

**AGRICULTURAL AND VETERINARY CHEMICALS
(NEW SOUTH WALES) ACT 1994 No. 53**

NEW SOUTH WALES



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SCHEDULE 1—CONSEQUENTIAL AMENDMENT OF OTHER STATE LAWS

**AGRICULTURAL AND VETERINARY CHEMICALS
(NEW SOUTH WALES) ACT 1994 No. 53**

NEW SOUTH WALES



Act No. 53, 1994

An Act to apply certain laws of the Commonwealth relating to agricultural and veterinary chemical products as laws of New South Wales; and for other purposes. [Assented to 28 September 1994]

RECOGNISING:

- (a) that the protection of the health and safety of human beings, animals and the environment is essential to the well-being of society and can be enhanced by putting in place a system to regulate agricultural chemical products and veterinary chemical products; and
- (b) that the principle of ecologically sustainable development requires a regulatory system that is designed to ensure that the use of such products today will not impair the prospects of future generations; and
- (c) that the furthering of trade and commerce between Australia and places outside Australia, and the present and future economic viability and competitiveness of primary industry and of a domestic industry for manufacturing and formulating such products, are essential for the well-being of the economy and require a system for regulating such products that is cost effective, efficient, predictable, adaptive and responsive; and
- (d) that it is desirable to establish a regulatory system that is open and accountable and gives opportunity for public input with respect to the regulation of such products; and
- (e) that the system should, so far as practicable, be uniform throughout Australia; and
- (f) that uniformity could best be achieved by the enactment of legislation by the Parliament of the Commonwealth as a law for the government of the Australian Capital Territory and the adoption of that legislation by the Parliaments and legislatures of the States and the Northern Territory:

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Agricultural and Veterinary Chemicals (New South Wales) Act 1994.

Commencement

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

Definitions

3. (1) In this Act:

“**Agricultural and Veterinary Chemicals Act**” means the Agricultural and Veterinary Chemicals Act 1994 of the Commonwealth;

“**Agricultural and Veterinary Chemicals (Administration) Act**” means the Agricultural and Veterinary Chemicals (Administration) Act 1992 of the Commonwealth;

“**Agricultural and Veterinary Chemicals Code Act**” means the Agricultural and Veterinary Chemicals Code Act 1994 of the Commonwealth;

“**Agvet Code of New South Wales**” means the provisions applying because of section 5;

“**Agvet Regulations of New South Wales**” means the provisions applying because of section 6;

“**applicable provision**”, in relation to a jurisdiction, means a provision of:

- (a) the Agvet Code of that jurisdiction; or
- (b) the Agvet Regulations of that jurisdiction; or
- (c) a law of the Commonwealth that applies in that jurisdiction in relation to a provision of or offence against the Agvet Code or Agvet Regulations of that jurisdiction;

“**authority**”, in relation to the Commonwealth, has the meaning given in the Agricultural and Veterinary Chemicals Act;

“Commonwealth administrative laws” means:

- (a) the following Acts:
 - (i) the Administrative Appeals Tribunal Act 1975 of the Commonwealth;
 - (ii) the Administrative Decisions (Judicial Review) Act 1977 of the Commonwealth;
 - (iii) the Freedom of Information Act 1982 of the Commonwealth;
 - (iv) the Ombudsman Act 1976 of the Commonwealth;
 - (v) the Privacy Act 1988 of the Commonwealth; and
- (b) the regulations in force under those Acts;

“Commonwealth ancillary criminal laws” has the meaning given by section 8;

“Commonwealth Minister” means “the Minister” within the meaning of the Agvet Code of the participating Territories;

“corresponding Act” means an Act of another jurisdiction that corresponds to this Act;

“corresponding law” means:

- (a) a corresponding Act; or
- (b) regulations made under a corresponding Act; or
- (c) the Agvet Code, Agvet Regulations, or another applicable provision, of another jurisdiction; or
- (d) rules of court made under a corresponding Act;

“instrument” means any document whatever, including:

- (a) an Act or an instrument made under an Act; or
- (b) a law of this jurisdiction or an instrument made under such a law; or
- (c) an award or other industrial determination or order, or an industrial agreement; or
- (d) any other order (whether executive, judicial or otherwise); or
- (e) a notice, certificate or licence; or
- (f) an agreement; or
- (g) an application made, information or complaint laid, affidavit sworn, or warrant issued, for any purpose; or
- (h) an indictment, presentment, summons or writ; or
- (i) any other pleading in, or process issued in connection with, a legal or other proceeding;

“jurisdiction” means a State or the participating Territories;

“law”, in relation to a participating Territory, means a law of, or in force in, that Territory;

“NRA” means the National Registration Authority for Agricultural and Veterinary Chemicals established by the Agricultural and Veterinary Chemicals (Administration) Act;

“officer”, in relation to the Commonwealth, has the meaning given in the Agricultural and Veterinary Chemicals Act;

“participating Territory” means:

- (a) the Australian Capital Territory; or
- (b) another Territory that is declared by regulations in force under section 25 of the Agricultural and Veterinary Chemicals Act to be a participating Territory;

“State” includes the Northern Territory of Australia;

“Territory” means a Territory referred to in section 122 of the Constitution of the Commonwealth, other than the Northern Territory of Australia, Norfolk Island, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands;

“this jurisdiction” means New South Wales.

(2) In this Act, a reference to a Commonwealth Act includes a reference to:

- (a) that Commonwealth Act as amended and in force for the time being; and
- (b) an Act enacted in substitution for that Act.

Jervis Bay Territory

4. For the purposes of this Act, and the Agvet Code and the Agvet Regulations of this jurisdiction, the Jervis Bay Territory is taken to be part of the Australian Capital Territory.

PART 2—THE AGVET CODE, AND THE AGVET REGULATIONS, OF THIS JURISDICTION

Application of Agvet Code in this jurisdiction

5. The Code set out in the Schedule to the Agricultural and Veterinary Chemicals Code Act as in force for the time being:

- (a) applies as a law of New South Wales; and
- (b) as so applying, may be cited as the Agvet Code of New South Wales.

Application of Agvet Regulations in this jurisdiction

6. The regulations in force for the time being under section 6 of the Agricultural and Veterinary Chemicals Code Act:

- (a) apply as regulations in force for the purposes of the Agvet Code of New South Wales; and
- (b) as so applying, may be referred to as the Agvet Regulations of New South Wales.

Interpretation of Agvet Code and Agvet Regulations of this jurisdiction

7. (1) In the Agvet Code, and the Agvet Regulations, of this jurisdiction:

“the Minister for this jurisdiction” means the Minister;

“this jurisdiction” means New South Wales.

(2) Subject to Part 1 of the Agvet Code of this jurisdiction, the Acts Interpretation Act 1901 of the Commonwealth as in force for the time being applies as a law of this jurisdiction to:

- (a) the Agvet Code, and the Agvet Regulations, of this jurisdiction; and
- (b) any instrument made, granted or issued under that Code or those Regulations.

(3) For the purposes of subsection (2), the Commonwealth Act mentioned in that subsection applies as if:

- (a) the Agvet Code of this jurisdiction were a Commonwealth Act; and
- (b) the Agvet Regulations of this jurisdiction or instruments mentioned in that subsection were regulations or instruments made under a Commonwealth Act.

(4) The Interpretation Act 1987 does not apply to:

- (a) the Agvet Code, or the Agvet Regulations, of New South Wales; or
- (b) any instrument made, granted or issued under that Code or those Regulations.

Ancillary offences (aiding, abetting, accessories, attempts, incitement or conspiracy)

8. (1) In this section, “Commonwealth ancillary criminal laws” means:

- (a) section 5, 6, 7 or 7A of the Crimes Act 1914 of the Commonwealth; or

(b) section 86 (1) of that Act because of paragraph (a) of that subsection.

