



New South Wales

# Pesticides Regulation 2017

under the

Pesticides Act 1999

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Pesticides Act 1999*.

GABRIELLE UPTON, MP  
Minister for the Environment

## Explanatory note

The object of this Regulation is to remake, with some amendments, the provisions of the *Pesticides Regulation 2009*, which is repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

The amendments made by this Regulation include adding to the list of fumigants, adding a new category of prescribed pesticide work (ground applicator work), requiring trainees to obtain a permit, updating record keeping requirements and providing exemptions from licensing requirements.

This Regulation makes provision with respect to the following:

- (a) licences to carry out prescribed pesticide work,
- (b) the persons qualified to use pesticides,
- (c) the records required to be kept with respect to the use of pesticides,
- (d) the obligation of public authorities to prepare pesticide use notification plans,
- (e) the obligation of persons who engage persons to carry out fumigation work or pest management technician work in common areas of residential complexes to give prior notification to residents,
- (f) the obligation of persons who carry out fumigation work or pest management technician work in common areas of residential complexes to give notification to residents,
- (g) the general requirements for records made or kept under this Regulation,
- (h) the control of prohibited residues in agricultural produce,
- (i) creating an exemption for using a pesticide contrary to an approved label,
- (j) prescribing fees for clean up notices and prevention notices,
- (k) prescribing offences as penalty notice offences,
- (l) savings and formal matters.

This Regulation is made under the *Pesticides Act 1999*, including sections 5A, 22 (2), 27 (2), 46, 47 (2) and (3) (d), 49 (2) (b) and (d), 50 (1) (a), 51 (1) and (6), 63 (1) and (2) (a), 75 (1), 78 (1), 117 and 119 (the general regulation-making power).

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## Pesticides Regulation 2017

under the

Pesticides Act 1999

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Pesticides Regulation 2017*.

#### 2 Commencement

This Regulation commences on 1 September 2017 and is required to be published on the NSW legislation website.

**Note.** This Regulation replaces the *Pesticides Regulation 2009*, which is repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

#### 3 Definitions

(1) In this Regulation:

***Aerial Application Association of Australia*** means Aerial Application Association of Australia Ltd (ACN 002 501 886).

***exempt domestic like use of pesticide***—see clause 4.

***fumigant*** means the following:

- (a) a chemical declared to be a fumigant by the Environment Protection Authority by order published in the Gazette,
- (b) before 1 July 2018—a fumigant within the meaning of the *Pesticides Regulation 2009* immediately before the repeal of that Regulation,
- (c) on or after 1 July 2018—a chemical listed in Schedule 1.

***fumigation work***—see clause 6.

***ground applicator work***—see clause 6.

***period 1*** means on or after 1 September 2017 but before 1 July 2018.

***period 2*** means on or after 1 July 2018 but before 1 July 2019.

***period 3*** means on or after 1 July 2019 but before 1 July 2020.

***period 4*** means on or after 1 July 2020 but before 1 July 2021.

***period 5*** means on or after 1 July 2021 but before 1 July 2022.

***period 6*** means on or after 1 July 2022.

***pest management technician work***—see clause 6.

***powered spray equipment*** means spray equipment that is powered otherwise than by human energy.

***registered training organisation*** has the same meaning as in the *National Vocational Education and Training Regulator Act 2011* of the Commonwealth.

***spray equipment*** means any device or apparatus that distributes pesticide through the air, and includes powered spray equipment.

*the Act* means the *Pesticides Act 1999*.

*use* does not include store.

**Note.** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

- (2) Notes included in this Regulation do not form part of this Regulation.

#### **4 Exempt domestic like use of pesticide**

The use of a pesticide by a person is an *exempt domestic like use of pesticide* for the purposes of this Regulation if the pesticide is, or is part of, a product that is widely available to the general public at retail outlets, is ordinarily used for domestic purposes (including home gardening), is being applied by hand or hand-held applicator and:

- (a) if the product is being used outdoors—no more than 20 litres or 20 kilograms of “ready-to-use” product or 5 litres or 5 kilograms of concentrated product is being used, or
- (b) if the product is being used indoors—no more than 5 litres or 5 kilograms of “ready-to-use” product or 1 litre or 1 kilogram of concentrated product is being used.

## Part 2 Licences

### Division 1 Preliminary

#### 5 Definitions

In this Part:

***aerial applicator business***—see clause 6.

***aerial applicator pilot work***—see clause 6.

***agricultural activities*** includes the following:

- (a) horticulture activities,
- (b) husbandry (such as the keeping or breeding of livestock, poultry or bees),
- (c) the growing of fruit, vegetables or other crops,
- (d) the processing or storing of agricultural products, but only when carried on in connection with another agricultural activity.

***approved*** means approved by the Environment Protection Authority from time to time.

***course of training***, in relation to prescribed pesticide work, means a course of training the completion of which is required in order for a person to obtain the prescribed licence qualification for a licence to carry out the work.

***National Standard for Licensing Pest Management Technicians*** means the document entitled *National Standard for Licensing Pest Management Technicians* published in 1999 by the National Environmental Health Forum (National Environmental Health Monographs General Series No 4).

***person responsible*** for a trainee carrying out fumigation work or pest management technician work means:

- (a) in the case of a trainee who is carrying out the work as an employee—the trainee's employer, or
- (b) in the case of a trainee who is carrying out the work under contract as an independent contractor—the person for whom he or she is carrying out the work under that contract, or
- (c) in the case of a trainee who is carrying out the work while engaged in a course of training for that work—the person conducting the course, or
- (d) in the case of a trainee who is carrying out the work under an arrangement with some other person (whether or not for reward) otherwise than as referred to in paragraph (a), (b) or (c)—that other person.

***prescribed licence qualification***, in relation to a kind of licence, means the qualification prescribed by, or determined in accordance with, clause 19 for that licence.

***RPA applicator business***—see clause 6.

***RPA applicator pilot work***—see clause 6.

***supervisor***, in relation to a trainee, means a person who is designated as the supervisor of the trainee by the person responsible for the trainee carrying out fumigation work or pest management technician work.

***trainee***, in relation to fumigation work or pest management technician work, means an unqualified person who is:

- (a) engaged in a course of training for the work, and
- (b) of or above the age of 17 years.

**unqualified person**, in relation to prescribed pesticide work, means a person who does not hold the prescribed licence qualification for a licence to carry out such work.

## Division 2 Licensing requirements

### 6 Kinds of prescribed pesticide work

- (1) Each of the following is prescribed for the purposes of section 5A of the Act as **prescribed pesticide work**:
- (a) **aerial applicator pilot work**—being the piloting by an individual of an aircraft that is being used to apply a pesticide to property (whether or not for fee or reward),
  - (b) **aerial applicator business**—being a business carried on for aerial applicator pilot work,
  - (c) **RPA applicator pilot work**—being the remote piloting by an individual of an unmanned aircraft that is being used to apply a pesticide to property (whether or not for fee or reward),
  - (d) **RPA applicator business**—being a business carried on for RPA applicator pilot work,
  - (e) **fumigation work**—being the use by an individual of fumigants (other than sterilising fumigants applied from single use canisters) for the prevention, control or eradication of pests for fee or reward or for a public authority (whether or not for fee or reward),
  - (f) **ground applicator work**—being the use by an individual of pesticides (other than fumigants) for the control of weeds or of pests affecting plants or soil for fee or reward, but it does not include:
    - (i) aerial applicator pilot work, or
    - (ii) RPA applicator pilot work, or
    - (iii) fumigation work, or
    - (iv) the use of pesticide on land owned or occupied by the person using the pesticide or by a relative (within the meaning of the *Adoption Act 2000*) of the person,
  - (g) **pest management technician work**—being the use by an individual of pesticides (other than restricted pesticides used to control vertebrates or fumigants) for the prevention, control or eradication of pests for fee or reward or for a public authority (whether or not for fee or reward) but it does not include:
    - (i) aerial applicator pilot work, or
    - (ii) RPA applicator pilot work, or
    - (iii) fumigation work, or
    - (iv) ground applicator work.
- (2) Despite subclause (1), each of the following uses of pesticides is not **prescribed pesticide work** if the use does not occur in connection with the piloting or use of an aircraft:
- (a) the use on land of pesticides by an individual who is the owner or occupier of the land (or who is the employee of such a person) in connection with agricultural activities on that land,
  - (b) the use of pesticides by an individual for amenity horticulture purposes (such as ground or garden maintenance, landscaping, floriculture, arboriculture or the operations of a nursery),

