

Contents (1995 - 106)

Agricultural and Veterinary Chemicals (Control of Use) Act 1995

Long Title

Part 1 - Preliminary

1. Short title
2. Commencement
3. Interpretation
4. Act binds Crown
5. Objectives to be furthered
6. Saving of other laws
7. Exemptions
8. Labels attached to containers

Part 2 - Administration

Division 1 - The Agricultural, Silvicultural and Veterinary Chemicals Council

9. Establishment of Agricultural, Silvicultural and Veterinary Chemicals Council
10. Constitution of Council
11. Functions of Council
12. Powers of Council
13. Reports, &c.

Division 2 - The Tasmanian Agricultural and Veterinary Chemicals Advisory Committee

14. Establishment of Tasmanian Agricultural and Veterinary Chemicals Advisory Committee
15. Constitution of Advisory Committee
16. Functions and powers of Advisory Committee

Division 3 - The Registrar

17. Registrar

Part 3 - Restrictions and Prohibitions on Use of, or Dealing With, Chemical Products

18. Offences involving use, &c., of chemical products
19. Permit
20. Orders prohibiting or regulating handling, &c.
21. Offence of commercial use without a licence
22. Commercial operator licence
23. Offence of use, &c., of restricted chemical product without a restricted chemical product permit
24. Restricted chemical product permit
25. Offence of altering, &c., storage instructions
26. Regulations with respect to use, &c., of certain chemical products

Part 4 - Controls Over Use of Agricultural Chemical Products

27. Orders controlling or prohibiting agricultural spraying or use of chemical products
28. Effect of order
29. Agricultural spraying permit
30. Damage by spray drift

- 31. Notification to neighbours of agricultural spraying
- 32. Requirements for pilots
- 33. Pilot (chemical rating) licence
- 34. Agricultural aircraft operator licence
- 35. Requirements for aircraft operators
- 36. Approved insurance policies
- 37. Provision of information
- 38. Defective spraying equipment
- 39. Regulations with respect to spraying equipment

Part 5 - Controls Over Contaminated Land, Stock and Agricultural Produce

- 40. Contaminated stock order
- 41. Contaminated stock notice
- 42. Contaminated produce notice
- 43. Premises use restriction notice
- 44. Information about premises use restriction notices
- 45. Destruction notice
- 46. Restriction on sale of treated stock or produce

Part 5A - Infringement notices

- 46A. Service of infringement notice
- 46B. Form of infringement notice
- 46C. Repealed
- 46D. Repealed
- 46E. Repealed
- 46F. Repealed
- 46G. Repealed
- 46H. Repealed
- 46I. Payment to Public Account
- 46J. Repealed

Part 6 - Miscellaneous

- 47. Inspectors
- 48. Powers of inspectors
- 49. Testing of contaminated stock, premises, agricultural produce, preparation or fitting
- 50. Seizure of chemical products, agricultural produce, stock, preparations and fittings
- 51. Analysts
- 52. False or misleading statements
- 53. Extra information about application may be required
- 54. Information about licence, &c., may be required
- 55. Information about possession
- 56. Confidentiality of commercial information
- 57. Review of decisions
- 58. Costs
- 59. Time limit for commencing prosecutions
- 60. Evidentiary provisions
- 61. Offences by corporations and partnerships, &c.
- 62. Offences by employers and contractors
- 63. Delegation

- 64. Fees
- 65. Protection from liability
- 66. Orders may incorporate material
- 67. Regulations
- 68. Repeal
- 69. Savings and transitional provisions
- 70. Administration of Act

Schedule 1 - Objectives**Schedule 2 - Provisions with respect to meetings of council****Schedule 3 - Provisions with respect to membership of advisory committee****Schedule 4 - Provisions with respect to meetings of Advisory Committee****Schedule 5 - Permits, certificates and licences**

Part 1 - Provisions applying to all authorities

Part 2 - Provisions applying to specified authorities

Schedule 6 - Savings and transitional provisions

Agricultural and Veterinary Chemicals (Control of Use) Act 1995

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**Agricultural and Veterinary Chemicals (Control of Use) Act
1995**

An Act to control the use and application of agricultural chemical products and veterinary chemical products, to provide for related matters and to repeal certain Acts

[Royal Assent 8 December 1995]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - Preliminary

1. Short title

This Act may be cited as the Agricultural and Veterinary Chemicals (Control of Use) Act 1995 .

2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

(1) [Section 3 Subsection (1) amended by No. 90 of 2001, Sched. 6, Applied:01 Apr 2002] In this Act, unless the contrary intention appears –

Advisory Committee means the Tasmanian Agricultural and Veterinary Chemicals Advisory Committee established under section 14 ;

aerial spraying means the spraying, spreading or dispersing of an agricultural chemical product from an aircraft in flight;

agricultural produce means any animal product or –

- (a) any carcass, or part of a carcass, of an animal; or
- (b) any plant or part of a plant, whether harvested or not; or
- (c) any commodity obtained from a plant or an animal; or
- (d) anything that is ordinarily used as, or manufactured into, food for humans or animals –

and includes any other commodity that is obtained from a plant or an animal and that is declared under subsection (3) to be agricultural produce;

agricultural spraying means the spraying, spreading or dispersing of an agricultural chemical product whether by hand or from any machine or piece of equipment, and includes aerial spraying;

aircraft means any machine, other than a hovercraft, that can derive support in the atmosphere from the reaction of the air but does not include a machine operated by remote control;

analyst means an analyst appointed and holding office under section 51 ;

animal product means –

- (a) the hide, skin, hair, wool, feather, shell, horn, fin or hoof of an animal; or
- (b) any part of the viscera of an animal; or
- (c) any bone or blood of an animal or any article or substance derived from the bone or blood of an animal; or
- (d) any article or substance derived from an animal whether or not in combination with any other article or substance;

approved insurance policy means a policy that is approved or belongs to a class of policy that is approved under section 36 ;

Chief Veterinary Officer means the person holding office as Chief Veterinary Officer under the Animal Health Act 1995 ;

Code means the Agvet Code of Tasmania, within the meaning of the Agricultural and Veterinary Chemicals (Tasmania) Act 1994 ;

contaminant, in relation to stock or agricultural produce, means any residue of a chemical or chemical product in excess of the maximum residue limit or a metal in excess of the maximum permitted concentration or, if no such limit or concentration is declared, in excess of the level which may

reasonably be expected to be detected in the stock or agricultural produce if not subjected to any specific source of the chemical or chemical product and includes a radioactive product;

contaminated –

(a) in relation to stock or agricultural produce, means stock or agricultural produce in or on which a contaminant is present; or

(b) in relation to a preparation or fitting, means a preparation or fitting which if used in the normal manner would cause or be likely to cause the presence of a contaminant in stock or agricultural produce;

contaminated produce notice means a notice issued and in force under section 42 ;

contaminated stock notice means a notice issued and in force under section 41 ;

Council means the Agricultural, Silvicultural and Veterinary Chemicals Council established under section 9 ;

deal with, in relation to a chemical product, includes store or dispose of the product;

Deputy Registrar means the Deputy Registrar of Chemical Products appointed under section 17 ;

destruction notice means a notice issued and in force under section 45 ;

fitting means any equipment or other thing used in the handling or keeping of stock;

inspector means a person appointed as an inspector under section 47 ;

[Section 3 Subsection (1) amended by No. 8 of 2003, Sched. 2, Applied:15 Oct 2003] **maximum permitted concentration**, in relation to a substance present in stock or agricultural produce, means the concentration that is set out in any code, standard, rule, specification or guideline adopted or incorporated by regulations made under the Food Act 2003 or declared under subsection (5) to be the maximum permitted concentration for that substance in relation to that stock or agricultural produce;

[Section 3 Subsection (1) amended by No. 8 of 2003, Sched. 2, Applied:15 Oct 2003] **maximum residue limit**, in relation to a substance present in stock or agricultural produce, means the level that is set out in any code, standard, rule, specification or guideline adopted or incorporated by regulations made under the Food Act 2003 or declared under subsection (5) to be the maximum residue limit for that substance in relation to that stock or agricultural produce;

operator, in relation to an aircraft, means –

(a) if the aircraft is subject to a hire-purchase agreement or a lease, the person in possession of the aircraft; or

(b) if the aircraft is borrowed for use (whether or not under a financial arrangement), the person borrowing the aircraft; or

(c) in any other case, the owner of the aircraft;

[Section 3 Subsection (1) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010] **pharmacist** means a person registered under the Health Practitioner Regulation National Law (Tasmania) in the pharmacy profession;

premises use restriction notice means a notice issued under section 43 ;

preparation means any substance or mixture which, if it contained a chemical or chemical product, would cause or be likely to cause the presence of a contaminant in or on stock or agricultural produce;

[Section 3 Subsection (1) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010]

Registrar means the Registrar of Chemical Products appointed under section 17 ;

Secretary means the Secretary of the Department;

stock means any animal of a food-producing species or any animal of which any part is used as, or which produces any product that is ordinarily used as, or manufactured into, fibre and any other animal declared under subsection (3) to be stock;

veterinary chemical product has the same meaning as in the Code except that, despite section 5 (4) of the Code, it includes –

(a) a substance or mixture that is –

(i) [Section 3 Subsection (1) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010] prepared by a pharmacist in accordance with the instructions of a veterinary surgeon; or

(ii) prepared by a veterinary surgeon –

in the course of the practice, by the person preparing the substance or mixture of substances, of his or her profession; and

(b) a substance declared under subsection (3) to be a veterinary chemical product –

but does not include a substance that is declared under subsection (4) not to be a veterinary chemical product;

veterinary surgeon means a veterinary surgeon registered under the Veterinary Surgeons Act 1987 .

(2) Unless the contrary intention appears, a word or expression used in the Code has the same meaning in this Act as it has in the Code .

(3) The Minister, by notice in the *Gazette*, may declare –

(a) a commodity, or a class of commodity, that is obtained from a plant or an animal to be agricultural produce; or

(b) an animal to be stock; or

(c) a substance to be a veterinary chemical product; or

(d) a substance not to be a veterinary chemical product.

(4) The Minister, by notice in the *Gazette*, may declare a product or substance, or a class of product or substance, which is not required to be registered under the Code to be a product or substance which is subject to this Act or such of the provisions of this Act as are specified in the order.

(5) The Minister, by notice in the *Gazette*, may declare concentrations or limits in relation to a prescribed substance present in stock or agricultural produce to be the maximum permitted concentration or the maximum residue limit for that substance in relation to that stock or agricultural produce.

(6) For the purposes of subsection (5) , **prescribed substance**, in relation to stock or agricultural produce, means –

(a) [Section 3 Subsection (6) amended by No. 8 of 2003, Sched. 2, Applied:15 Oct 2003] a substance in respect of which the maximum permitted concentration or the maximum residue limit in relation to that stock or agricultural produce has not been set out in any code, standard, rule, specification or guideline adopted or incorporated by regulations made under the Food Act 2003 ; or

(b) a substance declared under subsection (4) .

4. Act binds Crown

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

5. Objectives to be furthered

It is the obligation of any person on whom a function is imposed or a power is conferred under this Act to perform the function or to exercise the power in such a manner as to further the objectives set out in Schedule 1 .

6. Saving of other laws

This Act does not affect in any way the operation of any other law unless the contrary intention appears or unless that law is not capable of operating concurrently with this Act.