(2) The Commonwealth ancillary criminal laws apply as laws of this jurisdiction in relation to an offence against the Agvet Code, or the Agvet Regulations, of this jurisdiction, and so apply:

- (a) as if a reference in the laws to a law of the Commonwealth were a reference to that Code or those Regulations; and
- (b) to the exclusion of laws of this jurisdiction to the same or a similar effect.

(3) In the Agvet Code, or the Agvet Regulations, of this jurisdiction, a reference to an offence against that Code or those Regulations includes a reference to a related offence against the Commonwealth ancillary criminal laws.

PART 3—CITING THE AGVET CODES, AND THE AGVET REGULATIONS, OF OTHER JURISDICTIONS

References to Agvet Codes and Agvet Regulations of other jurisdictions

9. (1) This section has effect for the purposes of an Act, a law of this jurisdiction or an instrument made under an Act or such a law.

(2) If a law of a jurisdiction other than this jurisdiction provides that the Code set out in the Schedule to the Agricultural and Veterinary Chemicals Code Act as in force for the time being applies as a law of that jurisdiction, the Agvet Code of that jurisdiction is the Agvet Code so set out, applying as a law of that jurisdiction.

(3) If a law of a jurisdiction other than this jurisdiction provides that the regulations in force for the time being under section 6 of the Agricultural and Veterinary Chemicals Code Act apply as regulations in force for the purposes of the Agvet Code of that jurisdiction, the Agvet Regulations of that jurisdiction are those regulations as so applying.

References to Agvet Codes and Agvet Regulations

10. (1) The object of this section is to help ensure that the Agvet Code of this jurisdiction can operate, in appropriate circumstances, as if that Code, together with the Agvet Code of each other jurisdiction, constituted a single national Agvet Code applying throughout Australia.

(2) Subject to this section, a reference in an instrument to the Agvet Codes, or to the Agvet Regulations, is taken, for the purposes of the laws of this jurisdiction:

- (a) to be a reference to the Agvet Code, or to the Agvet Regulations, of this jurisdiction; and
 - (b) to include a separate reference to the Agvet Code, or to the Agvet Regulations, of each other jurisdiction.
- (3) Subsection (2) has effect except so far as the contrary intention appears in the instrument or the context of the reference otherwise requires.

PART 4—APPLICATION OF AGVET CODES TO THE CROWN

Agvet Code of this jurisdiction

11. The Agvet Code of this jurisdiction binds the Crown in right of this jurisdiction and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Agvet Code of other jurisdictions

12. The Agvet Code of each jurisdiction other than this jurisdiction binds the Crown in right of this jurisdiction.

Crown not liable to prosecution

13. Nothing in this Part, or in the Agvet Code of this jurisdiction, renders the Crown in any capacity liable to be prosecuted for an offence.

This Part overrides the prerogative

14. If, because of this Part, a provision of the law of another jurisdiction binds the Crown in right of this jurisdiction, the Crown in that right is subject to that provision despite any prerogative right or privilege.

PART 5—APPLICATION OF COMMONWEALTH ADMINISTRATIVE LAWS TO AGVET CODE AND AGVET REGULATIONS OF THIS JURISDICTION

Object

15. 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.

Application of Commonwealth administrative laws in relation to applicable provisions

16. (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.

(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 Administrative Appeals Tribunal Act 1975, or section 13 of the Administrative Decisions (Judicial Review) Act 1977, of the Commonwealth as those sections apply as laws of this jurisdiction under subsection (1) of this section.

(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.

(4) For the purposes of a law of this jurisdiction, a matter arising in relation to the applicable provisions of this jurisdiction:

- (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
- (b) is taken not to be a matter arising in relation to laws of this jurisdiction.

(5) Subsection (4) has effect for the purposes of a law of this jurisdiction except as prescribed by regulations under section 32.

Functions and powers conferred on Commonwealth officers and authorities

17. (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.

(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.

Reference in Commonwealth administrative law to a provision of another law

18. 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.

PART 6—JURISDICTION OF COURTS

Jurisdiction of Federal Court

19. (1) Jurisdiction is conferred on the Federal Court of Australia with respect to all civil matters arising under the applicable provisions of this jurisdiction.

(2) This section does not affect the jurisdiction of the courts of this jurisdiction.

Exercise of jurisdiction under cross-vesting provisions

20. This Act does not affect the operation of a provision of a law of this jurisdiction relating to cross-vesting of jurisdiction.

PART 7—THE NATIONAL REGISTRATION AUTHORITY FOR AGRICULTURAL AND VETERINARY CHEMICALS

Conferral of functions and powers on NRA

21. (1) The NRA has the functions and powers conferred or expressed to be conferred on it under this Act or the Agvet Code of this jurisdiction.

(2) In addition to the powers mentioned in subsection (1), the NRA has power to do all things necessary or convenient to be done in connection with the performance of the functions referred to in subsection (1) and, in particular may:

- (a) enter into contracts; and
- (b) acquire, hold and dispose of real and personal property; and
- (c) occupy, use and control any land or building owned or held under lease by the Commonwealth, a State or a Territory and made available for the purposes of the NRA; and

- (d) appoint agents and attorneys, and act as agent for other persons;
and
- (e) do anything incidental to any of its powers.

Agreements and arrangements

22. (1) The Minister, or a person authorised in writing by the Minister, may enter into an agreement or arrangement with the Commonwealth Minister for the performance of functions or the exercise of powers by the NRA as an agent of the State.

(2) The NRA has the functions and powers mentioned in the agreement or arrangement.

Conferral of other functions and powers for purposes of law in this jurisdiction

23. The NRA has power to do acts in this jurisdiction in the performance or exercise of any function or power:

- (a) expressed to be conferred on it by a law of a jurisdiction (other than this jurisdiction) that corresponds to this Act or the Agvet Code of this jurisdiction; or
- (b) referred to in an agreement or arrangement made under a provision of an Act of a jurisdiction other than this jurisdiction corresponding to section 22.

Commonwealth Minister may give directions in exceptional circumstances

24. The power of the Commonwealth Minister to give directions to the NRA under section 10 of the Agricultural and Veterinary Chemicals (Administration) Act extends to giving directions in relation to functions and powers of the NRA conferred under the applicable provisions of this jurisdiction, and the section applies accordingly.

PART 8—MISCELLANEOUS

Orders

25. Orders in force for the time being under section 7 of the Agricultural and Veterinary Chemicals Code Act have the same effect for the purposes of the Agvet Code of this jurisdiction as they would have if they were provisions of the Agvet Regulations of this jurisdiction.

Manufacturing principles

26. Subject to the Agvet Code, and the Agvet Regulations, of this jurisdiction, the manufacturing principles in force for the time being under section 23 of the Agricultural and Veterinary Chemicals Act also have effect for the purposes of Part 8 of that Code.

Delegation

27. The power of delegation of the Commonwealth Minister under section 71 of the Agricultural and Veterinary Chemicals (Administration) Act extends to the powers that are expressed to be conferred on the Commonwealth Minister under this Act or the Agvet Code of this jurisdiction, and the section applies accordingly.

Conferral of powers on State officers

28. (1) If an officer of a Department, administrative unit or authority is authorised, under section 69F of the Agricultural and Veterinary Chemicals (Administration) Act, by the Chief Executive Officer of the NRA to exercise the powers or perform the functions of an inspector for the purposes of a particular relevant law those powers and functions are conferred on that officer.

(2) Powers and functions conferred as referred to in subsection (1) are to be exercised or performed in accordance with the authorisation but are taken to have been validly exercised or performed despite any failure to comply with a condition or restriction of the authorisation.

(3) Words and expressions used in this section have the same meanings as they have in section 69F of the Agricultural and Veterinary Chemicals (Administration) Act.

Application of fees and taxes

29. All fees, taxes and other money (other than penalties and fines) that, under the applicable provisions of this jurisdiction, are authorised or directed to be payable by or imposed on any person must be paid to the Commonwealth.

