples or specimens from the stock, land or agricultural produce are taken—
 - (i) under the supervision of an authorised officer; or
 - (ii) in the manner specified in the notice; and
 - (b) that the testing is carried out—
 - (i) under the supervision of an authorised officer; or
 - (ii) in the manner specified in the notice; and
 - (c) that the samples or specimens are tested at a laboratory that is approved by the chief administrator; and
 - (d) that the testing is carried out within the time specified in the notice; and

(e) that the testing is carried out at the expense of the owner if—

- (i) it is being carried out for a prescribed reason; or
- (ii) the result of the testing shows that the stock or agricultural produce (as the case requires) is contaminated or that, in the case of land, the growing of plants or the grazing of stock on it would be likely to result in the production of contaminated agricultural produce or the contamination of the stock.

(3) An owner of any stock, land or agricultural produce who is given a notice must comply with it.

Penalty: 50 penalty units.

Note

Section 72A applies to an offence against this subsection.

Note to s. 56(3) inserted by No. 13/2013 s. 5(3).

(4) If the result of the testing of any stock, land or agricultural produce under this section shows that the stock, land or agricultural produce is contaminated, the person who carried out the test of that stock, land or agricultural produce must notify the Secretary or an authorised officer of that contamination within the prescribed time and in the prescribed manner.

S. 56(4) inserted by No. 73/1996 s. 3.

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 with a prescribed constituent or a constituent of a prescribed class of constituents, the person who carried out the test of that agricultural produce

S. 56A inserted by No. 55/2001 s. 21.

must notify the Secretary or an authorised officer of that contamination within the prescribed time and in the prescribed manner.

57 Seizure of chemical products and agricultural produce

(1) An authorised officer may seize—

S. 57(1)(a)
amended by
No. 73/1994
s. 52(1)(a).

- (a) any chemical product, fertiliser or stock food, if he or she is satisfied that the sale or use of the chemical product, fertiliser or stock food is prohibited; and
- (b) any agricultural produce, if he or she is satisfied that a requirement of a contaminated produce notice has not been complied with in respect of that agricultural produce; and
- (c) any stock, if he or she is satisfied—
 - (i) that a requirement of a contaminated stock notice has not been complied with in respect of that stock; or
 - (ii) that the stock has been abandoned and is likely to be contaminated.

S. 57(2)
amended by
No. 73/1994
s. 52(1)(b).

(2) An authorised officer who has seized any chemical product, fertiliser, stock food, agricultural produce or stock under subsection (1) may destroy or otherwise deal with it.

S. 57(3)
amended by
No. 73/1994
s. 52(1)(b).

(3) An authorised officer may recover from the owner of the chemical product, fertiliser, stock food or agricultural produce the reasonable costs incurred in acting under subsection (1) or (2).

58 Destruction notice

- (1) The chief administrator may, by notice in writing, require the destruction of any chemical product, fertiliser, stock food, agricultural produce, plants or stock if the chief administrator, on the advice of an authorised officer, is satisfied that—
- (a) the sale or use of the chemical product, fertiliser or stock food is prohibited; or
- (b) the agricultural produce is contaminated; or
- (c) agricultural produce to be derived from the plants is likely to be contaminated; or
- (d) the stock is contaminated.
- (2) Without limiting subsection (1), the notice may require that the chemical product, fertiliser, stock food, agricultural produce, plants or stock be destroyed in the manner and within the time specified in the notice.
- (3) The chief administrator must give the notice to the person in possession of the chemical product, fertiliser, stock food, agricultural produce, plants or stock.
- (4) A person in possession of any chemical product, fertiliser, stock food, agricultural produce, plants or stock who is given a notice must comply with it.

S. 58(1)
amended by
No. 73/1994
s. 52(2)(a)(i).

S. 58(1)(a)
amended by
No. 73/1994
s. 52(2)(a)(ii).

S. 58(2)
amended by
No. 73/1994
s. 52(2)(b).

S. 58(3)
amended by
No. 73/1994
s. 52(2)(b).

S. 58(4)
amended by
No. 73/1994
s. 52(2)(b).

Penalty: 100 penalty units.

Note

Section 72A applies to an offence against this subsection.

Note to
s. 58(4)
inserted by
No. 13/2013
s. 5(3).

S. 58(5)
amended by
No. 73/1994
s. 52(2)(b).

(5) If the person does not comply with the notice within the time specified in it, the chief administrator may destroy the chemical product, fertiliser, stock food, agricultural produce, plants or stock.

S. 58(6)
amended by
No. 73/1994
s. 52(2)(b).

(6) The chief administrator may recover from the owner of the chemical product, fertiliser, stock food, agricultural produce, plants or stock the reasonable costs incurred in acting under subsection (5).

59 False or misleading statements

(1) A person must not make in, or in relation to, any application under this Act any statement that is false or misleading, because of inclusion in the statement of anything that is false or misleading or because of omission from the statement of anything that is material.

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

In any other case, 50 penalty units.

S. 59(2)
amended by
No. 73/1994
s. 53(1),
substituted by
No. 55/2001
s. 22.

(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.

S. 59(3)
inserted by
No. 55/2001
s. 22.

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

In any other case, 50 penalty units.

Note

Section 72A applies to an offence against subsection (1), (2) or (3).

Note to s. 59
inserted by
No. 13/2013
s. 5(9).

60 Extra information about application may be required

(1) The chief administrator may, by notice in writing, require an applicant to supply extra information if that extra information is reasonably required to enable the chief administrator to deal properly with the application.

S. 60(1)
amended by
No. 73/1994
s. 53(2)(a)(i)(ii).

(2) The chief administrator may refuse to consider the application further until the extra information is supplied.

S. 60(2)
amended by
No. 73/1994
s. 53(2)(b).

S. 60(3)
amended by
No. 73/1994
s. 53(2)(c).

- (3) An applicant who becomes aware of any material change to the information supplied in, or in relation to, the application must notify the chief administrator.

Penalty: In the case of a corporation, 20 penalty units.

In any other case, 10 penalty units.

Note to
s. 60(3)
inserted by
No. 13/2013
s. 5(3).

Note

Section 72A applies to an offence against this subsection.

61 Information about licence, permit or certificate may be required

S. 61(1)
substituted by
No. 73/1994
s. 53(3).

- (1) The chief administrator may, by notice in writing given to the holder of a licence, permit or certificate, require that person to supply any information that is reasonably required to enable the chief administrator to decide whether the licence, permit or certificate should be cancelled.