7. Exemptions

(1) If the Minister considers it is in the public interest to do so, and after consultation with the NRA, the Minister, by order, may exempt any person, product, equipment or method of application or any class of person, product, equipment or method of application from any of the provisions of this Act either unconditionally or in specified circumstances.

(2) *[Section 7 Subsection (2) amended by No. 8 of 2003, Sched. 2, Applied: 15 Oct 2003]* Before making an order under subsection (1), the Minister must consult with the Minister administering the Food Act 2003 and the Minister administering the Environmental Management and Pollution Control Act 1994.

8. Labels attached to containers

(1) For the purposes of this Act, a label is attached to a container if the label is securely attached or affixed to, appears on, or is included with, the container.

(2) For the purposes of this Act but without limiting the generality of subsection (1) –

(a) writing appearing on a container is taken to have been written on a label attached to the container; and

(b) a reference to a label attached to a container includes a reference to writing appearing on the container; and

(c) a reference to attaching a label to a container includes a reference to putting writing on the container.

PART 2 - Administration

Division 1 - The Agricultural, Silvicultural and Veterinary Chemicals Council

9. Establishment of Agricultural, Silvicultural and Veterinary Chemicals Council

The Agricultural, Silvicultural and Veterinary Chemicals Council is established.

10. Constitution of Council

(1) The Council consists of –

- (a) the Secretary or a person nominated by the Secretary and approved by the Minister who is the chairperson of the Council; and
- (b) the Secretary of the responsible Department in relation to the Environmental Management and Pollution Control Act 1994 or a person nominated by the Secretary of that Department and approved by the Minister administering that Act; and
- (c) *[Section 10 Subsection (1) amended by No. 8 of 2003, Sched. 2, Applied:15 Oct 2003]* the Secretary of the responsible Department in relation to the Food Act 2003 or a person nominated by the Secretary of that Department and approved by the Minister administering that Act.

(2) Schedule 2 has effect with respect to meetings of the Council.

11. Functions of Council

The functions of the Council are as follows:

- (a) *[Section 11 Amended by No. 8 of 2003, Sched. 2, Applied:15 Oct 2003]* to advise the Minister, the Minister administering the Food Act 2003 and the Minister administering the Environmental Management and Pollution Control Act 1994 on matters relating to chemical products and their use;
- (b) to recommend to the Minister the making of orders and regulations under this Act;
- (c) to develop or approve codes of practice in relation to the handling of chemical products and the monitoring of residues in water supplies, food and fibre;
- (d) to monitor guidelines adopted for the use of chemical products nationally and internationally;
- (e) to examine standards of residues and develop guidelines to ensure best practice in the handling of chemical products;
- (f) to examine problems of the use of chemical products in farming and forestry and identify priority areas for action to minimise the presence of chemical products and residues;
- (g) to commission research on economic methods to minimise the use of chemical products;
- (h) to perform such other functions as are imposed on it by this or any other Act.

12. Powers of Council

- (1) The Council may do all things necessary or convenient to be done for or in connection with, or incidental to, the performance of its functions.
- (2) Subject to subsection (3), the Council may direct the Registrar to suspend or cancel any permit issued by the Registrar.
- (3) The Council may not exercise its power under subsection (2) in relation to a permit which has been issued by the Registrar in accordance with an agreement with the NRA.

13. Reports, &c.

- (1) The Council is to give to the Minister such information and reports relating to its functions and powers as the Minister requires or as it considers appropriate.

(2) *[Section 13 Subsection (2) amended by No. 8 of 2003, Sched. 2, Applied:15 Oct 2003]* If the Minister receives any information or report from the Council, the Minister is to give a copy of the information or report to the Minister administering the Food Act 2003 and the Minister administering the Environmental Management and Pollution Control Act 1994 .

Division 2 - The Tasmanian Agricultural and Veterinary Chemicals Advisory Committee

14. Establishment of Tasmanian Agricultural and Veterinary Chemicals Advisory Committee

The Tasmanian Agricultural and Veterinary Chemicals Advisory Committee is established.

15. Constitution of Advisory Committee

(1) The Advisory Committee consists of –

- (a) the Registrar, who is the chairperson of the Advisory Committee; and
- (b) a person employed in the Department who possesses experience in the assessment or regulation of chemical products nominated by the Secretary; and
- (c) the Chief Veterinary Officer; and
- (d) *[Section 15 Subsection (1) amended by No. 90 of 2001, Sched. 6, Applied:01 Apr 2002] [Section 15 Subsection (1) amended by No. 8 of 2003, Sched. 2, Applied:15 Oct 2003] [Section 15 Subsection (1) amended by No. 3 of 2010, Sched. 1, Applied:01 Jul 2010]* a medical practitioner, or a pharmacist, employed in the responsible Department in relation to the Food Act 2003 nominated by the Minister administering that Act; and
- (e) a person experienced in assessing the use and effects of chemicals nominated by the Minister administering the Environmental Management and Pollution Control Act 1994 ; and
- (f) a person nominated by the Tasmanian Farmers and Graziers Association to represent the users of chemical products; and
- (g) a person to represent the interests of consumers; and
- (h) a person to represent the interests of commercial operators conducting business in the application of chemical products; and
- (i) a veterinary surgeon nominated by the Australian Veterinary Association (Tasmanian Division).

(2) The members of the Advisory Committee, other than the chairperson and the member referred to in subsection (1) (c) , are to be appointed by the Minister.

(3) Schedule 3 has effect with respect to the membership of the Advisory Committee.

(4) Schedule 4 has effect with respect to the meetings of the Advisory Committee.

16. Functions and powers of Advisory Committee

(1) The functions of the Advisory Committee are as follows:

- (a) to advise the Registrar on all matters relating to permits referred to it by the Registrar;
- (b) to recommend to the Council policies and guidelines relating to the use of chemical products;
- (c) to advise the Council on any matter relating to chemicals and chemical products referred to it by the Council or considered by the Advisory Committee to be relevant.

(2) The Advisory Committee may do all things necessary or convenient to be done for or in connection with, or incidental to, the performance of its functions.

(3) If the Advisory Committee is of the opinion that any matter relating to its functions should be referred to the Minister, the Advisory Committee may refer the matter to the Minister and is to inform the Council of its opinion and make such representations and recommendations in relation to that matter to the Council as it considers appropriate.

Division 3 - The Registrar

17. Registrar

- (1) The Secretary, by instrument in writing, must appoint a person employed in the Department to be the Registrar of Chemical Products and a person employed in the Department to be the Deputy Registrar of Chemical Products.
- (2) *[Section 17 Subsection (2) amended by No. 86 of 2000, Sched. 1, Applied:01 May 2001]* A person appointed as the Registrar of Chemical Products or the Deputy Registrar of Chemical Products holds that office in conjunction with State Service employment.
- (3) The Deputy Registrar may, subject to any direction given by the Registrar, perform or exercise any of the functions or powers imposed or conferred on the Registrar under this Act and any act or thing done by the Deputy Registrar in the performance or exercise of those functions or powers has the same force and effect as if it had been done by the Registrar.
- (4) In performing or exercising any of his or her functions or powers under this Act, the Registrar is to give consideration to any policies or guidelines established by the Council or the NRA and must act in accordance with any direction given to the Registrar by the Council.
- (5) The Registrar is to advise the Council of any decisions made by the Registrar or Deputy Registrar under this Act.
- (6) The Registrar is to advise the NRA of any permits issued under this Act.

PART 3 - Restrictions and Prohibitions on Use of, or Dealing With, Chemical Products

18. Offences involving use, &c., of chemical products

(1) A person must not use or deal with a chemical product unless –

- (a) it is registered under the Code and it is used or dealt with in accordance with a label approved under the Code in relation to that chemical product; or
- (b) it is used or dealt with in accordance with a permit granted and in force under this Act or a permit issued and in force under the Code ; or
- (c) all the following subparagraphs apply:
 - (i) the chemical product was registered under the Code at the time it came into the person's possession;
 - (ii) the period beginning on the day when the chemical product ceased to be so registered and ending on the day when it was used is not longer than a period that the Registrar, after consultation with the NRA, has determined in relation to the chemical product for the purposes of this subparagraph;
 - (iii) the chemical product was acquired for use and not for supply;
 - (iv) a recall notice has not been issued by the NRA in respect of the chemical product;
 - (v) an order has not been made under this Act prohibiting the chemical product's use; or

(d) *[Section 18 Subsection (1) amended by No. 90 of 2001, Sched. 6, Applied:01 Apr 2002] [Section 18 Subsection (1) amended by No. 14 of 2003, s. 4, Applied:09 May 2003]* it is a veterinary chemical product prepared by –

- (i) a veterinary surgeon; or
- (ii) a registered pharmaceutical chemist acting in accordance with the instructions of a veterinary surgeon –

and is handled in accordance with an advice notice or label in the prescribed form.

Penalty: Fine not exceeding 200 penalty units.

(1A) *[Section 18 Subsection (1A) inserted by No. 14 of 2003, s. 4, Applied:09 May 2003]* If a chemical product is registered under the Code and is used –

- (a) at a lower concentration than is advised on a label referred to in subsection (1)(a) ; or
- (b) at a lower rate of application than is advised on that label; or
- (c) at a lower frequency than is advised on that label; or
- (d) on a crop identified on that label to treat a pest or disease that is not so identified –

that use of the chemical product is taken to comply with subsection (1)(a) .

(2) A person must not at any time (in this section referred to as "the relevant time") have in the person's possession or custody for the purpose of use a chemical product unless –

- (a) it is registered under the Code ; or
- (b) the container containing the chemical product has attached to it a label identical to a label approved under the Code in relation to that chemical product; or
- (c) all the following subparagraphs apply:
 - (i) the chemical product was registered under the Code at the time it came into the person's possession;

- (ii) the chemical product was acquired for use and not for supply;
- (iii) a recall notice has not been issued by the NRA in respect of the chemical product;
- (iv) the period beginning on the day when the chemical product ceased to be so registered and ending at the relevant time is not longer than a period that the Registrar, after consultation with the NRA, has determined in relation to the chemical product for the purpose of this subparagraph.

Penalty: Fine not exceeding 200 penalty units.

(3) A person is not guilty of an offence under subsection (2) in relation to a chemical product the registration of which has been suspended under the Code .

19. Permit

A permit may be applied for, granted or refused only in accordance with Schedule 5 .

20. Orders prohibiting or regulating handling, &c.

(1) *[Section 20 Subsection (1) amended by No. 14 of 2003, s. 5, Applied:09 May 2003]* A person must not handle, use, prescribe or otherwise deal with any chemical product in contravention of an order made by the Minister that prohibits or regulates the handling of a chemical product or class of chemical product that –

- (a) is specified in the order; or
- (b) contains a constituent that is, or is part of a class that is, specified in the order; or
- (c) contains a constituent other than in the proportion specified in the order in relation to a class of constituents of which that constituent is a part.

Penalty: In the case of –

- (a) a corporation, a fine not exceeding 400 penalty units; or
- (b) any other person, a fine not exceeding 200 penalty units.