Documents or substances held by previous registering authority may be given to NRA

30. Despite anything in any other law of this jurisdiction, any authority of this jurisdiction that, immediately before the commencement of this section, performed functions under a provision of the law of this jurisdiction that corresponded to a provision of the Agvet Code of this

jurisdiction may give to the NRA any documents or substances in its possession or custody that were received by it in the performance of those functions or otherwise relate to the performance of those functions.

Exemptions from liability for damages

31. (1) No action, suit or other proceeding for damages lies against the State or a person who is or has been a co-ordinator of this jurisdiction for any loss or injury directly or indirectly suffered as a result of:

- (a) the handling of an approved active constituent for a proposed or existing chemical product; or
- (b) the handling of a registered chemical product; or
- (c) the handling of an active constituent for a proposed or existing chemical product, or of a chemical product, in respect of which a permit or exemption has been issued or given by the NRA; or
- (d) an inability to use, or to use in a particular manner, an active constituent for a proposed or existing chemical product:
 - (i) because an approval, permit or exemption permitting its use, or permitting its use in that manner, has been refused by the NRA or such an approval, permit or exemption that was previously granted by the NRA has been suspended or cancelled; or
 - (ii) because its use, or its use in that manner, is precluded by the conditions of an approval, permit or exemption; or
- (e) an inability to use, or to use in a particular manner, a chemical product:
 - (i) because a registration, permit or exemption permitting its use, or permitting its use in that manner, has been refused by the NRA or such a registration, permit or exemption that was previously granted by the NRA has been suspended or cancelled; or
 - (ii) because its use, or its use in that manner, is precluded by the conditions of a registration, permit or exemption; or
- (f) the carrying out of a step in the manufacture of a chemical product in respect of which a licence has been issued by the NRA; or
- (g) an inability to carry out, or to carry out in a particular manner or at particular premises, a step in the manufacture of a chemical product:
 - (i) because a licence to carry out that step, or to carry out that step in that manner or at those premises, has been refused by the NRA or such a licence that was previously granted by the NRA has been suspended or cancelled; or

(ii) because the carrying out of that step, or the carrying out of that step in that manner or at those premises, is precluded by the conditions of a licence.

(2) If an action, suit or other proceeding is brought against a person responsible for the importation, manufacture, supply or handling of:

- (a) an approved active constituent for a proposed or existing chemical product; or
- (b) a registered chemical product; or
- (c) an active constituent for a proposed or existing chemical product, or a chemical product, in respect of which the NRA has issued a permit or given an exemption; or
- (d) a chemical product in respect of a step in the manufacture of which the NRA has issued a licence,

in relation to any loss or injury directly or indirectly suffered because of the importation, manufacture, supply or handling of the constituent or product, it is not a defence to that action, suit or other proceeding that the NRA had approved the constituent, registered the product, issued a permit or given an exemption in relation to the constituent or the product, or issued a licence in relation to a step in the manufacture of the product.

(3) Expressions used in this section have the same meanings as in the Agvet Code of this jurisdiction.

Regulations

32. 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.

Eligible laws

33. The regulations may declare any law, or provision of a law, to be an eligible law for the purposes of the definition of "permit" in section 109 of the Agvet Code of this jurisdiction.

PART 9—IMPOSITION OF FEES AND TAXES

Fees (including taxes)

34. This section imposes the fees (including fees that are taxes) that the Agvet Regulations of this jurisdiction prescribe.

PART 10—CONFERRAL OF FUNCTIONS ON COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS

Conferral of functions on Commonwealth Director of Public Prosecutions

35. The Director of Public Prosecutions of the Commonwealth (“the Director”) may:

- (a) institute prosecutions on indictment for indictable offences against the Agvet Code, or the Agvet Regulations, of this jurisdiction; and
- (b) carry on prosecutions of the kind referred to in paragraph (a) (except prosecutions instituted by the Attorney-General or the Director of Public Prosecutions of the State), whether or not instituted by the Director; and
- (c) if the Attorney-General or the Director of Public Prosecutions of the State requests the Director in writing to carry on a prosecution of the kind referred to in paragraph (a) that was instituted by the Attorney-General or the Director of Public Prosecutions of the State—carry on the prosecution; and
- (d) institute proceedings for the commitment of persons for trial in respect of indictable offences against the Agvet Code, or the Agvet Regulations, of this jurisdiction; and
- (e) institute proceedings for the summary conviction of persons in respect of offences against the Agvet Code, or the Agvet Regulations, of this jurisdiction; and
- (f) carry on proceedings of a kind referred to in paragraph (d) or (e) (whether or not instituted by the Director); and
- (g) do anything incidental or conducive to the performance of any of the functions referred to in paragraphs (a) to (f).

PART 11—RELATIONSHIP WITH OTHER STATE LAWS

Regulations relating to savings and transitional provisions

36. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) In particular, the regulations may make provision for or with respect to:

- (a) treating the registration or approval of a chemical product or constituent of a chemical product under the Agvet Code to be registration or approval of the chemical product or constituent for the purposes of any of the provisions of the Pesticides Act 1978 or the Stock Medicines Act 1989; or

- (b) treating a label approved under the Agvet Code to be a label registered under or required or permitted by any of the provisions of the Pesticides Act 1978 or the Stock Medicines Act 1989; or
- (c) suspending the operation of provisions of the Pesticides Act 1978 or the Stock Medicines Act 1989 specified in the regulations to the extent (if any) so specified.

(3) Any such savings or transitional provision may, if the regulations so provide, take effect from the commencement of this section or a later date.

(4) To the extent to which any such savings or transitional 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:

- (a) to affect, in a manner prejudicial to any person (other than this State or an authority of this State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than this State or an authority of this State) in respect of anything done or omitted to be done before the date of its publication.

(5) In this section, “**chemical product**”, “**constituent**” and “**label**” have the same meanings as in the Agvet Code.

Consequential amendment of other State laws

37. The Pesticides Act 1978 and the Stock Medicines Act 1989 are amended as set out in Schedule 1.

SCHEDULE 1—CONSEQUENTIAL AMENDMENT OF OTHER STATE LAWS

(Sec. 37)

Pesticides Act 1978 No. 57**Section 5 (Definitions):**

- (a) In section 5 (1), insert in alphabetical order:

“Agvet Code” means the provisions applying because of section 5 of the Agricultural and Veterinary Chemicals (New South Wales) Act 1994;

- (b) From section 5 (1), omit the definition of “pest”, insert instead:

“pest” has the same meaning as in the Agvet Code;

- (c) From section 5 (1), omit the definition of “pesticide”, insert instead:

“pesticide” has the same meaning as agricultural chemical product in the Agvet Code and includes a veterinary chemical product (within the meaning of that Code) that is represented as being suitable for, or is manufactured, supplied or used for, the external control of ectoparasites of animals;

- (d) From section 5 (1), omit the definition of “substance”, insert instead:

“substance” has the same meaning as in the Agvet Code;

Stock Medicines Act 1989 No. 182**Section 3 (Definitions):**

- (a) In section 3 (1), insert in alphabetical order:

“Agvet Code” means the provisions applying because of section 5 of the Agricultural and Veterinary Chemicals (New South Wales) Act 1994;

- (b) From section 3 (1), omit the definition of “food producing species”, insert instead:

“food producing species” has the same meaning as food-producing species in the Agvet Code;

- (c) From section 3 (1), omit the definition of “pest”, insert instead:

“pest” has the same meaning as in the Agvet Code;

SCHEDULE 1—CONSEQUENTIAL AMENDMENT OF OTHER
STATE LAWS—*continued*

- (d) From section 3 (1), omit the definition of “stock”, insert instead:
 “**stock**” has the same meaning as animal in the Agvet Code;
- (e) From section 3 (1), omit the definition of “stock medicine”, insert instead:
 “**stock medicine**” has the same meaning as veterinary chemical product in the Agvet Code, but excludes a veterinary chemical product (within the meaning of that Code) that is represented as being suitable for, or is manufactured, supplied or used for, the external control of ectoparasites of stock;
- (f) From section 3 (1), omit the definition of “substance”, insert instead:
 “**substance**” has the same meaning as in the Agvet Code;
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[*Minister's second reading speech made in—
Legislative Assembly on 13 May 1994
Legislative Council on 22 September 1994*]

FIRST PRINT

**AGRICULTURAL AND VETERINARY CHEMICALS
(NEW SOUTH WALES) BILL 1994**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to give effect to this State's part in an agreement reached between the Commonwealth, the States, the Australian Capital Territory and the Northern Territory for the regulation and control of agricultural and veterinary chemicals by means of a uniform legislative scheme. The scheme will be administered by the National Registration Authority for Agricultural and Veterinary Chemicals ("the NRA"), which was established by Commonwealth legislation passed in 1992 and commenced to operate on 15 June 1993.

