



New South Wales

Pesticides Bill 1999

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are as follows:

- (a) to promote the protection of human health, the environment, property and trade in relation to the use of pesticides, having regard to the principles of ecologically sustainable development within the meaning of the *Protection of the Environment Administration Act 1991*,
- (b) to minimise risks to human health, the environment, property and trade,
- (c) to promote collaborative and integrated policies in relation to the use of pesticides,
- (d) to establish a legislative framework to regulate the use of pesticides.

This Bill complements the legislative scheme involving the “*Agvet Code*” (ie the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* of the Commonwealth). The Agvet Code applies as a law of New South Wales. It provides for the approval and registration of agricultural products (ie

pesticides and herbicides) and veterinary chemical products, and it controls the manufacture and supply of those chemical products. The control of the use of those chemical products is what this Bill is designed to achieve.

This Bill replaces the *Pesticides Act 1978*.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 sets out the objects of the proposed Act (as stated in the above overview).

Clause 4 defines certain words and expressions used in the proposed Act. Words and expressions used in the Agvet Code that are also used in the proposed Act have the same meaning in the proposed Act as they have in the Code.

Clause 5 defines the term *pesticide* as being an agricultural chemical product within the Code, or a veterinary chemical product (within the meaning of the Code) that is used for the external control of ectoparasites of animals.

Clause 6 declares certain offence provisions of the proposed Act to be “eligible laws” for the purposes of the definition of *permit* in Part 7 of the Agvet Code. Part 7 of the Agvet Code sets up a system under which a person who wants to do something in respect of a pesticide that would otherwise be prohibited under an eligible law may obtain a permit in respect of the doing of the thing. In other words, a permit authorises a person to whom the permit applies to do (or omit to do) something that is otherwise prohibited by the proposed Act.

Part 2 Control of pesticides

Division 1 Wilful or negligent misuse of pesticides

This Division creates upper level offences that involve an element of culpability with respect to the misuse of pesticides. The maximum penalty for committing an offence under this Division is \$250,000 for a corporation or \$120,000 for an individual.

Clause 7 provides that it is an offence to wilfully or negligently use a pesticide in a manner that injures any person or damages any property of another person (eg livestock or agricultural produce). The offence does not apply in relation to agricultural farm land (ie the “on-farm” exception).

Clause 8 provides that it is an offence to wilfully or negligently use a pesticide in a manner that harms any non-target animal or non-target plant (ie an animal or plant that is not one that the pesticide is meant to be used against) or that harms any animal in the case where the pesticide concerned is not subject to an approved label or a permit. The on-farm exception also applies in relation to this offence. The offence does not also apply in relation to residential premises.

Clause 9 provides that it is an offence to wilfully or negligently use a pesticide in a manner that materially harms any endangered, vulnerable or protected animal.

Division 2 Misuse of pesticides

Clause 10 provides that it is an offence to use a pesticide in a manner that injures any person or damages any property of another person. An “on-farm” exception applies in relation to this offence, and it is a defence if it is established that the commission of the offence was due to causes over which the person had no control and that the person took reasonable precautions and exercised due diligence to prevent the commission of the offence (the “due diligence” defence).

Clause 11 provides that it is offence to use a pesticide in a manner that harms any non-target animal or non-target plant or, in the case where the pesticide concerned is not subject to an approved label or permit, harms any animal or plant. The “on-farm” exception and residential premises exception also apply in relation to this offence, as does the “due diligence” defence.

Division 3 General offences relating to control of pesticides

Clause 12 prohibits the possession of an unregistered pesticide (ie a pesticide that is not registered under the Agvet Code) unless authorised by a permit and the permit is complied with.

Clause 13 prohibits the use of an unregistered pesticide unless authorised by a permit and the permit is complied with.

Clause 14 makes it an offence not to read the relevant approved label or permit for a pesticide before using the pesticide.

Clause 15 prohibits the use of a registered pesticide in contravention of the instructions on an approved label for the pesticide unless the use is authorised by a permit.

Clause 16 prohibits the keeping of a registered pesticide in a container that does not have the approved label on it.

Clause 17 prohibits the use or possession of any restricted pesticide unless authorised by a certificate of competency under the proposed Act or a pesticide control order under Part 4 of the proposed Act. *Restricted pesticides* are restricted chemical products declared as such under the Agvet Code.

Part 3 Pesticide control notices

This Division provides for a system of clean-up and prevention notices to enable effective action to deal with pesticide pollution (ie any harm to persons, property, the environment or trade caused by the use of a pesticide) and with situations involving the use of a pesticide in an environmentally unsatisfactory manner (eg where it is used in contravention of the proposed Act).

Division 1 Preliminary

Clause 18 contains definitions for the purposes of the proposed Division.

Division 2 Clean-up notices

Clauses 19–22 provide that a person who is suspected by the Environment Protection Authority of having caused pesticide pollution, or the occupier of premises in which pesticide pollution has or is occurring, may be directed by the Authority to take such clean-up action as is specified in a clean-up notice. Failure to comply with a clean-up notice is an offence. A public authority may also take such clean-up action as it considers necessary to deal with any pesticide pollution. Clean-up directions may be given orally or by notice in writing. The Environment Protection Authority may recover the administrative costs of preparing and giving clean-up notices.

Division 3 Prevention notices

Clauses 23–27 provide that the Environment Protection Authority may, if it suspects that a pesticide is or has been used in an environmentally unsatisfactory manner at any premises or by any person (other than at premises), direct the

occupier of the premises or the person to take such action as is specified in the prevention notice. Failure to comply with a prevention notice is an offence. A prevention notice may be appealed against to the Land and Environment Court (see **clause 114**) and when it begins to operate is subject to the appeal process. The Environment Protection Authority may recover the administrative costs of preparing and giving prevention notices.

Division 4 Compliance cost

Clauses 28–31 provide for the recovery of costs in relation to clean-up action irrespective of whether the action taken arises from a clean-up notice or is done voluntarily by a public authority. Such costs may be specified in a compliance cost notice, and any amounts unpaid are recoverable as a debt in court. A compliance cost notice may be registered in relation to any land owned by the person who is the subject of the notice. On registration of a compliance cost notice, a charge is created on the land in relation to which the notice is registered to secure the payment to the Environment Protection Authority or public authority concerned of the amount specified in the notice.

Division 5 Miscellaneous

Clauses 32–37 contain miscellaneous provisions relating to clean-up and prevention notices. More than one such notice may be given to the same person. Notices may be issued in respect of matters occurring outside the State which affect the environment of this State. A notice may be revoked or varied by a subsequent notice, by modification of its terms and specifications or by extending the time for compliance. The Environment Protection Authority is authorised to enter any premises for the purposes of exercising its functions under the proposed Part. It is an offence to wilfully delay or obstruct a person carrying out any action in compliance with a clean-up notice or prevention notice. It is also an offence to make a false or misleading statement in any report required under the proposed Part and lodged with the Environment Protection Authority.

Part 4 Pesticide control orders

Clause 38 provides for the making of pesticide control orders by the Environment Protection Authority. Such orders may be made for the purposes of protecting public health, property, the environment or trade, or in order to implement certain decisions or policies of the National Registration Authority for Agricultural and Veterinary Chemicals. A pesticide control order has no effect unless it is published in the Gazette.

Clause 39 provides for the operation of pesticide control orders. An order may prohibit or control the use of pesticides, or it may authorise the use of restricted pesticides. It is an offence to contravene a pesticide control order.

Part 5 Miscellaneous powers and offences

Clause 40 refers to the fact that Chapter 7 (Investigation) of the *Protection of the Environment Operations Act 1997* extends the exercise of powers under the proposed Act. That Chapter deals with such matters as the appointment of authorised officers of the Environment Protection Authority, powers to require information and records, powers of entry and search, powers to question and to identify persons, and powers with respect to certain things such as vehicles.

Clause 41 enables an authorised officer to give directions for the destruction or rendering harmless of a pesticide in certain situations (eg if the authorised officer is of the opinion that it is necessary to do so because of a risk to the environment). It is an offence not to comply with any such direction. An authorised officer may also destroy or render harmless a pesticide if authorised by the owner of the pesticide.

Clause 42 enables an authorised officer to direct, by notice in writing, a person to cease using equipment used in the application of a pesticide if the officer is of the opinion that the equipment is defective. If such a notice is given, it is an offence to use the equipment in contravention of the notice. It is also an offence to remove or interfere with any defect notice that is affixed to the equipment by the authorised officer.

Clause 43 prohibits the attachment of aerial spraying equipment to an aircraft that is not approved by the Civil Aviation Safety Authority for agricultural operations.

Clause 44 provides that it is an offence to disclose any information relating to any agricultural, manufacturing or commercial secrets or working processes and obtained in connection with the administration or execution of the proposed Act.

Part 6 Licences and certificates of competency

Division 1 Licensing of aerial pesticide operations

Clauses 45–55 deal with the licensing of aerial pesticide operations. A person who pilots an aircraft that is being used in the application of a pesticide is required to hold a pilot (pesticide rating) licence, and is also required to hold an aircraft (pesticide applicator) licence (or be employed or engaged by a person who holds

such a licence). A person must not employ or engage a person to pilot an aircraft that is being used in the application of a pesticide unless the employer holds an aircraft (pesticide applicator) licence and the pilot is the holder of a pilot (pesticide rating) licence.

An application for a licence is made to the Environment Protection Authority and must be in the approved form and accompanied by the prescribed application fee. The Authority may require further information from the applicant. The Authority may grant the licence (subject to such conditions as it thinks fit to impose) or refuse to grant a licence on certain grounds. Licence conditions may be revoked or varied. A licence holder is required to pay an annual licence fee prescribed by the regulations. A licence remains in force until it is suspended or revoked by the Authority or is surrendered. A licence holder must notify the Authority of any changes in the licence particulars, and must also provide the Authority with certain information received by the holder (eg if the holder ceases to hold the prescribed qualifications for a licence).

The holder of an aircraft (pesticide applicator) licence is required to make a record about each occasion on which the holder has caused an aircraft to be used in the application of a pesticide. The Environment Protection Authority may suspend a licence for a period of up to 6 months, and it may revoke a licence for certain reasons (such as the holder of the licence contravening a provision of the proposed Act).

Division 2 Certificates of competency

Clauses 56–58 deal with certificates of competency (which authorise persons to use restricted pesticides). An application for a certificate of competency is made to the Environment Protection Authority and must be in the approved form and accompanied by the prescribed application fee. The Authority may grant the certificate (subject to such conditions as it thinks fit to impose), or it may refuse to grant the certificate if the applicant is not competent to use the restricted pesticide without causing harm. The Authority may suspend or revoke a certificate of competency.

Division 3 General provisions relating to licences and certificates of competency

Clause 59 makes it an offence to contravene the conditions of a licence or certificate of competency.

Clause 60 makes it an offence to make a false or misleading statement in connection with an application for a licence or a certificate of competency. It is also an offence for a person to falsely represent that the person is the holder of a licence or certificate of competency.

Clause 61 provides that a person may apply to the Administrative Decisions Tribunal for a review of the Environment Protection Authority's decision to refuse to grant a licence or certificate of competency, to impose a condition on the licence or certificate, or to suspend or revoke the licence or certificate.

Part 7 Control of pesticide residues in agricultural produce

Clause 63 defines certain terms for the purposes of the proposed Part.

Clause 64 provides that if an authorised officer reasonably suspects that any agricultural produce contains a pesticide residue, the officer may serve a notice in the approved form on the owner of the agricultural produce, or on the occupier of the premises on which the produce is situated, or on another person who is in charge of the any vehicle, aircraft or vessel in or on which the produce is situated. The notice may contain provisions requiring the person on whom it is served to do certain things in relation to the produce (eg not to part with possession or control of the produce or to deal with it in some specified way). A pesticide residue notice may only operate for a maximum of 14 days. It is an offence for the person to fail to comply with any such notice.

Clause 65 enables the Minister to make a pesticide residue order in respect of any agricultural produce that is specified or described in a notice under proposed section 64. Such an order may require the destruction of the produce concerned, and the order may remain in force for up to 6 months. A person on whom a pesticide residue order is served must comply with the requirements of the order.

Clause 66 enables the Environment Protection Authority to authorise the destruction of any agricultural produce in default of a requirement of a pesticide residue order.

Part 8 Pesticides Implementation Committee

Clause 67 provides for the establishment of a Pesticides Implementation Committee. The Implementation Committee is to be chaired by a person appointed by the Minister and will have up to 12 other members appointed by the Minister. Those members may be representatives of community and industry interests and

representatives of relevant government agencies. The Implementation Committee ceases operations, and is abolished, when it reports to the Minister under proposed section 68 (ie sometime before July 2003).

Clause 68 specifies the functions of the Implementation Committee. The Committee is to provide a report to the Minister, by July 2003, on the implementation of the proposed Act.

Part 9 Pesticide codes of practice

Clause 69 provides for the making of pesticide codes of practice by the Minister for the purposes of providing guidance on the use and management of pesticides or for any other purpose that is consistent with the objects of the proposed Act.

Clause 70 deals with the manner in which codes are made.

Part 10 Procedural provisions

Division 1 Proceedings for offences

Clauses 71–74 deal with the manner in which proceedings for offences under the proposed Act are to be dealt with, and the time within which summary proceedings may be commenced. Only the Environment Protection Authority may institute proceedings for an offence under the proposed Act.

Division 2 Penalty notices

Clauses 75–80 deal with penalty notice offences under the proposed Act (the regulations are to prescribe which offences are penalty notice offences). A penalty notice is a notice informing a person that the penalty payable may be paid within the time specified in the notice, otherwise the offence will be dealt with by a court. The manner in which penalty notices are to be served, and the consequences of paying a penalty in accordance with the proposed Division, are outlined. The regulations may prescribe the penalty payable, but any such penalty may not exceed \$1,500 nor the maximum amount that may be imposed by a court on conviction for the offence. The proposed Division does not limit the operation of the proposed Act or any other Act in relation to proceedings undertaken for offences.

Division 3 Restraining orders

Clauses 81–91 outline the nature of restraining orders, the procedure for applying for and the making of restraining orders in relation to the defendant's property. A restraining order if registered is a charge on the defendant's property.

Division 4 Court orders in connection with offences

Clauses 92–98 provide that a court may order a person who is found to have committed an offence under the proposed Act or the regulations to take such steps as are specified in the order to stop any injury, damage or harm caused by the commission of the offence, to make good any resulting environmental damage or to prevent the continuance or recurrence of the offence. If a public authority or person has, directly or indirectly, by reason of the commission of the offence, incurred costs and expenses, the court may order the offender to pay those costs and expenses or pay compensation. The court may also order an offender to pay any costs and expenses of investigation and a penalty of an amount not greater than the amount of any monetary benefits acquired by the offender as a result of the commission of the offence.

Clause 99 provides that the court may make additional orders regarding an offence, fix a period for compliance, and impose any other necessary requirements.

Clause 100 provides for the forfeiture to the Crown of pesticides and other things that are connected with the commission of an offence under the proposed Act or the regulations, or that have been seized by an authorised officer.

Clause 101 makes it an offence to fail to comply with an order under the proposed Division.

Division 5 Evidentiary provisions

Clause 102 defines certain terms for the purposes of the proposed Division.

Clause 103 provides that the occupier of premises at or from which pesticide pollution has occurred is presumed to have caused the pollution.

Clause 104 provides that proof of a reasonable excuse lies on the defendant.

Clause 105 provides that no proof is required of the appointment of certain persons (including authorised officers) and also deals with the admissibility of documentary evidence.

Clause 106 provides that certain signed documents certifying certain matters are admissible as evidence and are prima facie evidence of the matters so certified.

Clause 107 deals with the appointment of appropriately qualified persons as analysts and the admissibility of certificates prepared by such analysts in evidence.

Division 6 Other procedural provisions

Clause 108 provides that the Environment Protection Authority may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach or threatened breach of the proposed Act or the regulations.

Clauses 109 and **110** specify the matters to be taken into account by a court in imposing a penalty for an offence under the proposed Act and set out other sentencing powers of the court.

Clause 111 makes it an offence to cause or permit another person to commit an offence under the proposed Act.

Clause 112 deals with offences by corporations.

Clause 113 provides that a person is guilty of an offence in respect of any act or omission occurring outside the State if any substance has been caused to come into the State, if that substance causes or is likely to cause harm to the environment and if the act or omission would have constituted an offence if it had occurred in the State.

Part 11 Miscellaneous

Clause 114 enables a person who is aggrieved by certain decisions under the proposed Act (such as a prevention notice under Division 3 of Part 3) to appeal to the Land and Environment Court against the decision.

Clause 115 provides that the Environment Protection Authority may exempt any person or class of persons from any specified provisions of the proposed Act or the regulations.

Clause 116 provides that acts or omissions committed by members of a fire brigade, a bush fire brigade, the State Emergency Service or other rescue units are exempt from the proposed Act.