- (2) A person who is given a notice must comply with it.

Penalty: In the case of a corporation, 50 penalty units.

In any other case, 20 penalty units.

Note to
s. 61(2)
inserted by
No. 13/2013
s. 5(3).

Note

Section 72A applies to an offence against this subsection.

62 Information about sale of a chemical product, fertiliser or stock food

S. 62(1)
amended by
No. 73/1994
s. 53(4)(a).

- (1) An authorised officer may require the seller or person in possession of a chemical product, fertiliser or stock food, or of any substance that the authorised officer reasonably suspects is a chemical product, fertiliser or stock food—

- (a) to state the name and address of the person to whom the seller sold the chemical product, fertiliser, stock food or substance; and **S. 62(1)(a) amended by No. 73/1994 s. 53(4)(b).**
- (b) to state the name and address of the person from whom the seller or the person in possession of the chemical product, fertiliser, stock food or substance bought it; and **S. 62(1)(b) amended by No. 73/1994 s. 53(4)(b).**
- (c) to provide any other information about the sale or purchase that the authorised officer reasonably requests.
- (2) A person must comply with a requirement unless the person has a reasonable excuse.

Penalty: In the case of a corporation, 50 penalty units.

In any other case, 20 penalty units.

Note

Section 72A applies to an offence against this subsection.

Note to s. 62(2) inserted by No. 13/2013 s. 5(3).

62A Records of notices etc.

- (1) The Secretary must keep records of notices under section 56(1) and (4).
- (2) Records maintained by the Secretary under subsection (1) may be made available by the Secretary in the form that does not identify individuals, properties or premises to any person or body who applies in writing for the information.
- (3) Records maintained by the Secretary under subsection (1) may be made available to—
- (a) any person, body or organisation prescribed by the regulations; or

S. 62A inserted by No. 73/1996 s. 4.

(b) any officer or employee of a government department, agency or public statutory authority of the Commonwealth or a State or Territory of the Commonwealth employed in the administration of this Act, the **Livestock Disease Control Act 1994**, the **Stock (Seller Liability and Declarations) Act 1993** or any Act of the Commonwealth or a State or Territory of the Commonwealth prescribed by the regulations—

subject to any conditions specified by the Secretary.

- (4) Records maintained by the Secretary under subsection (1) may also be made available by the Secretary subject to any conditions specified by the Secretary to—
- (a) any person or body if the owner of the stock, land or agricultural produce referred to in the records or any other person mentioned in the records consents in writing to the release of the information; or
 - (b) to any person or body nominated by the owner of the stock, land or agricultural produce or any person referred to in the records as carrying out services on behalf of or as agent for the owner or the person referred to in the records;
 - (c) to any person or body if the Secretary is satisfied that it is in the public interest that the information should be released to that person or body.
- (5) The Secretary may charge a fee fixed by the Secretary by notice published in the Government Gazette for access to, or copies or extracts from, any records maintained by the Secretary under this section.

62B Secrecy

S. 62B
inserted by
No. 73/1996
s. 4.

- (1) A person who has at any time—
- (a) exercised a power or discharged a function under this Act or the Regulations; or
 - (b) been employed for the purposes of, or in connection with, the administration of this Act or the Regulations—

must not divulge or communicate to any person or publish any information referred to in section 62A unless the divulgence, communication or publication is made in accordance with that section.

Penalty: 60 penalty units.

- (2) A person or body to whom information is made available under section 62A and a person or employee under the control of that person or body, is subject, in respect of that information, to the same rights, privileges, obligations and liabilities under this section as if that person, body or employee were a person referred to in subsection (1).

63 Confidentiality of commercial information

S. 63(1)
substituted by
No. 73/1994
s. 54(1).

- (1) In this section, *information* means any information received or held by the Department, the chief administrator or any member of staff of the Department relating to a chemical product, fertiliser or stock food, and includes—
- (a) information that is supplied as required under section 60 or 61 or Schedule 1; and
 - (b) information that is provided by—
 - (i) the National Registration Authority for Agricultural and Veterinary Chemicals; or

(ii) the National Health and Medical
Research Council—

but does not include information that is included on a label or in an advice note which accompanies a chemical product, fertiliser or stock food at the time of its sale or delivery to the buyer.

S. 63(2)
amended by
No. 73/1994
s. 54(2)(a)–(c).

- (2) Information must be treated as confidential and, subject to subsection (4), the chief administrator or any member of staff of the Department must not disclose that information to any person unless—

S. 63(2)(a)
substituted by
No. 73/1994
s. 54(2)(d).

- (a) the disclosure is authorised in writing by—
- (i) the interested person (within the meaning of the Agvet Code of Victoria) in the case of information concerning a chemical product; or
 - (ii) the wholesale dealer in the fertiliser or stock food concerned in the case of information concerning a fertiliser or stock food; or
- (b) the disclosure—
- (i) is made in pursuance of this Act; or
 - (ii) is necessary in respect of any proceedings for an offence that are instituted or proposed to be instituted under this Act.

Penalty: 250 penalty units.

- (3) A court to which information is disclosed under subsection (2) or (5)(b)(ii) must do everything necessary to prevent disclosure of that information to any person otherwise than for the purpose of the proceedings before the court.

- (4) The chief administrator may disclose information—
- (a) to the person for the time being in charge of the Poisons Information Centre, if asked by that person in a poisoning emergency; or
 - (b) to the Secretary to the Department of Health (or a person nominated by the Secretary to the Department of Health for the purposes of this paragraph) in prescribed circumstances; or
 - (c) to the National Registration Authority for Agricultural and Veterinary Chemicals.
- (5) A person to whom information is disclosed in pursuance of this Act must not disclose that information to any person unless—
- (a) the disclosure is authorised in writing by—
 - (i) the interested person (within the meaning of the Agvet Code of Victoria) in the case of information concerning a chemical product; or
 - (ii) the wholesale dealer in the fertiliser or stock food concerned in the case of information concerning a fertiliser or stock food; or
 - (b) the disclosure—
 - (i) is made in pursuance of this Act; or

S. 63(4)
amended by
No. 73/1994
s. 54(3)(a).

S. 63(4)(b)
amended by
Nos 73/1994
s. 54(3)(b),
46/1998
s. 7(Sch. 1)
(as amended
by No.
12/1999
s. 3(Sch. 1
item 2)),
substituted by
No. 29/2010
s. 43(2).