The Commonwealth has enacted legislation for a scheme for the approval and registration of agricultural and veterinary chemicals and for the licensing of manufacturers of those chemicals. The object of the scheme is to ensure that the legislation in each State and Territory on these matters is, and will continue to be, uniform. The control of the use of chemicals will remain with the States and is not affected by the proposed legislation.

The essence of the legislative scheme is that the law passed by the Commonwealth Parliament establishing an Agricultural and Veterinary Chemicals Code (referred to as the "Agvet Code") is to have effect in certain Commonwealth Territories (referred to as the "participating Territories"). The Agvet Code is to be applied by the legislatures of other Australian jurisdictions as the law of those jurisdictions. The relevant Commonwealth, State and Territory Ministers have agreed that the applied laws will have the characteristics of, and will be treated for most practical purposes within each jurisdiction as if they were, Commonwealth rather than State laws.

The Commonwealth Acts Interpretation Act will apply for the purposes of interpreting the Agvet Codes as applied in the States and the Northern Territory so that there will be a uniform interpretation regime. Also, the Commonwealth administrative law package will apply to the legislation. This package of laws consists of the Administrative Decisions (Judicial Review) Act 1977, the Administrative Appeals Tribunal Act 1975, the Freedom of Information Act 1982, the Ombudsman Act 1976, and the Privacy Act 1988. These Acts will provide exclusive rights of review of decisions of the NRA taken under the applied legislation. The State legislation applying

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the Commonwealth law will confer full administrative authority in relation to the applied laws on the NRA.

Offences against the legislation will continue to be offences against laws of the States or Territories concerned, although the Commonwealth Director of Public Prosecutions is to be empowered to prosecute for any such offences. However, certain Commonwealth ancillary criminal laws, which apply in relation to the Agvet Code of the participating Territories, will also apply as laws of the States and the Northern Territory in relation to offences against the Agvet Codes of those States and that Territory.

RECITALS

The Recitals refer to the need to regulate agricultural and veterinary chemical products on a uniform basis throughout Australia and state the reason for the proposed regulatory scheme that has been devised.

PART 1—PRELIMINARY

Clause 1—Short title

This clause specifies the short title of the proposed Act.

Clause 2—Commencement

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

Clause 3—Definitions

This clause defines expressions used in the proposed Act.

Clause 4—Jervis Bay Territory

This clause has the effect of treating the Jervis Bay Territory and the Australian Capital Territory as a single Territory for the purposes of the proposed Act.

PART 2—THE AGVET CODE, AND THE AGVET REGULATIONS, OF THIS JURISDICTION

Clause 5—Application of Agvet Code in this jurisdiction

The purpose of this clause is to apply, as a law of the State, the Agvet Code that is set out in the Schedule to the Agricultural and Veterinary Chemicals Code Act 1994 of the Commonwealth.

The clause provides that the Code, as it applies as a law of this State, may be referred to as the Agvet Code of New South Wales.

Clause 6—Application of Agvet Regulations in this jurisdiction

The purpose of this clause is to apply the regulations for the time being in force under section 6 of the Agricultural and Veterinary Chemicals Code Act 1994 of the Commonwealth as regulations in force for the purpose of the Agvet Code of this State.

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The clause provides that the regulations, as they apply for the purpose of the Agvet Code of this State, may be referred to as the Agvet Regulations of New South Wales.

Clause 7—Interpretation of Agvet Code and Agvet Regulations of this jurisdiction

This clause contains some interpretative provisions that are applicable to the Agvet Code and Agvet Regulations of this State.

The Code uses the neutral expression "jurisdiction". Accordingly this clause defines "this jurisdiction" as referring to New South Wales and "the Minister for this jurisdiction" as referring to the Minister who will be administering the proposed Act.

The clause also provides that the Acts Interpretation Act 1901 of the Commonwealth is to apply for the purpose of interpreting the Agvet Code and the Agvet Regulations of this State and that the Interpretation Act 1987 of this State is not to apply.

Clause 8—Ancillary offences (aiding, abetting, accessories, attempts, incitement or conspiracy)

This clause applies certain Commonwealth ancillary criminal laws as laws of this State in relation to offences against the Agvet Code or the Agvet Regulations of this State. Corresponding ancillary State criminal laws will not apply to those offences. The clause ensures that actions constituting certain ancillary offences that are related to offences against the Code or the Regulations will receive uniform treatment throughout Australia. Accordingly, anything done in a State or the Northern Territory by way of aiding or abetting, being an accessory to, attempting to commit, inciting the commission of, or conspiring to commit, an offence against the Code or the Regulations will constitute the same offence against the law of that State or that Territory as if it were done in the participating Territories. References in the Code or the Regulations to an offence against the Code or the Regulations are taken to include a related offence against the Commonwealth ancillary criminal laws.

PART 3—CITING THE AGVET CODES, AND THE AGVET REGULATIONS, OF OTHER JURISDICTIONS

Clause 9—References to Agvet Codes and Agvet Regulations of other jurisdictions

This clause enables the Code set out in the Schedule to the Agricultural and Veterinary Chemicals Code Act 1994 of the Commonwealth, and regulations made for the purposes of that Code, as they are applied by the corresponding law of another State or of the Northern Territory, or as they have effect in the participating Territories, to be referred to as the Agvet Code or the Agvet Regulations of that State, of the Northern Territory or of the participating Territories, as the case may be.

Clause 10—References to Agvet Codes and Agvet Regulations

Where it is desired in a law or document to refer to the Agvet Codes or to the Agvet Regulations of the States, the Northern Territory and the participating Territories, this clause will enable the law or document to refer simply to the Agvet Codes or to the Agvet Regulations without the need to specify all the jurisdictions concerned.

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PART 4—APPLICATION OF AGVET CODES TO THE CROWN

Clause 11—Agvet Code of this jurisdiction

This clause provides that the Agvet Code of this State binds the Crown in right of this State and the Crown in all other capacities in respect of which the Parliament of this State has legislative power to bind the Crown.

Clause 12—Agvet Code of other jurisdictions

This clause provides that the Crown in right of this State is bound by the Agvet Codes of each other State, of the Northern Territory and of the participating Territories.

Clause 13—Crown not liable to prosecution

This clause makes it clear that nothing in Part 4, or in the Agvet Code of this State, makes the Crown in any capacity liable to be prosecuted for an offence.

Clause 14—This Part overrides the prerogative

This clause makes it clear that, where the Agvet Code of another State, of the Northern Territory or the participating Territories binds the Crown in right of New South Wales, that Code overrides any prerogative right or privilege of the Crown.

PART 5—APPLICATION OF COMMONWEALTH ADMINISTRATIVE LAWS TO AGVET CODE AND AGVET REGULATIONS OF THIS JURISDICTION

Clause 15—Object

This clause states that the object of the Part is to help ensure that all the Agvet Codes are administered on a uniform basis.

Clause 16—Application of Commonwealth administrative laws in relation to applicable provisions

This clause applies the Commonwealth administrative laws (which are defined in clause 3) to matters arising under the Agvet Code and Agvet Regulations of this State.

