

First print



New South Wales

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.

Explanatory note

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.

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

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New South Wales

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

No. , 2001

A Bill for

An Act to amend the *Agricultural and Veterinary Chemicals (New South Wales) Act 1994* with respect to the functions and powers of certain Commonwealth authorities and officers of the Commonwealth; and for other purposes.

See also *Co-operative Schemes (Administrative Actions) Bill 2001*.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Agricultural and Veterinary Chemicals (New South Wales) Amendment Act 2001</i> .	3 4
2 Commencement	5
This Act commences immediately before section 4 (1) of the <i>Co-operative Schemes (Administrative Actions) Act 2001</i> commences.	6 7
3 Amendment of Agricultural and Veterinary Chemicals (New South Wales) Act 1994 No 53	8 9
The <i>Agricultural and Veterinary Chemicals (New South Wales) Act 1994</i> is amended as set out in Schedule 1.	10 11

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 3 Definitions	3
	Insert in alphabetical order in section 3 (1):	4
	<i>confer</i> includes impose.	5
	<i>function</i> includes a duty.	6
[2]	Part 5	7
	Omit the Part. Insert instead:	8
	Part 5 Application of Commonwealth administrative laws to Agvet Code and Agvet Regulations of this jurisdiction	9 10 11
	15 Object	12
	The object of this Part is to help ensure that the Agvet Code of this jurisdiction and the Agvet Code of each other jurisdiction are administered on a uniform basis.	13 14 15
	16 Application of Commonwealth administrative laws in relation to applicable provisions	16 17
	(1) The Commonwealth administrative laws apply as laws of this jurisdiction to any matter arising in relation to the applicable provisions of this jurisdiction as if those provisions were laws of the Commonwealth and were not laws of this jurisdiction.	18 19 20 21
	(2) The provisions of the Agvet Code of this jurisdiction that require the NRA to give brief particulars of reasons for decisions do not affect the obligations of the NRA under section 28 of the <i>Administrative Appeals Tribunal Act 1975</i> of the Commonwealth as that section applies as a law of this jurisdiction under subsection (1) of this section.	22 23 24 25 26 27

- (3) The provisions of the Agvet Code of this jurisdiction that relate to the disclosure of confidential commercial information do not affect the operation of the *Freedom of Information Act 1982* of the Commonwealth as that Act applies as a law of this jurisdiction under subsection (1) of this section. 1
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- (4) For the purposes of a law of this jurisdiction, a matter arising in relation to the applicable provisions of this jurisdiction: 6
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- (a) is taken to be a matter arising in relation to laws of the Commonwealth in the same way as if those provisions were laws of the Commonwealth, and 8
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- (b) is taken not to be a matter arising in relation to laws of this jurisdiction. 11
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- (5) Subsection (4) has effect for the purposes of a law of this jurisdiction except as prescribed by regulations under section 32. 13
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15
- 17 Functions and powers conferred on Commonwealth officers and authorities** 16
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- (1) A Commonwealth administrative law applying because of section 16 that confers on a Commonwealth officer or authority a function or power also confers on the officer or authority the same function or power in relation to a matter arising in relation to an applicable provision of this jurisdiction. 18
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- (2) In performing a function or exercising a power conferred by subsection (1), the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power under the Commonwealth administrative law. 24
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28
- 18 Reference in Commonwealth administrative law to a provision of another law** 29
30
- For the purposes of section 16, a reference in a Commonwealth administrative law to a provision of that or another Commonwealth administrative law is taken to be a reference to that provision as applying because of that section. 31
32
33
34

18A	Construction of references to Part IVA of Commonwealth AAT Act	1 2
	For the purposes of section 16, a reference in a provision of the <i>Administrative Appeals Tribunal Act 1975</i> of the Commonwealth (as that provision applies as a law of this jurisdiction) to the whole or any part of Part IVA of that Act is taken to be a reference to the whole or any part of that Part as it has effect as a law of the Commonwealth.	3 4 5 6 7 8
[3]	Sections 28A and 28B	9
	Insert after section 28:	10
28A	Inspectors and analysts	11
	(1) In this section:	12
	<i>officer</i> means:	13
	(a) an inspector appointed under section 69F (1) of the Agricultural and Veterinary Chemicals (Administration) Act, or	14 15 16
	(b) an analyst approved under section 69G of the Agricultural and Veterinary Chemicals (Administration) Act.	17 18 19
	(2) An officer has, in respect of a matter arising in relation to an applicable provision of this jurisdiction, the functions and powers conferred or expressed to be conferred on him or her under the applicable provisions of this jurisdiction.	20 21 22 23
28B	Validation of actions of inspectors and analysts	24
	(1) In this section:	25
	<i>officer</i> has the same meaning as in section 28A.	26
	<i>relevant provision</i> means Schedule 1 [3] of the <i>Agricultural and Veterinary Chemicals (New South Wales) Amendment Act 2001</i> .	27 28 29
	<i>relevant time</i> , in relation to a thing, means the time at which the thing was done or omitted to be done or purported to have been done or omitted to be done.	30 31 32

(2) Anything done or omitted to be done by an officer before the commencement of the relevant provision that would have been validly done or omitted had the relevant provision commenced before the relevant time has, and is taken always to have had, the same force and effect as it would have had if the relevant provision had commenced before the relevant time.	1 2 3 4 5 6
Note. Part 2 of the <i>Co-operative Schemes (Administrative Actions) Act 2001</i> applies to administrative actions taken by an officer as affected by this section.	7 8 9
[4] Section 33A	10
Insert after section 33:	11
33A Transitional provision—Agricultural and Veterinary Chemicals (New South Wales) Amendment Act 2001	12 13
(1) In this section:	14
<i>substitution provision</i> means Schedule 1 [2] of the <i>Agricultural and Veterinary Chemicals (New South Wales) Amendment Act 2001</i> .	15 16 17
(2) Part 5 of this Act, as substituted by the substitution provision, applies in relation to matters arising in relation to the applicable provisions of this jurisdiction, and decisions made or other things done or omitted to be done under the Commonwealth administrative laws in respect of such matters, before, on or after the commencement of the substitution provision.	18 19 20 21 22 23 24