



New South Wales

Co-operative Schemes (Administrative Actions) Bill 2001

Explanatory note

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

This Bill is cognate with the *Agricultural and Veterinary Chemicals (New South Wales) Amendment Bill 2001*.

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 *Agricultural and Veterinary Chemicals (New South Wales) Amendment Bill 2001* and the *Commonwealth Agricultural and Veterinary Chemicals Legislation Amendment Bill 2001*.

The explanatory note to the *Agricultural and Veterinary Chemicals (New South Wales) Amendment Bill 2001* sets out the relevant background in respect of the matter.

The object of this Bill is to deal with doubts cast by the decision in *Hughes* on the ability of Commonwealth authorities or officers to exercise powers and perform functions under State laws in relation to the following inter-governmental legislative schemes:

- (a) the co-operative scheme for agricultural and veterinary chemicals, or
- (b) any other co-operative scheme to which the proposed Act is applied by proclamation.

This Bill ensures that functions or powers are not imposed on Commonwealth authorities and officers in connection with administrative actions under the schemes if their imposition would exceed the legislative powers of the State, and validates any such previous invalid administrative action.

In relation to the co-operative scheme for agricultural and veterinary chemicals, this Bill is supported by the *Commonwealth Agricultural and Veterinary Chemicals Legislation Amendment Bill 2001*, which seeks to authorise the conferral of duties on Commonwealth authorities and officers by State law to the fullest extent that is constitutionally possible.

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 defines certain words and expressions used in the proposed Act. The expression *invalid administrative action* is defined as an administrative action taken by a Commonwealth authority or officer pursuant to a function or power conferred under a co-operative scheme established by a relevant State Act to which the proposed Act applies, and that is invalid because its conferral on the Commonwealth authority or officer is not supported by a head of power in the Commonwealth Constitution.

Clause 4 defines the relevant State Acts to which the proposed Act applies, namely, the *Agricultural and Veterinary Chemicals (New South Wales) Act 1994* and any other State Act declared by proclamation of the Governor. The clause enables the relevant commencement time for the validation under the proposed Act to be declared by proclamation.

Clause 5 ensures that a relevant State Act is construed as not conferring a duty on a Commonwealth authority or officer to perform a function or exercise a power if the conferral of the duty would be beyond the legislative power of the Parliament of the State. In the case of the co-operative scheme for agricultural and veterinary chemicals, the clause complements the Commonwealth *Agricultural and Veterinary Chemicals Legislation Amendment Bill 2001* (which seeks to authorise the conferral of duties on Commonwealth authorities and officers by State law to the fullest extent that is constitutionally possible).

Part 2 Validation of invalid administrative actions

Clause 6 provides that the proposed Part applies to previous invalid administrative actions, namely any such action taken or purportedly taken under a relevant State Act at or before the commencement time in relation to that Act (the relevant commencement time).

Clause 7 deals with the operation of the proposed Part. Clause 7 (1) provides that the proposed Part extends to affect rights and liabilities that are or have been the subject of legal proceedings. Clause 7 (2) provides that the proposed Part does not affect rights and liabilities arising between parties to legal proceedings heard and finally determined at or before the relevant commencement time to the extent to which they arise from, or are affected by, an invalid administrative action. Clause 7 (3) ensures that the proposed Part extends to certain previous administrative action that is to be validated by the cognate *Agricultural and Veterinary Chemicals (New South Wales) Amendment Bill 2001*.

Clause 8 provides that every invalid administrative action to which the proposed Part applies has (and is deemed always to have had) the same force and effect as it would have had if it had been taken by a duly authorised State authority or officer of the State. The clause does not in terms validate administrative actions taken by Commonwealth authorities and officers, but rather attaches to the actions retrospectively the same force and effect as would have ensued had the actions been taken by State authorities and officers (a similar distinction was drawn in *The Queen v Humby, Ex parte Rooney* (1973) 129 CLR 231).

Clause 9 complements clause 8 and does not affect the generality of clause 8. The clause declares that the rights and liabilities of all persons are (and always have been) for all purposes the same as if every invalid administrative action to which the proposed Part applies had been taken by a duly authorised State authority or officer of the State.

Clause 10 ensures that the proposed Part does not reinstate administrative actions that, since the action was taken, have been affected by another action or process. For example, if a decision has been altered on review, the proposed Part does not reinstate the decision in its original form. The proposed Part applies to the decision as it is affected by later actions from time to time.

Part 3 Miscellaneous

Clause 11 provides that the proposed Act binds the Crown.