In order to ensure that certain provisions of the Agvet Code of this State do not affect the operation of those administrative laws, the clause provides that:

- (a) obligations imposed on the NRA under that Code to give brief reasons for certain decisions do not affect the obligations of the NRA to give full statements of reasons for its decisions that are required by section 28 of the Administrative Appeals Tribunal Act 1975 of the Commonwealth and section 13 of the Administrative Decisions (Judicial Review) Act 1977 of the Commonwealth; and
- (b) obligations imposed on the NRA under that Code not to disclose confidential commercial information do not affect the obligations of the NRA under the Freedom of Information Act 1982 of the Commonwealth.

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Clause 17—Functions and powers conferred on Commonwealth officers and authorities

This clause makes it clear that, in so far as the Commonwealth administrative laws apply to the Agvet Code of this State because of clause 16, those laws confer functions or powers on Commonwealth officers and authorities to the same extent as those laws confer those functions and powers in relation to Commonwealth laws, and the functions and powers are to be exercised as nearly as practicable in the same way as under the Commonwealth laws.

Clause 18—Reference in Commonwealth administrative law to a provision of another law

This clause provides that, for the purpose of the application under clause 16 of the Commonwealth administrative laws to the Agvet Code of this State, a reference in any such administrative law to a provision of that law or of another administrative law is to be treated as a reference to the provision as it applies to that Code under that clause.

PART 6—JURISDICTION OF COURTS

Clause 19—Jurisdiction of Federal Court

This clause confers jurisdiction on the Federal Court of Australia in all civil matters arising under the Agvet Code or the Agvet Regulations of this State or under Commonwealth laws that apply to that Code or those Regulations. The clause makes it clear that the jurisdiction of State courts is not affected.

Clause 20—Exercise of jurisdiction under cross-vesting provisions

This clause declares that the proposed Act does not affect the operation of the State laws relating to cross-vesting of jurisdiction between courts.

**PART 7—THE NATIONAL REGISTRATION AUTHORITY FOR
AGRICULTURAL AND VETERINARY CHEMICALS**

Clause 21—Conferral of functions and powers on NRA

This clause declares that the NRA has the functions and powers expressed to be conferred on it under the proposed Act or under the Agvet Code of this State.

In addition it confers certain specified powers on the NRA, which mirror the powers presently conferred on the NRA under section 7 (3) of the Agricultural and Veterinary Chemicals (Administration) Act 1992 of the Commonwealth.

Clause 22—Agreements and arrangements

This clause authorises the Minister or a person authorised by the Minister to enter into an agreement or an arrangement with the Commonwealth Minister responsible for the administration of the agricultural and veterinary chemicals legislation under which the NRA may act as an agent of this State. A corresponding provision exists in section 9 of the Agricultural and Veterinary Chemicals (Administration) Act 1992 of the Commonwealth.

Agricultural and Veterinary Chemicals (New South Wales) 1994

Clause 23—Conferral of other functions and powers for purposes of law in this jurisdiction

This clause empowers the NRA to exercise functions and powers in this State that are conferred on it by the Agvet legislation of another jurisdiction or are referred to in an agreement or arrangement made under a provision of an Act of another jurisdiction that corresponds to clause 22.

Clause 24—Commonwealth Minister may give directions in exceptional circumstances

This clause provides that the power of the Commonwealth Minister who is responsible for the administration of the agricultural and veterinary chemicals legislation to give directions to the NRA under section 10 of the Agricultural and Veterinary Chemicals (Administration) Act 1992 of the Commonwealth extends to giving directions in relation to functions and powers conferred on the NRA under the Agvet Code and Agvet Regulations of this State and Commonwealth laws applying to that Code and those Regulations.

PART 8—MISCELLANEOUS

Clause 25—Orders

This clause provides that orders made under section 7 of the Agricultural and Veterinary Chemicals Code Act 1994 of the Commonwealth are to have the same effect as if they were provisions of the Agvet Regulations of this State.

Clause 26—Manufacturing principles

This clause provides that the manufacturing principles determined by the NRA under section 23 of the Agricultural and Veterinary Chemicals Act 1994 of the Commonwealth are to have effect for the purposes of Part 8 of the Agvet Code of this State.

Clause 27—Delegation

This clause provides that the powers of delegation vested in the Commonwealth Minister responsible for the agricultural and veterinary chemicals legislation of the Commonwealth may also be exercised in relation to powers expressed to be conferred on that Minister under the proposed Act or the Agvet Code of this State.

Clause 28—Conferral of powers on State officers

This clause confers the powers and functions of inspectors on certain State officers.

Clause 29—Application of fees and taxes

As the Commonwealth will be meeting the cost of administering the Agvet Code and Agvet Regulations of this State, this clause provides that all fees, taxes and other money (other than penalties and fines) that are payable under that Code or those Regulations are to be paid to the Commonwealth.

Agricultural and Veterinary Chemicals (New South Wales) 1994

Clause 30—Documents or substances held by previous registering authority may be given to NRA

This clause ensures that the existing registering authority of this State for agricultural and veterinary chemicals will not be prevented by anything in any existing law from giving to the NRA those documents or substances in the authority's possession or custody that relate to the functions to be performed by the NRA.

Clause 31—Exemptions from liability for damages

This clause provides that this State and any co-ordinator nominated by this State for the purposes of the Agvet Code of this State is not liable if a person suffers loss or injury as a result of the use of an approved active constituent for a proposed chemical product, or the use of a registered chemical product. The co-ordinator is a person nominated by the State to perform certain functions under the Agvet Code.

The clause also provides that the fact that a constituent has been approved or a product has been registered by the NRA or that the manufacturer of a product has been licensed by the NRA is not to be a defence in a proceeding brought against the importer, manufacturer, supplier or distributor of the product by a person who has suffered loss or injury as a result of the use of a product.

Clause 32—Regulations

This clause empowers the Governor-in-Council to make regulations for the purposes of the proposed Act.

Clause 33—Eligible laws

This clause enables the regulations to declare laws of this State to be eligible laws for the purposes of the definition of "permit" in section 109 of the Agvet Code. This will allow a permit to be granted under the Agvet Code authorising the doing of something that would otherwise be an offence against that law.

PART 9—IMPOSITION OF FEES AND TAXES

Clause 34—Fees (including taxes)

This clause is the provision that formally imposes the fees and taxes that are prescribed by the Agvet Regulations of this State for the purposes of applications and other matters under the Agvet Code of this State.

**PART 10—CONFERRAL OF FUNCTIONS ON COMMONWEALTH
DIRECTOR OF PUBLIC PROSECUTIONS**

Clause 35—Conferral of functions on Commonwealth Director of Public Prosecutions

This clause empowers the Director of Public Prosecutions of the Commonwealth to institute and carry on prosecutions for offences against the Agvet Code or the Agvet Regulations of the State.

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PART 11—RELATIONSHIP WITH OTHER STATE LAWS

Clause 36—Regulations relating to savings and transitional provisions

This clause will enable regulations to be made with respect to savings and transitional provisions.

Clause 37—Consequential amendment of other State laws

This clause gives effect to Schedule 1 which contains consequential amendments to the Pesticides Act 1978 and the Stock Medicines Act 1989.

SCHEDULE 1—CONSEQUENTIAL AMENDMENT OF OTHER STATE LAWS

This Schedule contains consequential amendments to the Pesticides Act 1978 and the Stock Medicines Act 1989.

FIRST PRINT

**AGRICULTURAL AND VETERINARY CHEMICALS
(NEW SOUTH WALES) BILL 1994**

NEW SOUTH WALES



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**AGRICULTURAL AND VETERINARY CHEMICALS
(NEW SOUTH WALES) BILL 1994**

NEW SOUTH WALES



No. , 1994

A BILL FOR

An Act to apply certain laws of the Commonwealth relating to agricultural and veterinary chemical products as laws of New South Wales; and for other purposes.