Clause 117 provides that the regulations under the proposed Act may also provide for exemptions.

Clause 118 outlines the methods by which any notice or document under the proposed Act may be served on a person.

Clause 119 empowers the making of regulations for the purposes of the proposed Act (including specific regulation-making powers). These specific powers include such matters as record keeping, training in the use of pesticides, and the provision of information in relation to the supply, distribution, use and disposal of pesticides.

Clause 120 provides that the proposed Act binds the Crown.

Clause 121 repeals the *Pesticides Act 1978*.

Clause 122 gives effect to the savings and transitional provisions set out in Schedule 2.

Clause 123 gives effect to the amendment of the Acts set out in Schedule 3.

Clause 124 provides for a review of the proposed Act after 5 years.

Schedule 1 Members and procedure of Implementation Committee

The Schedule contains provisions relating to the members and procedure of the Pesticides Implementation Committee (such as provisions dealing with terms of office, remuneration, appointment of deputies, the manner in which vacancies of office occur, disclosure of pecuniary interests and the quorum for meetings).

Schedule 2 Savings and transitional provisions

The Schedule contains relevant savings and transitional provisions consequent on the enactment of the proposed Act (including the power to make regulations of a savings or transitional nature).

Schedule 3 Amendment of other Acts

The Schedule contains amendments to Acts that are mainly consequential on the enactment of the proposed Act. A number of more substantive amendments are made to the *Protection of the Environment Operations Act 1997*, including the following:

- (a) to extend Chapter 7 of the Act (which deals with investigation powers) to the exercise of powers under the proposed Act (and also to the investigation of offences under the *Pesticides Act 1978*),

- (b) to provide that an authorised officer may exercise entry and search powers in relation to aircraft,
- (c) to enable an authorised officer, if the officer has seized something, to direct the occupier of the premises to retain it at those premises,
- (d) to enable authorised officers to be accompanied by another person for the purpose of providing assistance to the authorised officer.



New South Wales

Pesticides Bill 1999

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New South Wales

Pesticides Bill 1999

No. , 1999

A Bill for

An Act to regulate and control the use of pesticides; to repeal the *Pesticides Act 1978*; to amend certain other Acts; and for other purposes.

Clause 1 Pesticides Bill 1999

Part 1 Preliminary

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

Note. The Code set out in the Schedule to the Agricultural and Veterinary Chemicals Code Act 1994 of the Commonwealth (the "**Agvet Code**") is the basis of a uniform legislative scheme for the approval and registration of agricultural chemical products (eg pesticides) and veterinary chemical products. Section 5 of the Agricultural and Veterinary Chemicals (New South Wales) Act 1994 provides that the Agvet Code applies as law of New South Wales. 3
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The Agvet Code controls the manufacture and supply (eg sale) of agricultural and veterinary chemical products. The control of the use of those chemical products (described in this Act as "pesticides") is generally a matter for the States. 9
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This Act provides the basis for the control of the use of pesticides in New South Wales. 12
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This Act should be read in conjunction with the Agvet Code (particularly the definitions in that Code). 14
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1 Name of Act 16

This Act is the *Pesticides Act 1999*. 17

2 Commencement 18

This Act commences on a day or days to be appointed by proclamation. 19
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3 Objects of this Act 21

The objects of this Act are as follows: 22

(a) to promote the protection of human health, the environment, property and trade in relation to the use of pesticides, having regard to the principles of ecologically sustainable development within the meaning of the *Protection of the Environment Administration Act 1991*, 23
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(b) to minimise risks to human health, the environment, property and trade, 28
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(c) to promote collaborative and integrated policies in relation to the use of pesticides, 30
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(d) to establish a legislative framework to regulate the use of pesticides. 32
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4	Definitions	1
(1)	In this Act:	2
	<i>agricultural farm land</i> includes a timber plantation.	3
	<i>aerial spraying equipment</i> means equipment attached to, or forming part of, an aircraft, being equipment that is manufactured, adapted or used for the purpose of facilitating the use of pesticides from the aircraft.	4 5 6 7
	<i>Agvet Code</i> means the provisions applying because of section 5 of the <i>Agricultural and Veterinary Chemicals (New South Wales) Act 1994</i> .	8 9
	<i>animal</i> has the same meaning as in the Agvet Code.	10
	Note. The definition in the Agvet Code is as follows:	11
	“ animal ” means any animal (other than a human being), whether vertebrate or not, and whether a food-producing species or not, and includes:	12
	(a) mammals, birds, bees, reptiles, amphibians, fish, crustaceans and molluscs, and	13 14 15
	(b) the semen, ova or embryo of an animal (other than a human being) or any other substance or thing directly relevant to the reproduction of an animal (other than a human being), and	16 17 18
	(c) any other prescribed form of animal life, whether prescribed by reference to a species or in any other way.	19 20
	<i>approved label</i> , in relation to a pesticide, means any label approved under Part 2 of the Agvet Code for or in respect of the pesticide.	21 22
	The term “ label ” in the Agvet Code includes tag, leaflet, brand, stamp, mark, stencil or written statement.	23 24
	<i>authorised officer</i> means a person appointed by the Environment Protection Authority under Part 7.2 of the <i>Protection of the Environment Operations Act 1997</i> as an authorised officer for the purposes of this Act.	25 26 27 28
	<i>certificate of competency</i> means a certificate of competency in force under this Act.	29 30
	<i>container</i> has the same meaning as in the Agvet Code.	31
	Note. The definition in the Agvet Code is as follows:	32
	“ container ” includes anything by which or in which a pesticide is, or is to be, covered, enclosed, contained or packaged, but does not include a container (such as a shipping container) in which other containers of pesticides are, or are to be, placed for the purpose of being transported.	33 34 35 36
	<i>environment</i> means components of the earth, including:	37
	(a) land, air and water, and	38
	(b) any layer of the atmosphere, and	39
	(c) any organic or inorganic matter and any living organism, and	40

(d) human-made or modified structures and areas,	1
and includes interacting natural ecosystems that include components referred to in paragraphs (a)–(c).	2 3
Environment Protection Authority (or Authority) means the Environment Protection Authority constituted under the <i>Protection of the Environment Administration Act 1991</i> .	4 5 6
exercise a function includes perform a duty.	7
function includes a power, authority or duty.	8
harm an animal or plant includes poison, injure, contaminate, infect, distress, maim, impair or kill the animal or plant.	9 10
Implementation Committee means the Pesticides Implementation Committee established under this Act.	11 12
injury to a person includes any kind of physical or psychological injury whether temporary or permanent, including conditions such as nausea, allergic reaction, dizziness, headache, stress, and running nose or eyes.	13 14 15
instruction has the same meaning as in the Agvet Code.	16
Note. The definition in the Agvet Code is as follows:	17
“ instruction ” includes direction, caution, warning or recommendation.	18
licence means an aircraft (pesticide applicator) licence, or a pilot (pesticide rating) licence, in force under this Act.	19 20
non-target animal , in relation to the use of a pesticide, means any animal that is not specified on an approved label or permit for the pesticide as being an animal in respect of which the pesticide may be used.	21 22 23 24
non-target plant , in relation to the use of a pesticide, means any plant that is not specified on the approved label or permit for the pesticide as being a plant in respect of which the pesticide may be used.	25 26 27
occupier of premises means the person who has the management or control of the premises.	28 29
permit means a permit under Part 7 of the Agvet Code.	30
pest has the same meaning as in the Agvet Code.	31
Note. The definition in the Agvet Code is as follows:	32
“ pest ” means:	33
(a) in relation to an animal plant or thing—any animal, plant or other biological entity that injuriously affects the physical condition, worth or utility of the first-mentioned animal or plant or of that thing, or	34 35 36
(b) in relation to a place—any animal, plant or other biological entity that injuriously affects the use or enjoyment of that place.	37 38

<i>pesticide</i> —see section 5.	1
<i>pesticide control order</i> means an order made under Part 4.	2
<i>pesticide pollution</i> means any harm or risk of harm to any person, property, the environment or trade that is caused by the use of a pesticide.	3 4 5
<i>plant</i> has the same meaning as in the Agvet Code.	6
Note. The definition in the Agvet Code is as follows:	7
“ plant ” means any vegetation or fungus and includes a seed or cutting of a plant, or any other part or product of a plant.	8 9
<i>possession</i> of a pesticide or other thing includes any case in which a person:	10
(a) has custody or control of the pesticide or thing, or	11 12
(b) has the pesticide or thing in the custody of another person, or	13
(c) has the pesticide or thing in or on any premises, whether or not belonging to or occupied by the person.	14 15
<i>premises</i> includes:	16
(a) a building or structure, or	17
(b) land or a place (whether enclosed or built on or not), or	18
(c) a vehicle, vessel or aircraft.	19
<i>property</i> (except in Part 10) includes:	20
(a) any premises, or	21
(b) livestock, or	22
(c) agricultural crops or other produce.	23
<i>public authority</i> means a public or local authority constituted by or under an Act, and includes:	24
(a) a government department, or	25 26
(b) a statutory body representing the Crown, a State owned corporation or a local council, or	27 28
(c) a member of staff or other person who exercises functions on behalf of a public authority.	29 30
<i>registered pesticide</i> means a pesticide that is registered under Part 2 of the Agvet Code.	31 32

restricted pesticide means a pesticide that is a restricted chemical product within the meaning of the Agvet Code. 1
2

Note. The term “**restricted chemical product**” is defined in the Agvet Code as a chemical product declared by regulations made for the purposes of section 93 of the Code to be a restricted chemical product. 3
4
5

substance has the same meaning as in the Agvet Code. 6

Note. The definition in the Agvet Code is as follows: 7

“**substance**” includes: 8

- (a) any gas, liquid, mixture or compound of gases, or mixture or compound of liquids, and 9
10
- (b) an organism or part of an organism, including a genetically manipulated organism or part of a genetically manipulated organism, and 11
12
- (c) matter whose production involves the use of an organism, 13
but does not include an excluded organism or part of an excluded organism, or 14
material that is produced from, or matter whose production involves the use of, an 15
excluded organism. 16

unregistered pesticide means a pesticide that is not registered under Part 2 of the Agvet Code. 17
18

use a pesticide includes: 19

- (a) apply, spray, spread or disperse the pesticide by any means (for example by hand or by the use of a machine or any type of equipment including aerial spraying equipment), or 20
21
22
 - (b) store the pesticide, or 23
 - (c) prepare the pesticide for use. 24
- (2) Without limiting subsection (1), a word or expression used in the Agvet Code that is used in this Act has the same meaning in this Act as it has in that Code. 25
26
27
- (3) Notes included in this Act do not form part of this Act. 28

5 Meaning of “pesticide” 29

(1) In this Act, ***pesticide*** means: 30

- (a) an agricultural chemical product within the meaning of the Agvet Code, or 31
32
- (b) a veterinary chemical product (within the meaning of the Agvet Code) that is represented as being suitable for, or is manufactured, supplied or used for, the external control of ectoparasites of animals. 33
34
35
36

Note. The Agvet Code defines an “**agricultural chemical product**” to be a substance or a mixture of substances that is represented, imported, manufactured, supplied or used as a means of directly or indirectly: 37
38
39

(a)	destroying, stupefying, repelling, inhibiting the feeding of, or preventing infestation by or attacks of, any pest in relation to a plant, a place or a thing, or	1 2 3
(b)	destroying a plant, or	4
(c)	modifying the physiology of a plant or pest so as to alter its natural development, productivity, quality or reproductive capacity, or	5 6
(d)	modifying an effect of another agricultural chemical product, or	7
(e)	attracting a pest for the purpose of destroying it.	8
	The term also includes insect repellants for use on human beings.	9
(2)	For the purposes of this Act, a pesticide continues to be regarded as a pesticide even when it is mixed with some other substance (whether or not the other substance is a pesticide). However, a pesticide does not include a prescribed mixture or a mixture of a prescribed class or description.	10 11 12 13 14
	Note. Subsection (2) generally deals with the situation where a pesticide is diluted, or is mixed, before being used. The effect of the provision is that the mixing of a pesticide does not mean that it is no longer a pesticide.	15 16 17
6	Eligible laws for purposes of Agvet Code—matters authorised by permit	18 19
	Sections 12, 13 and 15 are declared to be eligible laws for the purposes of the definition of <i>permit</i> in section 109 of the Agvet Code.	20 21
	Note. The effect of a permit issued under section Part 7 of the Agvet Code is that it authorises a person to whom it applies to do (or omit to do) something that is otherwise prohibited by this Act, so long as the person does so in accordance with the conditions of the permit. In other words, a person who wants to do something in respect of a pesticide that would otherwise be prohibited under a provision of <u>this Act</u> that is an eligible law, may obtain a permit in respect of the doing of the thing.	22 23 24 25 26 27

Clause 7	Pesticides Bill 1999
Part 2	Control of pesticides
Division 1	Wilful or negligent misuse of pesticides

Part 2	Control of pesticides	1
Division 1	Wilful or negligent misuse of pesticides	2
7	Injury to persons or damage to property resulting from pesticide use	3
(1)	A person is guilty of an offence if the person wilfully or negligently uses a pesticide in a manner that:	4
(a)	injures or is likely to injure any other person, or	5
(b)	damages or is likely to damage any property of another person.	6
	Maximum penalty:	7
•	\$250,000 in the case of a corporation, or	8
•	\$120,000 in the case of an individual.	9
(2)	“On-farm” exception	10
	A person does not commit an offence under subsection (1) if the person establishes:	11
(a)	that the injury or damage occurred, or is likely to occur, only on the agricultural farm land in respect of which the pesticide was used, and	12
(b)	that the person is the occupier of that land or is employed or engaged by the occupier of that land.	13
8	Harm to animals or plants resulting from pesticide use	14
(1)	A person is guilty of an offence if the person wilfully or negligently uses a pesticide in a manner that:	15
(a)	harms any non-target animal or non-target plant, or	16
(b)	if there is no approved label or permit for the pesticide—harms any animal or plant.	17
	Maximum penalty:	18
•	\$250,000 in the case of a corporation, or	19
•	\$120,000 in the case of an individual.	20

(2) “On-farm”/residential premises exception	1
A person does not commit an offence under subsection (1) if the person establishes:	2
(a) that the harm occurred only on the agricultural farm land, or the residential premises, in respect of which the pesticide was used, and	3
(b) that the person is the occupier of that land or those premises, or is employed or engaged by the occupier of that land or those premises.	4
9 Material harm to endangered, vulnerable or protected animals	5
(1) A person is guilty of an offence if the person wilfully or negligently uses a pesticide in a manner that materially harms:	6
(a) an animal that is a threatened species within the meaning of the <i>Threatened Species Conservation Act 1995</i> , or	7
(b) any protected fauna within the meaning of the <i>National Parks and Wildlife Act 1974</i> .	8
Maximum penalty:	9
• \$250,000 in the case of a corporation, or	10
• \$120,000 in the case of an individual.	11
(2) For the purposes of subsection (1), the following matters are taken to be relevant in determining whether the harm to any such animal or protected fauna is material:	12
(a) the number of animals harmed,	13
(b) the type of animals harmed,	14
(c) the local population of the type of animal harmed.	15
(3) Nothing in subsection (2) limits the matters that may be considered in determining whether harm to an animal that is a threatened species or to protected fauna is material.	16
Division 2 Misuse of pesticides	17
10 Injury to persons or damage to property resulting from pesticide use	18
(1) A person must not use a pesticide in a manner that:	19
(a) injures or is likely to injure any other person, or	20

Clause 10	Pesticides Bill 1999
Part 2	Control of pesticides
Division 2	Misuse of pesticides

(b)	damages or is likely to damage any property of another person.	1
	Maximum penalty:	2
•	\$120,000 in the case of a corporation, or	3
•	\$60,000 in the case of an individual.	4
(2)	“On-farm” exception	5
	A person does not commit an offence under subsection (1) if the person establishes:	6
		7
(a)	that the injury or damage occurred, or is likely to occur, only on the agricultural farm land in respect of which the pesticide was used, and	8
		9
		10
(b)	that the person is the occupier of that land or is employed or engaged by the occupier of that land.	11
		12
(3)	“Due diligence” defence	13
	It is a defence in any proceedings against a person for an offence under this section if the person establishes:	14
		15
(a)	that the commission of the offence was due to causes over which the person had no control, and	16
		17
(b)	that the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence.	18
		19
11	Harm to animals or plants resulting from pesticide use	20
(1)	A person must not use a pesticide in a manner that:	21
(a)	harms any non-target animal or non-target plant, or	22
(b)	if there is no approved label or permit for the pesticide—harms any animal or plant.	23
		24
	Maximum penalty:	25
•	\$120,000 in the case of a corporation, or	26
•	\$60,000 in the case of an individual.	27
(2)	“On-farm”/residential premises exception	28
	A person does not commit an offence under subsection (1) if the person establishes:	29
		30
(a)	that the harm occurred only on the agricultural farm land, or the residential premises, in respect of which the pesticide was used, and	31
		32
		33