S. 63(4)(c)
inserted by
No. 73/1994
s. 54(3)(b).

S. 63(5)(a)
substituted by
No. 73/1994
s. 54(4).

- (ii) is necessary in respect of any proceedings for an offence that are instituted or proposed to be instituted under this Act.

Penalty: 250 penalty units.

64 Review of decisions

S. 64(1)
amended by
Nos 73/1994
s. 54(5)(a)(i),
52/1998
s. 311(Sch. 1
item 4).

- (1) A person whose interests are affected by the relevant decision may apply to the Victorian Civil and Administrative Tribunal for review of a decision of the chief administrator or an authorised officer—

S. 64(1)(a)
repealed by
No. 73/1994
s. 54(5)(a)(ii).

* * * * *

S. 64(1)(b)
amended by
No. 73/1994
s. 54(5)(a)(iii).

- (b) to refuse to grant a licence, permit or certificate; or

S. 64(1)(c)
repealed by
No. 73/1994
s. 54(5)(a)(ii).

* * * * *

S. 64(1)(d)
amended by
No. 73/1994
s. 54(5)(a)(iii).

- (d) to cancel a licence, permit or certificate other than at the request of the holder; or

S. 64(1)(e)
amended by
No. 73/1994
s. 54(5)(a)
(iii)(iv).

- (e) to attach a condition to a licence, permit or certificate; or

S. 64(1)(f)
amended by
No. 73/1994
s. 54(5)(a)
(iii)(v).

- (f) to vary a condition of a licence, permit or certificate; or

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 No. 46 of 1992
 Part 8—General

| | | | | | | |
|---|---|---|---|---|---|--|
| * | * | * | * | * | | |
| | | | | | <p>(h) to require testing to be carried out; or</p> <p>(i) to issue or amend a land use restriction notice.</p> | <p>S. 64(1)(g) repealed by No. 73/1994 s. 54(5)(a)(ii).</p> |
| * | * | * | * | * | | <p>S. 64(2) repealed by No. 73/1994 s. 54(5)(b).</p> |
| | | | | | <p>(3) A person from whom any chemical product, fertiliser, stock food, agricultural produce or stock is seized under section 57, or the owner of that chemical product, fertiliser, stock food, agricultural produce or stock, may appeal to the Magistrates' Court against the seizure.</p> | <p>S. 64(3) amended by No. 73/1994 s. 54(5)(c).</p> |
| | | | | | <p>(4) On an appeal under subsection (3) the Magistrates' Court may order—</p> <p>(a) that the appeal be dismissed; or</p> <p>(b) that the seized chemical product, fertiliser, stock food, agricultural produce or stock be returned to the person from whom it was seized, or to the owner; or</p> <p>(c) that compensation be paid to the person from whom the chemical product, fertiliser, stock food, agricultural produce or stock was seized, or to the owner; or</p> <p>(d) both the return of the chemical product, fertiliser, stock food, agricultural produce, or stock and the payment of compensation.</p> | <p>S. 64(4)(b) amended by No. 73/1994 s. 54(5)(c).</p> <p>S. 64(4)(c) amended by No. 73/1994 s. 54(5)(c).</p> <p>S. 64(4)(d) amended by No. 73/1994 s. 54(5)(c).</p> |
| | | | | | <p>(5) A person who is given a destruction notice under section 58 may appeal to the Magistrates' Court against the notice.</p> | |

- (6) On an appeal under subsection (5) the Magistrates' Court may order—
- (a) that the appeal be dismissed; or
 - (b) that the destruction notice be withdrawn; or
 - (c) that compensation be paid to the owner of the chemical product, fertiliser, stock food, agricultural produce or stock; or
 - (d) both the withdrawal of the notice and the payment of compensation.

S. 64(6)(c)
amended by
No. 73/1994
s. 54(5)(c).

65 Agricultural Chemicals Advisory Committee

- (1) There is established an advisory committee to be known as the Victorian Agricultural Chemicals Advisory Committee.
- (2) The function of the Committee is to advise the chief administrator on regulation and control of the application of agricultural chemical products.
- (3) The Committee consists of 9 members appointed by the Minister of whom—
 - (a) one is an officer of the Department; and
 - (b) one is a person whose name is included in a panel of not less than 3 names submitted to the Minister by a body that the Minister considers to be representative of primary producers; and
 - (c) one is a person whose name is included in a panel of not less than 3 names submitted to the Minister by a body that the Minister considers to be representative of people who work with agricultural chemical products; and

S. 65(2)
amended by
No. 73/1994
s. 54(6).

S. 65(3)(c)
amended by
No. 73/1994
s. 54(6).

- (d) one is a person whose name is included in a panel of not less than 3 names submitted to the Minister by a body that the Minister considers to be representative of manufacturers of agricultural chemical products; and
- (e) one is a person whose name is included in a panel of not less than 3 names submitted to the Minister by a body that the Minister considers to be representative of the aerial spraying industry; and
- (f) one is a person whose name is included in a panel of not less than 3 names submitted to the Minister by a body that the Minister considers to be representative of the ground spraying industry; and
- (g) one is a person whose name is included in a panel of not less than 3 names submitted to the Minister by a body that the Minister considers to be representative of conservation interests; and
- (h) one is a person whose name is included in a panel of not less than 3 names submitted to the Minister by a body that the Minister considers to be representative of the interests of consumers; and
- (i) one is a person whose name is included in a panel of not less than 3 names submitted to the Minister by a body that the Minister considers to be representative of local government.
- (4) The member appointed under subsection (3)(a) is the chairperson of the Committee.

S. 65(3)(d)
amended by
No. 73/1994
s. 54(6).

- (5) If there is, or is about to be, a vacancy in the office of a member referred to in subsection (3)(b), (c), (d), (e), (f), (g), (h) or (i) the Minister must request the body chosen by the Minister for the purposes of that paragraph to submit to the Minister in writing, on or before the date specified by the Minister when making the request, a panel of names of people eligible to be appointed as members of the Committee.
- (6) If the body fails to submit a panel of names on or before the specified date, the Minister may appoint an otherwise eligible person to fill the vacancy.