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RECOGNISING:

- 5 (a) that the protection of the health and safety of human beings, animals and the environment is essential to the well-being of society and can be enhanced by putting in place a system to regulate agricultural chemical products and veterinary chemical products; and
- 10 (b) that the principle of ecologically sustainable development requires a regulatory system that is designed to ensure that the use of such products today will not impair the prospects of future generations; and
- 15 (c) that the furthering of trade and commerce between Australia and places outside Australia, and the present and future economic viability and competitiveness of primary industry and of a domestic industry for manufacturing and formulating such products, are essential for the well-being of the economy and require a system for regulating such products that is cost effective, efficient, predictable, adaptive and responsive; and
- 20 (d) that it is desirable to establish a regulatory system that is open and accountable and gives opportunity for public input with respect to the regulation of such products; and
- (e) that the system should, so far as practicable, be uniform throughout Australia; and
- 25 (f) that uniformity could best be achieved by the enactment of legislation by the Parliament of the Commonwealth as a law for the government of the Australian Capital Territory and the adoption of that legislation by the Parliaments and legislatures of the States and the Northern Territory:

Agricultural and Veterinary Chemicals (New South Wales) 1994

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the Agricultural and Veterinary Chemicals (New South Wales) Act 1994. 5

Commencement

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

Definitions

3. (1) In this Act: 10

“**Agricultural and Veterinary Chemicals Act**” means the Agricultural and Veterinary Chemicals Act 1994 of the Commonwealth;

“**Agricultural and Veterinary Chemicals (Administration) Act**” means the Agricultural and Veterinary Chemicals (Administration) Act 1992 of the Commonwealth; 15

“**Agricultural and Veterinary Chemicals Code Act**” means the Agricultural and Veterinary Chemicals Code Act 1994 of the Commonwealth;

“**Agvet Code of New South Wales**” means the provisions applying because of section 5; 20

“**Agvet Regulations of New South Wales**” means the provisions applying because of section 6;

“**applicable provision**”, in relation to a jurisdiction, means a provision of: 25

(a) the Agvet Code of that jurisdiction; or

(b) the Agvet Regulations of that jurisdiction; or

(c) a law of the Commonwealth that applies in that jurisdiction in relation to a provision of or offence against the Agvet Code or Agvet Regulations of that jurisdiction; 30

“**authority**”, in relation to the Commonwealth, has the meaning given in the Agricultural and Veterinary Chemicals Act;

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“Commonwealth administrative laws” means:

(a) the following Acts:

- (i) the Administrative Appeals Tribunal Act 1975 of the Commonwealth;
- 5 (ii) the Administrative Decisions (Judicial Review) Act 1977 of the Commonwealth;
- (iii) the Freedom of Information Act 1982 of the Commonwealth;
- (iv) the Ombudsman Act 1976 of the Commonwealth;
- 10 (v) the Privacy Act 1988 of the Commonwealth; and

(b) the regulations in force under those Acts;

“Commonwealth ancillary criminal laws” has the meaning given by section 8;

15 **“Commonwealth Minister”** means “the Minister” within the meaning of the Agvet Code of the participating Territories;

“corresponding Act” means an Act of another jurisdiction that corresponds to this Act;

“corresponding law” means:

- (a) a corresponding Act; or
- 20 (b) regulations made under a corresponding Act; or
- (c) the Agvet Code, Agvet Regulations, or another applicable provision, of another jurisdiction; or
- (d) rules of court made under a corresponding Act;

“instrument” means any document whatever, including:

- 25 (a) an Act or an instrument made under an Act; or
- (b) a law of this jurisdiction or an instrument made under such a law; or
- (c) an award or other industrial determination or order, or an industrial agreement; or
- 30 (d) any other order (whether executive, judicial or otherwise); or
- (e) a notice, certificate or licence; or
- (f) an agreement; or
- (g) an application made, information or complaint laid, affidavit sworn, or warrant issued, for any purpose; or
- 35 (h) an indictment, presentment, summons or writ; or
- (i) any other pleading in, or process issued in connection with, a legal or other proceeding;

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- “jurisdiction”** means a State or the participating Territories;
- “law”**, in relation to a participating Territory, means a law of, or in force in, that Territory;
- “NRA”** means the National Registration Authority for Agricultural and Veterinary Chemicals established by the Agricultural and Veterinary Chemicals (Administration) Act; 5
- “officer”**, in relation to the Commonwealth, has the meaning given in the Agricultural and Veterinary Chemicals Act;
- “participating Territory”** means:
- (a) the Australian Capital Territory; or 10
 - (b) another Territory that is declared by regulations in force under section 25 of the Agricultural and Veterinary Chemicals Act to be a participating Territory;
- “State”** includes the Northern Territory of Australia;
- “Territory”** means a Territory referred to in section 122 of the Constitution of the Commonwealth, other than the Northern Territory of Australia, Norfolk Island, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands; 15
- “this jurisdiction”** means New South Wales.
- (2) In this Act, a reference to a Commonwealth Act includes a reference to:
- (a) that Commonwealth Act as amended and in force for the time being; and
 - (b) an Act enacted in substitution for that Act. 20

Jervis Bay Territory 25

4. For the purposes of this Act, and the Agvet Code and the Agvet Regulations of this jurisdiction, the Jervis Bay Territory is taken to be part of the Australian Capital Territory.

PART 2—THE AGVET CODE, AND THE AGVET REGULATIONS, OF THIS JURISDICTION 30

Application of Agvet Code in this jurisdiction

5. The Code set out in the Schedule to the Agricultural and Veterinary Chemicals Code Act as in force for the time being:
- (a) applies as a law of New South Wales; and
 - (b) as so applying, may be cited as the Agvet Code of New South Wales. 35

Application of Agvet Regulations in this jurisdiction

6. The regulations in force for the time being under section 6 of the Agricultural and Veterinary Chemicals Code Act:

- 5 (a) apply as regulations in force for the purposes of the Agvet Code of New South Wales; and
 (b) as so applying, may be referred to as the Agvet Regulations of New South Wales.

Interpretation of Agvet Code and Agvet Regulations of this jurisdiction

10 7. (1) In the Agvet Code, and the Agvet Regulations, of this jurisdiction:

“the Minister for this jurisdiction” means the Minister;

“this jurisdiction” means New South Wales.

15 (2) Subject to Part 1 of the Agvet Code of this jurisdiction, the Acts Interpretation Act 1901 of the Commonwealth as in force for the time being applies as a law of this jurisdiction to:

- (a) the Agvet Code, and the Agvet Regulations, of this jurisdiction; and
 20 (b) any instrument made, granted or issued under that Code or those Regulations.

(3) For the purposes of subsection (2), the Commonwealth Act mentioned in that subsection applies as if:

- 25 (a) the Agvet Code of this jurisdiction were a Commonwealth Act; and
 (b) the Agvet Regulations of this jurisdiction or instruments mentioned in that subsection were regulations or instruments made under a Commonwealth Act.

(4) The Interpretation Act 1987 does not apply to:

- 30 (a) the Agvet Code, or the Agvet Regulations, of New South Wales; or
 (b) any instrument made, granted or issued under that Code or those Regulations.

Ancillary offences (aiding, abetting, accessories, attempts, incitement or conspiracy)

8. (1) In this section, “Commonwealth ancillary criminal laws” means:

- 35 (a) section 5, 6, 7 or 7A of the Crimes Act 1914 of the Commonwealth; or

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(b) section 86 (1) of that Act because of paragraph (a) of that subsection.

(2) The Commonwealth ancillary criminal laws apply as laws of this jurisdiction in relation to an offence against the Agvet Code, or the Agvet Regulations, of this jurisdiction, and so apply: 5

(a) as if a reference in the laws to a law of the Commonwealth were a reference to that Code or those Regulations; and

(b) to the exclusion of laws of this jurisdiction to the same or a similar effect.

(3) In the Agvet Code, or the Agvet Regulations, of this jurisdiction, a reference to an offence against that Code or those Regulations includes a reference to a related offence against the Commonwealth ancillary criminal laws. 10

PART 3—CITING THE AGVET CODES, AND THE AGVET REGULATIONS, OF OTHER JURISDICTIONS 15

References to Agvet Codes and Agvet Regulations of other jurisdictions

9. (1) This section has effect for the purposes of an Act, a law of this jurisdiction or an instrument made under an Act or such a law.