(b)	that the person is the occupier of that land or those premises, or is employed or engaged by the occupier of that land or those premises.	1 2 3
(3)	“Due diligence” defence	4
	It is a defence in any proceedings against a person for an offence under this section if the person establishes:	5 6
(a)	that the commission of the offence was due to causes over which the person had no control, and	7 8
(b)	that the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence.	9 10
Division 3	General offences relating to control of pesticides	11
12	Possession of unregistered pesticide	12
	A person must not possess an unregistered pesticide unless the person:	13
(a)	is authorised to do so by a permit, and	14
(b)	complies with the permit.	15
	Maximum penalty:	16
•	\$120,000 in the case of a corporation, or	17
•	\$60,000 in the case of an individual.	18
	Note. The effect of a permit is explained in the note to section 6. This offence is an “eligible law” for the purposes of Part 7 of the Agvet Code.	19 20
13	Use of unregistered pesticide	21
	A person must not use an unregistered pesticide unless the person:	22
(a)	is authorised to do so by a permit, and	23
(b)	complies with the permit.	24
	Maximum penalty:	25
•	\$120,000 in the case of a corporation, or	26
•	\$60,000 in the case of an individual.	27
	Note. The effect of a permit is explained in the note to section 6. This offence is an “eligible law” for the purposes of Part 7 of the Agvet Code.	28 29

Clause 14	Pesticides Bill 1999
Part 2	Control of pesticides
Division 3	General offences relating to control of pesticides

14 Requirement to read approved label and permit	1
(1) A person must on each occasion before using a registered pesticide:	2
(a) read an approved label for the pesticide, or	3
(b) ensure that an approved label for the pesticide is explained to the person.	4
Maximum penalty:	5
• \$120,000 in the case of a corporation, or	6
• \$60,000 in the case of an individual.	7
(2) If a permit is in force in respect of a pesticide, a person to whom the permit applies must on each occasion, before using the pesticide:	8
(a) read the permit, or	9
(b) ensure that the permit is explained to the person.	10
Maximum penalty:	11
• \$120,000 in the case of a corporation, or	12
• \$60,000 in the case of an individual.	13
(3) If a pesticide is mixed with any other substance, any requirement under subsection (1) or (2) in relation to that pesticide is not affected.	14
Note. The mixing of a pesticide with another substance still means that the approved label or permit for the pesticide must be read.	15
18	19
15 Using pesticide contrary to approved label	20
(1) A person must not use a registered pesticide in contravention of any instruction on an approved label for the pesticide unless the person:	21
(a) is authorised to do so by a permit, and	22
(b) complies with the permit.	23
Maximum penalty:	24
• \$120,000 in the case of a corporation, or	25
• \$60,000 in the case of an individual.	26
Note. The effect of a permit is explained in the note to section 6. This offence is an “eligible law” for the purposes of Part 7 of the Agvet Code.	27
28	29

- (2) If a registered pesticide is mixed with any other substance, the requirement under subsection (1) in relation to the pesticide is not affected. 1
2
3
- Note.** The mixing of a registered pesticide with another substance still means that the relevant instructions on the approved label for the pesticide must be followed. 4
5
- (3) **Defences** 6
It is a defence in any proceedings against a person for an offence under subsection (1) if the person establishes that: 7
8
- (a) the person did not contravene the relevant instructions on an approved label for the pesticide, or 9
10
- (b) the person complied with the relevant instructions on another version of an approved label for the pesticide (being an approved label that was, at the time of the alleged offence, affixed or attached to, or appeared on, the container for the pesticide that was used), or 11
12
13
14
15
- (c) the person: 16
- (i) used the pesticide at a concentration or rate lower than that specified in the instructions on an approved label for the pesticide (provided any such lower concentration or rate was not prohibited by the instructions or by any pesticide control order), and 17
18
19
20
21
- (ii) otherwise complied with the relevant instructions on the approved label. 22
23
- (4) For the purposes of subsection (3), a **relevant instruction** means an instruction that relates to any of the following matters: 24
25
- (a) any restriction (however expressed) as to the use of the pesticide (for example a direction not to use the pesticide for any purpose, or in any manner, contrary to the approved label unless authorised by law), 26
27
28
29
- (b) the situation in which the use of the pesticide is permitted (for example the type of crop), 30
31
- (c) the pest to be controlled by the pesticide, 32
- (d) the rate, concentration, frequency or timing, number, volume, or other similar limitation, in respect of which the pesticide may or may not be used, 33
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Clause 15 Pesticides Bill 1999

Part 2 Control of pesticides

Division 3 General offences relating to control of pesticides

(e)	the equipment by means of which the pesticide may be used,	1
(f)	the preparation and mixing of the pesticide,	2
(g)	withholding periods,	3
(h)	any restraints on the use of the pesticide (for example weather conditions, entry to treated areas, distance restrictions),	4 5
(i)	the protection of livestock, crops, wildlife, non-target animals or non-target plants, fish or other aquatic life,	6 7
(j)	the protection of the environment,	8
(k)	avoidance of spray drift, vapour movement and odour,	9
(l)	storing or disposal of the pesticide,	10
(m)	safety directions and other human-health related matters,	11
(n)	record keeping, training and notification requirements,	12
(o)	expiry dates or dates in which use is permitted,	13
(p)	times during the day when use of the pesticide is permitted,	14
(q)	any other matter that may be prescribed by the regulations.	15
16	Keeping pesticides in container without approved label	16
(1)	A person must not, without reasonable excuse, keep a registered pesticide in a container that does not have an approved label attached to the container.	17 18 19
	Maximum penalty:	20
	• \$20,000 in the case of a corporation, or	21
	• \$10,000 in the case of an individual.	22
(2)	If a registered pesticide is mixed with any other substance, the requirement under subsection (1) in relation to the pesticide is not affected.	23 24 25

17 Use or possession of restricted pesticides	1
A person must not possess or use a restricted pesticide unless authorised to do so by:	2
	3
(a) a certificate of competency, or	4
(b) a pesticide control order.	5
Maximum penalty:	6
• \$120,000 in the case of a corporation, or	7
• \$60,000 in the case of an individual.	8
Note. Failure to comply to comply with the conditions of any such certificate of competency, or with a pesticide control order, is an offence under this Act.	9
	10

Clause 18	Pesticides Bill 1999
Part 3	Pesticide control notices
Division 1	Preliminary

Part 3	Pesticide control notices	1
Division 1	Preliminary	2
18	Definitions	3
	In this Part:	4
	<i>clean-up notice</i> means a notice under Division 2.	5
	<i>clean-up action</i> , in relation to pesticide pollution, includes:	6
	(a) action to prevent, minimise, remove or mitigate the pesticide pollution, or	7 8
	(b) ascertaining the nature and extent of the pesticide pollution, or	9
	(c) preparing and carrying out a remedial plan of action.	10
	<i>compliance cost notice</i> means a notice under Division 4.	11
	<i>prevention notice</i> means a notice under Division 3.	12
Division 2	Clean-up notices	13
19	Environment Protection Authority may direct clean-up action	14
	(1) The Environment Protection Authority may, by notice in writing, do either or both of the following:	15 16
	(a) direct a person who is reasonably suspected by the Authority of causing or having caused any pesticide pollution,	17 18
	(b) direct an occupier of premises at which the Authority reasonably suspects that any pesticide pollution is occurring or has occurred,	19 20 21
	to take such clean-up action as is specified in the notice and within such period as is specified in the notice.	22 23
	(2) The clean-up notice may require the person to whom the notice is given to furnish reports to the Environment Protection Authority regarding progress on the carrying out of the clean-up action.	24 25 26

-
- (3) If the person given a clean-up notice complies with the notice but was not the person who caused the pesticide pollution, the cost of complying with the notice may be recovered by the person who complied with the notice as a debt in a court of competent jurisdiction from the person who caused the pesticide pollution. 1
2
3
4
5
- (4) A person who, without reasonable excuse, does not comply with a clean-up notice given to the person is guilty of an offence. 6
7
- Maximum penalty: 8
- in the case of a corporation—\$120,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues, or 9
10
11
 - in the case of an individual—\$60,000 and, in the case of a continuing offence, a further penalty of \$30,000 for each day the offence continues. 12
13
14
- 20 Clean-up by public authorities** 15
- (1) If a public authority reasonably suspects, or is advised by the Environment Protection Authority, that any pesticide pollution is occurring or has occurred, the public authority may take such clean-up action as it considers necessary. 16
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18
19
- (2) A public authority may take action under this section whether or not a clean-up notice has been given under section 19, and (if such a notice has been given) whether or not the period specified in the notice under that section has ended. 20
21
22
23
- (3) A public authority may take clean-up action under this section by itself or by its employees, agents or contractors. 24
25
- 21 Clean-up directions may be given orally** 26
- (1) The Environment Protection Authority may, instead of giving a direction under this Division by notice in writing, give the direction orally. 27
28
29
- (2) A direction that can be given orally under this Division by the Environment Protection Authority can be given orally by a person who is acting under delegated or other authority from the Authority. 30
31
32
- (3) A direction given orally to a person ceases to have effect on the expiration of 72 hours from the time it was given unless confirmed by a written clean-up notice given to the person. 33
34
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-

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- (2) The Environment Protection Authority may, by notice in writing, do either or both of the following:
- (a) direct the occupier of the premises,
 - (b) direct the person who is using or who used the pesticide,
- to take such action, as is specified in the notice and within such period (if any) as is specified in the notice, to ensure that the pesticide, or the pesticide and any other pesticide, is in the future used in an environmentally satisfactory manner.
- (3) The action to be taken may (without limitation) include any of the following:
- (a) any action relating to the use of a pesticide (for example the method of application, use at a specified time only, use on specified land only, and the climatic conditions in which the pesticide may be used),
 - (b) notification that a pesticide has or is about to be used,
 - (c) ceasing to use a particular pesticide, a particular type of spray equipment or a particular method of application,
 - (d) ceasing to carry on any operation that involves the use of a pesticide,
 - (e) monitoring, sampling, analysing and recording information that is relevant to the use of a pesticide (eg weather conditions),
 - (f) preparing and carrying out a plan of action to prevent any pesticide from being used in an environmentally unsatisfactory manner,
 - (g) installing, repairing, altering, replacing, maintaining or operating equipment or other machinery used in the application of any pesticide.
- (4) If the occupier who is given a notice is not the person who is using or who used the pesticide, the notice is taken to require the occupier to take all available steps to cause the action to be taken.
- (5) A prevention notice may require the person to whom the notice is given to furnish reports to the Environment Protection Authority regarding progress on carrying out the action required to be taken by the notice.

Clause 25	Pesticides Bill 1999
Part 3	Pesticide control notices
Division 3	Prevention notices

25	Offence	1
	A person who does not comply with a prevention notice given to the person is guilty of an offence.	2 3
	Maximum penalty:	4
	• in the case of a corporation—\$120,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues, or	5 6 7
	• in the case of an individual—\$60,000 and, in the case of a continuing offence, a further penalty of \$30,000 for each day the offence continues.	8 9 10
26	Commencement of operation of prevention notice or variation of prevention notice	11 12
	A prevention notice, or a variation of a prevention notice, does not operate:	13 14
	(a) until the period within which an appeal under this Act can be lodged against the notice or variation has expired without an appeal being lodged, or	15 16 17
	(b) if such an appeal is lodged within that period, until the Land and Environment Court confirms the notice or variation or the appeal is withdrawn, or	18 19 20
	(c) until the person who has the right to lodge such an appeal notifies the Environment Protection Authority in writing that no appeal is to be made against the notice or variation,	21 22 23
	whichever first occurs.	24
27	Fee	25
	(1) The purpose of this section is to enable the Environment Protection Authority to recover the administrative costs of preparing and giving prevention notices.	26 27 28
	(2) A person who is given a prevention notice by the Environment Protection Authority must within 30 days pay the prescribed fee to the Authority.	29 30 31
	(3) The Environment Protection Authority may on the application of a person to whom subsection (2) applies:	32 33
	(a) extend the time for payment of the fee, or	34
	(b) waive payment of the fee.	35

- (4) The fee is not payable during the currency of an appeal against the prevention notice. 1
2
- (5) If the decision of the Land and Environment Court on an appeal does not invalidate the prevention notice, the fee is payable within 30 days of the decision. 3
4
5
- (6) A person who does not pay the fee within the time provided under this section is guilty of an offence. 6
7
- Maximum penalty: \$20,000. 8

Division 4 Compliance cost 9

28 Compliance cost notices 10

- (1) If the Environment Protection Authority gives a clean-up notice under section 19 to a person, the Authority may, by notice in writing, require the person to pay all or any reasonable costs and expenses incurred by the Authority in connection with: 11
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- (a) monitoring action under the notice, and 15
- (b) ensuring that the notice is complied with, and 16
- (c) any other associated matters. 17
- (2) A public authority that takes clean-up action under section 20 may, by notice in writing, require: 18
19
- (a) the person who is reasonably suspected by the public authority of having caused the pesticide pollution concerned, or 20
21
- (b) the occupier of the premises at which the public authority reasonably suspects that the pesticide pollution occurred, 22
23
- or both, to pay all or any reasonable costs and expenses incurred by the public authority in connection with the clean-up action. 24
25

29 Recovery of amounts 26

- (1) The Environment Protection Authority or public authority concerned may recover any unpaid amounts specified in a compliance cost notice as a debt in a court of competent jurisdiction. 27
28
29

Clause 29 Pesticides Bill 1999

Part 3 Pesticide control notices

Division 4 Compliance cost

(2)	If the person given a compliance cost notice complies with the notice but was not the person who caused the pesticide pollution, the cost of complying with the notice may be recovered by the person who complied with the notice as a debt in a court of competent jurisdiction from the person who caused the pesticide pollution.	1 2 3 4 5
30	Registration of compliance cost notices in relation to land	6
(1)	If a compliance cost notice has been given by the Environment Protection Authority or a public authority to a person, the Authority or public authority may apply to the Registrar-General for registration of the notice in relation to any land owned by the person.	7 8 9 10
(2)	An application under this section must define the land to which it relates.	11 12
(3)	The Registrar-General must, on application under this section and lodgment of a copy of the compliance cost notice, register the notice in relation to the land in such manner as the Registrar-General thinks fit.	13 14 15 16
(4)	If the notice relates to land under the provisions of the <i>Real Property Act 1900</i> , the notice is to be registered under that Act.	17 18
31	Charge on land subject to compliance cost notice	19
(1)	This section applies where a compliance cost notice is registered under section 30, on the application of the Environment Protection Authority or a public authority, in relation to particular land owned by a person.	20 21 22
(2)	There is created by force of this section, on the registration of the notice, a charge on the land in relation to which the notice is registered to secure the payment to the Environment Protection Authority or public authority of the amount specified in the notice.	23 24 25 26
(3)	Such a charge ceases to have effect in relation to the land:	27
(a)	on payment to the Environment Protection Authority or public authority of the amount concerned, or	28 29
(b)	on the sale or other disposition of the land with the written consent of the Environment Protection Authority or public authority, or	30 31 32
(c)	on the sale of the land to a purchaser in good faith for value who, at the time of the sale, has no notice of the charge,	33 34
	whichever first occurs.	35

(4) Such a charge is subject to every charge or encumbrance to which the land was subject immediately before the notice was registered.	1 2
(5) Such a charge is not affected by any change of ownership of the land, except as provided by subsection (3).	3 4
(6) If:	5
(a) such a charge is created on land of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, land of that kind, and	6 7 8
(b) the charge is so registered,	9
a person who purchases or otherwise acquires the land after the registration of the charge is, for the purposes of subsection (3), taken to have notice of the charge.	10 11 12
(7) The regulations may make provision for or with respect to the removal of a charge under this section.	13 14
Division 5 Miscellaneous	15
32 Multiple notices	16
More than one notice under a provision of this Part may be given to the same person.	17 18
33 Extraterritorial application	19
A notice may be given under this Part to a person in respect of a matter or thing even though the person is outside the State or the matter or thing occurs or is located outside the State, so long as the matter or thing affects the environment of this State.	20 21 22 23
34 Revocation or variation	24
(1) A notice given under this Part may be revoked or varied by a subsequent notice or notices.	25 26
(2) A notice may be varied by modification of, or addition to, its terms and specifications.	27 28
(3) Without limiting the above, a notice may be varied by extending the time for complying with the notice.	29 30
(4) A notice may only be revoked or varied by the Environment Protection Authority.	31 32

Clause 35	Pesticides Bill 1999
Part 3	Pesticide control notices
Division 5	Miscellaneous

35	Power to enter land	1
(1)	The Environment Protection Authority or a public authority may, by its employees, agents or contractors, enter any premises at any reasonable time for the purpose of exercising its functions under this Part.	2 3 4 5
(2)	For the purpose of entering or leaving any such premises, the power conferred by this section extends to entering other premises.	6 7
(3)	A power to enter premises conferred by this section authorises entry by foot or by means of a motor vehicle or other vehicle, or in any other manner.	8 9 10
(4)	Entry may be effected under this section by the Environment Protection Authority or a public authority with the aid of such authorised officers or police officers as the Environment Protection Authority or public authority considers necessary and with the use of reasonable force.	11 12 13 14 15
(5)	This section does not empower a person to enter any part of premises used only for residential purposes without the permission of the occupier of the premises or the authority of a search warrant under section 199 of the <i>Protection of the Environment Operations Act 1997</i> .	16 17 18 19
	Note. Chapter 7 of the <i>Protection of the Environment Operations Act 1997</i> , which contains a search warrant power, extends to the exercise of powers under this Act.	20 21
36	Obstruction of persons	22
	A person who wilfully delays or obstructs:	23
(a)	a person who is carrying out any action in compliance with a notice under this Part, or another person authorised by the person to carry it out, or	24 25 26
(b)	a public authority that is taking clean-up action under Division 2, or another person authorised by the authority to carry it out,	27 28
	is guilty of an offence.	29
	Maximum penalty:	30
	• in the case of a corporation—\$120,000 and, in the case of a continuing offence, a further penalty of \$60,000 for each day the offence continues, or	31 32 33
	• in the case of an individual—\$60,000 and, in the case of a continuing offence, a further penalty of \$30,000 for each day the offence continues.	34 35 36

37 False or misleading statements in reports

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A person who in a report required under this Part and lodged with the Environment Protection Authority makes a statement that the person knows is false or misleading in a material particular is guilty of an offence.