- (c) the use of pesticides by an individual for bush care purposes,
  - (d) the use of pesticides by an individual for the purposes of water treatment (including the treatment of water in pools and spas),
  - (e) the application of paint by an individual that contains anti-fouling pesticides,
  - (f) the use of pesticides by an individual to treat or prevent an ectoparasitic infestation,
  - (g) the use of pesticides by an individual to treat or preserve timber at a treatment plant.
- (3) A business is carried on for aerial applicator pilot work or RPA applicator pilot work if:
- (a) a business is carried on by a person (other than a public authority) and the person:
    - (i) employs or engages an individual to carry out that work for the business, or
    - (ii) carries out that work as a self-employed individual, or
  - (b) a public authority employs or engages an individual to carry out that work for it.

## 7 Kinds of licences

For the purposes of section 46 of the Act, each of the following licences is prescribed as a kind of licence that authorises its holder to carry out the prescribed pesticide work specified:

- (a) aerial applicator pilot licence—aerial applicator pilot work,
- (b) aerial applicator business licence—aerial applicator business,
- (c) RPA applicator pilot licence—RPA applicator pilot work,
- (d) RPA applicator business licence—RPA applicator business,
- (e) fumigator licence—fumigation work,
- (f) pest management technician licence—pest management technician work,
- (g) ground applicator licence—ground applicator work.

## Division 3 Exemptions

### Subdivision 1 Exemptions generally

#### 8 Exemptions granted by Environment Protection Authority

- (1) The Environment Protection Authority may, by order in writing, exempt a specified person or class of persons from any of the licensing requirements.
- (2) An order that exempts a class of persons from any of the licensing requirements must be published in the Gazette.
- (3) An exemption from licensing requirements granted under this clause is subject to such conditions (if any) as may be specified in the order.
- (4) In this clause:  
*licensing requirements* means:
  - (a) the provisions of Division 1 of Part 6 of the Act, and
  - (b) the provisions of this Part.

**9 Exemption—newly qualified persons**

A person who has obtained the prescribed licence qualification for a fumigator licence, pest management technician licence or ground applicator licence may carry out work authorised by the particular licence without holding the licence:

- (a) until 60 days after obtaining the qualification, or
- (b) if the person applies to the Environment Protection Authority for the licence within that 60-day period:
  - (i) until the person is issued with a licence, or
  - (ii) until 14 days after the person receives notice that the application has been refused.

**10 Exemption—persons selling, testing, maintaining or disposing of plant**

A person may carry out fumigation work, ground applicator work or pest management technician work without a licence if the work is carried out solely for the purpose of selling, testing, maintaining (including servicing or repairing) or disposing of plant (which includes any machinery, equipment or appliance).

**11 Exemption—on-farm use of fumigants**

A person may carry out fumigation work on land used for an agricultural activity without a licence if:

- (a) the person is the owner or occupier of the land or an employee of the owner or occupier, and
- (b) the fumigation work is carried out in connection with the agricultural activity for the control of insect pests in stored products or for the control of rabbits, mice or rats, and
- (c) the fumigation work is carried out in compliance with the instructions on the approved label for the pesticide being used.

**12 Exemption—exempt domestic like use of pesticide**

A person may carry out work that is exempt domestic like use of pesticide without a licence if the use of the pesticide is for the control of weeds or the control of pests that affect plants or soil.

## **Subdivision 2 Trainees**

**13 Exemption—trainees**

- (1) A person may carry out fumigation work or pest management technician work without a licence if the person:
  - (a) has within the previous 2 years obtained a training permit for the particular work from the Environment Protection Authority, and
  - (b) carries out that work as a trainee for the purposes of an approved course of training for that work, and
  - (c) carries out that work under the supervision of a supervisor, and
  - (d) keeps and maintains a record in relation to the carrying out of that work in accordance with this Division.
- (2) A person is entitled to obtain a training permit if the person applies to the Environment Protection Authority for the permit and the application:
  - (a) is in the approved form, and

- (b) is accompanied by such material or information to support the application (such as qualifications and proof of age and identity) as the Authority may require, and
  - (c) is accompanied by the applicable fee.
- (3) The **applicable fee** for a permit is as follows:
- (a) for an application made during period 1—\$78.40,
  - (b) for an application made during period 2—\$118.00,
  - (c) for an application made during period 3—\$158.00,
  - (d) for an application made during period 4—\$162.00,
  - (e) for an application made during period 5—\$166.00,
  - (f) for an application made during period 6—\$170.00.
- (4) The Environment Protection Authority may at its discretion waive, remit, reduce or refund any fee payable under this clause.

#### **14 Obligation of trainee to keep record**

A person who carries out fumigation work or pest management technician work as a trainee must keep and maintain a record of the following in relation to the carrying out of that work:

- (a) the name and address of the trainee,
- (b) the name and address of each employer of the trainee,
- (c) the name of each supervisor,
- (d) a description of the work as it is actually carried out,
- (e) a record of the dates on which the work is carried out.

Maximum penalty: 20 penalty units.

#### **15 Obligations of person responsible for trainee**

- (1) The person responsible for a trainee carrying out fumigation work or pest management technician work must ensure that:
- (a) the trainee, when carrying out the work, is supervised by a supervisor who holds a licence authorising the supervisor to carry out work of the kind being done by the trainee, and
  - (b) the supervision of the trainee is direct supervision, unless the supervisor or the person responsible for the trainee has established:
    - (i) that the trainee's competency makes direct supervision unnecessary, and
    - (ii) that a lesser degree of supervision would not endanger the health or safety of the trainee or any other person, and
  - (c) the trainee receives directions, demonstrations, training and monitoring appropriate to the work and commensurate with the competence of the trainee, and
  - (d) immediate remedial action is taken in the event of an emergency that arises from the trainee carrying out the work.

Maximum penalty: 100 penalty units.

- (2) The person responsible for a trainee carrying out fumigation work or pest management technician work must ensure that the trainee keeps and maintains a record in relation to the carrying out of that work in accordance with this Subdivision.
- Maximum penalty: 20 penalty units.

#### **16 Obligations of supervisor of trainee**

- (1) The supervisor of a trainee carrying out fumigation work or pest management technician work must directly supervise the trainee while the trainee is carrying out the work, unless the supervisor or person responsible for the trainee has established:
  - (a) that the trainee's competency makes direct supervision unnecessary, and
  - (b) that a lesser degree of supervision would not endanger the health or safety of the trainee or any other person.

Maximum penalty: 100 penalty units.

- (2) A supervisor of a trainee carrying out fumigation work or pest management technician work:
  - (a) must ensure that the trainee keeps and maintains a record in relation to the carrying out of that work in accordance with this Subdivision, and
  - (b) must check the record on each date on which the work is carried out by the trainee and must sign the record on that date and include a note stating whether the supervisor is satisfied that the record is correct in respect of that date.

Maximum penalty: 20 penalty units.