(2) The Minister, by order, may –

- (a) prohibit or regulate the handling of a chemical product by reference to any conditions or circumstances specified in the order; or
- (b) prohibit the handling of a chemical product except as permitted by a permit granted and in force under this Act; or
- (c) prohibit or regulate the use of a chemical product –
 - (i) for all purposes; or
 - (ii) for any purpose specified in the order; or
 - (iii) for any purpose other than a purpose specified in the order; or
- (d) prohibit or regulate the mixing together of chemical products; or
- (e) *[Section 20 Subsection (2) amended by No. 14 of 2003, s. 5, Applied:09 May 2003]* prohibit or regulate the mixing of chemical products with any other substance; or
- (f) *[Section 20 Subsection (2) amended by No. 14 of 2003, s. 5, Applied:09 May 2003]* prohibit or regulate the sale, supply or prescription of a veterinary chemical product by a veterinary surgeon; or
- (g) *[Section 20 Subsection (2) amended by No. 14 of 2003, s. 5, Applied:09 May 2003]* prohibit or regulate the sale or supply of chemical products otherwise than in the normal course of sale by retail or by wholesale.

(3) *[Section 20 Subsection (3) amended by No. 8 of 2003, Sched. 2, Applied:15 Oct 2003]* Before making an order under subsection (2) , the Minister must consult with the Minister administering the Food Act 2003 and the Minister administering the Environmental Management and Pollution Control Act 1994 .

21. Offence of commercial use without a licence

A person must not offer a service for fee or reward which involves –

- (a) the use of a prescribed chemical product; or
- (b) the use of chemical products of a class that is prescribed; or
- (c) the use of a chemical product in a prescribed manner –

unless that person holds a commercial operator licence granted and in force under this Act and complies with any conditions of that licence.

Penalty: Fine not exceeding 200 penalty units.

22. Commercial operator licence

A commercial operator licence may be applied for, granted or refused only in accordance with Schedule 5 .

23. Offence of use, &c., of restricted chemical product without a restricted chemical product permit

(1) A person must not use a restricted chemical product unless that person holds a restricted chemical product permit granted and in force under this Act.

Penalty: Fine not exceeding 100 penalty units.

(2) A person must not at any time have in the person's possession or custody for the purpose of use a restricted chemical product unless the person holds a restricted chemical product permit granted and in force under this Act.

Penalty: Fine not exceeding 100 penalty units.

24. Restricted chemical product permit

A restricted chemical product permit may be applied for, granted or refused only in accordance with Schedule 5 .

25. Offence of altering, &c., storage instructions

A person must not transfer a chemical product from the container in which it is supplied in accordance with the Code into another container except –

- (a) where it is to be used immediately; or
- (b) where the other container has a label attached to it bearing relevant matter identical to that on the container in which it was supplied.

Penalty: Fine not exceeding 20 penalty units.

26. Regulations with respect to use, &c., of certain chemical products

(1) Regulations under this Act may, in relation to any chemical product or class of chemical product, make provision –

- (a) for regulating the preparation for use and handling of the chemical product or class of chemical product; and
- (b) for the protection of persons from injury or illness, or the risk of injury or illness, arising from the handling, use or misuse of the chemical product or class of chemical product; and
- (c) for prohibiting or restricting the classes of animals or plants to which the chemical product or class of chemical product may be applied.

(2) Without prejudice to the generality of subsection (1) , the regulations referred to in that subsection may, in relation to any chemical product or class of chemical product, make provision –

- (a) imposing requirements with respect to the buildings and other premises in which the chemical product or class of chemical product is prepared for use or handled, the vehicles or vessels in which it is conveyed and the conditions in which it is prepared for use or handled; and

- (b) relating to the materials to be used in the construction of facilities used to store the chemical product or class of chemical product, the security of those facilities and the services and equipment to be used in the case of accidents or emergencies at those facilities; and
- (c) prohibiting the use of the chemical product or class of chemical product for specified purposes or in specified cases or circumstances or classes of cases or circumstances and imposing restrictions or conditions as to the purposes for which, the circumstances in which, or the methods or means by which, the chemical product or class of chemical product may be used; and
- (d) imposing conditions in relation to the identification, marking, movement, supply, disposal or otherwise dealing with stock or agricultural produce to which the chemical product or class of chemical product has been applied or to stock or agricultural produce to which the chemical product or class of chemical product has not been applied and imposing conditions in relation to the methods or means used in that identification, marking, movement, supply, disposal or other dealing; and
- (e) providing for the grant of certificates of competency in relation to the handling or use of the chemical product or class of chemical product and prohibiting that handling or use or any work or operation in connection with that handling or use except by or under the supervision of a person holding such a certificate; and
- (f) requiring the provision and keeping in good order, and requiring and regulating the use of protective clothing and equipment, of facilities for washing and cleaning, and of other things needed for protecting persons from the effects of the chemical product or class of chemical product or the residues of the chemical product or class of chemical product, or for removing sources of the chemical product or class of chemical product; and
- (g) requiring the provision and keeping available in good order, and requiring and regulating the use, of facilities for preventive and first aid treatment to persons at risk of suffering, or suffering, any illness or injury from the handling or use of the chemical product or class of chemical product; and
- (h) requiring the taking of measures for ascertaining the state of the health or physical condition of persons engaging, or proposing to engage, in the handling or use of the chemical product or class of chemical product and for detecting and investigating cases in which illness or injury has occurred, or is suspected to have occurred, to any such persons, including the undergoing of medical examinations, and the taking of blood and other tests and the giving of notifications of illness, injuries and absences from work; and
- (i) limiting or restricting the periods during which a person may be engaged in any operation or work for or in connection with the handling or use of the chemical product or class of chemical product and imposing prohibitions or restrictions on a person engaging in any such operation or work by reason of the person's age, state of health, bodily condition or other circumstances; and
- (j) requiring, regulating or prohibiting the carrying out of specified operations on premises on which the chemical product or class of chemical product has been used; and
- (k) prohibiting the entry, for such period as is specified in the regulations, on premises in which the chemical product or class of chemical product has been used; and
- (l) requiring the keeping of records, the giving of notifications and the furnishing of records and returns, relating to the handling or use of the chemical product or class of chemical product; and
- (m) relating to the making of declarations stating that the chemical product or class of chemical product has not been used in the production of agricultural produce or raising of stock.

(3) The regulations made for the purposes of subsections (1) and (2) may –

- (a) impose obligations on persons employing persons in any work or operation in the conveyance or use of, or otherwise dealing with, a chemical product or class of chemical product, on persons so employed and on other persons; and
- (b) *[Section 26 Subsection (3) amended by No. 86 of 2000, Sched. 1, Applied:01 May 2001]* impose duties and confer powers on inspectors, analysts, classes of State Service officers and State Service employees

specified in the regulations and classes of employees of councils, within the meaning of the Local Government Act 1993 , specified in the regulations.

- (4) Regulations under this Act may make provision for or with respect to the registration of sellers of restricted chemical products and other prescribed chemical products, prescribed preparations and prescribed fittings and the areas in which those chemical products, preparations or fittings are stored.

PART 4 - Controls Over Use of Agricultural Chemical Products

27. Orders controlling or prohibiting agricultural spraying or use of chemical products

- (1) The Minister, by order, may control or prohibit agricultural spraying for the purpose of protecting susceptible plants and stock, public health, the environment and trade.
- (2) *[Section 27 Subsection (2) amended by No. 8 of 2003, Sched. 2, Applied: 15 Oct 2003]* Before making an order under subsection (1), the Minister must consult with the Minister administering the Food Act 2003 and the Minister administering the Environmental Management and Pollution Control Act 1994.

28. Effect of order

- (1) An order under section 27 applies as specified in the order –
- (a) to all chemical products, a specified chemical product or a specified class of chemical products; and
 - (b) to all agricultural spraying or any specified method or methods of application; and
 - (c) in specified climatic or seasonal conditions; and
 - (d) in any other specified circumstance or on any other specified condition.
- (2) An order applies to the area specified in it to be the chemical control area, whether that area is the whole of Tasmania or a particular area.
- (3) An order may prohibit an activity except in accordance with an agricultural spraying permit granted and in force under this Act.
- (4) A person must comply with an order, unless the person acts in accordance with an agricultural spraying permit granted and in force under this Act.
- Penalty: In the case of –
- (a) a corporation, a fine not exceeding 400 penalty units; or
 - (b) any other person, a fine not exceeding 200 penalty units.

29. Agricultural spraying permit

An agricultural spraying permit may be applied for, granted or refused only in accordance with Schedule 5.

30. Damage by spray drift

- (1) A person must not carry out or cause to be carried out agricultural spraying which adversely affects any person, plants, stock, agricultural produce, water bodies, groundwater or soil, on premises, or any premises, not owned or occupied by the person carrying out or causing to be carried out the agricultural spraying unless that person has obtained the permission of the owner or occupier of the premises.
- Penalty: Fine not exceeding 200 penalty units.

(2) It is a defence to a prosecution under subsection (1) to prove that the adverse effect on any person, plants or stock resulted from matters which could not have reasonably been anticipated.

(3) In this section, ***adversely affects***, in relation to plants, stock, agricultural produce, water bodies, groundwater or soil on premises, or any premises, means creating a residue of an agricultural chemical product in excess of the prescribed level in or on the plants, stock, agricultural produce, water bodies, groundwater, soil or premises.

31. Notification to neighbours of agricultural spraying

- (1) A person who has for at least 12 months owned or occupied premises in the vicinity of premises on which agricultural spraying is carried out or likely to be carried out –
- (a) with a prescribed agricultural chemical product or class of agricultural chemical product; and

(b) within a prescribed distance from the boundary of the premises owned or occupied by the person; and

(c) in a prescribed manner –

may apply to the Secretary for a direction to be given by the Secretary to the owner or occupier of the premises on which the agricultural spraying is carried out or likely to be carried out requiring that owner or occupier to give notice to the applicant whenever agricultural spraying is to be carried out and of the name of the agricultural chemical product or class of agricultural chemical product to be used.

(2) A person who has for at least 12 months occupied as a tenant a dwelling on any premises on which agricultural spraying is carried out or likely to be carried out –

(a) with a prescribed agricultural chemical product or class of agricultural chemical product; and

(b) within a prescribed distance from the dwelling –

may apply to the Secretary for a direction to be given by the Secretary to the owner or occupier of the premises requiring the owner or occupier to give notice to the tenant whenever agricultural spraying is to be carried out and the name of the agricultural chemical product or class of agricultural chemical product to be used.

(3) If the Secretary is satisfied, on receipt of an application under subsection (1) or (2), that conditions exist entitling a person to apply to the Secretary for a direction, the Secretary must, on payment of the prescribed fee, give a direction to the owner or occupier of the relevant premises.

(4) The direction referred to in subsection (3) is to specify the time, determined by the Secretary, which must elapse between the giving of the notice and the carrying out of the agricultural spraying.

(5) In determining the time which must elapse between the giving of the notice and the carrying out of the agricultural spraying, the Secretary must have regard to seasonal conditions, weather conditions, crop and pest development, availability of equipment and such other factors as the Secretary considers to be relevant.

(6) A person to whom a direction under subsection (3) is given must comply with the direction.

Penalty: Fine not exceeding 200 penalty units.

(7) Where the Minister is satisfied that agricultural spraying is carried out or likely to be carried out on any premises or class of premises, the Minister may make an order requiring the owner or occupier of the premises or the owner or occupier of the class of premises to give notice to any person or class of person specified in the order.