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Maximum penalty:

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- in the case of a corporation—\$120,000, or
- in the case of an individual—\$60,000.

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Part 4 Pesticide control orders

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38 Making of pesticide control order

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- (1) The Environment Protection Authority may, with the approval of the Minister, make a pesticide control order. 3
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- (2) A pesticide control order may be made: 5
- (a) for any purpose relating to the protection of public health, property, the environment or trade, or 6
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- (b) in order to implement a decision or policy of the National Registration Authority in relation to any pesticide. 8
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- (3) A pesticide control order has no effect unless it is published in the Gazette. 10
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- (4) A pesticide control order takes effect on and from the date specified in the order (being a date that is not earlier than the date the order is published in the Gazette). 12
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- (5) The Environment Protection Authority is to cause a pesticide control order to be published in such newspapers and other publications as the Authority thinks appropriate. 15
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- (6) In this section: 18
- National Registration Authority* means the National Registration Authority for Agricultural and Veterinary Chemicals established by the *Agricultural and Veterinary Chemicals (Administration) Act 1992* of the Commonwealth. 19
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39 Operation of pesticide control order

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- (1) A pesticide control order may: 24
- (a) prohibit or control the use of a pesticide or class of pesticide that is specified in the order, or 25
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- (b) authorise the use or possession of a restricted pesticide or class of restricted pesticide that is specified in the order, 27
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- subject to such conditions as may be specified in the order. 29
- (2) A pesticide control order may prohibit or control the use of a pesticide, or authorise the use or possession of a restricted pesticide, by reference to any one or more of the following: 30
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| (a) | the manner in which the pesticide to which the order relates may or may not be used (including the equipment by means of which the pesticide may or may not be used), | 1
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| (b) | the class of persons who may or may not use the pesticide, | 4 |
| (c) | the climatic conditions under which the pesticide may or may not be used, | 5
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| (d) | the land in respect of which the pesticide may or may not be used, | 7
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| (e) | the occasions (whether by reference to particular days of the year or particular times of the day or the year) on which the pesticide may or may not be used, | 9
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| (f) | the concentration or application rate in which the pesticide may or may not be used, | 12
13 |
| (g) | requiring training in the use of the pesticide, | 14 |
| (h) | requiring records to be kept in relation to the use of the pesticide, | 15
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| (i) | requiring notification to be given, in a specified manner, to persons in the area where a pesticide is proposed to be used, | 17
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| (j) | requiring the erection of signs, in or about the area in which a pesticide is proposed to be used, | 19
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| (k) | any other circumstances in which the pesticide may or may be used, | 21
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| (l) | any other factor or condition specified in the order. | 23 |
| (3) | A pesticide control order may impose additional requirements to those appearing on an approved label or specified in a permit. In the event of any inconsistency between the requirements imposed by an order and those appearing on an approved label or specified in a permit, the terms of the order prevail. | 24
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| (4) | A person must not contravene a pesticide control order. | 29 |
| | Maximum penalty: | 30 |
| | • \$120,000 in the case of a corporation, or | 31 |
| | • \$60,000 in the case of an individual. | 32 |

Clause 40	Pesticides Bill 1999
Part 5	Miscellaneous powers and offences

Part 5	Miscellaneous powers and offences	1
40	Application of Chapter 7 of Protection of the Environment Operation Act 1997	2
	Chapter 7 (Investigation) of the <i>Protection of the Environment Operations Act 1997</i> extends to the exercise of powers in connection with this Act and the regulations.	3
	Note. Section 186 of the <i>Protection of the Environment Operations Act 1997</i> provides that Chapter 7 of that Act extends to the exercise of powers in connection with certain other legislation, including this Act. Chapter 7 of the <i>Protection of the Environment Operations Act 1997</i> deals with such matters as the appointment of authorised officers, powers to require information and records, powers of entry and search, powers to question and to identify persons, and powers with respect to certain things such as vehicles.	4
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41	Destruction of pesticides	14
(1)	An authorised officer may, with the written approval of the Environment Protection Authority, give directions for the destruction of, or rendering harmless of, any pesticide if the authorised officer is of the opinion that:	15
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(a)	it is necessary in the interest of public health or of any person to do so, or	19
		20
(b)	it is necessary to do so because of any harm or risk of harm to any person, property, the environment or trade.	21
		22
(2)	A person to whom any such direction is given must comply with the direction.	23
		24
	Maximum penalty:	25
	• \$120,000 in the case of a corporation, or	26
	• \$60,000 in the case of an individual.	27
(3)	An authorised officer may give a direction under subsection (1) without the approval of the Environment Protection Authority in an emergency situation where there is an imminent danger to public health (or of any person) or imminent harm to property, the environment or trade.	28
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(4)	An authorised officer may destroy or render harmless any pesticide if the owner of the pesticide authorises the authorised officer to do so.	33
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- (5) The owner of the pesticide is liable for the expenses incurred in the destruction or rendering harmless of the pesticide concerned. Any such expense may be recovered by the Environment Protection Authority as a debt in a court of competent jurisdiction. 1
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42 Defective equipment 5

- (1) This section applies where an authorised officer is of the opinion that any equipment being used in the application of a pesticide is defective. 6
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- (2) The authorised officer may, by notice in writing given to such person as appears to the authorised officer to have possession for the time being of the defective equipment, direct the person to cease using the equipment until: 8
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- (a) such time as the equipment is repaired or serviced in accordance with the notice, or 12
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- (b) such time as any other requirement specified in the notice is carried out, or 14
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- (c) such other time as is specified in the notice. 16
- (3) A notice given under this section may be revoked or varied by an authorised officer by further notice in writing given to the person. 17
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- (4) If a notice is given under this section in respect of any equipment, a person must not use the equipment in contravention of the notice. 19
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- Maximum penalty: 21
- \$120,000 in the case of a corporation, or 22
 - \$60,000 in the case of an individual. 23
- (5) If an authorised officer has given a notice under this section in respect of any equipment, the authorised officer may affix to the equipment a notice (a *defect notice*) to the effect that the equipment is defective and must not be used. 24
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- (6) A person (other than an authorised officer or person acting with the authority of such an officer) who removes a defect notice, or who obliterates or interferes with a defect notice, is guilty of an offence. 28
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- Maximum penalty: \$60,000. 31

43 Attachment of aerial spraying equipment to aircraft	1
A person must not attach any aerial spraying equipment to an aircraft unless the aircraft is approved by the Civil Aviation Safety Authority for agricultural operations.	2 3 4
Maximum penalty:	5
• \$120,000 in the case of a corporation, or	6
• \$60,000 in the case of an individual.	7
44 Disclosure of information	8
(1) A person is guilty of an offence if the person discloses any information relating to any agricultural, manufacturing or commercial secrets or working processes and obtained by the person in connection with the administration or execution of this Act or the regulations, unless the disclosure:	9 10 11 12 13
(a) is made with the consent of the person from whom the information was obtained, or	14 15
(b) is made in connection with the administration or execution of this Act or the regulations, or	16 17
(c) is made with the prior permission of the Minister, or	18
(d) is ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing and determination by that court, body or person of any matter or thing, or	19 20 21 22
(e) is made under subsection (3).	23
Maximum penalty: \$20,000.	24
(2) The Minister may grant the permission referred to in subsection (1) (c) only if the Minister is satisfied that to do so would be in the public interest.	25 26 27
(3) The Environment Protection Authority may communicate any matter which comes to the knowledge of the Authority in the exercise or performance of the its functions under this Act or the regulations:	28 29 30
(a) to an officer or authority engaged in administering or executing a law of the Commonwealth or of another State or a Territory relating to pesticides, or	31 32 33

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- (b) to any person, when communication of the matter to that person is, in the opinion of the Environment Protection Authority, reasonably related to the prevention of harm that may be, or the amelioration of harm that has been, caused by a pesticide to any person, property, the environment or trade. 1
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Clause 45	Pesticides Bill 1999
Part 6	Licences and certificates of competency
Division 1	Licensing of aerial pesticide operations

Part 6 Licences and certificates of competency 1

Division 1 Licensing of aerial pesticide operations 2

45 Requirement for licence 3

- (1) A person must not pilot an aircraft that is being used in the application of a pesticide unless: 4
- (a) the person is the holder of a pilot (pesticide rating) licence, and 5
 - (b) the person: 6
 - (i) is the holder of an aircraft (pesticide applicator) licence, 7
 - or 8
 - (ii) is employed or engaged, when applying the pesticide, by the holder of an aircraft (pesticide applicator) licence. 9

Maximum penalty: \$60,000. 10

- (2) A person (*the employer*) must not employ or engage any other person (*the pilot*) to pilot an aircraft that is being used in the application of a pesticide unless: 11
- (a) the employer is the holder of an aircraft (pesticide applicator) licence, and 12
 - (b) the pilot is the holder of a pilot (pesticide rating) licence. 13

Maximum penalty: 14

- \$120,000 in the case of a corporation, or 15
- \$60,000 in the case of an individual. 16

46 Application for licence 17

- (1) A person may apply to the Environment Protection Authority for a licence. 18
- (2) An application must: 19
- (a) be in the form approved by the Authority, and 20
 - (b) be accompanied by the fee prescribed by the regulations. 21

-
- (3) An application for an aircraft (pesticide applicator) licence must: 1
- (a) specify the name and address of the applicant, and 2
 - (b) be accompanied by evidence that the applicant holds an insurance policy of a class prescribed by the regulations (or is eligible to hold such an insurance policy), and 3
4
5
 - (c) be accompanied by such other particulars as are required by the regulations. 6
7
- (4) An application for a pilot (pesticide rating) licence must: 8
- (a) specify the name and address of the applicant, and 9
 - (b) be accompanied by such other particulars as are required by the regulations. 10
11
- 47 Further information** 12
- (1) The Environment Protection Authority may, by written notice served on the applicant for the licence, require the applicant to provide the Authority with such information as it considers necessary or relevant to the application, and that is specified in the notice, by a date so specified. 13
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- (2) If an applicant fails to comply with the requirements of a notice served under subsection (1) or, in purported compliance with a notice so served, provides information that, in the opinion of the Environment Protection Authority, is inadequate, the Authority may refuse to grant the licence. 18
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- 48 Grant of licence** 23
- (1) The Environment Protection Authority may determine an application for a licence by granting a licence to the applicant. 24
25
- (2) The Authority may refuse to grant a licence to an applicant for an aircraft (pesticide applicator) licence if: 26
27
- (a) the Authority is of the opinion that the applicant is not a fit and proper person to hold such a licence, or 28
29
 - (b) the applicant does not hold the qualifications prescribed by the regulations, or 30
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 - (c) the applicant does not hold an insurance policy of a class prescribed by the regulations (or is not eligible to hold such a policy). 32
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(3)	The Environment Protection Authority may refuse to grant a licence to an applicant for a pilot (pesticide rating) licence if:	1
		2
(a)	the Authority is of the opinion that the applicant is not a fit and proper person to hold such a licence, or	3
		4
(b)	the applicant does not hold the qualifications prescribed by the regulations.	5
		6
(4)	If the Environment Protection Authority grants a licence, the Authority is to cause to be published in the Gazette a notice:	7
		8
(a)	stating the name and address of the holder of the licence and the date on which the licence was granted, and	9
		10
(b)	containing such other information as the Authority thinks fit.	11
49	Licence conditions	12
(1)	A licence may be granted subject to such conditions as the Environment Protection Authority thinks fit to impose and that are specified in the licence.	13
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		15
(2)	The Authority may at any time by notice in writing served on the holder of the licence:	16
		17
(a)	revoke or vary any condition to which the licence is subject, or	18
		19
(b)	impose new conditions to which the licence is subject.	19
50	Licence fees	20
(1)	The holder of a licence must in each year pay to the Environment Protection Authority, before the date prescribed by the regulations for the purpose, an annual licence fee prescribed by the regulations.	21
		22
		23
(2)	If a fee in relation to a licence is unpaid, the Authority may recover the fee from the holder of the licence as a debt in a court of competent jurisdiction.	24
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		26
51	Duration of licence	27
(1)	Once a licence is granted, the licence remains in force until it is suspended or revoked by the Environment Protection Authority or is surrendered to the Authority.	28
		29
		30
(2)	A licence is, while it remains in force, subject to any variations made to the licence under this Act.	31
		32

52	Requirement to notify change in particulars	1
	The holder of a licence must notify the Environment Protection Authority in writing of any change in the particulars specified in the licence within 14 days after the change occurs.	2 3 4
	Maximum penalty: \$10,000.	5
53	Licensees to provide certain information	6
	(1) The holder of a licence must supply the Environment Protection Authority with the particulars of any information received by the holder that contradicts or modifies any information provided by the holder in connection with the application for the licence.	7 8 9 10
	Maximum penalty: \$10,000.	11
	(2) If the holder of a licence ceases to hold the qualifications prescribed by the regulations for the type of licence concerned, the holder must immediately supply the Environment Protection Authority with particulars of that fact.	12 13 14 15
	Maximum penalty: \$10,000.	16
	(3) If a prescribed insurance policy held by the holder of an aircraft (pesticide applicator) licence expires, or is varied, suspended or cancelled, the holder must immediately supply the Environment Protection Authority with particulars of that fact.	17 18 19 20
	Maximum penalty: \$10,000.	21
54	Records of aerial application of pesticides	22
	(1) The holder of an aircraft (pesticide applicator) licence must cause a record to be made in accordance with subsection (2) in respect of each occasion on which the holder of the licence has caused an aircraft to be used in the application of a pesticide.	23 24 25 26
	Maximum penalty:	27
	• \$120,000 in the case of a corporation, or	28
	• \$60,000 in the case of an individual.	29
	(2) The record must be made immediately after the application of the pesticide and must contain:	30 31
	(a) the name and address of the person who piloted the aircraft, and	32
	(b) a description of the pesticide that was applied (including product name and active constituents), and	33 34

Clause 54 Pesticides Bill 1999

Part 6 Licences and certificates of competency

Division 1 Licensing of aerial pesticide operations

(c)	the date and time of the application of the pesticide (including the start and finish time), and	1 2
(d)	the registration mark of the aircraft used in the application of the pesticide, and	3 4
(e)	a description of the manner in which, the climatic conditions under which and the equipment by means of which the pesticide was applied, and	5 6 7
(f)	a description of the land over which the pesticide was applied (including the address of the land or the particular paddock or part of a paddock), and	8 9 10
(g)	such other particulars as are required by the regulations to be contained in the record.	11 12
(3)	A record required to be made under this section must be kept by the holder of the licence concerned for a period of not less than 3 years after the date of the occasion to which the record relates.	13 14 15
	Maximum penalty:	16
•	\$120,000 in the case of a corporation, or	17
•	\$60,000 in the case of an individual.	18
55	Suspension or revocation of licence	19
(1)	The Environment Protection Authority may, for such reasons as it thinks fit, suspend a licence by notice in writing given to the holder of the licence for such period (not exceeding 6 months) as is specified in the notice. The Authority may, by further notice given to the licence holder, rescind the suspension or vary the period of suspension.	20 21 22 23 24
(2)	The Authority may, by notice in writing given to the holder of a licence, revoke the licence for any of the following reasons:	25 26
(a)	the holder of the licence ceases to have the qualifications prescribed by the regulations for the type of licence concerned,	27 28
(b)	in the case of an aircraft (pesticide applicator) licence—the holder of the licence ceases to hold an insurance policy prescribed by the regulations,	29 30 31
(c)	the holder of the licence supplied information that was, to the holder’s knowledge, false or misleading in a material particular in, or in connection with, the application for the licence,	32 33 34