### **Division 4 Applications for licences**

#### **17 Licence application fees**

- (1) The following fees are prescribed for the purposes of section 47 (2) (b) of the Act:
  - (a) for an application made during period 1—\$196,
  - (b) for an application made during period 2—\$295,
  - (c) for an application made during period 3—\$395,
  - (d) for an application made during period 4—\$405,
  - (e) for an application made during period 5—\$415,
  - (f) for an application made during period 6—\$425.
- (2) The Environment Protection Authority may at its discretion waive, remit, reduce or refund any fee payable under section 47 (2) (b) of the Act.

#### **18 Additional information and particulars to accompany application**

The following information and particulars are prescribed for the purposes of section 47 (3) (d) of the Act:

- (a) evidence of an approved kind of the applicant's identity and age,
- (b) evidence of an approved kind that the applicant has the prescribed licence qualification for the licence being sought (if any),
- (c) any other information or particulars specified by the approved application form.

### **Division 5 Granting of licences**

#### **19 Prescribed qualifications for licences**

- (1) **When a person has qualification to hold a licence**

The object of this clause is to provide for the qualifications for kinds of licences for the purposes of section 49 (2) (b) of the Act.

- (2) A person is not qualified to hold a particular kind of licence if:
- (a) qualifications for the licence are specified by this clause or are determined by the Environment Protection Authority in accordance with this clause, and
  - (b) the person does not hold those qualifications.
- (3) **Aerial applicator pilot licence**
- A person is qualified to hold an aerial applicator pilot licence if:
- (a) the person holds a current commercial pilot (aeroplane) licence or commercial pilot (helicopter) licence issued under the *Civil Aviation Act 1988* of the Commonwealth with an aerial application rating and an aerial application endorsement, and  
**Note.** See Subpart 61.R of the *Civil Aviation Safety Regulations 1998* of the Commonwealth.
  - (b) the person:
    - (i) is the holder of a current certificate of approval issued under the Spraysafe Accreditation Program conducted by the Aerial Application Association of Australia, or
    - (ii) has passed an examination conducted in accordance with the requirements of another State or Territory for the purpose of obtaining a licence equivalent to an aerial applicator pilot licence.
- (4) **Aerial applicator business licence**
- A person is qualified to hold an aerial applicator business licence if the person holds an Air Operator's Certificate issued under the *Civil Aviation Act 1988* of the Commonwealth endorsed for aerial application or agricultural operations.  
**Note.** See Part 137 of the *Civil Aviation Safety Regulations 1998* of the Commonwealth.
- (5) **RPA applicator pilot licence**
- A person is qualified to hold an RPA applicator pilot licence if the person holds a remote pilot licence under the *Civil Aviation Act 1988* of the Commonwealth.
- (6) **RPA applicator business licence**
- A person is qualified to hold an RPA applicator business licence if the person holds an RPA operator's certificate issued under the *Civil Aviation Act 1988* of the Commonwealth.
- (7) **Fumigator licences or pest management technician licences**
- A person is qualified to hold a fumigator licence or pest management technician licence if the person's competency to do the work authorised by the licence is of a standard equal to or better than:
- (a) the standard of competency set out in relation to that work in the National Standard for Licensing Pest Management Technicians, or
  - (b) any other standard of competency that the Environment Protection Authority considers to be equivalent to that Standard.
- (8) **Ground applicator work**
- A person is qualified to hold a ground applicator licence if the person's competency to do the work authorised by the licence is of a standard equal to or better than the competency standard (if any) published for the purposes of this subclause by the Environment Protection Authority by order published in the Gazette.

(9) **Additional or alternative qualifications**

The Environment Protection Authority may, by notice published in the Gazette (a *qualification determination notice*), determine that:

- (a) a qualification specified in the notice is an alternative qualification for a kind of licence to a qualification specified by, or previously determined in accordance with, this clause for the licence, or
  - (b) a qualification specified in the notice is a qualification required for a kind of licence in addition to a qualification specified by, or previously determined in accordance with, this clause for the licence.
- (10) The Environment Protection Authority may revoke or amend a qualification determination notice by a further notice published in the Gazette.
- (11) The determination of a qualification specified by a qualification determination notice takes effect on the day on which the notice is published or on such later day as may be specified in the notice.
- (12) If an alternative qualification for a kind of licence is specified by a qualification determination notice, a person who has that qualification is taken to hold an appropriate qualification for the licence concerned.
- (13) If an additional qualification for a kind of licence is specified by a qualification determination notice, a person must hold both the qualification specified by (or previously determined in accordance with) this clause for the licence and the additional qualification in order to be appropriately qualified to hold the licence.

**20 Additional ground for licence refusal**

That the applicant is under 18 years of age is prescribed as a circumstance for the purposes of section 49 (2) (d) of the Act.

**Division 6 Conditions of licences**

**21 Object of Division**

- (1) The object of this Division is to prescribe conditions for certain kinds of licences for the purposes of section 50 (1) (a) of the Act.
- (2) The conditions prescribed by this Division do not limit any conditions that are imposed on such licences by the Environment Protection Authority under the Act.

**22 Special condition—notification of cessation of prescribed licence qualification**

- (1) This clause applies to the following kinds of licences:
  - (a) aerial applicator pilot licence,
  - (b) aerial applicator business licence,
  - (c) RPA applicator pilot licence,
  - (d) RPA applicator business licence.
- (2) It is a condition of a licence to which this clause applies that the holder of the licence notify the Environment Protection Authority if the person ceases to have the prescribed licence qualification for the licence concerned.
- (3) Any such notice must be given as soon as practicable after the holder of the licence becomes aware that the holder has ceased to hold the qualification.
- (4) If there is an approved form for the notice, the notice must be in that form.

### **23 Special condition—notification concerning leakages or spills**

- (1) This clause applies to the following kinds of licences:
  - (a) aerial applicator business licence,
  - (b) RPA applicator business licence.
- (2) It is a condition of a licence to which this clause applies that the holder of the licence notify the Environment Protection Authority of any incident where a pesticide leakage or spill has occurred as the result of a crash or forced landing of an aircraft that is operated under the authority of the licence.
- (3) Any such notice must be given as soon as practicable after the incident occurs.
- (4) If there is an approved form for the notice, the notice must be in that form.

## **Division 7 Renewal of licences**

### **24 Renewal of licences**

- (1) The Environment Protection Authority may, on the application of the holder of a licence, renew the licence.
- (2) An application for the renewal of a licence may be made before the expiry of the current licence, but no later than 3 months after its expiry.
- (3) An application for the renewal of a licence must be:
  - (a) in the approved form, and
  - (b) accompanied by such material or information to support the application (such as qualifications and proof of age and identity) as the Environment Protection Authority may require, and
  - (c) accompanied by the applicable fee for the renewal of a licence.
- (4) The Environment Protection Authority may require the holder of a licence to surrender the holder's existing licence before renewing the licence.
- (5) The *applicable fee* for the renewal of a licence is as follows:
  - (a) for an application made during period 1—\$196,
  - (b) for an application made during period 2—\$295,
  - (c) for an application made during period 3—\$395,
  - (d) for an application made during period 4—\$405,
  - (e) for an application made during period 5—\$415,
  - (f) for an application made during period 6—\$425.
- (6) The Environment Protection Authority may at its discretion waive, remit, reduce or refund any fee payable under this clause.

## **Division 8 Provision of information and record keeping**

### **25 Licensees to provide certain information**

- (1) The holder of a licence must supply the Environment Protection Authority with the particulars of any information received by the holder that contradicts or modifies any information provided by the holder in connection with the application for the licence. Maximum penalty: 90 penalty units.
- (2) If the holder of a licence (other than an aerial applicator pilot licence, an aerial applicator business licence, an RPA applicator pilot licence or an RPA applicator

business licence) ceases to hold the prescribed licence qualification for the kind of licence concerned, the holder must supply the Environment Protection Authority with particulars of that fact as soon as practicable.