(8) *[Section 31 Subsection (8) amended by No. 8 of 2003, Sched. 2, Applied: 15 Oct 2003]* Before making an order under subsection (7), the Minister must consult with the Minister administering the Food Act 2003 and the Minister administering the Environmental Management and Pollution Control Act 1994.

(9) The Minister must make every reasonable effort to inform a person to whom the order applies of the order made by the Minister.

(10) The Minister's power under subsection (7) may be exercised in specific circumstances, in specified classes of circumstances or generally.

(11) A person must comply with an order made under subsection (7).

Penalty: Fine not exceeding 200 penalty units.

32. Requirements for pilots

(1) A person must not pilot an aircraft to carry out aerial spraying unless the person –

(a) holds a pilot (chemical rating) licence granted and in force under this Act; and

(b) complies with all conditions (if any) of that licence.

Penalty: Fine not exceeding 200 penalty units.

(2) A person must not pilot an aircraft to carry out aerial spraying unless the person –

(a) holds an agricultural aircraft operator licence granted and in force under this Act; and

(b) complies with all conditions (if any) of that licence.

Penalty: Fine not exceeding 200 penalty units.

(3) A person who does not –

(a) hold an agricultural aircraft operator licence; and

(b) comply with all conditions of that licence –

must not allow an employee or agent of that person to pilot an aircraft to carry out aerial spraying.

Penalty: Fine not exceeding 200 penalty units.

33. Pilot (chemical rating) licence

A pilot (chemical rating) licence may be applied for, granted or refused only in accordance with Schedule 5 .

34. Agricultural aircraft operator licence

An agricultural aircraft operator licence may be applied for, granted or refused only in accordance with Schedule 5 .

35. Requirements for aircraft operators

(1) The operator of an aircraft must not allow aerial spraying to be carried out from that aircraft unless the operator holds an approved insurance policy.

Penalty: In the case of –

(a) a corporation, a fine not exceeding 400 penalty units; or

(b) any other person, a fine not exceeding 200 penalty units.

(2) The operator of an aircraft must not allow aerial spraying to be carried out from that aircraft unless the operator holds an agricultural aircraft operator licence and complies with the conditions attached to that licence.

Penalty: In the case of –

(a) a corporation, a fine not exceeding 400 penalty units; or

(b) any other person, a fine not exceeding 200 penalty units.

(3) The operator of an aircraft must not allow aerial spraying to be carried out from that aircraft unless the pilot of the aircraft holds a pilot (chemical rating) licence.

Penalty: In the case of –

(a) a corporation, a fine not exceeding 400 penalty units; or

(b) any other person, a fine not exceeding 200 penalty units.

36. Approved insurance policies

(1) The Secretary may approve a policy of indemnity insurance or a class of policy of indemnity insurance for the purposes of this Act and may require an approved policy or class of policy to provide cover for a minimum insured amount.

(2) The Secretary may –

(a) grant approval subject to specified conditions; and

(b) revoke an approval or vary its conditions.

(3) The Secretary must cause notice to be published in the *Gazette* of –

(a) the granting of an approval; and

(b) any conditions to which it is subject; and

(c) any revocation of an approval or variation of its conditions.

37. Provision of information

(1) The Minister, by order, may –

(a) require the occupier of premises or the occupiers of a class of premises to provide the prescribed information to any person who is employed or contracted to carry out agricultural spraying on those premises or class of premises –

- (i) of a prescribed agricultural chemical product or class of agricultural chemical product; or
- (ii) in a prescribed manner; and

(b) require the person who is employed or contracted to carry out agricultural spraying on those premises or class of premises –

- (i) of a prescribed agricultural chemical product or class of agricultural chemical product; or
- (ii) in a prescribed manner –

to provide the prescribed information to the occupier of those premises or class of premises; and

(c) prohibit the person who is employed or contracted to carry out agricultural spraying on premises or a class of premises –

- (i) of a prescribed agricultural chemical product or class of agricultural chemical product; or
- (ii) in a prescribed manner –

from starting the agricultural spraying without first having received the prescribed information; and

(d) require the occupier of premises or the occupiers of a class of premises who intends or intend to have agricultural spraying carried out on those premises or class of premises –

- (i) of a prescribed agricultural chemical product or class of agricultural chemical product; or
- (ii) in a prescribed manner –

to make every reasonable effort to inform the prescribed persons, or persons of the prescribed class, of the proposed time of agricultural spraying and any other prescribed information.

(2) A person must comply with an order made under subsection (1) .

Penalty: Fine not exceeding 200 penalty units.

(3) [Section 37 Subsection (3) amended by No. 8 of 2003, Sched. 2, Applied: 15 Oct 2003] Before making an order under subsection (1) , the Minister must consult with the Minister administering the Food Act 2003 and the Minister administering the Environmental Management and Pollution Control Act 1994 .

38. Defective spraying equipment

(1) An inspector, by notice in writing –

(a) given to the owner or operator of any equipment that is used or to be used for the purposes of agricultural spraying, may direct the owner or operator not to use the equipment until the designated repairs, modifications or adjustments specified in the notice have been made; and

(b) given to the owner of the equipment, may direct the owner to make the designated repairs, modifications or adjustments specified in the notice before the date specified in the notice.

(2) For the purposes of subsection (1) , **designated repairs, modifications or adjustments**, in relation to equipment, are such repairs, modifications or adjustments as are necessary to be made to the equipment to enable it to comply with the prescribed standard or, if no standard is prescribed, to enable the equipment to meet such standard the inspector considers necessary.

(3) A person to whom a notice is given under subsection (1) must comply with the notice.

Penalty: Fine not exceeding 200 penalty units.

39. Regulations with respect to spraying equipment

The Governor may make regulations for or with respect to regulating equipment used or to be used for the purpose of agricultural spraying including but not limited to regulations prescribing –

- (a) specifications for the equipment; and
- (b) testing of the equipment; and
- (c) maintenance of the equipment.

PART 5 - Controls Over Contaminated Land, Stock and Agricultural Produce

40. Contaminated stock order

(1) The Minister, by order, may regulate the identification, inspection, testing, treatment, movement, sale, disposal or handling of contaminated stock.

(2) A person to whom an order applies must comply with the order.

Penalty: Fine not exceeding 100 penalty units.

41. Contaminated stock notice

(1) An inspector, by notice in writing, may regulate the identification, inspection, testing, treatment, movement, sale, disposal, management or handling of any stock on any premises or in any vehicle or vessel if the inspector believes on reasonable grounds that stock on those premises or in that vehicle or vessel is contaminated.

(2) Without limiting subsection (1) , the notice may –

(a) prohibit or restrict the movement or sale of the stock except –

(i) in accordance with the notice; or

(ii) with the approval of an inspector; and

(b) impose requirements relating to the treatment of the stock.

(3) The inspector may give the notice to –

(a) the owner or occupier of the premises on which the stock is kept; or

(b) the person in possession of the stock; or

(c) the owner of the stock; or

(d) the driver of any vehicle or person in charge of any vessel in which the stock is being transported; or

(e) if the stock is in transit, the person into whose possession the stock is to be delivered; or

(f) one or more of the persons specified in paragraphs (a) to (e) .

(4) A person who is given a notice under subsection (3) must comply with the notice.

Penalty: Fine not exceeding 100 penalty units.

42. Contaminated produce notice

(1) An inspector, by notice in writing, may regulate the use or disposal of, or other dealing with, any agricultural produce, preparation or fitting if the inspector believes on reasonable grounds that the agricultural produce, preparation or fitting is contaminated.

(2) Without limiting subsection (1) , the notice may –

(a) prohibit the use or disposal of, or other dealing with, the agricultural produce, preparation or fitting except –

(i) in accordance with the notice; or

(ii) with the approval of an inspector; or

(b) require that the agricultural produce, preparation or fitting be inspected, tested or treated as specified in the notice; or

(c) require that the agricultural produce, preparation or fitting be labelled, marked or otherwise identified –

(i) in the manner specified in the notice; and

(ii) before the date, if any, specified in the notice.

(3) The inspector may give the notice to –

- (a) the owner or occupier of the premises on which the stock or plants from which agricultural produce is produced is kept or are grown or on which the preparation or fitting is located; or
- (b) the owner of the agricultural produce, preparation or fitting; or
- (c) the person in possession of the agricultural produce, preparation or fitting; or
- (d) the driver of any vehicle or person in charge of any vessel in which the agricultural produce, preparation or fitting is being transported; or
- (e) if the agricultural produce, preparation or fitting is in transit, the person into whose possession it is to be delivered; or
- (f) one or more of the persons specified in paragraphs (a) to (e) .

(4) A person who receives a notice under subsection (3) must comply with the notice.

Penalty: Fine not exceeding 100 penalty units.

43. Premises use restriction notice

(1) The Secretary, by notice in writing, may regulate the use of any premises for the growing of plants or the keeping of stock if the Secretary believes on reasonable grounds, after considering a report by an inspector, that the growing of plants or the keeping of stock on those premises would be likely to result in the production of contaminated agricultural produce or contaminated stock.

(2) Without limiting subsection (1) , the notice may –

- (a) prohibit or restrict the growing on the premises of specified plants, or plants of a specified class –
 - (i) before the date, if any, specified in the notice; or
 - (ii) except in accordance with the conditions of the notice; or
 - (iii) except with the approval of an inspector; or
- (b) prohibit or restrict the keeping on the premises of specified stock, or stock of a specified class –
 - (i) before the date, if any, specified in the notice; or
 - (ii) except in accordance with the conditions of the notice; or
 - (iii) except with the approval of an inspector; or
- (c) impose requirements relating to –
 - (i) the identification, testing or treatment of agricultural produce or stock; or
 - (ii) the fencing of land or enclosing of other premises; or
 - (iii) notification to be given of the planting of crops on the premises or the restocking of the premises.

(3) The inspector may give the notice to the owner or the occupier of the premises or to both.

(4) A person who receives a notice under subsection (3) must comply with the notice.

Penalty: Fine not exceeding 200 penalty units.

44. Information about premises use restriction notices

(1) Subject to subsection (2) , the Secretary must provide details of any current premises use restriction notice issued in respect of any premises to any person who applies in a form approved by the Secretary for information about the premises and who pays the relevant prescribed fee.

(2) The Secretary must not provide details under subsection (1) unless the owner of the premises has given consent in writing.

(3) If the Minister considers it is in the public interest to do so, the Secretary may provide information about a premises restriction notice to a department of the Commonwealth or an authority established under an Act of the Commonwealth or to any person whom the Minister considers appropriate.

45. Destruction notice

(1) The Secretary, by notice in writing, may require the destruction of any agricultural produce, or any plants, preparation or fitting, if the Secretary, on the advice of an inspector, is satisfied that –

- (a) the agricultural produce is contaminated; or
- (b) agricultural produce to be derived from the plants is likely to be contaminated; or
- (c) animals consuming the agricultural produce or preparation are likely to be contaminated; or
- (d) the sale or use of the preparation is prohibited; or
- (e) use of the preparation in the normal manner is likely to result in contamination of stock or agricultural produce; or
- (f) animals exposed to or in contact with the fitting are likely to be contaminated.