(d)	the holder of the licence has contravened any provision of this Act or the regulations, whether or not the holder has been convicted of an offence for the contravention,	1 2 3
(e)	the holder of the licence has contravened any condition to which the licence is subject,	4 5
(f)	if the Authority is of the opinion that the holder of the licence is no longer a fit and proper person to hold the licence,	6 7
(g)	if the Authority receives information about the holder of the licence and the Authority is of the opinion that, had the information been received at the time when an application for the licence was made, it would have refused the application,	8 9 10 11
(h)	if the holder of the licence fails to pay the annual licence fee under section 50.	12 13
(3)	If the Environment Protection Authority suspends or revokes a licence, the Authority must cause a notice to be published in the Gazette:	14 15
(a)	stating that the licence has been suspended or revoked, and	16
(b)	containing such other information as the Authority thinks fit.	17
(4)	The suspension or revocation of a licence takes effect on the day on which the notice of the suspension or revocation is given to the holder of the licence (or on such later date as may be specified in the notice).	18 19 20
Division 2	Certificates of competency	21
56	Application for certificate of competency	22
(1)	A person may apply to the Environment Protection Authority for a certificate of competency authorising the person to use or possess a restricted pesticide to which the certificate relates.	23 24 25
(2)	An application for a certificate must:	26
(a)	be in the form approved by the Authority, and	27
(b)	be accompanied by the fee prescribed by the regulations.	28
57	Granting of certificate of competency	29
(1)	The Environment Protection Authority may determine an application for a certificate of competency by granting a certificate to the applicant.	30 31

Clause 57 Pesticides Bill 1999

Part 6 Licences and certificates of competency

Division 2 Certificates of competency

- (2) The Environment Protection Authority may refuse to grant a certificate of competency if it is of the opinion that the applicant for the certificate is not competent to use or possess the restricted pesticide in respect of which the application relates without unintended harm being caused by the pesticide. The Authority may refuse to grant a certificate for any other reasons it thinks fit. 1
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- (3) In granting a certificate of competency, the Environment Protection Authority may impose conditions on the use or possession of the restricted pesticide in respect of which the certificate relates. 7
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- (4) The Environment Protection Authority may at any time by notice in writing served on the holder of a certificate of competency: 10
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- (a) revoke or vary any condition to which the certificate is subject, 12
or 13
- (b) impose new conditions to which the certificate is subject. 14
- (5) A certificate of competency must specify: 15
- (a) the person to whom it is granted, and 16
- (b) the restricted pesticide in respect of which it relates, and 17
- (c) the period of time for which it is granted, and 18
- (d) the conditions to which it is subject. 19
- (6) The regulations may determine fees for the granting of certificates of competency. 20
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- (7) A certificate of competency remains in force for the period specified in the certificate unless it is sooner suspended or revoked by the Environment Protection Authority or is surrendered to the Authority. 22
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- 58 Suspension or revocation of certificate of competency 25**
- (1) The Environment Protection Authority may, for such reasons as it thinks fit, suspend a certificate of competency by notice in writing given to the holder of the certificate for such period as is specified in the notice. The Authority may, by further notice given to the certificate holder, rescind the suspension or vary the period of suspension. 26
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- (2) The Environment Protection Authority may, by notice in writing given to the holder of a certificate of competency, revoke the certificate for any of the following reasons: 31
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(a)	the holder of the certificate supplied information that was, to the holder's knowledge, false or misleading in a material particular in, or in connection with, the application for the certificate,	1 2 3 4
(b)	the holder of the certificate has contravened any provision of this Act or the regulations, whether or not the holder has been convicted of an offence for the contravention,	5 6 7
(c)	the holder of the certificate has contravened any condition to which the certificate is subject,	8 9
(d)	if the Authority receives information about the holder of the certificate and the Authority is of the opinion that, had the information been received at the time when an application for the certificate was made, it would have refused the application,	10 11 12 13
(e)	if the Authority receives information about a restricted pesticide and the Authority is of the opinion that, had the information been received at the time when an application for the certificate was made, it would have refused the application.	14 15 16 17
(3)	The suspension or revocation of a certificate of competency takes effect on the day on which the notice of the suspension or revocation is given to the holder of the certificate (or on such later date as may be specified in the notice).	18 19 20 21
Division 3	General provisions relating to licences and certificates of competency	22 23
59	Contravention of conditions	24
	A person who is the holder of a licence or certificate of competency must not contravene any condition to which the licence or certificate is subject.	25 26 27
	Maximum penalty:	28
	• \$120,000 in the case of a corporation, or	29
	• \$60,000 in the case of an individual.	30
60	Offences relating to false or misleading statements and holding out	31
(1)	A person must not, in connection with:	32
(a)	an application for a licence or a certificate of competency, or	33

Clause 60 Pesticides Bill 1999

Part 6 Licences and certificates of competency

Division 3 General provisions relating to licences and certificates of competency

(b)	a notice of any proposed change in the particulars specified in a licence or certificate of competency,	1 2
	make any statement that the person knows to be false or misleading in a material particular.	3 4
	Maximum penalty: \$60,000.	5
(2)	A person must not make any representation to the effect that the person is the holder of a licence or certificate of competency if the person does not hold the licence or certificate concerned.	6 7 8
	Maximum penalty: \$60,000.	9
61	Misuse of licences or certificates of competency	10
(1)	A person other than the holder of a licence or certificate of competency must not, without reasonable excuse, have a licence or certificate of competency in the person's possession.	11 12 13
	Maximum penalty: \$60,000.	14
(2)	A person must not forge or alter a licence or certificate of competency with intent to deceive.	15 16
	Maximum penalty: \$60,000.	17
(3)	The holder of a licence or certificate of competency must not lend the licence or certificate to, or allow it to be used by, any other person for any purpose for which the licence or certificate was granted.	18 19 20
	Maximum penalty: \$60,000.	21
62	Application to Administrative Decisions Tribunal for review of certain decisions	22 23
(1)	A person may apply to the Administrative Decisions Tribunal for a review of any of the following decisions:	24 25
(a)	the refusal or failure by the Environment Protection Authority to grant a licence or certificate of competency to the person,	26 27
(b)	a condition imposed by the Environment Protection Authority in relation to a licence or certificate of competency granted to the person,	28 29 30
(c)	the suspension or revocation of a licence or certificate of competency granted to the person.	31 32

Pesticides Bill 1999

Clause 62

Licences and certificates of competency

Part 6

General provisions relating to licences and certificates of competency

Division 3

- (2) For the purposes of this section, an application for the grant of a licence or certificate of competency is taken to have been refused if the licence is not granted within 90 days after the application is made in accordance with this Act. 1
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Part 7 Control of pesticide residues in agricultural produce	1
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63 Definitions	3
(1) In this Part:	4
<i>agricultural produce</i> means any produce that:	5
(a) is, or may become, capable of being used as food for any form of life, and	6
(b) is prescribed by the regulations,	7
but does not include any produce that is the result of a manufacturing process.	8
<i>metabolite</i> , in relation to a pesticide, includes any substance resulting from the breakdown, conversion or reaction of the pesticide.	9
<i>pesticide residue</i> , in relation to agricultural produce, means any substance or organism (including a pesticide or any metabolite of a pesticide) that is present in or on the produce as a result of the use of a pesticide or contact between a pesticide and the produce.	10
(2) For the purposes of this Part, agricultural produce contains a prohibited residue when:	11
(a) a concentration of a prescribed substance that is in excess of the maximum permissible concentration of that substance prescribed by the regulations in respect of the produce is present in or on the produce, or	12
(b) if a maximum permissible concentration for that pesticide residue has not been prescribed in respect of the produce—any concentration of a pesticide residue is present in or on the produce.	13
(3) If the regulations prescribe the method by which the concentration of any relevant substance or pesticide residue is to be ascertained, the concentration of the relevant substance or pesticide residue is, for the purposes of this Part, to be the concentration ascertained by the use of that method.	14
(4) For the purposes of this Part, if the quantity of any agricultural produce is to be specified, described or prescribed, it may be specified, described or prescribed by reference to its weight or volume, any container in which it is situated, or the premises on which it is situated.	15
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64 Pesticide residue notices	1
(1) If an authorised officer reasonably suspects that any agricultural produce contains a pesticide residue, the authorised officer may, with the approval of the Environment Protection Authority, serve a notice in the approved form on:	2
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(a) the owner of the produce, or	6
(b) the occupier of the premises in or on which the produce is situated, or	7
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(c) the person who appears to the authorised officer to be the person in charge of any premises in or on which the produce is situated.	9
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(2) A notice served under this section in relation to any agricultural produce:	12
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(a) must:	14
(i) describe the produce, and	15
(ii) describe where the produce is situated at the time of service of the notice, and	16
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(iii) specify or describe the quantity of the produce, and	18
(iv) specify the expiry date of the notice, being a date occurring not more than 14 days after the date of service of the notice, and	19
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(b) may contain provisions requiring any person on whom it is to be served and who has possession or control of the agricultural produce:	22
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(i) not to part with possession or control of the produce, or	25
(ii) to retain the produce at the premises on which it is situated at the time the notice is served or on premises that are under the control of that person (or another person specified in the notice) where the produce will, in the opinion of the authorised officer, least endanger the health of the public or of any person, or	26
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(iii) to deal with the produce or to do anything in relation to the produce (other than requiring the destruction of the produce) in accordance with the directions set out in the notice, being directions that are reasonably necessary for the preservation of the health of the public or of any person.	31
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(3) The Environment Protection Authority or any authorised officer may revoke a notice served under this section by giving notice of its revocation to the person on whom it was served.	1 2 3
(4) A notice issued under this section in relation to any agricultural produce is in force from the time of service of the notice until the expiry date specified in the notice unless it is sooner revoked:	4 5 6
(a) by service of an order made by the Minister under section 65 in relation to the whole or any part of the produce, or	7 8
(b) by the Environment Protection Authority or an authorised officer under subsection (3).	9 10
(5) While a notice under this section is in force, the person on whom it was served must not fail to comply with any requirement of the notice that is applicable to the person.	11 12 13
Maximum penalty:	14
• \$120,000 in the case of a corporation, or	15
• \$60,000 in the case of an individual.	16
65 Pesticide residue orders	17
(1) The Minister may:	18
(a) make an order under this section in respect of the whole or part of any agricultural produce that is specified or described in a notice that has been served under section 64, and	19 20 21
(b) cause the order to be served as provided by subsection (4) (a).	22
(2) An order made and served under this section in relation to any agricultural produce:	23 24
(a) must:	25
(i) describe the name of the produce, and	26
(ii) describe where the produce was situated at the time of service of the notice under section 64 in respect of which the order is made, and	27 28 29
(iii) specify or describe the quantity of the produce, and	30
(iv) specify the date on which the order is made, and	31
(v) specify the expiry date of the order, being a date occurring not more than 6 months after the date on which the order is made, and	32 33 34

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| (b) | may contain provisions requiring any person on whom it is to be served and who has possession or control of the produce: | 1 |
| | (i) not to part with possession or control of the produce, or | 2 |
| | (ii) to retain the produce in or on the premises specified in the order and that are under the control of that person, | 3 |
| | or | 4 |
| | (iii) to deal with the produce or to do anything in relation to the produce in accordance with the directions set out in the order, being directions that are reasonably necessary for the preservation of the health of the public or of any person, or | 5 |
| | (iv) subject to subsection (3), within a time specified in the order, to destroy the produce in a manner described in the order or in accordance with the directions of an authorised officer. | 6 |
| (3) | The Minister may not cause an order under this section to be served, being an order requiring the destruction of a quantity of agricultural produce, unless: | 7 |
| | (a) at the time the Minister made the order, the Minister was satisfied that: | 8 |
| | (i) at least one sample of the produce from each prescribed portion of the quantity of produce contains a pesticide residue, or | 9 |
| | (ii) if the quantity of the produce is less than or equal to the prescribed portion in relation to the produce, at least one sample of the produce contains a pesticide residue, and | 10 |
| | (b) the requirement to destroy the agricultural produce does not take effect before 90 days after the date of service of the order, and | 11 |
| | (c) the Minister is of the opinion that there is no reasonable likelihood of the agricultural produce ceasing to contain a pesticide residue within the period of 3 years following the date on which the Minister made the order. | 12 |
| (4) | An order made under this section: | 13 |
| | (a) may be served on the owner of the agricultural produce in relation to which it was made or on the occupier of any premises on which the produce is situated at the time of service of the order, and | 14 |

(b)	remains in force from the time it is served until the expiry date specified in the order, unless it is sooner revoked by the Minister, and	1 2 3
(c)	revokes any notice issued under section 64 that relates to the agricultural produce to which the order relates.	4 5
(5)	If an order under this section is in force, the person on whom it was served must not fail to comply with any requirement of the order that is applicable to the person.	6 7 8
	Maximum penalty:	9
	• \$120,000 in the case of a corporation, or	10
	• \$60,000 in the case of an individual.	11
(6)	In this section:	12
	<i>prescribed portion</i> , in relation to a quantity of agricultural produce, means:	13 14
(a)	if the quantity is specified or described in the order by reference to its weight—50 tonnes, or	15 16
(b)	if the quantity is specified or described in the order by reference to its volume:	17
(i)	if the produce is not in liquid form—100 cubic metres,	18 19
or		20
(ii)	if the produce is in liquid form—5,000 litres, or	21
(c)	if the quantity is specified or described in the order by reference to the premises on which it is situated—150 hectares, or	22 23
(d)	such smaller portion as may be prescribed by the regulations in relation to the produce.	24 25
66	Destruction of agricultural produce by authorised officer in default	26
(1)	If a person fails to comply with a requirement of an order under section 65 to destroy any agricultural produce, the Environment Protection Authority may authorise an authorised officer to destroy the produce.	27 28 29 30
(2)	The authorised officer may:	31
(a)	comply with the requirement to destroy the agricultural produce as if the authorised officer were the person to whom the requirement relates, and	32 33 34

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- (b) for the purpose of complying with that requirement, enter any premises on which the agricultural produce to which the requirement relates is situated. 1
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 - (3) Any expenses incurred by an authorised officer under this section may be recovered as a debt due to the Crown by the person to whom the requirement relates. 4
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Part 8 Pesticides Implementation Committee

67 Establishment of Implementation Committee	2
(1) There is established by this Act a Pesticides Implementation Committee.	3 4
(2) The Implementation Committee consists of:	5
(a) a person appointed by the Minister to be the Chairperson of the Committee, and	6 7
(b) such other members as may be appointed by the Minister (but not exceeding 12 in number).	8 9
(3) The members referred to in subsection (2) (b) may be selected from the following:	10 11
(a) representatives of community and industry interests,	12
(b) representatives of relevant government agencies (such as the Department of Agriculture, WorkCover Authority, Department of Health and Department of Urban Affairs and Planning).	13 14 15
(4) If representatives of community and industry interests are appointed, the Minister is to have regard persons who have expertise in the following areas:	16 17 18
(a) pesticide product supply and management,	19
(b) pest control operators' practices,	20
(c) environmental impact of pesticide use,	21
(d) the use of pesticides in agriculture,	22
(e) aerial pesticide application practices,	23
(f) catchment management,	24
(g) ecologically sustainable development,	25
(h) local government.	26
(5) Schedule 1 has effect with respect to the members and procedure of the Implementation Committee.	27 28
(6) The Implementation Committee ceases operations, and is abolished, when it reports to the Minister as referred to in section 68 (4).	29 30

68	Functions of Implementation Committee	1
(1)	The Implementation Committee is to advise the Minister and the Environment Protection Authority on matters relating to the implementation of this Act, including:	2
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		4
(a)	any matter relating to the use, management and disposal of pesticides, and	5
		6
(b)	strategies for the reduction of risks associated with the use and disposal of pesticides,	7
		8
(c)	the making of regulations, pesticide control orders and pesticide codes of practice.	9
		10
(2)	The Implementation Committee has such other functions as may be conferred on it by or under this or any other Act.	11
		12
(3)	The Implementation Committee may provide advice to the Minister or the Environment Protection Authority even though it was not requested by the Minister or the Authority.	13
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(4)	The Implementation Committee is to provide a report, by 1 July 2003, to the Minister on the implementation of this Act.	16
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Part 9 Pesticide codes of practice	1
69 Nature of pesticide codes of practice	2
(1) Pesticide codes of practice may be made by the Minister:	3
(a) for the purposes of providing guidance on the use and management of pesticides, or	4
(b) for any other purpose that is consistent with the objects of this Act.	5
(2) Without limiting subsection (1), a pesticide code of practice may apply to any one or more of the following:	6
(a) any specified pesticide or class of pesticide,	7
(b) any specified industry or sector of an industry,	8
(c) the use of pesticides in a particular manner (eg ground application or aerial spraying operations).	9
(3) A pesticide code of practice may refer to or incorporate, with or without modification, a standard or other document prepared or published by a body specified in the code, as in force at a particular time or from time to time.	10
(4) Pesticide codes of practice are in the nature of guidelines and compliance is not mandatory.	11
70 Making of pesticide codes of practice	12
(1) The Minister may make a pesticide code of practice on the recommendation of the Environment Protection Authority.	13
(2) If the Minister decides to make a pesticide code of practice, the Minister is to cause the code to be published in the Gazette.	14
(3) A copy of each pesticide code of practice is to be available for public inspection, without charge, at the principal office of the Environment Protection Authority during ordinary office hours. A copy of each code is to be available for purchase from the Authority.	15
(4) A pesticide code of practice may, by notice published in the Gazette, be amended or revoked at any time by the Minister on the recommendation of the Environment Protection Authority.	16