Maximum penalty: 90 penalty units.

## **26 Records of aerial application of pesticides**

- (1) This clause applies in relation to:
  - (a) an aerial applicator business licence, and
  - (b) an RPA applicator business licence.
- (2) The holder of a licence to which this clause applies must cause a record to be made in accordance with this clause in respect of each occasion on which the holder of the licence has caused an aircraft to be used in the application of a pesticide.  
Maximum penalty:
  - (a) in the case of a corporation—400 penalty units, or
  - (b) in the case of an individual—200 penalty units.
- (3) The holder of a licence to which this clause applies must provide a copy of a record required to be made under this clause to the owner or occupier of the land on which the pesticide was applied if requested to do so by the owner or occupier.  
Maximum penalty:
  - (a) in the case of a corporation—100 penalty units, or
  - (b) in the case of an individual—50 penalty units.
- (4) The record must be made as soon as practicable after the use of the pesticide concerned and, in any event, no later than 48 hours after the pesticide is used and must contain:
  - (a) the name and address of the person who piloted the aircraft, and
  - (b) a description of the pesticide that was applied (including product name and active constituents), and
  - (c) the date and time of the application of the pesticide (including the start and finish time), and
  - (d) if the aircraft has a registration mark, the registration mark of the aircraft, and
  - (e) if the aircraft does not have a registration mark, the serial number of the aircraft, and
  - (f) a description of the manner in which, the climatic conditions under which and the equipment by means of which the pesticide was applied, and
  - (g) a description of the land over which the pesticide was applied (including the address of the land or the particular paddock or part of a paddock) and the order in which each area (such as paddocks or sheds) was subjected to the application of the pesticide, and
  - (h) a description of the crop in respect of which the pesticide was applied or other situation in which it was used, and
  - (i) the rate of application of the pesticide and the quantity applied, and
  - (j) the name, address and contact details of the owner or occupier of the land on which the pesticide was applied.

- (5) A record required to be made under this clause must be kept by the holder (or former holder) of the licence for a period of not less than 3 years after the date of the occasion to which the record relates.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, or  
(b) in the case of an individual—200 penalty units.

## **Division 9      General**

### **27    Form of licence**

A licence must be in the approved form and must include the following:

- (a) the name (and, in the case of a licence granted to an individual, the date of birth) of the person to whom it is granted,  
(b) the date of its issue,  
(c) a description of the kind of prescribed pesticide work that the licence authorises its holder to do,  
(d) a unique identifying number,  
(e) the expiry date of the licence,  
(f) any conditions attached to the licence (other than conditions prescribed by this Regulation),  
(g) in the case of a licence granted to an individual, a photograph of the individual.

### **28    Duration of licence**

For the purposes of section 51 (1) of the Act, the maximum period for which a licence may be granted or renewed is 5 years.

### **29    Surrender of licence**

The holder of a licence may, by notice in the approved form given to the Environment Protection Authority and accompanied by the licence, voluntarily surrender the licence.

### **30    Replacement of lost, stolen, damaged or destroyed licences**

- (1) The holder of a licence that is lost, stolen, damaged or destroyed may apply to the Environment Protection Authority for a replacement licence.  
(2) The application:  
(a) must be in the approved form, and  
(b) must be accompanied by a statutory declaration by the applicant that explains how, or the circumstances in which, the licence was lost, stolen, damaged or destroyed, and  
(c) must be accompanied by the applicable fee for the replacement of a licence.  
(3) Without limiting subclause (2) (a), the approved form may be an electronic form accessible on a publicly available website.  
(4) A person who provides the Environment Protection Authority with a statutory declaration containing the particulars required by the approved form is taken to have done so in the approved form.  
(5) The Environment Protection Authority may issue a replacement licence if satisfied that the applicant's licence has been lost, stolen, damaged or destroyed.

- (6) A licence that is replaced under this clause must provide for the same expiry date as the licence it replaces.
- (7) If an application is refused, the Environment Protection Authority must give notice in writing of the refusal, and of the reasons for the refusal, to the applicant.
- (8) The holder of a licence that is replaced under this clause:
  - (a) must surrender the original licence if it is recovered, or
  - (b) in the case of a damaged licence that is replaced, must surrender the damaged licence.Maximum penalty: 20 penalty units.
- (9) Nothing in this clause prevents the Environment Protection Authority from issuing a replacement licence in such other circumstances as it considers appropriate.
- (10) The ***applicable fee*** for the replacement of a licence is as follows:
  - (a) for an application made during period 1—\$23,
  - (b) for an application made during period 2 or period 3—\$24,
  - (c) for an application made during period 4 or period 5—\$25,
  - (d) for an application made during period 6—\$26.

## Part 3 Pesticides to be used by qualified persons

### 31 Persons qualified to use pesticides

- (1) In this Part, a person is *qualified* to use a pesticide if the person holds any one or more of the following:
- (a) a licence under the Act,
  - (b) a recognised qualification that was issued to the person within the last 5 years,
  - (c) a recognised qualification that was issued to the person other than within the last 5 years if, within the last 5 years, the person:
    - (i) has participated in a quality assurance or stewardship program relating to the use of pesticides, being a program approved by the Environment Protection Authority by notice published in the Gazette, and
    - (ii) has complied with any conditions required by the notice in relation to that program,
  - (d) if the pesticide is the subject of a pesticide control order that authorises the use of the pesticide by persons who hold specified qualifications—those qualifications,
  - (e) if the use of the pesticide is loading or mixing pesticide for the purposes of aerial applicator pilot work—a certificate of completion for the Spraysafe Loader/Mixer Program issued by the Aerial Application Association of Australia.
- (2) In this clause:
- recognised qualification* means a certificate of completion or statement of attainment on completion of a course of study with respect to the use of pesticides:
- (a) by a registered training organisation in accordance with the Australian Qualifications Framework (within the meaning of section 7 of the *Higher Education Act 2001*), and
  - (b) in recognition of the person's satisfactory achievement of specified units of competency or parts of units of competency (being units of competency, or parts of units of competency, that, at the time the prescribed qualification is issued, are approved by the Environment Protection Authority in accordance with Schedule 2).

### 32 Person must not use pesticide unless qualified

- (1) A person must not use, or employ or engage a person to use, a pesticide in any of the following circumstances unless the person using the pesticide is qualified to use the pesticide:
- (a) in the course of carrying on, or working in, a business, educational institution or hospital (whether as principal, contractor or employee, and regardless of whether, in the case of a business, the use of pesticides is a purpose of the business concerned),
  - (b) in the course of acting as, or for or on behalf of, the landlord of any premises,
  - (c) in the course of acting for or on behalf of a public authority,
  - (d) in the course of carrying out pest control operations on a golf course, sporting field or bowling green,

- (e) in connection with any agricultural operations (including farming, horticultural or aquacultural operations) or forestry operations.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, or
- (b) in the case of an individual—200 penalty units.

- (2) Subclause (1) does not apply in any of the following circumstances:

- (a) if the person is carrying out prescribed pesticide work in circumstances in which the person is exempted from the requirement to hold a licence to carry out that work,

**Note.** See Division 3 of Part 2.

- (b) if the pesticide is being used in public baths or in any swimming pool or spa,
- (c) if the use of the pesticide by the person is an exempt domestic like use of pesticide,
- (d) if the pesticide is anti-fouling pesticide that is contained in a paint that is being applied by the person,
- (e) if the pesticide is used in connection with agricultural operations or forestry operations and the person used the pesticide:
  - (i) by means of hand-held and hand-powered equipment, and
  - (ii) on no more than 12 days in the previous 12 months (excluding any use to which paragraph (c) applies), and
  - (iii) under the direct supervision of a supervisor who was qualified to use the pesticide and who selected and prepared the pesticide, tested and calibrated the equipment before it was used, and instructed the person in how to apply the pesticide.