(2) The Secretary, by notice in writing, may require the destruction of any stock if the Secretary, on the advice of the Chief Veterinary Officer, is satisfied that –

- (a) the stock is contaminated; or
- (b) agricultural produce to be derived from the stock is likely to be contaminated.

(3) Without limiting subsection (1) or (2), the notice may require that the agricultural produce or plants, preparation, fitting or stock be destroyed in the manner, under the conditions, and within the time, specified in the notice.

(4) The Secretary must give the notice to the person in possession of the agricultural produce or plants, preparation, fitting or stock.

(5) A person in possession of any agricultural produce or plants, preparation, fitting or stock who is given a notice must comply with the notice.

Penalty: Fine not exceeding 100 penalty units.

(6) If the person does not comply with the notice within the time specified in it, the Secretary may destroy the agricultural produce or plants, preparation, fitting or stock.

(7) The Secretary may recover from the owner of the agricultural produce or plants, preparation, fitting or stock the reasonable costs incurred in acting under subsection (6).

46. Restriction on sale of treated stock or produce

(1) Except as otherwise authorised by the NRA or by the Registrar, a person must not supply or forward for processing, within the relevant withholding period stated on the label of a chemical product, any stock to which the product has been applied unless the person has notified the purchaser that the period has not expired.

Penalty: Fine not exceeding 20 penalty units.

(2) Except as otherwise authorised by the NRA or by the Registrar or as provided in subsection (3), if any chemical product has been applied to agricultural produce or to plants or animals from which agricultural produce has been derived, a person must not supply, or forward for processing, that agricultural produce within the withholding period stated on the label of the chemical product.

Penalty: Fine not exceeding 20 penalty units.

(3) A person may supply or forward for processing agricultural produce within the withholding period referred to in subsection (2) if the person notifies the purchaser that the withholding period has not expired.

PART 5A - Infringement notices

46A. Service of infringement notice

[Section 46A Inserted by No. 34 of 2007, s. 4, Applied:28 Sep 2007] The Registrar or an inspector may serve an infringement notice on a person, other than a person who has not attained the age of 16 years, if the Registrar or inspector is of the opinion that the person has committed a prescribed offence.

46B. Form of infringement notice

[Section 46B Inserted by No. 34 of 2007, s. 4, Applied:28 Sep 2007] *[Section 46B Substituted by No. 72 of 2007, Sched. 1, Applied:28 Apr 2008]* An infringement notice –

- (a) is not to relate to more than 3 offences; and
- (b) is to be in accordance with section 14 of the Monetary Penalties Enforcement Act 2005 .

46C.

[Section 46C Inserted by No. 34 of 2007, s. 4, Applied:28 Sep 2007] *[Section 46C Repealed by No. 72 of 2007, Sched. 1, Applied:28 Apr 2008]*

46D.

[Section 46D Inserted by No. 34 of 2007, s. 4, Applied:28 Sep 2007] *[Section 46D Repealed by No. 72 of 2007, Sched. 1, Applied:28 Apr 2008]*

46E.

[Section 46E Inserted by No. 34 of 2007, s. 4, Applied:28 Sep 2007] *[Section 46E Repealed by No. 72 of 2007, Sched. 1, Applied:28 Apr 2008]*

46F.

[Section 46F Inserted by No. 34 of 2007, s. 4, Applied:28 Sep 2007] *[Section 46F Repealed by No. 72 of 2007, Sched. 1, Applied:28 Apr 2008]*

46G.

[Section 46G Inserted by No. 34 of 2007, s. 4, Applied:28 Sep 2007] *[Section 46G Repealed by No. 72 of 2007, Sched. 1, Applied:28 Apr 2008]*

46H.

[Section 46H Inserted by No. 34 of 2007, s. 4, Applied:28 Sep 2007] *[Section 46H Repealed by No. 72 of 2007, Sched. 1, Applied:28 Apr 2008]*

46I. Payment to Public Account

[Section 46I Amended by No. 4 of 2017, Sched. 1, Applied:01 Jul 2019] *[Section 46I Inserted by No. 34 of 2007, s. 4, Applied:28 Sep 2007]* Any payments made in respect of an infringement notice are payable into the Public Account.

46J.

[Section 46J Inserted by No. 34 of 2007, s. 4, Applied:28 Sep 2007] *[Section 46J Repealed by No. 72 of 2007, Sched. 1, Applied:28 Apr 2008]*

PART 6 - Miscellaneous

47. Inspectors

- (1) The Secretary, by instrument in writing, may appoint persons employed in the Department to be inspectors for the purposes of this Act.
- (2) *[Section 47 Subsection (2) amended by No. 86 of 2000, Sched. 1, Applied:01 May 2001]* The Secretary, by instrument in writing and with the consent of another Head of a State Service Agency, may appoint State Service officers and State Service employees employed in that Agency to be inspectors for the purposes of this Act.
- (3) *[Section 47 Subsection (3) amended by No. 86 of 2000, Sched. 1, Applied:01 May 2001]* A person appointed as an inspector under subsection (1) or (2) holds that office in conjunction with State Service employment.
- (4) *[Section 47 Subsection (4) amended by No. 86 of 2000, Sched. 1, Applied:01 May 2001]* The Secretary, by instrument in writing, may authorise any person, other than a State Service officer or State Service employee, to perform such of the functions, and exercise such of the powers, of an inspector as are specified in the notice.
- (5) The Secretary, by instrument in writing, may authorise a class of person employed in the Department to perform such of the functions, and exercise such of the powers, of an inspector as are specified in the notice for such period as is specified in the notice.

48. Powers of inspectors

- (1) An inspector may –
 - (a) subject to subsection (6) , enter at any reasonable time any premises on or at which the inspector reasonably suspects that –
 - (i) any chemical product is prepared for use, sold, kept or stored; or
 - (ii) any chemical product has been, is being or will be used; or
 - (iii) there is any equipment that is used or intended to be used in connection with the use of a chemical product; or
 - (iv) there is an aircraft that is used or intended to be used for aerial spraying; or
 - (v) agricultural spraying has been or is being carried on; or
 - (vi) there is or are any contaminated stock, any contaminated agricultural produce or any plants from which contaminated produce is likely to be derived; or
 - (vii) there is any contaminated preparation or fitting; or
 - (viii) there is or are any stock or plants which has or have been adversely affected by any agricultural chemical product; and
 - (b) subject to subsection (6) , enter at any reasonable time any premises occupied by a person who holds a licence or permit under this Act, or who the inspector reasonably suspects is required to hold a licence or permit under this Act; and
 - (c) subject to subsection (6) , enter at any reasonable time any premises if the inspector reasonably suspects that entry may assist in ascertaining possible sources of agricultural spraying or the cause of any stock, agricultural produce, preparation or fitting being contaminated; and
 - (d) stop, detain and search any vehicle or vessel which is used, or which the inspector reasonably suspects is used, to transport –
 - (i) chemical products; or
 - (ii) contaminated stock, contaminated agricultural produce, contaminated preparation or contaminated fitting; or

- (iii) stock or plants from which contaminated agricultural produce is likely to be derived; and
- (e) search any aircraft which is used, or which the inspector reasonably suspects is used, for aerial spraying; and
- (f) search for, inspect and examine any substance, material, plant, animal or equipment if it is reasonably necessary to do so for the purpose of ascertaining whether this Act is being complied with; and
- (g) require a person to produce any document that the inspector reasonably requires for ascertaining whether this Act is being complied with and may –
 - (i) examine that document; and
 - (ii) make copies of it or take extracts from it; and
 - (iii) remove the document for as long as is reasonably necessary to make copies or take extracts; and
- (h) take photographs and video or other electronic recordings of any premises, the contents of any premises or the activities being undertaken on any premises; and
- (i) open any container, including a shipping container, or receptacle which the inspector reasonably suspects contains a chemical product; and
- (j) take and remove for analysis or examination –
 - (i) samples of any substance that the inspector reasonably suspects is a chemical product; and
 - (ii) samples of any agricultural produce, preparation or fitting, or specimens from any stock, that the inspector reasonably suspects is contaminated; and
 - (iii) samples of soil, water or plants from any premises that the inspector reasonably suspects is the cause of stock or agricultural produce being contaminated; and
- (k) seize and kill, or require to be killed, any animal if samples or specimens cannot reasonably be otherwise obtained; and
- (l) tag or mark for the purposes of identification, isolate, assemble, muster, inspect, examine, count, treat, decontaminate, or control the movement of, any stock; and
- (m) require any person carrying on application of an agricultural chemical product to cease or to change the method or timing of the application if the inspector reasonably suspects the application of the agricultural chemical product will result in –
 - (i) a contravention of this Act; or
 - (ii) *[Section 48 Subsection (1) amended by No. 8 of 2003, Sched. 2, Applied: 15 Oct 2003]* levels in drinking water exceeding those set out in guidelines for potable water issued by the National Health and Medical Research Council or Food Standards Australia New Zealand or any other prescribed authority; or
 - (iii) contravention of a code of practice approved by the Council; and
- (n) conduct or cause to be conducted any analysis or examination of a sample or specimen to determine its composition; and
- (o) give to any person such directions as the inspector considers necessary or convenient for the purposes of enabling the inspector to perform or exercise his or her functions or powers; and
- (p) remove any label or advice note, or any document purporting to be a label or an advice note; and
- (q) prohibit or restrict the movement of stock or agricultural produce; and
- (r) require an owner to provide adequate facilities and assistance to allow the safe and efficient handling of animals during inspection and during the taking of specimens; and

(s) require the owner or occupier of premises entered by the inspector to provide the inspector with all reasonable assistance necessary to enable the inspector to perform his or her functions.

(2) An inspector must not exercise any of the inspector's powers in relation to an animal or to stock unless –

(a) the inspector is an inspector under the Animal Health Act 1995 ; or

(b) the Chief Veterinary Officer has authorised, in writing, the inspector to exercise those powers.

(3) An inspector may, in performing any function under this Act, take on the premises any vehicle, vessel, equipment or assistants.

(4) A person must not –

(a) fail or refuse to comply with a reasonable request of, or a reasonable direction given by, an inspector in the performance of the inspector's functions under this Act; or

(b) hinder, assault, obstruct, threaten, intimidate or attempt to bribe an inspector or a person assisting an inspector under subsection (3) .

Penalty: Fine not exceeding 50 penalty units.

(5) An inspector who takes a sample or specimen under subsection (1) (j) must, if requested to do so by the owner or the person in possession of the substance, agricultural produce, preparation, fitting, soil, water, plant or animal, or the owner or occupier of the premises, give that person a portion of the sample or specimen.

(6) Nothing in this section authorises an inspector to exercise any of the powers under subsection (1) (a) , (b) or (c) in residential premises except –

(a) with the permission of the occupier of the residential premises; or

(b) pursuant to a warrant granted under subsection (7) .

(7) Where a justice is satisfied, on an application made by an inspector, that it is reasonably necessary for the purposes of this Act that the inspector should exercise the powers under subsection (1) (a) , (b) or (c) in residential premises, the justice may grant a warrant authorising the inspector, with such assistance as the justice thinks necessary, to enter the residential premises during such hours of the day or night as the warrant specifies or, if the warrant so specifies, at any time, if necessary by force, for the purpose of the exercise of the powers under subsection (1) (a) , (b) or (c) .