66 Members

- (1) Each member of the Committee—
 - (a) holds office for the period (not exceeding 3 years) specified in the instrument of his or her appointment; and
 - (b) is eligible for re-appointment at the end of his or her term of office; and
 - (c) unless he or she holds a full-time statutory office or is a full-time member of staff or is employed on a full-time basis by a public entity (within the meaning of section 5 of the **Public Administration Act 2004**), is entitled to be paid allowances for travelling and personal expenses at the rates and on the conditions applicable to members of staff.
- (2) The Minister may at any time remove a member from office.
- (3) The Minister may, in the instrument of appointment of a member, specify terms and conditions of appointment.

S. 66(1)(c)
substituted by
No. 73/1994
s. 54(7),
amended by
Nos 46/1998
s. 7(Sch. 1)
(as amended
by No.
12/1999
s. 3(Sch. 1
item 2)),
108/2004
s. 117(1)
(Sch. 3
item 6.2).

- (4) A member may resign from office by delivering to the Minister a signed letter of resignation.

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S. 66(5)
repealed by
No. 22/2004
s. 4.

67 Meetings of Committee

- (1) At a meeting of the Committee the chairperson (or, in the absence of the chairperson, any officer of the Department nominated by the chairperson to be the deputy chairperson) must preside.
- (2) The quorum for a meeting of the Committee is half the number of members for the time being.
- (3) A question arising at a meeting of the Committee must be determined by a majority of votes of the members present and voting on that question and, if the votes are equal, the person presiding at the meeting has a second or casting vote.
- (4) A proceeding or decision of the Committee is not invalid only because of—
 - (a) a defect or irregularity in or in connection with the appointment of a member; or
 - (b) a vacancy in the membership of the Committee.
- (5) Subject to this Act and the regulations, the Committee may regulate its own proceedings.

PART 9—ENFORCEMENT

S. 67A
inserted by
No. 35/2009
s. 7.

67A Non-compliance with condition of authority an offence

- (1) The holder of an authority must comply with any condition on that authority imposed by the chief administrator under clause 3 of Schedule 1.

Penalty: 60 penalty units.

Note to
s. 67A(1)
inserted by
No. 13/2013
s. 5(1).

Note

Section 72B applies to an offence against this subsection.

- (2) In this section *authority* has the same meaning as in clause 1 of Schedule 1.

S. 67B
inserted by
No. 29/2012
s. 6.

67B Non-return of cancelled or suspended authority an offence

- (1) The person who was the holder of an authority before it was cancelled or suspended under clause 4 of Schedule 1 must return the authority to the chief administrator within the time (if any) specified for its return in the notice under that clause.

Penalty: 5 penalty units.

Note to
s. 67B(1)
inserted by
No. 13/2013
s. 5(3).

Note

Section 72A applies to an offence against this subsection.

- (2) In this section *authority* has the same meaning as in clause 1 of Schedule 1.

68 Costs

A court which finds a person guilty of an offence against this Act or the regulations may order that the reasonable costs of any analyses carried out for the purposes of bringing the proceedings must be paid by that person.

69 Infringement notices

- (1) An authorised officer may serve an infringement notice on a person whom the authorised officer believes has committed a prescribed offence, requiring that person to pay the penalty prescribed for that offence.
- (2) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006**.
- (3) The penalty prescribed for an offence must not exceed 5 penalty units.

S. 69(2)
substituted by
No. 32/2006
s. 94(Sch.
item 1(1)).

S. 69(3)
amended by
No. 29/2012
s. 7.

* * * * *

S. 69(4)–(8)
repealed by
No. 32/2006
s. 94(Sch.
item 1(2)).

70 Time limit for commencing prosecutions

Proceedings for an offence against this Act or the regulations must be commenced not later than 2 years after the date on which the offence is alleged to have been committed.

Note

See sections 53(2), 55 and 56 of the **Infringements Act 2006**.

S. 70
amended by
No. 29/2012
s. 8.

Note to s. 70
inserted by
No. 32/2006
s. 94(Sch.
item 1(3)).

71 Evidentiary provisions

- (1) In proceedings for an offence against this Act or the regulations, a certificate purporting to be signed by the chief administrator and to certify—
 - (a) that a chemical product was, or was not, a registered chemical product on a specified date, or during a specified period; or

S. 71(1)(a)
amended by
No. 73/1994
s. 55(1)(a)(i).

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S. 71(1)(b)
repealed by
No. 73/1994
s. 55(1)(a)(ii).

* * * * *

(c) that a licence, certificate or permit was in force on a specified date or during a specified period; or

S. 71(1)(d)
amended by
No. 73/1994
s. 55(1)(a)(iii).

(d) that the matter appearing on a label or advice note, or in a licence, certificate or permit, is identical to the matter set out in or appended to the certificate; or

(e) that a licence, certificate or permit was suspended during a specified period or was cancelled on a specified date; or

(f) that a specified person was an authorised officer on a specified date during a specified period—

is evidence of the facts so certified and, in the absence of evidence to the contrary, is proof.

(2) In any proceedings for an offence against this Act or the regulations, proof is not required as to—

S. 71(2)(a)
amended by
No. 55/2001
s. 23(1).

(a) the authority of an authorised officer or any other person authorised in writing by the chief administrator to prosecute under this Act to prosecute; or

S. 71(2)(b)
amended by
Nos 73/1994
s. 55(1)(b),
46/1998
s. 7(Sch. 1)
(as amended
by No.
12/1999
s. 3(Sch. 1
item 2)).

(b) the appointment or employment of the chief administrator, an authorised officer or any other officer or employee of the Department—

until evidence is given to the contrary.

- (3) A certificate issued by an analyst setting out the result of an analysis made by the analyst of a plant, animal, chemical product, fertiliser or stock food on behalf of an informant in respect of a prosecution is admissible in evidence in the proceedings.
- (4) The analyst's certificate is proof of the facts and matters contained in it, unless the accused person gives notice in writing to the informant, at least 7 days before the hearing, that the analyst is required to be called as a witness.