Part 10	Procedural provisions	1
Division 1	Proceedings for offences	2
71	Manner in which proceedings for offences may be dealt with	3
(1)	Proceedings for an offence under Division 1 of Part 2 may be dealt with summarily before the Land and Environment Court in its summary jurisdiction.	4 5 6
(2)	Proceedings for an offence under this Act or the regulations (other than under Division 1 of Part 2) may be dealt with:	7 8
(a)	summarily before a Local Court constituted by a Magistrate sitting alone, or	9 10
(b)	summarily before the Land and Environment Court in its summary jurisdiction.	11 12
(3)	If proceedings are brought in a Local Court, the maximum monetary penalty that the Local Court may impose for the offence is \$20,000 despite any other higher monetary penalty provided in respect of the offence.	13 14 15 16
72	Time within which summary proceedings may be commenced	17
(1)	This section applies only to proceedings that are to be dealt with summarily.	18 19
(2)	Proceedings for an offence under this Act or the regulations may be commenced:	20 21
(a)	in the case of a prescribed offence—within but not later than 3 years after the date on which the offence is alleged to have been committed, or	22 23 24
(b)	in any other case—within but not later than 12 months after that date.	25 26
(3)	Proceedings for an offence under this Act or the regulations may also be commenced:	27 28
(a)	in the case of a prescribed offence—within but not later than 3 years after the date on which evidence of the alleged offence first came to the attention of any relevant authorised officer, or	29 30 31

Clause 72	Pesticides Bill 1999
Part 10	Procedural provisions
Division 1	Proceedings for offences

	(b) in any other case—within but not later than 12 months after that date.	1 2
(4)	If subsection (3) is relied on for the purpose of commencing proceedings for an offence, the information or application must contain particulars of the date on which evidence of the offence first came to the attention of any authorised officer and need not contain particulars of the date on which the offence was committed. The date on which evidence first came to the attention of any authorised officer is the date specified in the information or application, unless the contrary is established.	3 4 5 6 7 8 9 10
(5)	This section applies despite anything in the <i>Justices Act 1902</i> or any other Act.	11 12
(6)	In this section:	13
	<i>authorised officer</i> means any person who is an authorised officer for the purposes of this Act, whether or not the person has the functions of an authorised officer in connection with the offence concerned.	14 15 16
	<i>evidence</i> of an offence means evidence of any act or omission constituting the offence.	17 18
	<i>prescribed offence</i> means:	19
	(a) an offence under Division 1 of Part 2, or	20
	(b) an offence under section 45, or	21
	(c) an offence under this Act that is declared by the regulations to be a prescribed offence for the purposes of this section.	22 23
73	Environment Protection Authority may institute proceedings	24
	Proceedings for an offence under this Act or the regulations may be instituted only by the Environment Protection Authority.	25 26
74	Penalty notices and related proceedings excluded	27
(1)	This Division does not affect the issue of a penalty notice under Division 2 or enforcement proceedings consequent on the failure to pay the amount of the penalty notice.	28 29 30
(2)	Enforcement proceedings include proceedings under Part 3 or 4 of the <i>Fines Act 1996</i> or proceedings instituted by an officer authorised to issue such a penalty notice.	31 32 33

Division 2	Penalty notices	1
75	Penalty notice offences	2
(1)	For the purposes of this Division, a <i>penalty notice offence</i> is an offence under this Act or the regulations that is prescribed by the regulations for the purposes of this Division, other than an offence arising under Division 1 of Part 2.	3 4 5 6
(2)	A <i>penalty notice</i> is a notice to the effect that, if the person served with the notice does not wish to have a specified penalty notice offence dealt with by a court, the person may pay the penalty prescribed under section 78 for the offence:	7 8 9 10
(a)	within the time specified in the notice (being 28 days from the date on which the notice was served), and	11 12
(b)	to the person specified in the notice.	13
76	Service of penalty notices	14
(1)	An authorised officer may serve a penalty notice on a person if it appears to the authorised officer that the person has committed a penalty notice offence.	15 16 17
(2)	A penalty notice may be served personally or by post.	18
(3)	The regulations may authorise a penalty notice also to be served by leaving the notice on a vehicle or at other premises in respect of which the offence was committed.	19 20 21
77	Consequences of paying penalty in accordance with penalty notice	22
(1)	If the penalty prescribed for an alleged offence is paid in accordance with this Division, no person is liable to any further proceedings for the alleged offence.	23 24 25
(2)	Payment in accordance with this Division is not to be regarded as an admission of liability for the purposes of, nor is it in any way to affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.	26 27 28 29
78	Penalty payable	30
(1)	The regulations may prescribe the penalty payable under a penalty notice in respect of a penalty notice offence.	31 32

Clause 78	Pesticides Bill 1999
Part 10	Procedural provisions
Division 2	Penalty notices

- (2) Any such penalty may not exceed \$1,500 nor the maximum penalty that may be imposed by a court on a conviction for the offence. 1
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79 Withdrawal of penalty notice 3

- (1) An authorised officer: 4
- (a) may withdraw the notice within 28 days after the date on which the notice was served, and 5
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 - (b) must withdraw the notice immediately if directed to do so by the Environment Protection Authority. 7
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- (2) The following provisions have effect in relation to an alleged offence if a penalty notice for the alleged offence is withdrawn in accordance with this section: 9
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- (a) The amount that was payable under the notice ceases to be payable. 12
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 - (b) Any amount that has been paid under the notice is repayable to the person by whom it was paid. 14
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 - (c) Further proceedings in respect of the alleged offence may be taken against any person (including the person on whom the notice was served) as if the notice had never been served. 16
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80 Effect on other provisions 19

This Division does not limit the operation of this or any other Act in relation to proceedings that may be taken in relation to offences. 20
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Division 3 Restraining orders 22

81 Application of Division 23

- (1) This Division applies where: 24
- (a) proceedings have been commenced against a person for an offence under this Act or the regulations and, as a result of those proceedings, the person may be required to pay an amount referred to in section 95, or 25
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 - (b) proceedings have been commenced against a person under section 96. 29
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- (2) In this Division: 31
- the defendant* means the person referred to in subsection (1) (a) or (b). 32

82	Nature of restraining order	1
	A restraining order is an order of a court directing that any property of the defendant is not to be disposed of, or otherwise dealt with, by the defendant or by any other person, except in such manner and in such circumstances (if any) as are specified in the order.	2 3 4 5
83	Application for restraining order	6
	(1) The person bringing the proceedings (as referred to in section 81) may apply for a restraining order in relation to property of the defendant.	7 8
	(2) An application under this section may be made:	9
	(a) in the case of proceedings taken before a Local Court—to the Land and Environment Court, and	10 11
	(b) in the case of other proceedings—to the court before which the proceedings are brought.	12 13
	(3) On an application under this section:	14
	(a) the court may, if it thinks fit, require the person making the application to give notice of the application to a person who the court has reason to believe has an interest in the property or part of the property, and	15 16 17 18
	(b) a person to whom the court requires notice to be given under paragraph (a) is entitled to appear and to adduce evidence at the hearing of the application.	19 20 21
84	Making of restraining order	22
	On an application under section 83, the court may make a restraining order in relation to the defendant's property, if it is satisfied (on the information contained in or accompanying the application) that:	23 24 25
	(a) the defendant has committed the relevant offence, and	26
	(b) amounts are or are likely to be payable under section 95 or 96, and	27 28
	(c) it is appropriate to make an order under this section in the circumstances of the case.	29 30

85	Undertakings	1
	The court may refuse to make a restraining order if the person making the application refuses or fails to give to the court such undertakings as the court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making or operation of the order.	2 3 4 5 6
86	Ancillary orders	7
(1)	A court that makes a restraining order may make any ancillary orders that the court considers appropriate.	8 9
(2)	Without limiting the generality of subsection (1), ancillary orders may include any one or more of the following:	10 11
(a)	an order for the examination on oath of:	12
(i)	the defendant, or	13
(ii)	another person,	14
	before the court, or an officer of the court prescribed by rules of court, concerning the affairs of the defendant, including the nature and location of any property of the defendant,	15 16 17
(b)	an order varying the restraining order in respect of the property to which it relates,	18 19
(c)	an order varying any conditions to which the restraining order was subject.	20 21
(3)	An ancillary order may be made on application:	22
(a)	by the applicant for the restraining order, or	23
(b)	by the defendant, or	24
(c)	with the leave of the court, by any other person.	25
(4)	Ancillary orders may be made when or at any time after the restraining order is made. An ancillary order referred to in subsection (2) (a) may be made in advance of the restraining order.	26 27 28
87	Charge on property subject to restraining orders	29
(1)	If:	30
(a)	a court has made a restraining order in respect of particular property or all of the property of the defendant, and	31 32

- (b) the court orders the payment of an amount referred to in section 95 or 96, 1
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- there is created by force of this section, on the making of the order referred to in paragraph (b), a charge on all the property to which the restraining order applies to secure the payment to the Environment Protection Authority or a person of the amount referred to in section 95 or 96. 3
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- (2) Such a charge ceases to have effect in respect of the property: 8
- (a) on payment by the defendant to the Environment Protection Authority or person of the amount concerned, or 9
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- (b) on the sale or other disposition of the property with the consent of the court, or 11
12
- (c) on the sale of the property to a purchaser in good faith for value who, at the time of the sale, has no notice of the charge, 13
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- whichever first occurs. 15
- (3) Such a charge is subject to every charge or encumbrance to which the property was subject immediately before the order referred to in subsection (1) (b) was made and, in the case of land under the provisions of the *Real Property Act 1900*, is subject to every mortgage, lease or other interest recorded in the Register kept under that Act. 16
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- (4) Such a charge is not affected by any change of ownership of the property, except as provided by subsection (2). 21
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- (5) If: 23
- (a) such a charge is created on property of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, property of that kind, and 24
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- (b) the charge is so registered, 27
- a person who purchases or otherwise acquires the property after the registration of the charge is, for the purposes of subsection (2), taken to have notice of the charge. 28
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- (6) If such a charge relates to land under the provisions of the *Real Property Act 1900*, the charge has no effect until it is registered under that Act. 31
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88	Registration of restraining orders	1
(1)	If a restraining order applies to property of a particular kind and the provisions of any law of the State provide for the registration of title to, or charges over, property of that kind, the authority responsible for administering the provisions is required, on application by any person, to record the particulars of the order in the register kept under those provisions.	2 3 4 5 6 7
(2)	If the particulars of a restraining order are so recorded, a person who afterwards deals with the property is, for the purposes of section 87 (2), taken to have notice of the charge created by this Act on the making of the order.	8 9 10 11
(3)	If a restraining order applies to land under the provisions of the <i>Real Property Act 1900</i> , a caveat may be lodged under that Act in relation to the order.	12 13 14
89	Contravention of restraining orders	15
(1)	A person who knowingly contravenes a restraining order by disposing of, or otherwise dealing with, property that is subject to the order is guilty of an offence. Maximum penalty: A fine equivalent to the value of the property (as determined by the court) or imprisonment for 2 years, or both.	16 17 18 19 20
(2)	If:	21
(a)	a restraining order is made against property, and	22
(b)	the property is disposed of, or otherwise dealt with, in contravention of the restraining order, and	23 24
(c)	the disposition or dealing was either not for sufficient consideration or not in favour of a person who acted in good faith,	25 26 27
	the person who applied for the restraining order may apply to the court that made the restraining order for an order that the disposition or dealing with the property be set aside.	28 29 30
(3)	If an application is made under subsection (2), the court may make an order:	31 32
(a)	setting aside the disposition or dealing as from the day on which the disposition or dealing took place or as from the day of the order under this subsection, and	33 34 35

(b)	(if appropriate) declaring the respective rights of any persons who acquired interests in the property on or after the day on which the disposition or dealing took place and before the day of the order.	1 2 3 4
90	Court may revoke restraining order	5
(1)	The court that made a restraining order may revoke the order, on application made to it by the person in relation to whose property it was made.	6 7 8
(2)	The court may refuse to revoke the order if the person does not:	9
(a)	give security satisfactory to the court for the payment of any amount referred to in section 95 or 96 that may be imposed on or ordered to be paid by the person under this Act in respect of the person's conviction for the offence, or	10 11 12 13
(b)	give undertakings satisfactory to the court concerning the person's property.	14 15
(3)	Subsection (2) does not limit the discretion of the court to revoke or refuse to revoke a restraining order.	16 17
91	Time when restraining order ceases to be in force	18
	If, after a restraining order was made in reliance on the charging of a person with an offence under this Act or the regulations:	19 20
(a)	the charge is withdrawn and the person is not charged with a related offence by the time of the withdrawal—the restraining order ceases to be in force when the charge is withdrawn, or	21 22 23
(b)	the person is acquitted of the charge and the person is not charged with a related offence by the time of the acquittal—the restraining order ceases to be in force when the acquittal occurs.	24 25 26
Division 4	Court orders in connection with offences	27
92	Operation of Division	28
(1)	This Division (other than section 100 (2)) applies where a court finds an offence under this Act or regulations proved.	29 30

Clause 92	Pesticides Bill 1999
Part 10	Procedural provisions
Division 4	Court orders in connection with offences

(2)	Without limiting the generality of subsection (1), a court finds an offence proved if:	1
		2
(a)	the court convicts the offender of the offence, or	3
(b)	the court makes an order under section 556A of the <i>Crimes Act 1900</i> against the offender in relation to the offence (in which case the order is not a punishment for the purposes of that section).	4
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(3)	In this Division:	8
	<i>the court</i> means the court that finds the offence proved.	9
	<i>the offender</i> means the person who is found to have committed the offence.	10
		11
93	Orders generally	12
(1)	One or more orders may be made under this Division against the offender.	13
		14
(2)	Orders may be made under this Division in addition to any penalty that may be imposed or any other action that may be taken in relation to the offence.	15
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		17
94	Orders for restoration and prevention	18
	The court may order the offender to take such steps as are specified in the order, within such time as is so specified (or such further time as the court on application may allow):	19
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		21
(a)	to prevent, control, abate or mitigate any pesticide pollution caused by the commission of the offence, or	22
		23
(b)	to make good any resulting environmental damage, or	24
(c)	to prevent the continuance or recurrence of the offence.	25
95	Orders for costs, expenses and compensation at time offence proved	26
(1)	The court may, if it appears to the court that:	27
(a)	a public authority has incurred costs and expenses in connection with:	28
		29
(i)	the prevention, control, abatement or mitigation of any pesticide pollution caused by the commission of the offence, or	30
		31
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(ii)	making good any resulting environmental damage, or	33

(b)	a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,	1 2 3 4 5
	order the offender to pay to the public authority or person the costs and expenses so incurred, or compensation for the loss or damage so suffered, as the case may be, in such amount as is fixed by the order.	6 7 8
(2)	An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the <i>Land and Environment Court Act 1979</i> .	9 10 11
(3)	A Local Court may not make an order under subsection (1) for the payment of an amount that exceeds the amount for which an order may be made by the court when exercising jurisdiction under the <i>Local Courts (Civil Claims) Act 1970</i> . An order made by the court is enforceable as if it were an order made by the court when exercising jurisdiction under that Act.	12 13 14 15 16 17
96	Recovery of costs, expenses and compensation after offence proved	18
(1)	If, after the court finds the offence proved:	19
(a)	a public authority has incurred costs and expenses in connection with:	20 21
(i)	the prevention, control, abatement or mitigation of any pesticide pollution caused by the commission of the offence, or	22 23 24
(ii)	making good any resulting environmental damage, or	25
(b)	a person (including a public authority) has, by reason of the commission of the offence, suffered loss of or damage to property or has incurred costs and expenses in preventing or mitigating, or in attempting to prevent or mitigate, any such loss or damage,	26 27 28 29 30
	the person or public authority may recover from the offender the costs and expenses incurred or the amount of the loss or damage in the Land and Environment Court.	31 32 33