### 33 Supervision of persons

A person must not supervise a person in the use of a pesticide in connection with any agricultural operations or forestry operations unless the person supervising or the person being supervised is qualified to use the pesticide.

Maximum penalty: 200 penalty units.

### 34 Offences with respect to qualifications

- (1) A person who is required to be qualified in respect of the use, or supervision of the use, of a pesticide must, if requested to do so by an authorised officer, produce evidence of the qualification concerned for inspection by the authorised officer.

Maximum penalty: 200 penalty units.

- (2) A person must not forge or alter evidence of a qualification.  
Maximum penalty: 100 penalty units.
- (3) A person must not falsely represent that he or she is qualified to use a pesticide.  
Maximum penalty: 100 penalty units.

- (4) In this clause, a reference to evidence of a qualification is a reference to:

- (a) in the case of a permit or licence, the permit or licence concerned, and
- (b) in the case of any other qualification:
  - (i) a document that is issued to a person as the qualification concerned achieved by that person, or
  - (ii) a document (including a card) that is issued to the holder of the qualification concerned by a registered training organisation, or other

person or body approved by the Environment Protection Authority, as a record or evidence (or both) of the person's achievement of that qualification.

## Part 4 Records relating to use of pesticides

### 35 Pesticides used for commercial, agricultural or occupational purposes

- (1) A person must cause a record to be made, in accordance with this Part, that relates to each occasion on which the person uses a pesticide:
- (a) in the course of carrying on a business involving the use of pesticides (regardless of whether that use is the primary purpose of the business concerned), or
  - (b) in the course of acting as, or for or on behalf of, the landlord of any premises, or
  - (c) in the course of carrying out fumigation work, ground applicator work or pest management technician work for fee or reward, or
  - (d) in the course of acting for or on behalf of a public authority, or
  - (e) in the course of carrying out pest control operations on a golf course, sporting field or bowling green, or
  - (f) while treating livestock for ectoparasites by means of a dip bath or by the use of powered spray equipment that is not hand-held, or
  - (g) while treating harvested horticultural crops (being fruit, vegetables, flowers, nuts and herbs) by means of a dip bath, or
  - (h) while using any spray equipment to apply a pesticide for horticultural purposes (including the spraying of fallow crop land), but not if:
    - (i) the application consists of spot spraying that is confined to a small and restricted area on or within a tree crop, and
    - (ii) the pesticide is applied by hand-held and hand-powered equipment only, and
    - (iii) the pesticide is applied no closer than 20 metres to a property boundary, or
  - (i) while using any powered spray equipment to spray crops, fallow crop land or trees in a plantation (including in or around such trees), or
  - (j) while using powered spray equipment that is mounted on or attached to a vehicle and is not hand-held, or
  - (k) while applying baits to control vertebrate pests (other than baits that are used to control rodents in or around buildings used as part of agricultural operations).

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, or
  - (b) in the case of an individual—200 penalty units.
- (2) Subclause (1) does not apply:
- (a) if the use of the pesticide is in public baths or in any swimming pool or spa, or
  - (b) if the use of the pesticide is an exempt domestic like use of pesticide, but not if the pesticide is used in the course of pest management technician work and is of a kind that is ordinarily used in the course of such work, or
  - (c) if a record of the use of the pesticide is required to be kept under clause 26 (Records of aerial application of pesticides).
- (3) If a pesticide is being applied by a person on behalf of a public authority by hand or hand-held applicator under the supervision or direction of a supervisor who has responsibility for the operations, the supervisor is taken to be the person using the pesticide for the purposes of subclause (1).

### 36 Information to be contained in record

- (1) A record required to be made under this Part must contain the following information:
  - (a) the full product name of the pesticide applied,
  - (b) the date on which the pesticide was applied,
  - (c) a description of the crop in respect of which the pesticide was applied or other situation in which it was used,
  - (d) the rate of application of the pesticide and the quantity applied,
  - (e) the address of the property and the delineation of the area in which the pesticide was released,
  - (f) the name, address and contact details of the person who applied the pesticide or, if the pesticide was applied by a person employed to apply the pesticide, the name of the employee and the name, address and contact details of the employer,
  - (g) if, because of clause 35 (3), the record is required to be made by a supervisor—the name of each person who used the pesticide under the supervision or direction of the supervisor,
  - (h) if the pesticide is applied outdoors by means of any spray equipment:
    - (i) the estimated wind speed and direction at the start of the application and whenever there is any significant change during the application, and
    - (ii) if other weather conditions (such as temperature, humidity or rainfall conditions) are specified on the pesticide label as being relevant for the proper use of the pesticide—a description of those conditions at the start of the application and whenever there is any significant change during the application.
- (2) A record required to be made under this Part must also contain the following information if the person required to make the record is the holder of a licence:
  - (a) a description of the equipment used to apply the pesticide,
  - (b) the time of the application of the pesticide (including the start and finish time),
  - (c) the order in which each area of the land (such as paddocks or sheds) was subjected to the application of the pesticide (but not if the application of the pesticide occurred as part of pest management technician work),
  - (d) the name, address and contact details of the owner or occupier of the land on which the pesticide was applied (if the information is not the same as the information required by subclause (1) (f)).
- (3) The record must be made as soon as practicable after the use of the pesticide concerned and, in any event, no later than 48 hours after the pesticide is used.
- (4) The information specified in subclause (2) (d) is not required to be included if the pesticide is applied by or on behalf of an electricity distributor (within the meaning of the *Electricity Supply Act 1995*) in a remote location where it is not reasonably practicable to identify the owner or occupier of the land.

### 37 Keeping and provision of records

- (1) A person who is required to make a record under this Part, or who is provided with a record or copy under this clause, must keep the record or copy for a period of not less than 3 years after the date on which the record was made.
- (2) However, a person is not required to keep a record but must instead provide the record to the person's employer if:
  - (a) the person is employed under a contract of employment, and

- (b) the person uses the pesticide in the course of that employment, and
  - (c) the person is required to make the record under any provision of clause 35 (1) (d)–(k).
- (3) A person, who is engaged (other than under a contract of employment) for fee or reward to use a pesticide, who is required to make a record under any provision of clause 35 (1) (c)–(k) must provide a copy of the record to the owner or occupier of the land on which the pesticide was applied if requested to do so by the owner or occupier.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, or
- (b) in the case of an individual—200 penalty units.

### **38 Exemption from record keeping requirements**

- (1) The Environment Protection Authority may, by notice published in the Gazette, exempt a specified person or specified class of persons from any requirement under this Part.
- (2) Without limiting subclause (1), an exemption may relate to particular kinds of information referred to in clause 36.
- (3) Before making an exemption under this clause, the Environment Protection Authority is required to consult with such persons or bodies as the Authority considers appropriate (including the representatives of any relevant environmental or industry group).

## Part 5 Notification of proposed use of pesticide

### Division 1 Preliminary

#### 39 Definitions

In this Part:

**pesticide use notification plan**—see clause 40 (1) (a).

**prescribed public place** means:

- (a) any of the following to which the public is entitled to have access (whether or not on payment of a fee):
  - (i) a public garden, picnic area, playground, park, sporting field or oval,
  - (ii) public land owned or controlled by a public authority (for example, a road verge, rail easement or an easement for electricity purposes or for the purposes of other utilities),
  - (iii) land reserved under the *National Parks and Wildlife Act 1974* or any State forest or Crown land, or
- (b) the grounds of any government school (within the meaning of the *Education Act 1990*) or any establishment maintained by the Technical and Further Education Commission,

but does not include the inside of any building or structure located at such a place.