S. 71(3)
amended by
Nos 73/1994
s. 55(1)(c),
55/2001
s. 23(2).

72 Offences by corporations and partnerships etc.

* * * * *

S. 72(1)–(3)
repealed by
No. 13/2013
s. 3.

- (4) When in any proceedings under this Act it is necessary to establish the intention of a corporation, it is sufficient to show that a servant or agent of the corporation had that intention.
- (5) In respect of any proceedings for an offence by a corporation against this Act any statement made by an officer of the corporation is admissible as evidence against the corporation.
- (6) If a person who is a partner in a partnership commits an offence against this Act or the regulations in the course of the activities of the partnership, each other person who is a partner in the partnership is also guilty of the offence and liable to the penalty for it.
- (7) If a person who is concerned in the management of an unincorporated association commits an offence against this Act or the regulations in the course of the activities of the unincorporated association, each other person who is at the time of the commission of the offence concerned in the management of the unincorporated association is

also guilty of the offence and liable to the penalty for it.

- (8) It is a defence to a charge brought under subsection (6) or (7) if the person charged proves that—
- (a) the commission of the offence occurred without the knowledge of the person; or
 - (b) the person was not in a position to influence the conduct of the person who committed the offence; or
 - (c) the person, being in a position to influence that conduct, used all reasonable diligence to prevent the commission of the offence; or
 - (d) the person who committed the offence would not have been found guilty of it because of a defence available under this Act or the regulations.

S. 72(9)
amended by
No. 44/2001
s. 3(Sch.
item 3),
repealed by
No. 13/2013
s. 3.

* * * * *

S. 72A
inserted by
No. 13/2013
s. 4.

**72A Criminal liability of officers of bodies corporate—
accessorial liability**

- (1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer—
- (a) authorised or permitted the commission of the offence by the body corporate; or
 - (b) was knowingly concerned in any way (whether by act or omission) in the commission of the offence by the body corporate.

(2) For the purposes of subsection (1), the following provisions are specified—

- (a) section 18(4);
- (b) section 20(3);
- (c) section 28;
- (d) section 46(2);
- (e) section 46A(2);
- (f) section 49(4);
- (g) section 50(4);
- (h) section 52(4);
- (i) section 52AA;
- (j) section 54(3);
- (k) section 55(3);
- (l) section 56(3);
- (m) section 58(4);
- (n) section 59(1), (2) and (3);
- (o) section 60(3);
- (p) section 61(2);
- (q) section 62(2);
- (r) section 67B(1).

(3) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.

(4) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.

(5) In this section—

body corporate has the same meaning as corporation has in section 57A of the Corporations Act;

officer in relation to a body corporate means—

- (a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or
- (b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.

(6) This section does not affect the operation of Subdivision (1) of Division 1 of Part II of the **Crimes Act 1958**.

S. 72A(6)
substituted by
No. 20/2015
s. 56(Sch. 1
item 1).

72B Criminal liability of officers of bodies corporate— failure to exercise due diligence

S. 72B
inserted by
No. 13/2013
s. 4.

(1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.

(2) For the purposes of subsection (1), the following provisions are specified—

- (a) section 6(1);
- (b) section 19(1), (3), (4), (5), (6), (7) and (8);

- (c) section 21;
 - (d) section 24(1);
 - (e) section 25A(1);
 - (f) section 26(4);
 - (g) section 30(1);
 - (h) section 32(1) and (2);
 - (i) section 39(4);
 - (j) section 40(1);
 - (k) section 41(1);
 - (l) section 48(2);
 - (m) section 67A(1).
- (3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to—
- (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
 - (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
 - (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
 - (d) any other relevant matter.
- (4) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so,

the officer bears the same burden of proof that the body corporate would bear.

(5) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.

(6) In this section—

body corporate has the same meaning as in section 72A;

officer in relation to a body corporate, has the same meaning as in section 72A.

S. 72C
inserted by
No. 13/2013
s. 4.

**72C Criminal liability of officers of bodies corporate—
failure to exercise due diligence (evidential burden
of proof)**

(1) Subject to subsection (3), if a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision.

(2) For the purposes of subsection (1), the following provisions are specified—

(a) section 18(1);

(b) section 20(1);

(c) section 25(1);

(d) section 42(3);

(e) section 43(2) and (3).

(3) An officer of a body corporate does not commit an offence against a provision specified in subsection (2) if—

(a) the officer presents or points to evidence that suggests a reasonable possibility that the officer exercised due diligence to prevent the

- commission of the offence by the body corporate; and
- (b) the contrary is not proved (beyond reasonable doubt) by the prosecution.
- (4) In determining whether an officer of a body corporate exercised due diligence, a court may have regard to—
- (a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and
- (b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and
- (c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and
- (d) any other relevant matter.
- (5) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.
- (6) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.
- (7) In this section—
- body corporate*** has the same meaning as in section 72A;

officer in relation to a body corporate, has the same meaning as in section 72A.

73 Offences by employers and contractors

- (1) An employer commits an offence against this Act or the regulations, and is liable to the penalty for that offence, if a person commits the offence in the course of that person's employment by the employer, unless it is proved that—
 - (a) the employer—
 - (i) did not authorise or permit the acts or omissions of the employee; and
 - (ii) used all reasonable diligence to prevent them; or
 - (b) the employee would not have been convicted of the offence because of a defence available under this Act or the regulations.
- (2) A person who has contracted with another person for the provision of services by that other person commits an offence against this Act or the regulations, and is liable to the penalty for that offence, if that other person commits the offence in the course of providing those services for the person, unless it is proved that—
 - (a) the person—
 - (i) did not authorise or permit the acts or omissions of that other person; and
 - (ii) used all reasonable diligence to prevent them; or
 - (b) that other person would not have been convicted of the offence because of a defence available under this Act or the regulations.

74 Delegation

- (1) The chief administrator may, by instrument, delegate to any officer of the Department or authorised officer any power of the chief administrator under this Act or the regulations, other than this power of delegation.

S. 74(1)
amended by
No. 73/1994
s. 55(2)(a).

* * * * *

S. 74(2)
repealed by
No. 73/1994
s. 55(2)(b).

75 Fees

- (1) The Minister may, by notice published in the Government Gazette, fix fees to be paid under this Act and the rate of interest to be paid on overdue fees.

- (1A) A fee fixed under subsection (1) must be fixed as one or more fee units or as part of a fee unit.

S. 75(1A)
Inserted by
No. 69/2004
s. 54(3).

- (1B) The following applies in respect of a fee—

- (a) the fee may be expressed as being, or including, a part of a fee unit, but only of a part that is a tenth or more of a fee unit;
- (b) the amount of the fee is to be calculated by multiplying the number of fee units applicable by the value of a fee unit fixed from time to time under section 5 of the **Monetary Units Act 2004**;
- (c) despite section 7(3) of the **Monetary Units Act 2004**, if the amount of a fee calculated in accordance with paragraph (b) is not a multiple of 5 cents, the amount must be rounded down to the nearest multiple of 5 cents.