Clause 12 provides that it is immaterial for the purposes of the proposed Act that a Commonwealth authority or officer does not have a counterpart in the State, or that the powers and functions of State authorities or officers do not correspond to the powers and functions of Commonwealth authorities or officers.

Clause 13 provides that the proposed Act does not give rise to any liability against the State.

Clause 14 empowers the making of regulations for the purposes of the proposed Act.



New South Wales

Co-operative Schemes (Administrative Actions) Bill 2001

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New South Wales

Co-operative Schemes (Administrative Actions) Bill 2001

No. , 2001

A Bill for

An Act relating to administrative actions by Commonwealth authorities or officers of the Commonwealth under the *Agricultural and Veterinary Chemicals (New South Wales) Act 1994* and other State co-operative scheme laws; and for other purposes.

The Legislature of New South Wales enacts: 1

Part 1 Preliminary 2

1 Name of Act 3

This Act is the *Co-operative Schemes (Administrative Actions) Act 2001*. 4
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2 Commencement 6

This Act commences on a day or days to be appointed by proclamation. 7
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3 Definitions 9

In this Act: 10

administrative action means an act or omission of an administrative or legislative nature, and includes any act or omission of an administrative nature that is done or omitted in the course of or ancillary to or preliminary to or subsequent to judicial proceedings (civil or criminal). 11
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commencement time means (except as provided by section 4 (4)): 16

(a) in relation to the *Agricultural and Veterinary Chemicals (New South Wales) Act 1994*—the time when section 4 (1) commences, or 17
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(b) in relation to any other relevant State Act—the time when it becomes a relevant State Act for the purposes of this Act by a proclamation made under section 4 (2). 20
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Commonwealth authority means an authority or body (whether incorporated or not) that is established or continued in existence by or under an Act of the Commonwealth, but does not include the Federal Court of Australia, the Family Court of Australia or the Federal Magistrates Court. 23
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confer includes impose. 28

function includes a duty. 29

invalid administrative action means an administrative action of a Commonwealth authority or an officer of the Commonwealth taken, or purportedly taken:

- (a) pursuant to a function or power conferred, or purportedly conferred, by or under a relevant State Act (the ***relevant function or power***), and
- (b) in circumstances where the relevant function or power could not have been conferred on the authority or officer by a law of the Commonwealth the operation of which in the relevant respect was based on the legislative powers of the Parliament of the Commonwealth (including, for example, circumstances where the authority or officer was, or purportedly was, under an express or implied duty to perform the function or exercise the power),

that was invalid because of the circumstances referred to in paragraphs (a) and (b), whether or not it was also invalid on any other ground.

liability includes a duty or obligation.

officer of the Commonwealth has the same meaning as in section 75 (v) of the Constitution of the Commonwealth.

relevant function or power means a function or power referred to in paragraph (a) of the definition of ***invalid administrative action***.

relevant State Act is defined in section 4.

right includes an interest or status.

4 Co-operative schemes to which this Act applies—relevant State Acts

(1) For the purposes of this Act, ***relevant State Act*** means:

- (a) the *Agricultural and Veterinary Chemicals (New South Wales) Act 1994*, and
- (b) any other Act specified in a proclamation under subsection (2), and includes any law applying as a law of the State by force of any such Act.

(2) A proclamation may declare that a specified Act is a relevant State Act for the purposes of this Act.

(3) A proclamation under subsection (2) commences:	1
(a) at the beginning of the day on which it is published in the Gazette, or	2 3
(b) at a later time, being a specified time of a day specified in the proclamation.	4 5
(4) A proclamation may declare that the commencement time in relation to a relevant State Act is the specified time of a day specified in the proclamation (being a day that is not later than the day on which the proclamation is published in the Gazette). This Act has effect in respect of the commencement time so declared whether or not it has already had effect in respect of an earlier commencement time.	6 7 8 9 10 11
5 Administrative functions and powers conferred on Commonwealth authorities and officers	12 13
(1) A relevant State Act does not purport to confer any duty on a Commonwealth authority or an officer of the Commonwealth to perform a function, or to exercise a power, in relation to a matter arising under the relevant State Act if the conferral of the duty would be beyond the legislative power of the Parliament of the State.	14 15 16 17 18
(2) This section does not limit the operation of section 31 of the <i>Interpretation Act 1987</i> .	19 20