Clause 96	Pesticides Bill 1999
Part 10	Procedural provisions
Division 4	Court orders in connection with offences

(2)	The amount of any such costs and expenses (but not the amount of any such loss or damage) may be recovered as a debt.	1 2
97	Orders regarding costs and expenses of investigation	3
(1)	The court may, if it appears to the court that the Environment Protection Authority has reasonably incurred costs and expenses during the investigation of the offence, order the offender to pay to the Authority the costs and expenses so incurred in such amount as is fixed by the order.	4 5 6 7 8
(2)	An order made by the Land and Environment Court under subsection (1) is enforceable as if it were an order made by the Court in Class 4 proceedings under the <i>Land and Environment Court Act 1979</i> . An order made by a Local Court under subsection (1) is enforceable as if it were an order made by the court when exercising jurisdiction under the <i>Local Courts (Civil Claims) Act 1970</i> .	9 10 11 12 13 14
(3)	In this section: <i>costs and expenses</i> , in relation to the investigation of an offence, means the costs and expenses in taking any sample or conducting any inspection, test, measurement or analysis during the investigation of the offence.	15 16 17 18 19
98	Orders regarding monetary benefits	20
(1)	The court may order the offender to pay, as part of the penalty for committing the offence, an additional penalty of an amount not exceeding the court's estimation of the amount of any monetary benefits acquired by the offender, or accrued or accruing to the offender, as a result of the commission of the offence.	21 22 23 24 25
(2)	The amount of an additional penalty for an offence is not subject to any maximum amount of penalty provided elsewhere by or under this Act.	26 27 28
(3)	In this section: <i>monetary benefits</i> means monetary, financial or economic benefits. <i>the court</i> does not include a Local Court.	29 30 31

99	Additional orders	1
(1)	The court may do any one or more of the following:	2
(a)	order the offender not to use a particular pesticide or any pesticide of a particular class,	3 4
(b)	order the offender to undertake a specified training course in the use of pesticides,	5 6
(c)	order the offender to carry out a specified project for the restoration or enhancement of the environment in a public place or for the public benefit,	7 8 9
(d)	order the offender to carry out a specified environmental audit of activities carried on by the offender.	10 11
(2)	A Local Court is not authorised to make an order referred to in subsection (1) (c) or (d).	12 13
(3)	The court may, in an order under this section, fix a period for compliance and impose any other requirements the court considers necessary or expedient for enforcement of the order.	14 15 16
100	Forfeiture to Crown	17
(1)	If a person is convicted of an offence under this Act or the regulations, the court may order that any pesticide, substance, agricultural produce, container or other thing in respect of which the offence was committed is to be forfeited to the Crown.	18 19 20 21
(2)	A court may, on application by the Environment Protection Authority, order that any pesticide, substance, agricultural produce, container or other thing seized by an authorised officer in exercising powers in connection with this Act or the regulations is to be forfeited to the Crown.	22 23 24 25 26
(3)	Any such pesticide, agricultural produce, container or other thing forfeited to the Crown may be sold, destroyed or disposed of as directed by the Environment Protection Authority.	27 28 29
(4)	The relevant person must pay to the Crown the reasonable costs of destruction, sale or other disposal. The <i>relevant person</i> is the person referred to in subsection (1), the owner of the thing seized as referred to in subsection (2), or the occupier of the premises in or on which the thing was seized.	30 31 32 33 34

Clause 101	Pesticides Bill 1999
Part 10	Procedural provisions
Division 4	Court orders in connection with offences

101	Offence	1
	A person who fails to comply with an order under this Division (except an order under section 95, 96, 97 or 100) is guilty of an offence.	2 3 4
	Maximum penalty:	5
	• in the case of a corporation—\$120,000 for each day the offence continues, or	6 7
	• in the case of an individual—\$60,000 for each day the offence continues.	8 9
Division 5	Evidentiary provisions	10
102	Definitions	11
	In this Division:	12
	<i>designated officer</i> means an officer of the Environment Protection Authority designated in writing by the Director-General of the Authority for the purposes of this Division.	13 14 15
	<i>information</i> relating to an offence includes an application referred to in section 41 of the <i>Land and Environment Court Act 1979</i> .	16 17
	<i>instrument</i> includes a notice, order or written direction.	18
103	Evidence relating to occupier of premises	19
	In any proceedings for an offence under section 19 (4) or 25, no proof is required (until evidence is given to the contrary) of the fact that a person is, or at any relevant time was, the occupier of any premises to which the proceedings relate.	20 21 22 23
104	Onus of proof concerning reasonable excuse	24
	In any proceedings under this Act, the onus of proving that a person had a reasonable excuse (as referred to in any provision of this Act or the regulations) lies with the defendant.	25 26 27
105	Proof of certain things not required	28
	(1) In any proceedings under this Act no proof is required (until evidence is given to the contrary) of the appointment of the Director-General of the Environment Protection Authority or any member of the staff of the Authority.	29 30 31 32

(2) Any instrument purporting:	1
(a) to be an instrument issued, made or given for the purposes of this Act or the <i>Protection of the Environment Operations Act 1997</i> , and	2 3 4
(b) to have been signed by the person authorised to issue, make or give the instrument, or by another person acting as delegate or on behalf of the person,	5 6 7
is admissible in any proceedings under this Act and (in the absence of evidence to the contrary) is to be taken to be such an instrument and to have been so signed.	8 9 10
106 Certificate evidence of certain matters	11
(1) A document signed by the Director-General of the Environment Protection Authority or a designated officer and certifying any one or more of the matters specified in subsection (2) is admissible in any proceedings under this Act and is prima facie evidence of the matters so certified.	12 13 14 15 16
(2) The matters referred to in subsection (1) are as follows:	17
(a) that a pesticide was or was not, at a specified time or during a specified period, a registered pesticide,	18 19
(b) that a label was or was not, at a specified time, the approved label for a pesticide,	20 21
(c) that a permit was or was not, at a specified time, in force,	22
(d) that a person was or was not, at a specified time or during a specified period, authorised by a permit to do, or omit to do, something,	23 24 25
(e) that a pesticide control order was or was not, at a specified time, in force,	26 27
(f) that a person was or was not, at a specified time or during a specified period, the holder of a licence or certificate of competency,	28 29 30
(g) that a licence or certificate of competency was or was not, at a specified time, subject to specified conditions,	31 32
(h) that a licence or certificate of competency was, at a specified time, revoked or suspended for a specified period,	33 34

Clause 106	Pesticides Bill 1999
Part 10	Procedural provisions
Division 5	Evidentiary provisions

(i)	that the matter appearing on an approved label, permit or certificate of competency described in the document is identical to the matter set out in, or in an instrument annexed to, the document,	1 2 3 4
(j)	that a person was or was not, at a specified time or during a specified period, an authorised officer,	5 6
(k)	that a person was or was not, at a specified time or during a specified period, a member of staff of the Environment Protection Authority,	7 8 9
(l)	that an exemption was or was not given under this Act in relation to any specified matter,	10 11
(m)	that any such exemption was or was not, at a specified time or during a specified period, in force or subject to specified conditions,	12 13 14
(n)	that any exemption was or was not, or that any such conditions were or were not, varied or revoked at a specified time,	15 16
(o)	any other matter prescribed by the regulations.	17
107	Evidence of analysts	18
(1)	The Environment Protection Authority may, by instrument in writing, appoint appropriately qualified persons to be analysts for the purposes of this Act.	19 20 21
(2)	A certificate of such an analyst stating the result of an analysis or examination is admissible in evidence in any proceedings under this Act as evidence of the facts stated in the certificate and the correctness of the result of the analysis or examination.	22 23 24 25
(3)	A certificate of such an analyst that a container containing a sample was received at a specified laboratory and that the container was sealed and signed by an authorised officer is admissible in evidence in any proceedings under this Act as evidence of the facts stated in the certificate and that the sample has not been tampered with since the authorised person signed and sealed the container.	26 27 28 29 30 31
(4)	For the purposes of this section, a document purporting to be a certificate under this section is, unless the contrary is proved, to be taken to be such a certificate.	32 33 34

Division 6	Other procedural provisions	1
108	Remedy or restraint of breaches of this Act or regulations	2
(1)	The Environment Protection Authority may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act or the regulations.	3 4 5
(2)	Any such proceedings may be brought whether or not proceedings have been instituted for an offence under this Act or the regulations.	6 7
(3)	If the Court is satisfied that a breach has been committed or that a breach will, unless restrained by an order of the Court, be committed, it may make such orders as it thinks fit to remedy or restrain the breach.	8 9 10 11
(4)	In this section: <i>breach</i> includes a threatened or apprehended breach.	12 13
109	Matters to be considered in imposing penalty	14
(1)	In imposing a penalty for an offence under this Act or the regulations, the court is to take into consideration the following (so far as they are relevant):	15 16 17
(a)	the extent of the injury, damage or harm caused or likely to be caused by the commission of the offence,	18 19
(b)	the practical measures that may be taken to prevent, control, abate or mitigate any such injury, damage or harm,	20 21
(c)	the extent to which the person who committed the offence could reasonably have foreseen the injury, damage or harm caused or likely to be caused by the commission of the offence,	22 23 24
(d)	the extent to which the person who committed the offence had control over the causes that gave rise to the offence,	25 26
(e)	whether, in committing the offence, the person was complying with orders from an employer or supervising employee,	27 28
(f)	in any case where the defendant is a corporation, the type of corporation concerned (eg whether it is a sole trader or a family-owned business),	29 30 31
(g)	whether the person who committed the offence complied with any relevant pesticide code of practice.	32 33

Clause 109	Pesticides Bill 1999
Part 10	Procedural provisions
Division 6	Other procedural provisions

(2)	The court may take into consideration other matters that it considers relevant.	1 2
110	Other powers of court	3
	A court dealing with an offence under this Act or the regulations may:	4
(a)	dismiss the charge under section 556A of the <i>Crimes Act 1900</i> , or	5 6
(b)	discharge the offender conditionally under section 556A of the <i>Crimes Act 1900</i> , or	7 8
(c)	defer sentence under section 558 of the <i>Crimes Act 1900</i> , or	9
(d)	take such other action as is generally available by law.	10
111	Causing or permitting offence	11
	A person who causes or permits, by act or omission, another person to commit an offence under a provision of this Act or the regulations is guilty of an offence under that provision and is liable, on conviction, to the same penalty applicable to an offence under that provision.	12 13 14 15
112	Offences by corporations	16
(1)	If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision, unless the person satisfies the court that:	17 18 19 20 21
(a)	the person was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or	22 23
(b)	the person, if in such a position, used all due diligence to prevent the contravention by the corporation.	24 25
(2)	A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.	26 27 28
(3)	Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation under this Act or the regulations.	29 30 31

- (4) Without limiting any other law or practice regarding the admissibility of evidence, evidence that an officer, employee or agent of a corporation (while acting in his or her capacity as such) had, at any particular time, a particular intention, is evidence that the corporation had that intention. 1
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113 Extra-territoriality 6

- A person is guilty of a particular offence under this Act or the regulations in respect of any act or omission done or omitted by the person outside the State: 7
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- (a) if the act or omission causes any substance to come into the State, and 10
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- (b) if the substance causes harm or is likely to cause harm to the environment of the State, and 12
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- (c) if (apart from this section) the act or omission would have constituted that offence if it had been done or omitted within the State. 14
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Part 11 Miscellaneous

114 Appeals to Land and Environment Court against certain decisions	2
(1) A person who is aggrieved by:	3
(a) a prevention notice under Division 3 of Part 3 (or the variation of such a notice), or	4
(b) a direction under section 42, or	5
(c) a pesticide residue notice under section 64, or	6
(d) a pesticide residue order under section 65,	7
that is given to or served on the person may appeal to the Land and Environment Court against the notice, order or direction within 21 days (or such other period as may be prescribed by the regulations) after the giving or serving of the notice, direction or order concerned.	8
(2) The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay action on the matter appealed against.	9
(3) The decision of the Land and Environment Court on an appeal under this section is final and binding on the appellant and the person whose decision is the subject of the appeal.	10
115 Exemptions by Environment Protection Authority in emergencies and other situations	11
(1) The Environment Protection Authority may exempt any person or class of persons from any specified provision or provisions of this Act or the regulations, in the circumstances referred to in subsection (2).	12
(2) An exemption may be granted in:	13
(a) an emergency (including, for example, where an area is being plagued by pests), or	14
(b) circumstances where:	15
(i) the Authority is satisfied that it is not practicable to comply with the relevant provision or provisions, and	16
(ii) the Authority is satisfied that non-compliance with the provision or provisions will not have any significant adverse effect on public health, property, the environment or trade, and	17

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| (iii) | the Board of the Environment Protection Authority approves the granting of the exemption. | 1
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| (3) | If the regulations prescribe the manner in which an exemption is to be applied for, the exemption must be applied for in that manner. | 3
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| (4) | An exemption: | 5 |
| (a) | is effected by order made by the Environment Protection Authority and published in the Gazette, and | 6
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| (b) | takes effect from the date the order is published in the Gazette or a later date specified in the order, and | 8
9 |
| (c) | has effect for the period specified in the order. | 10 |
| (5) | In the case of an exemption granted in an emergency, the order may take effect when it is made or on a later date specified in the order. The order is to be published in the Gazette as soon as practicable after it is made. | 11
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| (6) | An exemption may be unconditional or may be subject to conditions specified in the order. | 15
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| (7) | An exemption may be revoked, varied or renewed by a further order made and published in accordance with this section. | 17
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| (8) | An exemption may not be granted or renewed so as to have effect for a total period exceeding 5 years. A further exemption granted within 5 years after the expiry of an earlier exemption (being a further exemption that is the same in substance as the earlier exemption) is to be treated as a renewed exemption for the purposes of this subsection. | 19
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| (9) | If an exemption is granted, any person may make a written request to the Environment Protection Authority for the reasons for the exemption and the Authority is to provide a written statement of the reasons to the person. The regulations may make provision with respect to any such statement of reasons, including: | 24
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| (a) | the time within which a request for reasons must be made or within which the statement of reasons must be provided, and | 29
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| (b) | the matters to be set out in a statement of reasons, and | 31 |
| (c) | the cases in which a statement of reasons is not required to be provided. | 32
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116 Exemption for fire brigades and other emergency services	1
(1) A person is not guilty of an offence under this Act or the regulations for any act or omission if it was done or omitted in good faith as a member of a fire brigade, a rural fire brigade, the State Emergency Service or other officially accredited rescue unit.	2 3 4 5
(2) This section has effect despite anything in this Act.	6
117 Exemptions by regulation	7
(1) The regulations may exempt, or provide for the exemption of:	8
(a) any person or class of persons, or	9
(b) any premises or class of premises, or	10
(c) any area or class of areas, or	11
(d) any other matter or thing or class of matters or things,	12
from any specified provision or provisions of this Act or the regulations, in such circumstances (if any) and subject to such conditions (if any) as may be specified or referred to in the regulations.	13 14 15
(2) The power to make regulations under this section is not limited by section 115.	16 17
118 Service of notices	18
(1) For the purposes of this Act, any notice or other document may be issued or given to a person, or may be served on a person:	19 20
(a) by delivering it personally to the person, or	21
(b) by delivering it to the place of residence or business of the person and by leaving it there for the person with some other person, or	22 23 24
(c) by posting it duly stamped and addressed to the person at the place last shown in the records of the Environment Protection Authority as the person's place of residence or business, or	25 26 27
(d) by posting it duly stamped and addressed to the person at the place indicated by the person as an address to which correspondence may be posted (including for example a post office box), or	28 29 30 31

(e)	by sending it by facsimile or electronic transmission (including for example the Internet) to the person in accordance with arrangements indicated by the person as appropriate for transmitting documents to the person, or	1 2 3 4
(f)	by leaving it addressed to the person at a document exchange or other place (in accordance with usual arrangements for the exchange or other place) indicated by the person as an exchange or place through which correspondence may be forwarded to the person.	5 6 7 8 9
(2)	This section does not affect any other mode of issuing, giving or serving a notice or other document under any other law.	10 11
119	Regulations	12
(1)	The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.	13 14 15 16
(2)	Without affecting the generality of subsection (1), the regulations may make provision for or with respect to the following:	17 18
(a)	any matter connected with licences and licence applications (including qualifications for licences),	19 20
(b)	any matter connected with certificates of competency and applications for certificates,	21 22
(c)	tests for applicants for certificates of competency,	23
(d)	the keeping of records and the making of returns by the holders of certificates of competency,	24 25
(e)	the making and keeping of records in relation to the use of pesticides,	26 27
(f)	training and qualification requirements for persons engaged in the use of pesticides,	28 29
(g)	the approval by the Environment Protection Authority of training courses and qualifications in relation to the use of pesticides,	30 31 32
(h)	fees payable under this Act or the regulations,	33
(i)	the waiving, remittal, reduction or refund of fees payable under this Act or the regulations,	34 35
(j)	standards for the application of pesticides,	36