(2) If a law of a jurisdiction other than this jurisdiction provides that the Code set out in the Schedule to the Agricultural and Veterinary Chemicals Code Act as in force for the time being applies as a law of that jurisdiction, the Agvet Code of that jurisdiction is the Agvet Code so set out, applying as a law of that jurisdiction. 20

(3) If a law of a jurisdiction other than this jurisdiction provides that the regulations in force for the time being under section 6 of the Agricultural and Veterinary Chemicals Code Act apply as regulations in force for the purposes of the Agvet Code of that jurisdiction, the Agvet Regulations of that jurisdiction are those regulations as so applying. 25

References to Agvet Codes and Agvet Regulations 30

10. (1) The object of this section is to help ensure that the Agvet Code of this jurisdiction can operate, in appropriate circumstances, as if that Code, together with the Agvet Code of each other jurisdiction, constituted a single national Agvet Code applying throughout Australia.

(2) Subject to this section, a reference in an instrument to the Agvet Codes, or to the Agvet Regulations, is taken, for the purposes of the laws of this jurisdiction: 35

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- (a) to be a reference to the Agvet Code, or to the Agvet Regulations, of this jurisdiction; and
 - (b) to include a separate reference to the Agvet Code, or to the Agvet Regulations, of each other jurisdiction.
- 5 (3) Subsection (2) has effect except so far as the contrary intention appears in the instrument or the context of the reference otherwise requires.

PART 4—APPLICATION OF AGVET CODES TO THE CROWN

10 **Agvet Code of this jurisdiction**

11. The Agvet Code of this jurisdiction binds the Crown in right of this jurisdiction and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Agvet Code of other jurisdictions

- 15 12. The Agvet Code of each jurisdiction other than this jurisdiction binds the Crown in right of this jurisdiction.

Crown not liable to prosecution

13. Nothing in this Part, or in the Agvet Code of this jurisdiction, renders the Crown in any capacity liable to be prosecuted for an offence.

20 **This Part overrides the prerogative**

14. If, because of this Part, a provision of the law of another jurisdiction binds the Crown in right of this jurisdiction, the Crown in that right is subject to that provision despite any prerogative right or privilege.

25 **PART 5—APPLICATION OF COMMONWEALTH ADMINISTRATIVE LAWS TO AGVET CODE AND AGVET REGULATIONS OF THIS JURISDICTION**

Object

- 30 15. 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.

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Application of Commonwealth administrative laws in relation to applicable provisions

16. (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. 5

(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 Administrative Appeals Tribunal Act 1975, or section 13 of the Administrative Decisions (Judicial Review) Act 1977, of the Commonwealth as those sections apply as laws of this jurisdiction under subsection (1) of this section. 10

(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. 15

(4) For the purposes of a law of this jurisdiction, a matter arising in relation to the applicable provisions of this jurisdiction: 20

(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 20

(b) is taken not to be a matter arising in relation to laws of this jurisdiction.

(5) Subsection (4) has effect for the purposes of a law of this jurisdiction except as prescribed by regulations under section 32. 25

Functions and powers conferred on Commonwealth officers and authorities

17. (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. 30

(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. 35

Reference in Commonwealth administrative law to a provision of another law

- 5 **18.** 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.

PART 6—JURISDICTION OF COURTS

Jurisdiction of Federal Court

- 10 **19.** (1) Jurisdiction is conferred on the Federal Court of Australia with respect to all civil matters arising under the applicable provisions of this jurisdiction.

(2) This section does not affect the jurisdiction of the courts of this jurisdiction.

Exercise of jurisdiction under cross-vesting provisions

- 15 **20.** This Act does not affect the operation of a provision of a law of this jurisdiction relating to cross-vesting of jurisdiction.

PART 7—THE NATIONAL REGISTRATION AUTHORITY FOR AGRICULTURAL AND VETERINARY CHEMICALS

Conferral of functions and powers on NRA

- 20 **21.** (1) The NRA has the functions and powers conferred or expressed to be conferred on it under this Act or the Agvet Code of this jurisdiction.

25 (2) In addition to the powers mentioned in subsection (1), the NRA has power to do all things necessary or convenient to be done in connection with the performance of the functions referred to in subsection (1) and, in particular may:

- 30 (a) enter into contracts; and
 (b) acquire, hold and dispose of real and personal property; and
 (c) occupy, use and control any land or building owned or held under lease by the Commonwealth, a State or a Territory and made available for the purposes of the NRA; and

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- (d) appoint agents and attorneys, and act as agent for other persons; and
- (e) do anything incidental to any of its powers.

Agreements and arrangements

22. (1) The Minister, or a person authorised in writing by the Minister, may enter into an agreement or arrangement with the Commonwealth Minister for the performance of functions or the exercise of powers by the NRA as an agent of the State. 5

(2) The NRA has the functions and powers mentioned in the agreement or arrangement. 10

Conferral of other functions and powers for purposes of law in this jurisdiction

23. The NRA has power to do acts in this jurisdiction in the performance or exercise of any function or power:

- (a) expressed to be conferred on it by a law of a jurisdiction (other than this jurisdiction) that corresponds to this Act or the Agvet Code of this jurisdiction; or 15
- (b) referred to in an agreement or arrangement made under a provision of an Act of a jurisdiction other than this jurisdiction corresponding to section 22. 20

Commonwealth Minister may give directions in exceptional circumstances

24. The power of the Commonwealth Minister to give directions to the NRA under section 10 of the Agricultural and Veterinary Chemicals (Administration) Act extends to giving directions in relation to functions and powers of the NRA conferred under the applicable provisions of this jurisdiction, and the section applies accordingly. 25

PART 8—MISCELLANEOUS

Orders

25. Orders in force for the time being under section 7 of the Agricultural and Veterinary Chemicals Code Act have the same effect for the purposes of the Agvet Code of this jurisdiction as they would have if they were provisions of the Agvet Regulations of this jurisdiction. 30

Manufacturing principles

26. Subject to the Agvet Code, and the Agvet Regulations, of this jurisdiction, the manufacturing principles in force for the time being under section 23 of the Agricultural and Veterinary Chemicals Act also
5 have effect for the purposes of Part 8 of that Code.

Delegation

27. The power of delegation of the Commonwealth Minister under section 71 of the Agricultural and Veterinary Chemicals (Administration) Act extends to the powers that are expressed to be conferred on the
10 Commonwealth Minister under this Act or the Agvet Code of this jurisdiction, and the section applies accordingly.

Conferral of powers on State officers

28. (1) If an officer of a Department, administrative unit or authority is authorised, under section 69F of the Agricultural and Veterinary
15 Chemicals (Administration) Act, by the Chief Executive Officer of the NRA to exercise the powers or perform the functions of an inspector for the purposes of a particular relevant law those powers and functions are conferred on that officer.

(2) Powers and functions conferred as referred to in subsection (1) are
20 to be exercised or performed in accordance with the authorisation but are taken to have been validly exercised or performed despite any failure to comply with a condition or restriction of the authorisation.

(3) Words and expressions used in this section have the same meanings as they have in section 69F of the Agricultural and Veterinary Chemicals
25 (Administration) Act.

Application of fees and taxes

29. All fees, taxes and other money (other than penalties and fines) that, under the applicable provisions of this jurisdiction, are authorised or directed to be payable by or imposed on any person must be paid to the
30 Commonwealth.

Documents or substances held by previous registering authority may be given to NRA

30. Despite anything in any other law of this jurisdiction, any authority of this jurisdiction that, immediately before the commencement
35 of this section, performed functions under a provision of the law of this jurisdiction that corresponded to a provision of the Agvet Code of this

jurisdiction may give to the NRA any documents or substances in its possession or custody that were received by it in the performance of those functions or otherwise relate to the performance of those functions.