S. 75(1B)
Inserted by
No. 69/2004
s. 54(3).

- (2) The power to fix fees under this section may be exercised—
- (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
 - (b) so as to make, with respect to the cases in relation to which the power is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, of different provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.
- (3) Any fee due under this Act bears interest at the rate fixed under subsection (1), from the date that the fee becomes due to the date that it is paid.

S. 75A
inserted by
No. 55/2001
s. 24.

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;
- (b) monitoring standards and performance of holders of authorities under the Act;
- (c) monitoring compliance with the Act;
- (d) generally administering the Act.

76 Regulations

- (1) The Governor in Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed, or necessary to be prescribed to give effect to this Act.
- (2) Without in any way limiting subsection (1), regulations may be made under this Act for or with respect to the things specified in sections 24(2), 27, 45, 52A and 47.
- (3) A power conferred by this Act to make regulations may be exercised—
 - (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified case or class of case; and
 - (b) so as to make, as respects the cases in relation to which the power is exercised—
 - (i) the same provision for all cases in relation to which the power is exercised, or different provisions for different cases or classes of case, or different provisions for the same case or class of case for different purposes; or
 - (ii) any such provision either unconditionally or subject to any specified condition.
- (4) Regulations made under this Act may be made—
 - (a) so as to apply—
 - (i) at all times or at a specified time; or
 - (ii) throughout the whole of the State or in a specified part of the State; or

S. 76(2)
amended by
Nos 73/1994
s. 55(3),
55/2001 s. 25.

- (iii) as specified in both subparagraphs (i) and (ii); and
- (b) so as to require a matter affected by the regulations to be—
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) approved by or to the satisfaction of a specified person or a specified class of persons; or
 - (iii) as specified in both subparagraphs (i) and (ii); and
- (c) so as to apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person whether—
 - (i) wholly or partially or as amended by the regulations; or
 - (ii) as formulated, issued, prescribed or published at the time the regulations are made or at any time before then; or
 - (iii) as formulated, issued, prescribed or published from time to time; and
- (d) so as to confer a discretionary authority or impose a duty on a specified person or a specified class of persons; and
- (e) so as to provide in a specified case or class of case for the exemption of persons or things or a class of persons or things from any of the provisions of the regulations, whether unconditionally or on specified conditions and either wholly or to such an extent as is specified; and

- (f) so as to impose a penalty not exceeding 50 penalty units for a contravention of the regulations.
- (5) If under subsection (4)(c)(iii) a regulation has applied, adopted or incorporated any matter contained in any document, code, standard, rule, specification or method as formulated, issued, prescribed or published from time to time and that document, code, standard, rule, specification or method is at any time amended, the document, code, standard, rule, specification or method is for the purpose of the regulation to be taken to have not been so amended until notice of the amendment is published in the Government Gazette.
- (6) Regulations made under this Act may be disallowed in whole or in part by resolution of either House of Parliament.

S. 76(6)
amended by
No. 78/2010
s. 24(Sch. 1
item 2.1).

* * * * *

S. 76(7)
repealed by
No. 78/2010
s. 24(Sch. 1
item 2.2).

77 Orders may incorporate material

- (1) An Order made under section 25(2), 25A(2), 38(1) or 48(1) may be made so as to apply, adopt or incorporate any material contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person, whether—
- (a) wholly or partially or as amended by the Order; or
- (b) as formulated, issued, prescribed or published at the time the Order is made or at any time before then; or

S. 77(1)
amended by
No. 73/1994
s. 55(4)(a).

- (c) as formulated, issued, prescribed or published from time to time.
- (2) If an Order applies, adopts or incorporates any material under subsection (1), there must be published in the Government Gazette with the Order a notice stating that the material may be inspected at the office of the Department specified in the notice.
- (3) If under subsection (1)(c) an Order has applied, adopted or incorporated any matter contained in any document, code, standard, rule, specification or method as formulated, issued, prescribed or published from time to time and that document, code, standard, rule, specification or method is at any time amended, the document, code, standard, rule, specification or method is for the purpose of the Order to be taken to have not been so amended until notice of the amendment is published in the Government Gazette.
- (4) A person is not guilty of an offence for contravening an Order under section 25(1), 25A(1), 39(4) or 48(2) if the relevant Order applied, adopted or incorporated material under subsection (1) of this section and—
- (a) a notice required by subsection (2) was not published with the Order; or
 - (b) at the time of the alleged contravention, the material was not available for inspection at the office of the Department specified in the notice.
- (5) Subsection (4) does not apply if, at the time of the alleged contravention, reasonable steps had been taken to bring the general purport of the applied, adopted or incorporated material to the notice of people likely to be affected by the Order.

S. 77(4)
amended by
No. 73/1994
s. 55(4)(b).

PART 10—TRANSITIONAL PROVISION

Pt 10
(Heading and
ss 78–81)
amended by
No. 73/1994
s. 56(1)(a)–
(f)(2),
repealed by
No. 33/2000
s. 6(b),
new Pt 10
(Heading
and s. 78)
inserted by
No. 13/2013
s. 6.

**78 Transitional provision—Statute Law Amendment
(Directors' Liability) Act 2013**

New s. 78
inserted by
No. 13/2013
s. 6.

- (1) For the avoidance of doubt, section 72A applies with respect to an offence against a provision specified in subsection (2) of that section that is alleged to have been committed by a body corporate on or after the commencement of section 4 of the **Statute Law Amendment (Directors' Liability) Act 2013**.
- (2) For the avoidance of doubt, section 72B applies with respect to an offence against a provision specified in subsection (2) of that section that is alleged to have been committed by a body corporate on or after the commencement of section 4 of the **Statute Law Amendment (Directors' Liability) Act 2013**.
- (3) For the avoidance of doubt, section 72C applies with respect to an offence against a provision specified in subsection (2) of that section that is alleged to have been committed by a body corporate on or after the commencement of section 4 of the **Statute Law Amendment (Directors' Liability) Act 2013**.

Agricultural and Veterinary Chemicals (Control of Use) Act 1992
No. 46 of 1992
Part 10—Transitional provision

(4) This section does not limit section 14 of the
Interpretation of Legislation Act 1984.