49. Testing of contaminated stock, premises, agricultural produce, preparation or fitting

(1) An inspector may, by notice in writing given to the owner of any stock, premises, agricultural produce, preparation or fitting, require the owner to have that stock, premises, agricultural produce, preparation or fitting tested if the inspector reasonably suspects that –

(a) the stock is contaminated; or

(b) the growing of plants or the farming of stock on the land would be likely to result in the production of contaminated agricultural produce or the contamination of the stock; or

(c) the agricultural produce is contaminated; or

(d) the preparation is contaminated; or

(e) the fitting is contaminated.

(2) Without limiting subsection (1) , the notice may require –

(a) that samples or specimens from the stock, premises, agricultural produce, preparation or fitting are taken –

(i) under the supervision of an inspector; or

(ii) in the manner specified in the notice; and

(b) that the testing is carried out –

- (i) under the supervision of an inspector; or
- (ii) in the manner specified in the notice; and
- (c) that the samples or specimens are tested at a laboratory that is approved by the Secretary; and
- (d) that the testing is carried out within the time specified in the notice; and
- (e) that the testing is carried out at the expense of the owner if –
 - (i) it is being carried out for a prescribed reason; or
 - (ii) the result of the testing shows that the stock, agricultural produce, preparation or fitting is contaminated or that, in the case of premises, the growing of plants or the farming of stock on it would be likely to result in the production of contaminated agricultural produce or the contamination of the stock.

(3) An owner of any stock, premises, agricultural produce, preparation or fitting who is given a notice under subsection (1) must comply with the notice.

Penalty: Fine not exceeding 50 penalty units.

50. Seizure of chemical products, agricultural produce, stock, preparations and fittings

- (1) An inspector may seize –
 - (a) any chemical product if the inspector is satisfied that the possession or use of the chemical product is prohibited; and
 - (b) any agricultural produce if the inspector is satisfied that a requirement of a contaminated produce notice has not been complied with in respect of that agricultural produce; and
 - (c) any stock if the inspector is satisfied –
 - (i) that a requirement of a contaminated stock notice has not been complied with in respect of that stock; or
 - (ii) that the stock has been abandoned and is likely to be contaminated; and
 - (d) any preparation if the inspector is satisfied that use of the preparation in the normal manner is likely to result in contamination of stock or agricultural produce; and
 - (e) any fitting if the inspector is satisfied that any animal exposed to or in contact with the fitting is likely to be contaminated.
 - (2) An inspector who has seized any chemical product, agricultural produce, stock, preparation or fitting under subsection (1) may destroy or otherwise deal with it.
 - (3) An inspector may recover from the owner of the chemical product, agricultural produce, stock, preparation or fitting the reasonable costs incurred in acting under subsection (1) or (2) .
 - (4) An inspector may, by notice in writing served on the owner of any chemical product, agricultural produce, stock, preparation or fitting referred to in subsection (1) , declare that chemical product, agricultural produce, stock, preparation or fitting to be under official control.
 - (5) A person must not alter or interfere with anything declared by an inspector to be under official control except under the direction of an inspector.
- Penalty: Fine not exceeding 50 penalty units.

51. Analysts

- (1) The Secretary may appoint as an analyst for the purposes of this Act –
 - (a) a person employed in the Department who possesses the appropriate qualifications; or
 - (b) *[Section 51 Subsection (1) amended by No. 86 of 2000, Sched. 1, Applied:01 May 2001]* with the approval of another Head of a State Service Agency, a State Service officer or State Service employee employed in that Agency who possesses the appropriate qualifications.

(2) [Section 51 Subsection (2) amended by No. 86 of 2000, Sched. 1, Applied:01 May 2001] The Secretary may authorise appropriately qualified persons who are not State Service officers or State Service employees to perform the functions and exercise the powers of an analyst for the purposes of this Act.

(3) An analyst appointed under the Code is an analyst for the purposes of this Act.

52. False or misleading statements

(1) A person must not, in making any application or giving any information under this Act –

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter from a statement knowing that without that matter the statement is misleading.

Penalty: In the case of –

- (a) a corporation, a fine not exceeding 100 penalty units; or
- (b) any other person, a fine not exceeding 50 penalty units.

(2) A person must not make any statement about a chemical product, preparation or fitting or the use of a chemical product, preparation or fitting that is false or misleading and likely to cause a person who relies on the statement to commit an offence under this Act.

Penalty: In the case of –

- (a) a corporation, a fine not exceeding 100 penalty units; or
- (b) any other person, a fine not exceeding 50 penalty units.

(3) A person must not make a statement that is false or misleading in answer to a question or an inquiry by an inspector, the Registrar, the Deputy Registrar or the Secretary.

Penalty: In the case of –

- (a) a corporation, a fine not exceeding 100 penalty units; or
- (b) any other person, a fine not exceeding 50 penalty units.

53. Extra information about application may be required

(1) The Secretary or the Registrar may, by notice in writing given to a person making an application under this Act, require that person to supply extra information if that extra information is reasonably required to enable the Secretary or the Registrar to deal properly with the application.

(2) The Secretary or Registrar may refuse to consider the application further until the extra information is supplied.

(3) An applicant who becomes aware of any material change to the information supplied in, or in relation to, the application must notify the Registrar or, if the application was made to the Secretary, the Secretary.

Penalty: In the case of –

- (a) a corporation, a fine not exceeding 20 penalty units; or
- (b) any other person, a fine not exceeding 10 penalty units.

54. Information about licence, &c., may be required

(1) The Secretary or the Registrar may, by notice in writing given to the holder of a licence, permit or certificate, require that person to supply any information that is reasonably required to enable the Secretary or Registrar to decide whether the licence, permit or certificate should be cancelled.

(2) A person who is given a notice must comply with the notice.

Penalty: In the case of –

- (a) a corporation, a fine not exceeding 50 penalty units; or
- (b) any other person, a fine not exceeding 20 penalty units.

55. Information about possession

(1) An inspector may require a person in possession of a chemical product, or any substance, that the inspector reasonably suspects is a chemical product or a person in possession of any agricultural produce or any preparation or fitting that the inspector reasonably suspects contains a chemical product –

(a) to state the name and address of the person from whom the person in possession of the chemical product, substance, agricultural produce, preparation or fitting obtained it; and

(b) to provide any other information about the obtaining of the chemical product, substance, agricultural produce, preparation or fitting that the inspector reasonably requests.

(2) A person must not, without reasonable excuse, fail to comply with a requirement.

Penalty: In the case of –

(a) a corporation, a fine not exceeding 50 penalty units; or

(b) any other person, a fine not exceeding 20 penalty units.

56. Confidentiality of commercial information

(1) In this section, *information* means –

(a) information that relates to a chemical product and that is included in an application under this Act; and

(b) any information that is supplied as required under section 53 or 54 or Schedule 5 .

(2) [Section 56 Subsection (2) amended by No. 86 of 2000, Sched. 1, Applied:01 May 2001] Information must be treated as confidential and, subject to subsection (4) , the Registrar, the Secretary, a member of the Council, a member of the Advisory Committee or any State Service officer or State Service employee must not disclose that information to any person unless the disclosure –

(a) is made in pursuance of this Act; or

(b) is necessary in respect of any proceedings for an offence that are instituted or proposed to be instituted under this Act.

Penalty: Fine not exceeding 250 penalty units.

(3) A court to which information is disclosed under subsection (2) or (5) (b) must do everything necessary to prevent disclosure of that information to any person otherwise than for the purpose of the proceedings before the court.

(4) The Registrar may disclose information –

(a) to the person for the time being in charge of a Poisons Information Centre, if asked by that person in a poisoning emergency; or

(b) [Section 56 Subsection (4) amended by No. 8 of 2003, Sched. 2, Applied:15 Oct 2003] to the Secretary of the responsible Department in relation to the Food Act 2003 (or a person nominated by that Secretary for the purposes of this paragraph) in prescribed circumstances.

(5) A person to whom information is disclosed in pursuance of this Act must not disclose that information to any person unless the disclosure –

(a) is made in pursuance of this Act; or

(b) is necessary in respect of any proceedings for an offence that are instituted or proposed to be instituted under this Act.

Penalty: Fine not exceeding 250 penalty units.

57. Review of decisions

(1) Subject to subsection (2) , a person may appeal to the Appeal Tribunal against the decision of the Registrar, the Secretary or an inspector –

(a) to refuse to grant a licence; or

- (b) to cancel a licence other than at the request of the holder; or
- (c) to attach a condition to a licence; or
- (d) to vary a condition of a licence; or
- (e) to require testing to be carried out; or
- (f) to issue or amend a premises use restriction notice.

(2) An appeal against a decision under subsection (1) may be made within 14 days from the date of the receipt of the decision.

(3) *[Section 57 Subsection (3) amended by No. 68 of 2003, Sched. 1, Applied:15 Dec 2003]* A person from whom any chemical product, agricultural produce, stock, preparation or fitting is seized under section 48 (1) (k) or 50 , or the owner of that chemical product, agricultural produce, stock, preparation or fitting, may apply to the Magistrates Court (Administrative Appeals Division) for a review of the seizure.

(4) *[Section 57 Subsection (4) amended by No. 68 of 2003, Sched. 1, Applied:15 Dec 2003]* In addition to its powers under the Magistrates Court (Administrative Appeals Division) Act 2001 , the Magistrates Court (Administrative Appeals Division) may order –

- (a) *[Section 57 Subsection (4) amended by No. 68 of 2003, Sched. 1, Applied:15 Dec 2003]*
- (b) that the seized chemical product, agricultural produce, stock, preparation or fitting be returned to the person from whom it was seized, or to the owner; or
- (c) that compensation be paid to the person from whom the chemical product, agricultural produce, stock, preparation or fitting was seized, or to the owner; or
- (d) both the return of the chemical product, agricultural produce, stock, preparation or fitting and the payment of compensation.

(5) *[Section 57 Subsection (5) amended by No. 73 of 2001, Sched. 1, Applied:01 Jul 2002]* A person who is given a destruction notice under section 45 may apply to the Magistrates Court (Administrative Appeals Division) for a review of the notice.

(6) *[Section 57 Subsection (6) amended by No. 73 of 2001, Sched. 1, Applied:01 Jul 2002]* *[Section 57 Subsection (6) amended by No. 68 of 2003, Sched. 1, Applied:15 Dec 2003]* In addition to its powers under the Magistrates Court (Administrative Appeals Division) Act 2001 , the Magistrates Court (Administrative Appeals Division) may order –

- (a) *[Section 57 Subsection (6) amended by No. 73 of 2001, Sched. 1, Applied:01 Jul 2002]*
- (b) that the destruction notice be withdrawn; or
- (c) that compensation be paid to the owner of the agricultural produce or plants, stock, preparation or fitting; or
- (d) both the withdrawal of the notice and the payment of compensation.

(7) *[Section 57 Subsection (7) amended by No. 73 of 2001, Sched. 1, Applied:01 Jul 2002]* *[Section 57 Subsection (7) omitted by No. 68 of 2003, Sched. 1, Applied:15 Dec 2003]*

(8) In this section –

Appeal Tribunal means the Resource Management and Planning Appeal Tribunal established under the Resource Management and Planning Appeal Tribunal Act 1993 ;

licence means –

- (a) a commercial operator licence under section 22 ; or
- (b) a pilot (chemical rating) licence under section 33 ; or
- (c) an agricultural aircraft operator licence under section 34 .