(k)	standards in relation to the design and construction of aerial spraying equipment and in relation to the attachment of such equipment to, and the installation of such equipment in, aircraft,	1 2 3
(l)	the recognition in this State of licences or other authorities issued by any other State or Territory that correspond or are similar to licences under this Act,	4 5 6
(m)	the circumstances in which any such recognised licence or other authority is taken to be a licence granted under this Act,	7 8
(n)	requiring notification to be given of the proposed use of pesticides,	9 10
(o)	requiring records to be kept, and information to be provided, in relation to the supply, distribution, use and disposal of pesticides,	11 12 13
(p)	requiring any application or other information provided under this Act or the regulations to be verified by statutory declaration.	14 15 16
(3)	The regulations may create an offence punishable by a penalty not exceeding 400 penalty units in the case of a corporation or 200 penalty units in the case of an individual.	17 18 19
120	Act to bind Crown	20
	This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.	21 22 23
121	Repeal of Pesticides Act 1978	24
	The <i>Pesticides Act 1978</i> is repealed.	25
122	Savings and transitional provisions	26
	Schedule 2 has effect.	27
123	Amendment of other Acts	28
	Each Act specified in Schedule 3 is amended as set out in that Schedule.	29 30

124 Review of Act

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| (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. | 2
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| (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act. | 5
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| (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years. | 7
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Schedule 1	Members and procedure of Implementation Committee	1
		2
	(Section 67 (5))	3
1	Definitions	4
	In this Schedule:	5
	<i>Chairperson</i> means the Chairperson of the Implementation Committee.	6
		7
	<i>member</i> means any member of the Implementation Committee.	8
2	Terms of office of members	9
	Subject to this Schedule, a member holds office for such period as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.	10
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3	Remuneration	13
	A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.	14
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4	Deputies	17
(1)	The Minister may, from time to time, appoint a person to be the deputy of a member, and the Minister may revoke any such appointment.	18
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		20
(2)	In the absence of a member, the member's deputy may, if available, act in the place of the member.	21
		22
(3)	While acting in the place of a member, a person:	23
(a)	has all the functions of the member and is taken to be a member, and	24
		25
(b)	is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.	26
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5	Vacancy in office of member	29
(1)	The office of a member becomes vacant if the member:	30
(a)	dies, or	31

(b)	completes a term of office and is not re-appointed, or	1
(c)	resigns the office by instrument in writing addressed to the Minister, or	2 3
(d)	is removed from office by the Minister under this clause, or	4
(e)	is absent from 4 consecutive meetings of the Implementation Committee of which reasonable notice has been given to the member personally or by post, except on leave granted by the Minister or unless the member is excused by the Minister for having been absent from those meetings, or	5 6 7 8 9
(f)	becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or	10 11 12 13
(g)	becomes a mentally incapacitated person, or	14
(h)	is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.	15 16 17 18 19
(2)	The Minister may at any time remove a member from office.	20
6	Filling of vacancy in office of member	21
	If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.	22 23
7	Chairperson and Deputy Chairperson	24
(1)	In the absence of the Chairperson, the Deputy Chairperson may, if available, act in the place of the Chairperson.	25 26
(2)	While acting in the place of the Chairperson, the Deputy Chairperson has all the functions of the Chairperson and is taken to be the Chairperson.	27 28 29
(3)	The Chairperson or Deputy Chairperson vacates office as Chairperson or Deputy Chairperson if the person:	30 31
(a)	is removed from office by the Minister under this clause, or	32
(b)	ceases to be a member.	33

- (4) The Minister may at any time remove the Chairperson or Deputy Chairperson from office as Chairperson or Deputy Chairperson. 1
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8 Disclosure of pecuniary interests 3

- (1) If: 4
- (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Implementation Committee, and 5
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 - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter, 8
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the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Implementation Committee. 11
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- (2) A disclosure by a member at a meeting of the Implementation Committee that the member: 14
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- (a) is a member, or is in the employment, of a specified company or other body, or 16
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 - (b) is a partner, or is in the employment, of a specified person, or 18
 - (c) has some other specified interest relating to a specified company or other body or to a specified person, 19
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is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1). 21
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- (3) Particulars of any disclosure made under this clause must be recorded by the Implementation Committee in a book kept for the purpose and that book must be open at all reasonable hours for inspection by any person on payment of the fee determined by the Implementation Committee. 25
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- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the Implementation Committee otherwise determines: 30
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- (a) be present during any deliberation of the Implementation Committee with respect to the matter, or 33
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 - (b) take part in any decision of the Implementation Committee with respect to the matter. 35
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(5) For the purposes of the making of a determination by the Implementation Committee under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:	1
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(a) be present during any deliberation of the Implementation Committee for the purpose of making the determination, or	5
	6
(b) take part in the making by the Implementation Committee of the determination.	7
	8
(6) A contravention of this clause does not invalidate any decision of the Implementation Committee.	9
	10
9 Effect of certain other Acts	11
(1) Part 2 of the <i>Public Sector Management Act 1988</i> does not apply to or in respect of the appointment of a member.	12
	13
(2) If by or under any Act provision is made:	14
(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or	15
	16
	17
(b) prohibiting the person from engaging in employment outside the duties of that office,	18
	19
the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.	20
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10 General procedure	24
The procedure for the calling of meetings of the Implementation Committee and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Implementation Committee.	25
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	28
11 Quorum	29
The quorum for a meeting of the Implementation Committee is a majority of its members, of whom one must be the Chairperson or Deputy Chairperson.	30
	31
	32

12 Presiding member	1
(1) The Chairperson (or, in the absence of the Chairperson, the Deputy Chairperson) is to preside at a meeting of the Implementation Committee.	2 3 4
(2) The presiding member has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.	5 6
13 Voting	7
A decision supported by a majority of the votes cast at a meeting of the Implementation Committee at which a quorum is present is the decision of the Implementation Committee.	8 9 10
14 Transaction of business outside meetings or by telephone	11
(1) The Implementation Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members of the Implementation Committee for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Implementation Committee.	12 13 14 15 16
(2) The Implementation Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.	17 18 19 20 21
(3) For the purposes of:	22
(a) the approval of a resolution under subclause (1), or	23
(b) a meeting held in accordance with subclause (2),	24
the Chairperson and each member have the same voting rights as they have at an ordinary meeting of the Implementation Committee.	25 26
(4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meetings of the Implementation Committee.	27 28 29
(5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.	30 31 32

15 First meeting

1

The Minister may call the first meeting of the Implementation Committee in such manner as the Minister thinks fit.

2

3

Schedule 2 Savings and transitional provisions	1
(Section 122)	2
Part 1 Preliminary	3
1 Regulations	4
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.	5 6
(2) Any such provision may, if the regulations so provide, take effect from the date of assent to this Act or a later date.	7 8
(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:	9 10 11
(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	12 13 14
(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	15 16 17
Part 2 Provisions consequent on enactment of this Act	18
2 Definitions	19
In this Part:	20
<i>former Act</i> means the <i>Pesticides Act 1978</i> .	21
3 Pesticide control notices may be issued with respect to existing pesticide pollution	22 23
Part 3 of this Act extends to any pesticide pollution that occurred before the commencement of that Part.	24 25

4	Continuation of existing licences	1
(1)	In this clause:	2
	<i>existing licence</i> means a licence that:	3
(a)	was issued under section 22F of the former Act, and	4
(b)	was in force immediately before the repeal of the former Act by this Act.	5 6
(2)	Subject to the regulations, an existing licence is taken to be a licence granted under this Act.	7 8
(3)	Subject to the regulations, an application for a licence made under the former Act that was not finally determined before the repeal of the former Act by this Act is taken to be an application for a licence under this Act and is to be dealt with in accordance with this Act.	9 10 11 12
5	Continuation of existing certificates of competency for restricted pesticides	13 14
(1)	In this clause:	15
	<i>existing certificate</i> means a certificate of competency that:	16
(a)	was issued under section 47 of the former Act, and	17
(b)	was in force immediately before the repeal of the former Act by this Act.	18 19
(2)	Subject to the regulations, an existing certificate:	20
(a)	is taken to be a certificate of competency granted under this Act, and	21 22
(b)	continues in force for the unexpired portion of its term (unless it is sooner suspended or revoked or otherwise ceases to be in force under this Act), and	23 24 25
(c)	cannot be renewed.	26
(3)	Subject to the regulations, an application for a certificate of competency made under the former Act that was not finally determined before the repeal of the former Act by this Act is taken to be an application for a certificate of competency under this Act and is to be dealt with in accordance with this Act.	27 28 29 30 31

6	Approved insurance policies	1
	Until such time as regulations are made to prescribe classes of insurance policies for the purposes of Division 1 of Part 6 of this Act, any insurance policy that was, immediately before the repeal of the former Act by this Act, an approved insurance policy is taken to be of a class prescribed by the regulations.	2 3 4 5 6
7	Continuation of existing pesticide orders	7
	Subject to the regulations, a pesticide order made under section 27 of the former Act, or an order made under section 49A of the former Act, and that was in force immediately before the repeal of the former Act by this Act is taken to be a pesticide control order made under this Act.	8 9 10 11
8	Pending appeals under former Act	12
	Any appeal made under section 58 of the former Act that was made before the repeal of the former Act but not determined before that repeal is to be determined as if this Act had not been enacted.	13 14 15
9	Existing pesticide inspectors and analysts of pesticides	16
	(1) Subject to the regulations, a person appointed as an inspector under section 7 of the former Act and holding office as such immediately before the repeal of the former Act by this Act is taken to be appointed as an authorised officer for the purposes of this Act.	17 18 19 20
	(2) Subject to the regulations, a person appointed as an analyst of pesticides under section 7 of the former Act and holding office as such immediately before the repeal of the former Act by this Act is taken to be appointed as an analyst for the purposes of this Act.	21 22 23 24
10	Criminal and other proceedings	25
	(1) Divisions 1 and 5 of Part 10 of this Act extend to proceedings in connection with the former Act in respect of offences committed under the former Act before its repeal or in respect of any related matter that continues to have force or effect. This subclause applies whether the proceedings were pending on the commencement of this clause or whether the proceedings are instituted after that commencement.	26 27 28 29 30 31

(2) Divisions 1 and 5 of Part 10 of this Act apply with such modifications as are necessary for the purposes of applying those Divisions to any such proceedings. In particular, the reference in section 73 to the Environment Protection Authority is to be read as including a reference to a person who is acting with the authority of the Minister to institute proceedings for an offence under the former Act.	1 2 3 4 5 6
11 Saving of existing regulation and regulation-making powers	7
(1) The <i>Pesticides Regulation 1995</i> is, on the repeal of the former Act by this Act, taken to be a regulation under this Act to the extent that it may be made under this Act.	8 9 10
(2) For the purposes of Part 3 of the <i>Subordinate Legislation Act 1989</i> , the <i>Pesticides Regulation 1995</i> is taken to have been published on the repeal of the former Act.	11 12 13
(3) Until the end of 3 years after the repeal of the former Act by this Act, regulations may be made under this Act for or with respect to any matter that could be prescribed by regulations under the former Act but for its repeal.	14 15 16 17
12 Existing notices, exemptions etc	18
A notice, direction, order, requirement or exemption given, issued or made under the former Act and in force on the repeal of the former Act by this Act continues to have effect to the extent provided by the regulations under this Schedule.	19 20 21 22
13 General saving	23
Any thing done under the former Act that has any force or effect immediately before its repeal by this Act is taken to have been done under the corresponding provision of this Act, subject to any express or implied provision to the contrary in this Act or the regulations made under this Act.	24 25 26 27 28

Schedule 3	Amendment of other Acts	1
	(Section 123)	2
3.1	Agricultural and Veterinary Chemicals (New South Wales) Act 1994 No 53	3 4
	Section 36 Regulations relating to savings and transitional provisions	5 6
	Omit “the <i>Pesticides Act 1978</i> or” wherever occurring from section 36 (2).	7
3.2	Fair Trading Act 1987 No 68	8
	Omit “ <i>Pesticides and Allied Chemicals Act 1978</i> ” wherever occurring from Schedules 1 and 2.	9 10
3.3	Fines Act 1996 No 99	11
	Schedule 1 Statutory provisions under which penalty notices issued	12 13
	Insert in alphabetical order:	14
	<i>Pesticides Act 1999</i> , section 76	15
3.4	Land and Environment Court Act 1979 No 204	16
[1]	Section 17 Class 1—environmental planning and protection appeals	17
	Insert after section 17 (aa):	18
	(b) appeals under section 114 of the <i>Pesticides Act 1999</i> ,	19

[2] Section 20 Class 4—environmental planning and protection and development contract civil enforcement	1 2
Insert after section 20 (1) (caa):	3
(cb) proceedings under section 96 of the <i>Pesticides Act 1999</i> ,	4
(cbb) proceedings under section 108 of the <i>Pesticides Act 1999</i> ,	5 6
[3] Section 20 (3) (a)	7
Insert in alphabetical order:	8
<i>Pesticides Act 1999</i> ,	9
[4] Section 21 Class 5—environmental planning and protection summary enforcement	10 11
Insert after section 21 (aa):	12
(b) proceedings under Divisions 1, 3 and 4 of Part 10 of the <i>Pesticides Act 1999</i> ,	13 14
3.5 Protection of the Environment Administration Act 1991 No 60	15
[1] Section 3 Definitions	16
Insert in alphabetical order of Acts in the definition of <i>environment protection legislation</i> in section 3 (1):	17 18
<i>Pesticides Act 1999</i> ,	19
[2] Section 3 (1) definition of “environment protection legislation”	20
Omit “ <i>Pesticides Act 1978</i> ,”.	21
[3] Section 17 Environmental Counsel to Board	22
Insert at the end of section 17 (8):	23
, or	24
(c) an offence under Division 1 of Part 2 of the <i>Pesticides Act 1999</i> .	25 26

3.6 Protection of the Environment Operations Act 1997 No 156	1
[1] Section 96 Preventative action	2
Insert “and carrying out” after “preparing” in section 96 (3) (i).	3
[2] Section 186 Extension of Chapter to other environment protection legislation	4
Insert after section 186 (b):	6
(b1) <i>Pesticides Act 1999</i> and the regulations under that Act,	7
[3] Section 186 (d)	8
Insert after section 186 (c):	9
(d) any provision of the <i>Pesticides Act 1978</i> in respect of offences committed under that Act (before its repeal by the <i>Pesticides Act 1999</i>) or in respect of any other matter that continues to have any force or effect (except as provided by regulations under Schedule 5 or under Schedule 2 to the <i>Pesticides Act 1999</i>).	10 11 12 13 14 15
[4] Section 196 Powers of authorised officers to enter premises	16
Insert “or by an aircraft,” after “other vehicle,” in section 196 (2).	17
[5] Section 198 Powers of authorised officers to do things at premises	18
Insert “, aircraft” after “vehicle” in section 198 (2) (a).	19
[6] Section 198 (2) (h1)	20
Insert after section 198 (2) (h):	21
(h1) for the purposes of paragraph (h), direct the occupier of the premises where the thing is seized to retain it at those premises or at another place under the control of the occupier,	22 23 24 25

[7] Section 199A	1
Insert after section 199:	2
199A Authorised officers may request assistance	3
A person may accompany an authorised officer and take all reasonable steps to assist an authorised officer in the exercise of the authorised officer's functions under this Part if the authorised officer is of the opinion that the person is capable of providing assistance to the authorised officer in the exercise of those functions.	4 5 6 7 8 9
[8] Section 205 Definitions	10
Insert "aircraft" after "vehicle," in the definition of <i>article</i> .	11
[9] Section 205A	12
Insert after section 205:	13
205A Application of Part	14
Nothing in this Part limits the functions that may be exercised under any other Part of this Chapter.	15 16
[10] Section 208 Stopping of vehicles and vessels for inspection or testing	17
Insert after section 208 (3):	18
(4) In this section, <i>vehicle</i> includes aircraft.	19
[11] Schedule 5 savings, transitional and other provisions	20
Insert at the end of clause 2 (1):	21
<i>Pesticides Act 1999</i>	22
3.7 Search Warrants Act 1985 No 37	23
Section 10 Definitions	24
Omit the matter relating to the <i>Pesticides Act 1978</i> from the definition of <i>search warrant</i> in section 10.	25 26

3.8 Stock Medicines Act 1989 No 182	1
[1] Section 4 Clearance authority for registration of stock medicines	2
Omit section 4 (3).	3
[2] Section 5 Registration under the Pesticides Act 1978	4
Omit the section.	5
[3] Section 6 Activities authorised under Poisons and Therapeutic Goods Act 1966	6
	7
Omit “ <i>Poisons Act 1966</i> or the <i>Pesticides Act 1978</i> ”.	8
Insert instead “ <i>Poisons and Therapeutic Goods Act 1966</i> ”.	9