**public authority**, in addition to the meaning given by the Act, includes the following:

- (a) a Minister,
- (b) an electricity network SOC within the meaning of the *Electricity Network Assets (Authorised Transactions) Act 2015*,
- (c) on and from 1 July 2018—a University within the meaning of the *Universities Governing Bodies Act 2011*.

**publish** in a newspaper means in a newspaper that is published in print or on a publicly accessible website (or both) and that circulates:

- (a) in the case of a public authority that operates throughout the State—generally in the State, or
- (b) in the case of a public authority that operates only in a particular local area or local areas—generally in that local area or those local areas, or
- (c) in the case of a public authority that is a local council—generally in the local government area of that council.

**sensitive place** means any of the following:

- (a) a school, pre-school, kindergarten or childcare centre,
- (b) a hospital, community health centre or nursing home,
- (c) any place declared to be a sensitive place by the Environment Protection Authority by order published in the Gazette.

### Division 2 Notification by public authorities

#### 40 Obligations on public authorities concerning use of pesticide

- (1) A public authority must not use, or allow any person to use, any pesticide in a prescribed public place that is owned by or is under the control of the public authority unless the public authority has first:
  - (a) prepared, finalised and notified the Environment Protection Authority of a plan (a **pesticide use notification plan**) in accordance with this Division, and

- (b) given public notice of the proposed use of pesticide in accordance with that plan.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, or
  - (b) in the case of an individual—200 penalty units.
- (2) A public authority may satisfy a requirement under this clause if it prepares and notifies one or more pesticide use notification plans that apply to all prescribed public places that it owns or controls.
  - (3) Subclause (1) does not apply in respect of the use of pesticide in a prescribed public place that is owned by or is under the control of a public authority if the pesticide is used by another public authority and that other public authority has:
    - (a) prepared, finalised and notified the Environment Protection Authority of a pesticide use notification plan in accordance with this Division, and
    - (b) given public notice in accordance with that plan.
  - (4) Subclause (1) does not apply in relation to the use of pesticide in public baths or in any swimming pool or spa.

#### **41 Contents of pesticide use notification plans**

- (1) A public authority's pesticide use notification plan:
  - (a) must set out how and when the public authority will give public notice of the proposed use of pesticides in any prescribed public places, and
  - (b) must identify where the plan operates, that is, it must identify the categories of prescribed public places in which the public authority proposes to use pesticide or allow its use, and
  - (c) must identify the categories of, or specific, prescribed public places in respect of which the public authority intends to provide notification of:
    - (i) all proposed uses of pesticides under the plan, or
    - (ii) only some proposed uses of pesticides under the plan, and what those uses are, and
  - (d) must indicate, as a separate item, the special protection measures that will be taken if the pesticide is proposed to be used in a prescribed public place that is adjacent to a sensitive place, and
  - (e) must identify the categories of people (the *affected persons*) who regularly use the categories of prescribed public places identified in the plan, and
  - (f) must estimate the degree of use by affected persons of those categories of prescribed public places, and
  - (g) must specify how and when the public authority will notify the affected persons of the proposed use of pesticide in the prescribed public places (other than a prescribed public place referred to in paragraph (1)), and
  - (h) must specify the information that will be provided to the affected persons that are notified, which must include at least the following:
    - (i) the full product name of the pesticide to be used,
    - (ii) the purpose for which the pesticide is to be used,
    - (iii) the dates on which, or the range of dates during which, the pesticide is to be used,
    - (iv) the places where the pesticide is to be used,

- (v) any warnings about limitations on the subsequent use of or entry onto the land if such warnings are specified on the approved label for the pesticide or in the permit for use of the pesticide,
  - (vi) a contact telephone number or email address for the officer of the public authority whom the affected persons can contact to discuss the notice, and
  - (i) must specify how and when the public authority will inform the general public (and not just the affected persons) of the plan and its contents, and
  - (j) must identify by job title or description, and provide the telephone number or email address, of the officer of the public authority whom any member of the public can contact to discuss the plan, and
  - (k) must, subject to clauses 42 and 43, set out provisions for future reviews of the pesticide use notification plan, including arrangements for public involvement in those reviews, and
  - (l) must specify the prescribed public places or class of prescribed public places (if any) for which the public authority does not intend to provide notification, and
  - (m) may set out how and when the public authority will give public notice of its use, or its allowing of the use, of pesticide in places other than prescribed public places.
- (2) Without limiting subclause (1) (g), a pesticide use notification plan may provide that the public authority will provide information to affected persons of the proposed use of pesticide in the prescribed public places by a combination of methods and, if the plan does so provide, must specify the information that will be provided by each method.

#### **42 Public consultation on draft pesticide use notification plans**

- (1) A public authority that has prepared a draft pesticide use notification plan must prepare a notice advising that the plan has been prepared and publish the notice in a newspaper or in a readily accessible location on its website.
- (2) The notice must specify:
  - (a) the area in which the plan is to operate, and
  - (b) where a copy of the draft plan will be displayed for the purposes of public inspection, and
  - (c) the way in which the public may comment on the draft plan, and
  - (d) the deadline for public comment on the draft plan (which must be at least 4 weeks after the notice is published).
- (3) The public authority must make the draft plan available for inspection free of charge at its head office and on its website.
- (4) The draft plan must be on display for at least the period commencing on the date on which notice is first given under this clause and ending on the date of the deadline for public comment.
- (5) As soon as practicable after the date of the deadline for public comment, the public authority must prepare a final version of the plan, taking into consideration any comments made before the deadline.

#### 43 Giving notice of finalised pesticide use notification plans

- (1) A public authority that has prepared a pesticide use notification plan in accordance with this Division must, as soon as practicable after the finalisation of the plan, give notice of the plan:
  - (a) in writing to the Environment Protection Authority, and
  - (b) by preparing a notice specifying the area in which the plan is to operate and where copies of the plan will be displayed and publishing the notice:
    - (i) in the Gazette, and
    - (ii) in a newspaper or in a readily accessible location on its website.
- (2) The public authority must make the plan available for inspection free of charge at its head office and on its website.

#### 44 Amendments to pesticide use notification plans

A pesticide use notification plan may be amended by another pesticide use notification plan, and any such amending plan must comply with clauses 42 and 43 unless the public authority considers on reasonable grounds that the amendment is not of sufficient substance to warrant public consultation.

### Division 3 Notification by persons other than public authorities

#### 45 Definitions

In this Division:

**common area** of a residential complex means:

- (a) common property within the meaning of the *Strata Schemes Development Act 2015*, or
- (b) association property within the meaning of the *Community Land Development Act 1989*, or
- (c) in relation to land under company title—land used as common property by the residents or land that no person has an exclusive right to occupy.

**pesticide use notice** means a notice to a person about the use of a pesticide that includes the following:

- (a) the full product name of the pesticide to be used,
- (b) the purpose for which the pesticide is to be used,
- (c) the dates on which, or the range of dates during which, the pesticide is to be used,
- (d) the places where the pesticide is to be used,
- (e) the period (if any) during which any affected area should not be entered (but only if the approved label for the pesticide or the permit for use of the pesticide requires that such a period be observed),
- (f) the contact details of the person who is to use the pesticide or of his or her office.

**residential complex** means any multiple occupancy medium-density or high-density residential premises, and includes:

- (a) any block of home units, or
- (b) any caravan park used for, amongst other purposes, residencies of over 8 weeks' duration, or
- (c) multiple occupancy land under a strata scheme (whether or not the dwellings are separate from each other), or

- (d) a community scheme within the meaning of the *Community Land Development Act 1989*,  
but does not include residential premises that comprise only 2 dwellings.