Part 2	Validation of invalid administrative actions	1
6	Invalid administrative actions to which Part applies	2
	This Part applies to invalid administrative actions that have been taken, or have purportedly been taken, under a relevant State Act at or before the commencement time in relation to that Act.	3 4 5
7	Operation of Part	6
	(1) Subject to subsection (2), this Part extends to rights or liabilities arising between parties to proceedings initiated at or before the commencement time in relation to a relevant State Act where an allegedly invalid administrative action is or was the subject of or relevant to the proceedings.	7 8 9 10 11
	(2) This Part does not affect rights or liabilities arising between parties to proceedings heard and finally determined at or before the commencement time in relation to a relevant State Act to the extent to which those rights or liabilities arise from, or are affected by, an invalid administrative action.	12 13 14 15 16
	(3) This Part extends to administrative actions as affected by the operation of section 28B of the <i>Agricultural and Veterinary Chemicals (New South Wales) Act 1994</i> .	17 18 19
8	Legal effect of invalid administrative actions	20
	Every invalid administrative action has, and is deemed always to have had, the same force and effect for all purposes as it would have had if:	21 22
	(a) it had been taken, or purportedly taken, by a State authority or officer of the State, and	23 24
	(b) the relevant function or power had been duly conferred on that authority or officer.	25 26
9	Rights and liabilities declared in certain cases	27
	(1) Without affecting the generality of section 8, the rights and liabilities of all persons are, by force of this Act, declared to be, and always to have been, for all purposes the same as if:	28 29 30
	(a) every invalid administrative action had been taken, or purportedly taken, by a State authority or officer of the State, and	31 32 33

(b)	the relevant function or power had been duly conferred on that authority or officer.	1 2
(2)	A right or liability conferred or affected by subsection (1):	3
(a)	is exercisable or enforceable, and	4
(b)	is to be regarded as always having been exercisable or enforceable,	5 6
	as if it were a right or liability conferred or affected by (or arising from) an administrative action of a State authority or officer of the State on which or whom the relevant function or power had been duly conferred.	7 8 9 10
(3)	Any act or thing done or omitted to be done at or before the commencement time in relation to a relevant State Act under or in relation to a right or liability conferred or affected by subsection (1):	11 12 13
(a)	has the same effect, and gives rise to the same consequences, for the purposes of any written or other law, and	14 15
(b)	is to be regarded as always having had the same effect, and given rise to the same consequences, for the purposes of any written or other law,	16 17 18
	as if it were done, or omitted to be done, to give effect to, or under the authority of, or in reliance on, an administrative action of a State authority or officer of the State on which or whom the relevant function or power had been duly conferred.	19 20 21 22
10	This Part to apply to administrative actions as purportedly in force from time to time	23 24
(1)	The purpose of this section is to ensure that this Part operates to give to an invalid administrative action that has subsequently been affected by another action or process no greater effect than it would have had if the administrative action, or any other relevant administrative action, had not been invalid on constitutional grounds (arising from the circumstances referred to in paragraphs (a) and (b) of the definition of <i>invalid administrative action</i> in section 3).	25 26 27 28 29 30 31

- (2) If administrative action taken by a Commonwealth authority or an officer of the Commonwealth was affected (whether by way of revocation, modification or otherwise) at or before the commencement time in relation to a relevant State Act by any later administrative action or by any judicial process or by any administrative review process, this Part applies to the administrative action as so affected from time to time. 1
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- (3) In this section, a reference to administrative action taken includes a reference to administrative action purportedly taken, and a reference to administrative action affected in any way includes a reference to administrative action purportedly affected in that way. 8
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Part 3 Miscellaneous

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11 Act binds Crown

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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.

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12 Corresponding authorities or officers

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It is immaterial, for the purposes of this Act, that a Commonwealth authority or an officer of the Commonwealth does not have a counterpart in the State, or that the powers and functions of a counterpart State authority or a counterpart officer of the State do not correspond exactly or substantially with those of the Commonwealth authority or the officer of the Commonwealth.

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13 Act not to give rise to liability against the State

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(1) The State is not liable to any action, liability, claim or demand arising from the enactment, commencement or operation of this Act or the making, publication or operation of a proclamation under section 4.

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(2) Without limiting subsection (1), no proceedings lie against the State in respect of an administrative action affected by this Act, except to the extent that the proceedings would lie had this Act not been enacted or a proclamation under section 4 not been made.

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(3) In this section:

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proceedings includes proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief.

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the State includes any State authority or officer of the State, and also includes:

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(a) the Crown in right of the State, and

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(b) the Government of the State, and

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(c) a Minister of the Crown in right of the State, and

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(d) a statutory corporation, or other body, representing the Crown in right of the State.

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14 Regulations	1
(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.	2 3 4 5
(2) In particular, the regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or the making of a proclamation under section 4.	6 7 8