58. Costs

A court which finds a person guilty of an offence against this Act may order that the reasonable costs of any analyses carried out for the purposes of bringing the proceedings must be paid by that person.

59. Time limit for commencing prosecutions

Proceedings for an offence against this Act must be commenced not later than 18 months after the date on which the offence is alleged to have been committed.

60. Evidentiary provisions

(1) In proceedings for an offence against this Act, a certificate purporting to be signed by the Secretary and to certify –

- (a) that a chemical product was, or was not, registered under the Code on a specified date or during a specified period; or
- (b) that a label described in the certificate was, or was not, approved under the Code on a specified date or during a specified period; or
- (c) that a code of practice, was or was not, approved by the Council; or
- (d) that a licence or permit was in force on a specified date or during a specified period; or
- (e) that the matter appearing on an approved label, or in a licence or permit, is identical to the matter set out in or appended to the certificate; or
- (f) that a licence or permit was suspended during a specified period or was cancelled on a specified date; or
- (g) that a specified person was an inspector on a specified date or during a specified period; or
- (h) that a specified person was an analyst, or was authorised to perform the functions and exercise the powers of an analyst, on a specified date or during a specified period; or
- (i) that a specified person was appointed the Registrar or Deputy Registrar on a specified date or during a specified period –

is evidence of the facts so certified and, in the absence of evidence to the contrary, is proof.

(2) In any proceedings for an offence against this Act, unless evidence is given to the contrary, proof is not required as to –

- (a) the authority of an officer to prosecute; or
- (b) the appointment of the Secretary or any person employed in the Department.

(3) A certificate issued by an analyst setting out the result of an analysis made by the analyst under this Act on behalf of a complainant in respect of a prosecution is admissible in evidence in the proceedings.

(4) The analyst's certificate is proof of the facts and matters contained in it unless the defendant gives notice in writing to the complainant, at least 7 days before the hearing, that the analyst is required to be called as a witness.

61. Offences by corporations and partnerships, &c.

(1) If a corporation commits an offence against this Act, each person who is a director or is concerned in the management of the corporation is also guilty of the offence and liable to the penalty for it.

(2) It is a defence to a charge brought under subsection (1) against a person who is the director, or is concerned in the management, of a corporation if that person proves that –

- (a) the commission of the offence by the corporation occurred without the knowledge of the person; or
- (b) the person was not in a position to influence the conduct of the corporation in relation to the commission of the offence; or

(c) the person, being in such a position, used all reasonable diligence to prevent the commission of the offence by the corporation; or

(d) the corporation would not have been found guilty of the offence because of a defence available under this Act.

(3) A person who is a director, or is concerned in the management, of a corporation may, by virtue of subsection (1), be proceeded against and be convicted of an offence whether or not the corporation has been proceeded against or convicted in respect of the offence.

(4) When in any proceedings under this Act it is necessary to establish the intention of a corporation, it is sufficient to show that an employee or agent of the corporation had that intention.

(5) If a person who is a partner in a partnership commits an offence against this Act in the course of the activities of the partnership, each other person who is a partner in the partnership is also guilty of the offence and liable to the penalty for it.

(6) If a person who is concerned in the management of an unincorporated association commits an offence against this Act in the course of the activities of the unincorporated association, each other person who is at the time of the commission of the offence concerned in the management of the unincorporated association is also guilty of the offence and liable to the penalty for it.

(7) It is a defence to a charge brought under subsection (5) or (6) if the person charged proves that –

(a) the commission of the offence occurred without the knowledge of the person; or

(b) the person was not in a position to influence the conduct of the person who committed the offence; or

(c) the person, being in such a position, used all reasonable diligence to prevent the commission of the offence; or

(d) the person who committed the offence would not have been found guilty of the offence because of a defence available under this Act.

(8) In this section, **officer** –

(a) *[Section 61 Subsection (8) amended by No. 42 of 2001, Sched. 1, Applied: 15 Jul 2001]* in relation to a corporation within the meaning of the Corporations Act, has the same meaning as in section 9 of that Act; and

(b) *[Section 61 Subsection (8) amended by No. 42 of 2001, Sched. 1, Applied: 15 Jul 2001]* in relation to a corporation which is not a corporation within the meaning of the Corporations Act, means any person, by whatever name called, who is concerned or takes part in the management of the corporation; and

(c) includes any employee of the corporation who gives to the Secretary, the Registrar, the Deputy Registrar or an inspector any information relating to any part of the operations of the corporation over which that employee exercises any superintendence or control.

62. Offences by employers and contractors

(1) An employer commits an offence against this Act, and is liable to the penalty for that offence, if a person commits the offence in the course of that person's employment by the employer unless it is proved that –

(a) the employer –

(i) did not authorise or permit the acts or omissions that constituted the offence; and

(ii) used all reasonable diligence to prevent them; or

(b) the employee would not have been convicted of the offence because of a defence available under this Act.

(2) A person who has contracted with another person for the provision of services by that other person commits an offence against this Act, and is liable to the penalty for that offence, if that other person commits the offence

in the course of providing those services for the person unless it is proved that –

(a) the person –

(i) did not authorise or permit the acts or omissions that constituted the offence; and

(ii) used all reasonable diligence to prevent them; or

(b) that other person would not have been convicted of the offence because of a defence available under this Act.

63. Delegation

(1) The Secretary may delegate to the Registrar, the Deputy Registrar, any person employed in the Department or an inspector any of the Secretary's functions or powers, other than this power of delegation.

(2) The Registrar may delegate to any person employed in the Department any of the Registrar's functions or powers, other than this power of delegation.

64. Fees

Any fee due under this Act bears interest at the rate prescribed in regulations made under this Act from the date that the fee becomes due to the date that it is paid.

65. Protection from liability

(1) Any act or thing done, or omitted to be done, under this Act in good faith by the Secretary, the Registrar, a delegate of the Secretary or Registrar, the Deputy Registrar, an inspector or a person assisting an inspector in the performance or exercise or purported performance or exercise of any functions or powers of an inspector, does not subject the Secretary, the Registrar, the Deputy Registrar, the inspector, the person or the Crown to any action, liability, claim or demand.

(2) Any loss or injury suffered by a person by reason of the handling or otherwise dealing with a chemical product in accordance with this Act, or a permit, approval or other authority issued under this Act, does not subject the Crown, a member of the Council, a member of the Advisory Committee, the Secretary, the Registrar, a delegate of the Secretary or Registrar, the Deputy Registrar or an inspector to any action, liability, claim or demand unless the loss or injury was caused by negligence or malice or anything done in bad faith by the member, the Secretary, the Registrar, the delegate, the Deputy Registrar or the inspector.

66. Orders may incorporate material

(1) An order made under this Act may be made so as to apply, adopt or incorporate any material contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any person whether –

(a) wholly or partially or as amended by the order; or

(b) as formulated, issued, prescribed or published at the time the order is made or at any time before then; or

(c) as formulated, issued, prescribed or published from time to time.

(2) If an order applies, adopts or incorporates any material under subsection (1), there must be published in the *Gazette*, at the same time as the making of the order is notified in the *Gazette*, a notice stating that the material may be inspected at the office of the Department specified in the notice.

(3) If under subsection (1) (c) an order has applied, adopted or incorporated any matter contained in any document, code, standard, rule, specification or method as formulated, issued, prescribed or published from time to time and that document, code, standard, rule, specification or method is at any time amended, the document, code, standard, rule, specification or method is for the purpose of the order to be taken to have not been so amended until notice of the amendment is published in the *Gazette*.

(4) A person is not guilty of an offence for contravening an order under this Act if the relevant order applied, adopted or incorporated material under subsection (1) and –

(a) a notice required by subsection (2) was not published with the order; or

(b) at the time of the alleged contravention, the material was not available for inspection at the office of the Department specified in the notice.

(5) Subsection (4) does not apply if, at the time of the alleged contravention, reasonable steps had been taken to bring the general purport of the applied, adopted or incorporated material to the notice of people likely to be affected by the order.

67. Regulations

(1) The Governor may make regulations for the purposes of this Act.

(2) Regulations under this Act may –

(a) prescribe fees to be paid under this Act and the rate of interest to be paid on overdue fees; and

(b) exempt any person or class of person from the payment of any fee.

(3) Regulations under this Act may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

(4) Regulations under this Act may –

(a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and

(b) in respect of such an offence, provide for the imposition of a fine not exceeding 200 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

(5) Regulations under this Act may authorise any matter to be from time to time determined, applied or regulated by the Secretary or Registrar.

(6) Regulations under this Act may adopt wholly or in part, with or without modification and specifically or by reference, any published standards, rules, codes or specifications whether the standards, rules, codes or specifications are published before or after the commencement of this Act.

(7) A reference in subsection (6) to standards, rules, codes or specifications includes a reference to those standards, rules, codes or specifications as amended from time to time.

(8) Regulations under this Act may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(9) A provision referred to in subsection (8) may take effect on and from the day on which this Act commences or a later day.

68. Repeal

The following Acts are repealed:

(a) Pesticides Act 1968 ;

(b) Pesticides Amendment Act 1994 ;

(c) Pesticides Amendment Act 1995 ;

(d) Veterinary Medicines Act 1987 ;

(e) Veterinary Medicines Amendment Act 1993 ;

(f) Veterinary Medicines Amendment Act 1995 .

69. Savings and transitional provisions

Schedule 6 has effect.

70. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the Administrative Arrangements Act 1990 –

- (a) the administration of this Act is assigned to the Minister for Primary Industry and Fisheries; and
- (b) the Department responsible to the Minister for Primary Industry and Fisheries in relation to the administration of this Act is the Department of Primary Industry and Fisheries.

SCHEDULE 1 - Objectives

Section 5

1. To impose controls in relation to the handling of agricultural chemical products and veterinary chemical products for the purpose of –
 - (a) protecting the health of the general public and the users of those products; and
 - (b) protecting the environment; and
 - (c) protecting the health and welfare of animals; and
 - (d) protecting domestic and export trade in agricultural produce and stock; and
 - (e) promoting the production of clean, high quality produce; and
 - (f) promoting a clean and high quality lifestyle for this State; and
 - (g) maintaining and enhancing economic viability of this State's agricultural and forest industries.
2. To impose controls in relation to agricultural spraying and to provide protection against loss caused by damage to, or detrimental effects on, plants and stock from agricultural spraying.
3. To impose controls in relation to the production of agricultural produce to avoid the presence of chemical products in food for human consumption, feed for animal consumption and drinking water supplies.
4. To impose controls over the conditions of storage for the sale, distribution or handling of agricultural chemical products and veterinary chemical products for the purpose of preventing or minimising the risks of –
 - (a) contamination of stock and agricultural produce; and
 - (b) the presence of chemical products in the environment; and
 - (c) hazard to persons.

SCHEDULE 2 - Provisions with respect to meetings of council

Section 10

1. Convening of meetings of Council

A meeting of the Council may be convened by the chairperson of the Council.

2. Procedure at meetings

(1) The Council is not competent to transact any business of the Council unless all members of the Council are present.

(2) Questions arising at a meeting of the Council are to be determined by a majority of the votes of the members voting.

(3) The chairperson of the Council is to preside at all meetings of the Council.

3. General procedure

The procedure for the calling of, and for the conduct of business at, meetings of the Council is, subject to any procedure that is specified in this Act, to be as determined by the Council.

