

Agricultural and Veterinary Chemicals (New South Wales) Amendment Bill 2001

Explanatory note

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

The *Co-operative Schemes (Administrative Actions) Bill 2001* is cognate with this Bill.

Overview of Bill

This Bill is part of a legislative response to the decision of the High Court in *The Queen v Hughes* (2000) 171 ALR 155 and other related matters, which includes the cognate *Co-operative Schemes (Administrative Actions) Bill 2001* and the *Commonwealth Agricultural and Veterinary Chemicals Legislation Amendment Bill 2001*.

The legislative response will:

- (a) validate things done or omitted to be done by certain Commonwealth authorities or officers in pursuance of the National Registration Scheme (NRS) for agricultural and veterinary chemicals that are potentially invalid following the decision of the High Court in *Hughes*, and
- (b) validate things done or omitted to be done by certain Commonwealth authorities or officers that are potentially invalid due to certain gaps in the NRS legislative scheme that have arisen independently of the decision in *Hughes*, and
- (c) ensure that things done or omitted in the future by Commonwealth authorities or officers in pursuance of the NRS have a constitutionally sound basis.

The decision of the High Court in *Hughes* has cast doubt on the ability of Commonwealth authorities and officers to exercise powers and perform functions under State laws in relation to several inter-governmental legislative schemes. In *Hughes*, the High Court indicated that, where a State gave a Commonwealth authority or officer a power to undertake a function under State law together with a duty to exercise the function, there must be a clear nexus between the exercise of the function and one or more of the legislative heads of power of the Commonwealth Parliament set out in the Commonwealth Constitution.

Hughes also highlighted the need for the Commonwealth Parliament to authorise the conferral of duties, powers or functions by a State on Commonwealth authorities or officers.

The decision in *Hughes* affects the NRS by casting doubts on the validity of the exercise of powers in relation to the NRS by the National Registration Authority for Agricultural and Veterinary Chemicals, the Commonwealth Director of Public Prosecutions, the Commonwealth Administrative Appeals Tribunal and Commonwealth inspectors and analysts.

The proposed Act (which amends the *Agricultural and Veterinary Chemicals (New South Wales) Act 1994*) makes changes to the NRS to place it on a more secure constitutional footing and closes certain gaps in the conferral of duties, functions and powers on Commonwealth authorities and officers relating to the Commonwealth Administrative Appeals Tribunal and inspectors and analysts appointed under Commonwealth law.

The proposed Act complements the *Co-operative Schemes (Administrative Actions) Bill 2001*. That Bill validates past actions of Commonwealth authorities and officers that were not linked to a head of power under the Commonwealth Constitution, and ensures that no duty, function or power is conferred on a Commonwealth authority or officer that is beyond the legislative power of the State.

The proposed Act is supported by the *Agricultural and Veterinary Chemicals Legislation Amendment Bill 2001* of the Commonwealth. That Bill proposes to clarify the powers, functions and duties of Commonwealth authorities and officers within the NRS, and also addresses the gaps in the NRS legislative scheme arising independently of the decision in *Hughes*. The Commonwealth Bill was introduced into the Senate on 3 April 2001.

Outline of provisions

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 immediately before the commencement of section 4 (1) of the *Co-operative Schemes (Administrative Actions) Bill*

2001.

Clause 3 is a formal provision giving effect to the amendments to the *Agricultural and Veterinary Chemicals (New South Wales) Act 1994* (**the Principal Act**) set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [1] inserts definitions of **confer** and **function** into the Principal Act.

Schedule 1 [2] repeals and re-enacts Part 5 of the Principal Act, which contains provisions that apply certain Commonwealth administrative laws as laws of the State. The effect is to re-apply those laws and to re-confer functions and powers on Commonwealth authorities and officers.

There is doubt about the efficacy of the previous purported conferral of functions and powers by Part 5, since the Commonwealth has not expressly authorised the conferral of those powers and functions by the States and the Northern Territory.

The substitution of Part 5 complements provisions in the *Agricultural and Veterinary Chemicals Legislation Amendment Bill 2001* of the Commonwealth that proposes to authorise the conferral of those functions and powers on Commonwealth authorities and officers.

Schedule 1 [3] inserts new sections 28A and 28B into the Principal Act. Proposed section 28A confers functions and powers on Commonwealth inspectors and analysts and thereby closes a gap in the NRS. The Principal Act as it stands does not purport to confer functions and powers on Commonwealth inspectors and analysts.

Proposed section 28B will validate things done or omitted to be done by inspectors and analysts before the commencement of proposed section 28A.

Schedule 1 [4] inserts a transitional provision to provide that the re-made Part 5 applies to matters arising and things done or omitted to be done before, on and after the repeal and re-making of Part 5.