#### **46 Prior notice of use of pesticide in residential complex**

- (1) A person who engages a person to carry out fumigation work or pest management technician work in any common area of a residential complex must ensure that a pesticide use notice is given at least 5 working days before the proposed use:
- (a) to each resident in person or by telephone, post, facsimile transmission or email or by placing the notice in the resident's letter box or under the resident's front door, or
  - (b) by placing the notice in writing:
    - (i) on the main notice boards at the residential complex (if available), and
    - (ii) if the pesticide is to be used in a common area within a building—at each entrance to the building concerned, and
    - (iii) if the pesticide is to be used in a common area outside a building—at each entrance to each building adjoining the common area concerned.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, or
  - (b) in the case of an individual—200 penalty units.
- (2) Notice is not required to be given under this clause if:
- (a) the work is to be carried out in an emergency so as to deal with biting or dangerous pests (such as rodents, wasps, bees, venomous spiders, fleas, bird mites or similar creatures), and
  - (b) the person carrying out the work displays a notice under clause 47 and makes records of the emergency and the use of pesticide.
- (3) Without limiting the meaning of the term, a *person who engages a person to carry out fumigation work or pest management technician work* includes the following:
- (a) a managing agent of an owners corporation for a strata scheme,
  - (b) a managing agent for an association for a community scheme,
  - (c) a park manager for a caravan park,
- where that agent or manager, or a member of his or her staff, arranges for a person to carry out the work.

#### **47 Notice during use of pesticide in residential complex**

- (1) A person who carries out fumigation work or pest management technician work in the common area of a residential complex must ensure a pesticide use notice is displayed while the work is being carried out and for any period during which the affected area should not be entered (as set out in the notice):
- (a) on the main notice boards at the residential complex (if available), and
  - (b) if the work is to be carried out in a common area within a building—at each entrance to the building concerned, and
  - (c) if the work is to be carried out in a common area outside a building—at each entrance to each building adjoining the common area concerned.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, or
- (b) in the case of an individual—200 penalty units.

- (2) This clause does not apply to any second or subsequent installation of pesticide in baits as part of an ongoing baiting program of which notice has been given under this clause.

#### **48 Prior notice of use of pesticide near sensitive place**

- (1) A person who carries out fumigation work or pest management technician work must ensure that, at least 5 working days before using a pesticide within 20 metres of a sensitive place (other than a hospital), a pesticide use notice is given to the person (or an agent of the person) having the care, control or management of the sensitive place.  
Maximum penalty:
- (a) in the case of a corporation—400 penalty units, or
  - (b) in the case of an individual—200 penalty units.
- (2) For the purposes of this clause, pesticide is used within 20 metres of a sensitive place if it is used:
- (a) within 20 metres of any common boundary between the land on which the pesticide is used and the sensitive place, or
  - (b) if the sensitive place consists only of a building or part of a building—within 20 metres of the building or part of the building.
- (3) A person does not commit an offence under this clause if he or she could not have reasonably known that the place where the pesticide is to be used is within 20 metres of a sensitive place.
- (4) Despite subclause (1), a pesticide use notice may be given under this clause immediately before the carrying out of the fumigation work or pest management technician work if:
- (a) the work is to be carried out in an emergency so as to deal with biting or dangerous pests (such as rodents, wasps, bees, venomous spiders, fleas, bird mites or similar creatures), and
  - (b) the pest management technician makes records of the emergency and the use of pesticide.
- (5) For the purposes of this clause, a pesticide use notice must be given in person or by telephone, post, facsimile transmission or email or by placing the notice in the person's letter box.
- (6) Nothing in this clause prevents a person who carries out fumigation work or pest management technician work from giving any other notice before using a pesticide whether or not within 20 metres of a sensitive place.
- (7) In this clause:  
*using a pesticide* means spraying a pesticide outdoors, or injecting a pesticide directly into the ground outdoors.

#### **49 Notices do not give right to veto use of pesticide**

Notices given under this Division are for information purposes only and do not give residents or any other persons any additional rights with respect to the use of the pesticide.

#### **50 Provision of safety data sheet**

- (1) A person who carries out fumigation work or pest management technician work must ensure that any person who is required to be notified under this Division in relation

to the use of a pesticide is given a copy of the safety data sheet for the pesticide as soon as practicable after the person requests that sheet.

Maximum penalty:

- (a) in the case of a corporation—30 penalty units, or
- (b) in the case of an individual—15 penalty units.

(2) In this clause:

*safety data sheet* has the same meaning as in the *Work Health and Safety Regulation 2017*.

#### **51 Records that must be kept**

- (1) If a pesticide use notice is given in person or by telephone, the person giving the notice must make a record of the giving of the notice.
- (2) A person who is required by this Division to give or display any pesticide use notice or make any record must keep a copy of the notice or record for at least 3 years.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, or
- (b) in the case of an individual—50 penalty units.

## **Part 6 Records**

### **52 Form of records**

- (1) Records that are made or kept under this Regulation must be legible and in the English language.
- (2) Records may be in written or electronic form.

### **53 Records may be integrated with other records**

Records that are required to be made and kept under this Regulation may be integrated with other records under this Regulation or with any other records, including those that are required to be made and kept under any other Act or law.

### **54 Records to be provided to authorised officer on request**

A person required to keep a record under this Regulation must, on the request of an authorised officer, provide the authorised officer with a copy of the record within a reasonable period that is specified in the request.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, or
- (b) in the case of an individual—200 penalty units.

### **55 Records must not include false or misleading information**

A person must not, in any record required to be made under this Regulation, make any statement, or include any information, that is false or misleading in a material particular.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, or
- (b) in the case of an individual—200 penalty units.

## Part 7 Miscellaneous

### 56 Prohibited residues

- (1) For the purposes of paragraph (b) of the definition of *agricultural produce* in section 63 (1) of the Act, the following are prescribed as agricultural produce:
  - (a) any produce of a kind referred to in Schedule 20 or 21 of the Food Standards Code and any vegetation from which produce of a kind so referred to is obtained,
  - (b) any produce, other than produce referred to in paragraph (a), of a kind referred to in the second column of Table 1 or 4 of the MRL Standard and any vegetation from which produce of a kind so referred to is obtained.
- (2) For the purposes of section 63 (2) (a) of the Act, the following are *prescribed substances*:
  - (a) a substance referred to in Schedule 20 or 21 of the Food Standards Code,
  - (b) a substance specified in the first column of Table 1 or 4 of the MRL Standard.
- (3) For the purposes of section 63 (2) (a) of the Act:
  - (a) the concentration of a prescribed substance specified in Schedule 20 or 21 of the Food Standards Code in respect of any agricultural produce is prescribed as the maximum permissible concentration of that substance in respect of that produce, and
  - (b) the concentration of a prescribed substance specified in the third column of Table 1 or 4 to the MRL standard in respect of any agricultural produce is prescribed as the maximum permissible concentration of that substance in respect of that produce.
- (4) If there is an inconsistency between the maximum permissible concentration prescribed by subclause (3) (a) and the maximum permissible concentration prescribed by subclause (3) (b) in respect of the same prescribed substance and agricultural produce, the maximum permissible concentration prescribed by subclause (3) (a) prevails.
- (5) In this clause:

**Food Standards Code** means the *Australia New Zealand Food Standards Code* as defined in the *Food Standards Australia New Zealand Act 1991* of the Commonwealth.

**MRL Standard** means the standard published from time to time by the Australian Pesticides and Veterinary Medicines Authority in accordance with section 7A of the *Agricultural and Veterinary Chemicals (Administration) Act 1992* of the Commonwealth.

**Note.** The Standard is set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Instrument No. 4 (MRL Standard) 2012* of the Commonwealth.