SCHEDULE 3 - Provisions with respect to membership of advisory committee

Section 15

1. Interpretation

In this Schedule, **member** means a member of the Advisory Committee other than the chairperson of the Committee or the member referred to in section 15 (1) (c) .

2. Change of name, &c.

(1) If a body referred to in section 15 (1) changes its name, the Governor may, by order, amend that subsection by substituting the body's new name.

(2) If a body referred to in section 15 (1) ceases to exist, the Governor, on the recommendation of the Advisory Committee, may, by order, amend that subsection by substituting the name of a body which the Governor is satisfied substantially represents the interests represented by the first-mentioned body.

3. Period of appointment

A member is to be appointed for such term, not exceeding 3 years, as is specified in the member's instrument of appointment and, if otherwise qualified, is eligible for reappointment from time to time.

4. Provisions requiring devotion of whole of time to other duties

Where, by or under any Act, provision is made requiring the holder of an office to devote the whole of his or her time to the duties of office under that Act, that provision does not operate to disqualify that person from holding that office and also the office of a member of the Advisory Committee.

5. Terms and conditions of appointment

(1) A member holds office on such terms and conditions not provided for in this Act as are determined by the Minister.

(2) Subject to subclause (3) , a member is entitled to be paid such remuneration and allowances as the Governor may from time to time determine.

(3) *[Schedule 3 Amended by No. 86 of 2000, Sched. 1, Applied:01 May 2001]* A member who is a State Service officer or State Service employee is not entitled to remuneration under subclause (2) except with the approval of the Minister administering that Act.

6. Disclosure of interests

(1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Advisory Committee must as soon as practicable after the relevant facts come to the knowledge of the member, disclose the nature of that interest at a meeting of the Advisory Committee.

(2) A disclosure under subclause (1) is to be recorded in the minutes of the meeting of the Advisory Committee and the member must not, unless the Advisory Committee otherwise determines –

(a) be present during any deliberation of the Advisory Committee with respect to that matter; or

(b) take part in any decision of the Advisory Committee with respect to that matter.

(3) For the purpose of making a determination by the Advisory Committee under subclause (2) in relation to a member who has made a disclosure under subclause (1) , a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates must not take part in the making by the Advisory Committee of the determination.

7. Deputies of members

(1) The Minister may appoint a deputy of a member of the Advisory Committee.

- (2) A person appointed as a deputy of a member of the Advisory Committee must be nominated by the person or body which nominated that member for appointment.
- (3) If a member of the Advisory Committee is unable for any reason to perform the duties of a member, the member's deputy may perform those duties and, when doing so, is taken to be a member.
- (4) A deputy member of the Advisory Committee holds office for such term, not exceeding 3 years, and on such conditions, as are specified in his or her instrument of appointment.

8. Vacation of office

- (1) A member vacates office if he or she –
 - (a) dies; or
 - (b) resigns; or
 - (c) is removed from office under subclause (2) , (3) or (4) .
- (2) The Minister may remove a member from office if the member –
 - (a) is absent from 2 consecutive meetings of the Advisory Committee without the permission of the Advisory Committee; or
 - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration or estate for their benefit; or
 - (c) is convicted in Tasmania or elsewhere of a crime or an offence punishable by imprisonment for 6 months or longer; or
 - (d) is convicted of an offence against this Act; or
 - (e) fails, without reasonable excuse, to comply with clause 6 .
- (3) The Minister may remove a member from office if satisfied that the member is unable to perform adequately or competently the duties of office.
- (4) The Minister may remove a member from office if –
 - (a) the Minister is satisfied, having regard to the information supplied by the person or body which nominated that member, that the member is no longer qualified to be a member of the Advisory Committee; or
 - (b) that person or body recommends the removal of that member.

9. Filling of vacancies

- (1) If the office of a member becomes vacant, the Minister may appoint a person to the vacant office for the remainder of that member's term of office.
- (2) A person appointed to the vacant office must be suitably qualified and, where appropriate, nominated by the person or body who nominated the former member for appointment.

SCHEDULE 4 - Provisions with respect to meetings of Advisory Committee

Section 15

1. Interpretation

In this Schedule, *member* means a member of the Advisory Committee.

2. Convening of meetings of the Advisory Committee

A meeting of the Advisory Committee may be convened by the chairperson of the Advisory Committee or by any 2 members or by the Secretary.

3. Procedure at meetings

(1) *[Schedule 4 Amended by No. 8 of 2003, Sched. 2, Applied:15 Oct 2003]* Five members of the Advisory Committee, of whom one must be a person employed in the Department and one must be a person nominated by the Minister administering the Food Act 2003 or the Minister administering the Environmental Management and Pollution Control Act 1994, form a quorum at any duly convened meeting of the Advisory Committee.

(2) Any duly convened meeting of the Advisory Committee at which a quorum is present is competent to transact any business of the Advisory Committee.

(3) Questions arising at a meeting of the Advisory Committee are to be determined by a majority of votes of the members present and voting.

4. Chairperson

(1) The chairperson of the Advisory Committee is to preside at all meetings of the Advisory Committee at which the chairperson is present.

(2) If the chairperson of the Advisory Committee is not present at a meeting of the Advisory Committee a member elected by the members present is to preside at that meeting.

5. General procedure

The procedure for the calling of, and for the conduct of business at, meetings of the Advisory Committee is, subject to any procedure that is specified in this Act, to be as determined by the Advisory Committee.

SCHEDULE 5 - Permits, certificates and licences

Sections 19 , 22 , 24 , 29 , 33 , 34 and 56

PART 1 - Provisions applying to all authorities

1. Interpretation

In this Schedule, *authority* means –

- (a) a permit under section 19 ; or
- (b) a commercial operator licence under section 22 ; or
- (c) a restricted chemical product permit under section 24 ; or
- (d) an agricultural spraying permit under section 29 ; or
- (e) a pilot (chemical rating) licence under section 33 ; or
- (f) an agricultural aircraft operator licence under section 34 .

2. Applications

- (1) A person may apply to the Registrar for the grant of an authority.
- (2) An application must –
 - (a) be in a form approved by the Registrar; and
 - (b) include any information that the Registrar reasonably requires; and
 - (c) except in the case of an application for a permit under section 19 , be accompanied by the relevant prescribed fee; and
 - (d) be lodged in a manner approved by the Registrar.
- (3) An applicant for a permit under section 19 must pay the prescribed fee on or before the date specified by the Registrar.

3. Grant or refusal

- (1) The Registrar may grant or refuse to grant an authority.
- (2) An authority is subject to any conditions imposed by the Registrar and specified in the authority.
- (3) The Registrar may, by notice in writing to the holder of an authority, vary or omit any conditions of the authority and impose new conditions.
- (4) The Registrar may refuse to grant an authority –
 - (a) if the applicant has been convicted of a crime or an offence punishable by imprisonment; or
 - (b) on any prescribed ground.

4. Cancellation or suspension

- (1) The Registrar may, by notice in writing to the holder of an authority, cancel or suspend the authority if –
 - (a) the holder has not complied with a condition of the authority; or
 - (b) the holder has been convicted of an offence against a relevant Act; or
 - (c) a relevant fee has not been paid on or before the due date; or
 - (d) the Registrar becomes aware of any information which, if it had been known at the time the authority was granted, would have prevented the grant of the authority; or

(e) any prescribed ground exists.

(2) A notice must specify –

(a) the date on which the cancellation or suspension takes effect; and

(b) in the case of suspension –

(i) the period of suspension; or

(ii) any conditions that must be satisfied before the suspension will be lifted.

5. Notice of reasons and opportunity to comment

Before suspending or cancelling an authority or refusing to grant an application for an authority, the Registrar must give the applicant for, or the holder of, the authority –

(a) notice of the reasons for the proposed action; and

(b) the opportunity to submit written comments on the proposed action.

6. Term of Authority

An authority continues in operation for the term (not exceeding 5 years) specified in it, unless it is cancelled before then.

7. Fees

The holder of an authority must pay the relevant prescribed fee on or before the due date each year.

PART 2 - Provisions applying to specified authorities

8. Permits

A permit may authorise the use of a chemical product in a manner which is at variance with conditions for its use specified on a label approved under the Code in relation to that chemical product.

9. Commercial operator licences

- (1) The Registrar may, without limiting his or her power under clause 3 (2) , impose a condition on a commercial operator licence requiring the holder to hold an approved insurance policy.
- (2) The Registrar may, without limiting his or her power under clause 3 (4) or clause 4 (1) –
 - (a) refuse to grant a commercial operator licence if the applicant does not hold an approved insurance policy or a cover note for such a policy; or
 - (b) cancel or suspend a commercial operator licence if the holder does not hold an approved insurance policy.

10. Pilot (chemical rating) licences

The Registrar may, without limiting his or her power under clause 3 (4) , refuse to grant a pilot (chemical rating) licence if the applicant has not attended a course, or passed an examination, approved by the Registrar.

11. Agricultural aircraft operator licences

The Registrar may, without limiting his or her power under clause 3 (4) or clause 4 (1) –

- (a) refuse to grant an agricultural aircraft operator licence if the applicant does not hold an approved insurance policy or a cover note for such a policy; or
- (b) cancel or suspend an agricultural aircraft operator licence if the holder does not hold an approved insurance policy.

SCHEDULE 6 - Savings and transitional provisions

Section 69

1. Interpretation

In this Schedule, *commencement day* means the day on which this Act commences.

2. Registrar, and Deputy Registrar, of Pesticides

(1) The person holding office as Registrar of Pesticides immediately before the commencement day continues, on and after that day, to hold that office until a person is appointed as Registrar of Chemical Products under this Act.

(2) The person holding office as Deputy Registrar of Pesticides immediately before the commencement day continues, on and after that day, to hold that office until a person is appointed as Deputy Registrar of Chemical Products under this Act.

3. Analysts

A person holding office as an analyst under the Pesticides Act 1968 immediately before the commencement day is, on that day, taken to be appointed as an analyst under this Act.

4. Declarations under section 26H of the Veterinary Medicines Act 1987

A declaration made under section 26H of the Veterinary Medicines Act 1987 and in force immediately before the commencement day continues in force, on and after that day, as if section 26H had not been repealed.

5. Approvals for use of pesticides

The approval of the use of a pesticide under regulation 18 of the Pesticides Regulations 1969 and in force immediately before the commencement day is, on and after that day, taken to be a permit granted under this Act.

6. Registration of pest controllers

A registration made under regulation 23A of the Pesticides Regulations 1969 and in force immediately before the commencement day is, on and after that day, taken to be a commercial operator licence granted under this Act.

7. Pest control operator licences

An operator's licence granted under section 23B of the Pesticides Regulations 1969 and in force immediately before the commencement day is, on and after that day, taken to be a commercial operator licence granted under this Act.

8. Records relating to pesticides

Records required to be kept by a pest controller under regulation 23D of the Pesticides Regulations 1969 are, on and after the commencement day, taken to be records required to be kept under this Act.

9. Licences to use restricted pesticides

A licence to use a restricted pesticide granted under regulation 23K of the Pesticides Regulations 1969 and in force immediately before the commencement day continues in force, on and after that day, for the period for which it was granted and Division III of Part V of the Pesticides Regulations 1969 continues to apply to it.