SCHEDULE

SCHEDULE 1

Sections 6, 18, 19, 25,
29, 31, 39 and 42

PERMITS, CERTIFICATES AND LICENCES

PART 1—PROVISIONS APPLYING TO ALL AUTHORITIES

1 Definition

In this Schedule, *authority* means—

- (a) a permit under section 6(1);
- (b) a permit under section 18(2);
- (c) a permit under section 19;
- (d) a permit under section 25(2)(b) or 25A(2)(b);
- (e) an applicator (chemical rating) certificate under section 29;
- (f) a commercial operator licence under section 31;
- (fa) a permit under section 32;
- (g) a permit under section 39(3);
- (h) a pilot (chemical rating) licence under section 42;
- (i) an agricultural aircraft operator licence under section 42.

Sch. 1 cl. 1
amended by
Nos 73/1994
s. 56(3)(a)–(c),
55/2001 s. 26.

2 Applications

- (1) A person may apply to the chief administrator for the grant of an authority.

- (2) An application must—
- (a) be in a form approved by the chief administrator; and
 - (b) include any information that the chief administrator requires; and
 - (c) be accompanied by the relevant approved fee.

3 Grant or refusal

- (1) The chief administrator may grant or refuse to grant an authority.
- (2) An authority is subject to any conditions imposed by the chief administrator and specified in the authority.
- (3) The chief administrator may, by notice in writing to the holder of an authority, vary or omit any conditions of the authority and impose new conditions.
- (4) The chief administrator may refuse to grant an authority—
 - (a) if the applicant has been convicted of an offence against a relevant Act; or
 - (b) on any prescribed ground.

4 Cancellation or suspension

- (1) The chief administrator may, by notice in writing to the holder of an authority, cancel or suspend the authority if—
 - (a) the holder has not complied with a condition of the authority; or
 - (b) the holder has been convicted of an offence against a relevant Act; or

- (c) a relevant fee has not been paid on or before the due date; or
- (d) the chief administrator becomes aware of any information which, if it had been known at the time the authority was granted, would have prevented the grant of the authority; or
- (e) any prescribed ground exists.

(1A) The chief administrator may include in the notice under subclause (1) a requirement that the holder of the authority return the authority to the chief administrator within the time specified in the notice.

Sch. 1
cl. 4(1A)
inserted by
No. 29/2012
s. 9(1).

(2) A notice must specify—

(a) the date on which the cancellation or suspension takes effect; and

(ab) the time within which the authority must be returned to the chief administrator if the notice includes this requirement; and

Sch. 1
cl. 4(2)(ab)
inserted by
No. 29/2012
s. 9(2).

(b) in the case of suspension—

(i) the period of suspension; or

(ii) any conditions that must be satisfied before the suspension will be lifted.

5 Notice of reasons and opportunity to comment

Before suspending or cancelling an authority or refusing to grant an application, the chief administrator must give the applicant for, or the holder of the authority—

(a) notice of the reasons for the proposed action; and

(b) the opportunity to submit written comments on the proposed action.

6 Term of authority

An authority continues in operation for the term (not exceeding 10 years) specified in it, unless it is cancelled before then.

7 Fees

The holder of an authority must pay the relevant approved fee on or before the due date each year.

PART 2—PROVISIONS APPLYING TO SPECIFIED AUTHORITIES

8 Applicator (chemical rating) certificates

- (1) The chief administrator may, without limiting his or her power under clause 3(2), impose conditions on an applicator (chemical rating) certificate—
 - (a) requiring the holder to undergo regular medical checkups; and
 - (b) specifying the equipment authorised by the certificate to be used; and
 - (c) specifying the preparations authorised by the certificate to be used.
- (2) The chief administrator may, without limiting his or her power under clause 3(4), refuse to grant an applicator (chemical rating) certificate if the applicant has not attended a course, or passed an examination, approved by the chief administrator.

9 Commercial operator licences

- (1) The chief administrator may, without limiting his or her power under clause 3(2), impose a condition on a commercial operator licence requiring the holder to hold an approved insurance policy.

- (2) The chief administrator may, without limiting his or her power under clause 3(4) or clause 4(1)—
- (a) refuse to grant a commercial operator licence if the applicant does not hold an approved insurance policy or a cover note for such a policy; or
 - (b) cancel or suspend a commercial operator licence if the holder does not hold an approved insurance policy.

10 Pilot (chemical rating) licences

The chief administrator may, without limiting his or her power under clause 3(4), refuse to grant a pilot (chemical rating) licence if the applicant has not attended a course, or passed an examination, approved by the chief administrator.

* * * * *

Sch. 1 cl. 11
repealed by
No. 35/2009
s. 8.

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 9 May 1991

Legislative Council: 9 October 1991

The long title for the Bill for this Act was "A Bill to re-enact with amendments provisions relating to the manufacture, sale, use and application of agricultural and veterinary chemicals; to repeal the **Agricultural Chemicals Act 1958**, the **Animal Preparations Act 1987**, the **Fertilizers Act 1974** and the **Aerial Spraying Control Act 1966**; to amend the **Sale of Land Act 1962** and the **Stock Diseases Act 1968** and for other purposes."

The **Agricultural and Veterinary Chemicals (Control of Use) Act 1992** was assented to on 23 June 1992 and came into operation as follows:

Section 81 on 24 June 1992: Government Gazette 24 June 1992 page 1532—see **Interpretation of Legislation Act 1984**; sections 1–5, 19(4)(5), 25, 27, 53, 54, 62, 65–76, Schedule 1 on 11 March 1993: Government Gazette 11 March 1993 page 489; section 19(6) on 25 March 1994: Special Gazette (No. 13) 25 March 1994 page 1—see **Interpretation of Legislation Act 1984**; sections 6, 19(1)–(3), 23, 26, 38–40, 45, 46, 48, 49, 52, 55–61, 63, 64, 77, 78(2)(a)(4)(d)(5) on 15 March 1995: Government Gazette 9 March 1995 page 502; sections 50, 51, 78(3) on 20 December 1995: Government Gazette 14 December 1995 page 3489; rest of Act (*except* sections 41, 78(4)(a)–(c)) on 1 August 1996: Special Gazette (No. 89) 1 August 1996 page 2.

Section 78(4)(a)–(c) never proclaimed, repealed by No. 33/2000 section 6(b).

Section 41 never proclaimed, repealed by No. 55/2001 s. 12.