Exemptions from liability for damages

- 31. (1)** No action, suit or other proceeding for damages lies against the State or a person who is or has been a co-ordinator of this jurisdiction for any loss or injury directly or indirectly suffered as a result of: 5
- (a) the handling of an approved active constituent for a proposed or existing chemical product; or
 - (b) the handling of a registered chemical product; or 10
 - (c) the handling of an active constituent for a proposed or existing chemical product, or of a chemical product, in respect of which a permit or exemption has been issued or given by the NRA; or
 - (d) an inability to use, or to use in a particular manner, an active constituent for a proposed or existing chemical product: 15
 - (i) because an approval, permit or exemption permitting its use, or permitting its use in that manner, has been refused by the NRA or such an approval, permit or exemption that was previously granted by the NRA has been suspended or cancelled; or 20
 - (ii) because its use, or its use in that manner, is precluded by the conditions of an approval, permit or exemption; or
 - (e) an inability to use, or to use in a particular manner, a chemical product:
 - (i) because a registration, permit or exemption permitting its use, or permitting its use in that manner, has been refused by the NRA or such a registration, permit or exemption that was previously granted by the NRA has been suspended or cancelled; or 25
 - (ii) because its use, or its use in that manner, is precluded by the conditions of a registration, permit or exemption; or 30
 - (f) the carrying out of a step in the manufacture of a chemical product in respect of which a licence has been issued by the NRA; or
 - (g) an inability to carry out, or to carry out in a particular manner or at particular premises, a step in the manufacture of a chemical product: 35
 - (i) because a licence to carry out that step, or to carry out that step in that manner or at those premises, has been refused by the NRA or such a licence that was previously granted by the NRA has been suspended or cancelled; or 40

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(ii) because the carrying out of that step, or the carrying out of that step in that manner or at those premises, is precluded by the conditions of a licence.

5 (2) If an action, suit or other proceeding is brought against a person responsible for the importation, manufacture, supply or handling of:

- (a) an approved active constituent for a proposed or existing chemical product; or
- (b) a registered chemical product; or
- 10 (c) an active constituent for a proposed or existing chemical product, or a chemical product, in respect of which the NRA has issued a permit or given an exemption; or
- (d) a chemical product in respect of a step in the manufacture of which the NRA has issued a licence,

15 in relation to any loss or injury directly or indirectly suffered because of the importation, manufacture, supply or handling of the constituent or product, it is not a defence to that action, suit or other proceeding that the NRA had approved the constituent, registered the product, issued a permit or given an exemption in relation to the constituent or the product, or issued a licence in relation to a step in the manufacture of the product.

20 (3) Expressions used in this section have the same meanings as in the Agvet Code of this jurisdiction.

Regulations

25 32. 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.

Eligible laws

30 33. The regulations may declare any law, or provision of a law, to be an eligible law for the purposes of the definition of "permit" in section 109 of the Agvet Code of this jurisdiction.

PART 9—IMPOSITION OF FEES AND TAXES

Fees (including taxes)

34. This section imposes the fees (including fees that are taxes) that the Agvet Regulations of this jurisdiction prescribe.

**PART 10—CONFERRAL OF FUNCTIONS ON
COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS**

Conferral of functions on Commonwealth Director of Public Prosecutions

35. The Director of Public Prosecutions of the Commonwealth (“the Director”) may: 5
- (a) institute prosecutions on indictment for indictable offences against the Agvet Code, or the Agvet Regulations, of this jurisdiction; and
 - (b) carry on prosecutions of the kind referred to in paragraph (a) (except prosecutions instituted by the Attorney-General or the Director of Public Prosecutions of the State), whether or not instituted by the Director; and 10
 - (c) if the Attorney-General or the Director of Public Prosecutions of the State requests the Director in writing to carry on a prosecution of the kind referred to in paragraph (a) that was instituted by the Attorney-General or the Director of Public Prosecutions of the State—carry on the prosecution; and 15
 - (d) institute proceedings for the commitment of persons for trial in respect of indictable offences against the Agvet Code, or the Agvet Regulations, of this jurisdiction; and 20
 - (e) institute proceedings for the summary conviction of persons in respect of offences against the Agvet Code, or the Agvet Regulations, of this jurisdiction; and
 - (f) carry on proceedings of a kind referred to in paragraph (d) or (e) (whether or not instituted by the Director); and 25
 - (g) do anything incidental or conducive to the performance of any of the functions referred to in paragraphs (a) to (f).

PART 11—RELATIONSHIP WITH OTHER STATE LAWS

Regulations relating to savings and transitional provisions

36. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act. 30
- (2) In particular, the regulations may make provision for or with respect to:
- (a) treating the registration or approval of a chemical product or constituent of a chemical product under the Agvet Code to be registration or approval of the chemical product or constituent for the purposes of any of the provisions of the Pesticides Act 1978 or the Stock Medicines Act 1989; or 35

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- (b) treating a label approved under the Agvet Code to be a label registered under or required or permitted by any of the provisions of the Pesticides Act 1978 or the Stock Medicines Act 1989; or
- 5 (c) suspending the operation of provisions of the Pesticides Act 1978 or the Stock Medicines Act 1989 specified in the regulations to the extent (if any) so specified.

(3) Any such savings or transitional provision may, if the regulations so provide, take effect from the commencement of this section or a later date.

10 (4) To the extent to which any such savings or transitional 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:

- 15 (a) to affect, in a manner prejudicial to any person (other than this State or an authority of this State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than this State or an authority of this State) in respect of anything done or omitted to be done before the date of its publication.

20 (5) In this section, “chemical product”, “constituent” and “label” have the same meanings as in the Agvet Code.

Consequential amendment of other State laws

37. The Pesticides Act 1978 and the Stock Medicines Act 1989 are amended as set out in Schedule 1.

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(Sec. 37)

Pesticides Act 1978 No. 57

- Section 5 (**Definitions**): 5
- (a) In section 5 (1), insert in alphabetical order:
 “Agvet Code” means the provisions applying because of section 5 of the Agricultural and Veterinary Chemicals (New South Wales) Act 1994;
- (b) From section 5 (1), omit the definition of “pest”, insert instead: 10
 “pest” has the same meaning as in the Agvet Code;
- (c) From section 5 (1), omit the definition of “pesticide”, insert instead: 15
 “pesticide” has the same meaning as agricultural chemical product in the Agvet Code and includes a veterinary chemical product (within the meaning of that Code) that is represented as being suitable for, or is manufactured, supplied or used for, the external control of ectoparasites of animals; 20
- (d) From section 5 (1), omit the definition of “substance”, insert instead:
 “substance” has the same meaning as in the Agvet Code;

Stock Medicines Act 1989 No. 182

- Section 3 (**Definitions**): 25
- (a) In section 3 (1), insert in alphabetical order:
 “Agvet Code” means the provisions applying because of section 5 of the Agricultural and Veterinary Chemicals (New South Wales) Act 1994;
- (b) From section 3 (1), omit the definition of “food producing species”, insert instead: 30
 “food producing species” has the same meaning as food-producing species in the Agvet Code;
- (c) From section 3 (1), omit the definition of “pest”, insert instead: 35
 “pest” has the same meaning as in the Agvet Code;

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SCHEDULE 1—CONSEQUENTIAL AMENDMENT OF OTHER
STATE LAWS—*continued*

- (d) From section 3 (1), omit the definition of “stock”, insert instead:

5 “**stock**” has the same meaning as animal in the Agvet Code;

- (e) From section 3 (1), omit the definition of “stock medicine”, insert instead:

10 “**stock medicine**” has the same meaning as veterinary chemical product in the Agvet Code, but excludes a veterinary chemical product (within the meaning of that Code) that is represented as being suitable for, or is manufactured, supplied or used for, the external control of ectoparasites of stock;

- 15 (f) From section 3 (1), omit the definition of “substance”, insert instead:

 “**substance**” has the same meaning as in the Agvet Code;