### 57 Exemption for using pesticide contrary to approved label

A person is exempt from the requirement under section 15 (1) of the Act not to use a registered pesticide in contravention of an instruction on an approved label for the pesticide if:

- (a) the pesticide is used to control a pest other than a pest of a kind specified by the label, and
- (b) the pest being controlled is not a weed or vertebrate animal, and

- (c) the pesticide is used to control the pest in or on a plant or crop of a kind specified by the label, and
- (d) the pesticide is used in compliance with any other instructions on the label.

**58 Prescribed fees for clean-up and prevention notices**

- (1) The purpose of this clause is to prescribe fees for the purposes of sections 22 (2) and 27 (2) of the Act.
- (2) The prescribed fees are as follows:
  - (a) for a notice given during period 1—\$535,
  - (b) for a notice given during period 2—\$550,
  - (c) for a notice given during period 3—\$565,
  - (d) for a notice given during period 4—\$580,
  - (e) for a notice given during period 5—\$595,
  - (f) for a notice given during period 6—\$610.

**59 Penalty notices**

- (1) For the purposes of section 75 (1) of the Act, each offence created by a provision specified in Column 1 of Schedule 3 is prescribed as a penalty notice offence for the purposes of Division 2 of Part 10 of the Act.
- (2) For the purposes of section 78 (1) of the Act, the prescribed penalty payable under a penalty notice in relation to a penalty notice offence is:
  - (a) the amount specified in Column 2 of Schedule 3, or
  - (b) if the person alleged to have committed the offence is a corporation, and if a greater amount is specified in Column 3 of Schedule 3, the amount specified in Column 3 of Schedule 3.

## **Schedule 1 Fumigants**

(Clause 3 (1))

1, 3-dichloropropene  
chloropicrin  
dazomet  
ethanedinitrile  
ethyl formate  
ethylene oxide (except single dose canisters)  
metham sodium  
methyl bromide  
any product that liberates phosphine gas  
potassium-monomethyl dithiocarbamate  
sulfuryl fluoride

## Schedule 2 Approval of units of competency by EPA

(Clause 31 (2))

- 1 The Environment Protection Authority may from time to time approve of units of competency, or parts of units of competency, for the purposes of the definition of *recognised qualification* in clause 31 (2).
- 2 The Environment Protection Authority may only approve of units of competency, or parts of units of competency, if the units of competency are specified in a current Training Package endorsed by the Australian Industry and Skills Committee established by the Council of Australian Governments Industry and Skills Council.
- 3 Before approving units of competency, or parts of units of competency, the Environment Protection Authority:
  - (a) must notify relevant groups, including registered training organisations and environmental and industry representatives, and
  - (b) must be satisfied that the proposed units of competency, or parts of units of competency, are relevant to the objects of the Act.
- 4 An approval:
  - (a) must clearly identify all units of competency, or parts of units of competency, required to be achieved for the issue of a prescribed qualification, and
  - (b) may specify that particular units of competency, or particular parts of units of competency, must be achieved by particular pesticide users or classes of pesticide users (including, for example, the users of a particular type of pesticide).
- 5 An approval is to be published in the Gazette and takes effect on the day that it is so published or on such later date as may be specified in the approval.
- 6 The Environment Protection Authority must ensure that copies of any approval in force are available for public inspection, without charge and during ordinary business hours, at each of its offices.
- 7 The Environment Protection Authority may revoke an approval at any time by notice published in the Gazette. Any such revocation takes effect on the day that it is so published or on such later date as may be specified in the notice.

## Schedule 3 Penalty notice offences

(Clause 59)

For the purposes of section 75 (1) of the Act:

- (a) each offence specified in this Schedule is an offence for which a penalty notice may be issued, and
- (b) the amount payable under any such penalty notice is the amount specified in this Schedule for the offence.

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision</b>	<b>Penalty (individual)</b>	<b>Penalty (corporation)</b>
<b>Offences against the Act</b>		
Section 10 (1)	\$750	\$1,500
Section 11 (1)	\$750	\$1,500
Section 11A (1)	\$750	\$1,500
Section 12 (1)	\$750	\$1,500
Section 13 (1)	\$750	\$1,500
Section 14 (1)	\$750	\$1,500
Section 14 (2)	\$750	\$1,500
Section 15 (1)	\$750	\$1,500
Section 16 (1)	\$250	\$500
Section 17	\$750	\$1,500
Section 19 (4)	\$750	\$1,500
Section 22 (4)	\$500	\$1,000
Section 25	\$750	\$1,500
Section 27 (6)	\$500	\$1,000
Section 39 (4)	\$500	\$1,000
Section 41 (2)	\$500	\$1,000
Section 42 (4)	\$500	\$1,000
Section 42 (6)	\$500	\$1,000
Section 43	\$500	\$1,000
Section 45 (1)	\$500	\$1,000
Section 45 (2)	\$500	\$1,000
Section 59	\$500	\$1,000
Section 60 (2)	\$500	\$1,000
Section 61 (1)	\$500	\$1,000
Section 61 (2)	\$500	\$1,000
Section 61 (3)	\$500	\$1,000
Section 64 (5)	\$750	\$1,500
Section 65 (5)	\$750	\$1,500

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision</b>	<b>Penalty (individual)</b>	<b>Penalty (corporation)</b>
<b>Offences against this Regulation</b>		
Clause 14	\$250	—
Clause 15 (1)	\$500	\$1,000
Clause 15 (2)	\$250	\$500
Clause 16 (1)	\$500	—
Clause 16 (2)	\$250	—
Clause 25 (1)	\$250	\$500
Clause 25 (2)	\$250	\$500
Clause 26 (2)	\$500	\$1,000
Clause 26 (3)	\$125	\$250
Clause 26 (5)	\$500	\$1,000
Clause 30 (8)	\$250	\$500
Clause 32 (1)	\$500	\$1,000
Clause 33	\$500	—
Clause 34 (1)	\$500	—
Clause 34 (2)	\$500	—
Clause 34 (3)	\$500	—
Clause 35 (1)	\$500	\$1,000
Clause 37 (1)	\$250	\$500
Clause 37 (2)	\$250	\$500
Clause 37 (3)	\$250	\$500
Clause 40 (1)	\$500	\$1,000
Clause 46 (1)	\$500	\$1,000
Clause 47 (1)	\$500	\$1,000
Clause 48 (1)	\$500	\$1,000
Clause 50 (1)	\$125	\$250
Clause 51 (2)	\$125	\$250
Clause 54	\$250	\$500
Clause 55	\$500	\$1,000

## Schedule 4 Savings and transitional provisions

### 1 General savings

- (1) Any act, matter or thing that, immediately before the repeal of the *Pesticides Regulation 2009*, had effect under that Regulation continues to have effect under this Regulation.
- (2) Subclause (1) does not apply so as to continue any exemption referred to in clause 7 (4) of the *Pesticides Regulation 2009* and any such exemption ceases to have effect on the repeal of that Regulation.

### 2 Licences

A person who, immediately before the repeal of the *Pesticides Regulation 2009*, held a licence specified in Column 1 (the *existing licence*) is taken on the repeal of that Regulation to hold the licence specified in Column 2 subject to the same conditions and for the same period as the existing licence.

Column 1	Column 2
Aerial applicator pilot licence	Aerial applicator pilot licence
Aerial applicator business licence	Aerial applicator business licence
UAV applicator controller licence	RPA applicator pilot licence
UAV applicator business licence	RPA applicator business licence
Fumigator licence	Fumigator licence
Pest management technician licence	Pest management technician licence

### 3 Exemption—ground applicator work carried out before 1 July 2018

Despite any other provision of this Regulation, a person who carries out ground applicator work before 1 July 2018 does not require a licence to carry out the work.

### 4 Training permit not required until after 1 July 2018

Clause 13 (1) (a) of this Regulation does not have effect until 1 July 2018.