The name of this Act was changed from the **Agricultural and Veterinary Chemicals Act 1992** to the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992** by the **Agricultural and Veterinary Chemicals (Victoria) Act 1994**, Act No. 73/1994 section 38.

2 Table of Amendments

This publication incorporates amendments made to the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992** by Acts and subordinate instruments.

Financial Management (Consequential Amendments) Act 1994, No. 31/1994

Assent Date: 31.5.94
Commencement Date: S. 4(Sch. 2 item 4) on 1.1.95: Government Gazette 28.7.94 p. 2055
Current State: This information relates only to the provision/s amending the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992**

Agricultural and Veterinary Chemicals (Victoria) Act 1994, No. 73/1994

Assent Date: 22.11.94
Commencement Date: Pt 1 (ss 1–4) on 22.11.94: s. 2(1); rest of Act (*except* ss 44, 50(4)) on 15.3.95: Government Gazette 9.3.95 p. 502; ss 44, 50(4) on 22.11.95: s. 2(3)
Current State: All of Act in operation

Miscellaneous Acts (Further Omnibus Amendments) Act 1996, No. 73/1996

Assent Date: 17.12.96
Commencement Date: Pt 2 (ss 3, 4) on 17.12.96: s. 2(1)
Current State: This information relates only to the provision/s amending the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992**

Veterinary Practice Act 1997, No. 58/1997

Assent Date: 28.10.97
Commencement Date: S. 96(Sch. item 1) on 17.3.98: Government Gazette 12.3.98 p. 520
Current State: This information relates only to the provision/s amending the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998 (as amended by No. 12/1999)

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992**

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**Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998,
No. 52/1998**

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 item 4) on 1.7.98: Government Gazette
18.6.98 p. 1512
Current State: This information relates only to the provision/s
amending the **Agricultural and Veterinary
Chemicals (Control of Use) Act 1992**

**Agricultural and Veterinary Chemicals (Control of Use) (Amendment) Act 2000,
No. 33/2000**

Assent Date: 6.6.00
Commencement Date: 30.5.01: s. 2(2)
Current State: All of Act in operation

Health (Amendment) Act 2001, No. 33/2001

Assent Date: 19.6.01
Commencement Date: Ss 13, 14 on 20.6.01: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Agricultural and Veterinary
Chemicals (Control of Use) Act 1992**

Corporations (Consequential Amendments) Act 2001, No. 44/2001

Assent Date: 27.6.01
Commencement Date: S. 3(Sch. item 3) on 15.7.01: s. 2
Current State: This information relates only to the provision/s
amending the **Agricultural and Veterinary
Chemicals (Control of Use) Act 1992**

**Agricultural and Veterinary Chemicals (Control of Use) (Further Amendment)
Act 2001, No. 55/2001**

Assent Date: 16.10.01
Commencement Date: 17.10.01: s. 2
Current State: All of Act in operation

Fisheries (Amendment) Act 2003, No. 56/2003

Assent Date: 16.6.03
Commencement Date: S. 11(Sch. item 1) on 17.6.03: s. 2
Current State: This information relates only to the provision/s
amending the **Agricultural and Veterinary
Chemicals (Control of Use) Act 1992**

**Primary Industries Legislation (Miscellaneous Amendments) Act 2004,
No. 22/2004**

Assent Date: 18.5.04
Commencement Date: Ss 3, 4 on 19.5.04: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Agricultural and Veterinary
Chemicals (Control of Use) Act 1992**

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Primary Industries Legislation (Further Miscellaneous Amendments) Act 2004, No. 69/2004

Assent Date: 19.10.04
Commencement Date: S. 54 on 20.10.04: s. 2(1)
Current State: This information relates only to the provision/s amending the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992**

Occupational Health and Safety Act 2004, No. 107/2004

Assent Date: 21.12.04
Commencement Date: S. 178 on 1.7.05: s. 3(1)
Current State: This information relates only to the provision/s amending the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 6) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992**

Infringements (Consequential and Other Amendments) Act 2006, No. 32/2006

Assent Date: 13.6.06
Commencement Date: S. 94(Sch. item 1) on 1.7.06: Government Gazette 29.6.06 p. 1315
Current State: This information relates only to the provision/s amending the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992**

Public Health and Wellbeing Act 2008, No. 46/2008

Assent Date: 2.9.08
Commencement Date: S. 268 on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992**

Primary Industries Legislation Amendment Act 2009, No. 35/2009

Assent Date: 30.6.09
Commencement Date: Ss 3–8 on 1.7.09: s. 2(1)
Current State: This information relates only to the provision/s amending the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992**

Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010

Assent Date: 30.3.10
Commencement Date: S. 51(Sch. item 4) on 1.7.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992**

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Health and Human Services Legislation Amendment Act 2010, No. 29/2010

Assent Date: 8.6.10
Commencement Date: S. 43 on 1.7.10: Special Gazette (No. 235) 23.6.10 p. 1
Current State: This information relates only to the provision/s amending the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992**

Subordinate Legislation Amendment Act 2010, No. 78/2010

Assent Date: 19.10.10
Commencement Date: S. 24(Sch. 1 item 2) on 1.1.11: s. 2(1)
Current State: This information relates only to the provision/s amending the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992**

Primary Industries Legislation Amendment Act 2012, No. 29/2012

Assent Date: 29.5.12
Commencement Date: Ss 3–9 on 1.9.12: Special Gazette (No. 267) 31.7.12 p. 1
Current State: This information relates only to the provision/s amending the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992**

Statute Law Amendment (Directors' Liability) Act 2013, No. 13/2013

Assent Date: 13.3.13
Commencement Date: Ss 3–6 on 14.3.13: s. 2
Current State: This information relates only to the provision/s amending the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992**

Statute Law Revision Act 2013, No. 70/2013

Assent Date: 19.11.13
Commencement Date: S. 4(Sch. 2 item 4) on 1.12.13: s. 2(1)
Current State: This information relates only to the provision/s amending the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992**

Justice Legislation Amendment Act 2015, No. 20/2015

Assent Date: 16.6.15
Commencement Date: S. 56(Sch. 1 item 1) on 17.6.15: s. 2(3)
Current State: This information relates only to the provision/s amending the **Agricultural and Veterinary Chemicals (Control of Use) Act 1992**

3 Amendments Not in Operation

Not updated for this publication.

4 Explanatory details

No entries at date of publication.