

Passed by both Houses



New South Wales

Co-operative Schemes (Administrative Actions) Bill 2001

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2001*



New South Wales

Co-operative Schemes (Administrative Actions) Bill 2001

Act No , 2001

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.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

Clause 1 Co-operative Schemes (Administrative Actions) Bill 2001

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

This Act is the *Co-operative Schemes (Administrative Actions) Act 2001*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

In this Act:

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).

commencement time means (except as provided by section 4 (4)):

- (a) in relation to the *Agricultural and Veterinary Chemicals (New South Wales) Act 1994*—the time when section 4 (1) commences, or
- (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).

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.

confer includes impose.

function includes a duty.

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:
 - (a) at the beginning of the day on which it is published in the Gazette, or
 - (b) at a later time, being a specified time of a day specified in the proclamation.
- (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.

5 Administrative functions and powers conferred on Commonwealth authorities and officers

- (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.
- (2) This section does not limit the operation of section 31 of the *Interpretation Act 1987*.

Part 2 Validation of invalid administrative actions

6 Invalid administrative actions to which Part applies

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.

7 Operation of Part

- (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.
- (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.
- (3) This Part extends to administrative actions as affected by the operation of section 28B of the *Agricultural and Veterinary Chemicals (New South Wales) Act 1994*.

8 Legal effect of invalid administrative actions

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:

- (a) it had been taken, or purportedly taken, by a State authority or officer of the State, and
- (b) the relevant function or power had been duly conferred on that authority or officer.

9 Rights and liabilities declared in certain cases

- (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:
 - (a) every invalid administrative action had been taken, or purportedly taken, by a State authority or officer of the State, and

- (b) the relevant function or power had been duly conferred on that authority or officer.
- (2) A right or liability conferred or affected by subsection (1):
 - (a) is exercisable or enforceable, and
 - (b) is to be regarded as always having been exercisable or enforceable,
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.
- (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):
 - (a) has the same effect, and gives rise to the same consequences, for the purposes of any written or other law, and
 - (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,
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.

10 This Part to apply to administrative actions as purportedly in force from time to time

- (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 *invalid administrative action* in section 3).

- (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.
- (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.

Part 3 Miscellaneous

11 Act binds Crown

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.

12 Corresponding authorities or officers

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.

13 Act not to give rise to liability against the State

- (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.
- (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.
- (3) In this section:

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.

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

- (a) the Crown in right of the State, and
- (b) the Government of the State, and
- (c) a Minister of the Crown in right of the State, and
- (d) a statutory corporation, or other body, representing the Crown in right of the State.

14 Regulations

- (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) 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.