

Queensland



**AGRICULTURAL AND  
VETERINARY CHEMICALS  
(QUEENSLAND) ACT 1994**

**Act No. 78 of 1994**

Queensland



**AGRICULTURAL AND VETERINARY  
CHEMICALS (QUEENSLAND) ACT 1994**

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Queensland



**Agricultural and Veterinary Chemicals  
(Queensland) Act 1994**

**Act No. 78 of 1994**

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**An Act to apply certain Commonwealth laws about agricultural and veterinary chemical products as Queensland laws, and for other purposes**

*[Assented to 1 December 1994]*

**Parliament's reasons for enacting this Act are that it recognises that—**

1. The protection of the health and safety of human beings, animals and the environment is essential to the wellbeing of society and can be enhanced by putting in place a system to regulate agricultural chemical products and veterinary chemical products (“**chemical products**”).

2. The principle of ecologically sustainable development requires a regulatory system designed to ensure the use of chemical products today will not impair the prospects of future generations.

3. The furthering of trade and commerce between Australia and places outside Australia, and the present and future economic viability and competitiveness of primary industry and a domestic industry for manufacturing and formulating chemical products—

(a) are essential for the wellbeing of the economy; and

(b) require a system for regulating chemical products that is cost effective, efficient, predictable, adaptive and responsive.

4. It is desirable to establish a regulatory system that is open and accountable and gives opportunity for public input about the regulation of chemical products.

5. The system should, as far as practicable, be uniform throughout Australia.

6. Uniformity could best be achieved by the enactment of legislation by the Commonwealth Parliament as a law for the government of the Australian Capital Territory and the adoption of the legislation by the Parliaments and legislatures of the States and the Northern Territory.

**The Parliament of Queensland enacts—**

## **PART 1—PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Agricultural and Veterinary Chemicals (Queensland) Act 1994*.

### **Commencement**

2. This Act commences on a day to be fixed by proclamation.

### **Definitions**

3. In this Act—

“**Agricultural and Veterinary Chemicals Act**” means the *Agricultural and Veterinary Chemicals Act 1994* (Cwlth).

“**Agricultural and Veterinary Chemicals (Administration) Act**” means the *Agricultural and Veterinary Chemicals (Administration) Act 1992* (Cwlth).

“**Agricultural and Veterinary Chemicals Code Act**” means the *Agricultural and Veterinary Chemicals Code Act 1994* (Cwlth).

“**Agvet Code of Queensland**” means the provisions applying because of section 5.

“**Agvet Regulations of Queensland**” means the provisions applying because of section 6.

“**applicable provision**” of a jurisdiction means a provision of—

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



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provision of, or offence against, the Agvet Code or Agvet Regulations of the jurisdiction.

**“authority”** of the Commonwealth has the meaning given by the Agricultural and Veterinary Chemicals Act.

**“Commonwealth administrative laws”** means—

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

**“Commonwealth Minister”** means ‘the Minister’ within the meaning of the Agvet Code of the participating Territories.

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

**“corresponding law”** means—

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

**“instrument”** means a document, including, for example—

- (a) an Act or instrument made under an Act; or
- (b) a law of this jurisdiction or an instrument made under a law of this jurisdiction; or
- (c) an award or other industrial determination or order, or an industrial agreement; or
- (d) any other order (whether executive, judicial or otherwise); or

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- (e) a notice, certificate or licence; or
  - (f) an agreement; or
  - (g) an application made, information or complaint laid, affidavit sworn, or warrant issued, for any purpose; or
  - (h) an indictment, presentment, summons or writ; or
  - (i) any other pleading in, or process issued about, a legal or other proceeding.

**“jurisdiction”** means a State or the participating Territories.

**“law”** of a participating Territory means a law of, or in force in, the Territory.

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

**“officer”** of the Commonwealth has the meaning given by the Agricultural and Veterinary Chemicals Act.

**“participating Territory”** means—

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

**“State”** includes the Northern Territory.

**“Territory”** does not include the Northern Territory of Australia, Norfolk Island, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands.

**“this jurisdiction”** means Queensland.

### **Jervis Bay Territory**

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

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

### Application of Agvet Code in this jurisdiction

5. The Code set out in the Schedule to the Agricultural and Veterinary Chemicals Code Act—

- (a) applies as a law of Queensland; and
- (b) may be cited as the Agvet Code of Queensland.

### Application of Agvet Regulations in this jurisdiction

6. The regulations in force under section 6 of the Agricultural and Veterinary Chemicals Code Act—

- (a) apply as regulations in force for the purposes of the Agvet Code of Queensland; and
- (b) may be cited as the Agvet Regulations of Queensland.

### Interpretation of Agvet Code and Agvet Regulations of this jurisdiction

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

“**Commonwealth Interpretation Act**” means the *Acts Interpretation Act 1901* (Cwlth).

“**the Minister for this jurisdiction**” means the Minister.

“**this jurisdiction**” means Queensland.

(2) Subject to Part 1 of the Agvet Code of this jurisdiction, the Commonwealth Interpretation Act applies as a law of this jurisdiction to—

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

(3) For the purposes of subsection (2), the Commonwealth Interpretation

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Act applies as if—

- (a) the Agvet Code of this jurisdiction were a Commonwealth Act; and
  - (b) the Agvet Regulations of this jurisdiction or instruments mentioned in the subsection were regulations or instruments made under a Commonwealth Act.
- (4) The *Acts Interpretation Act 1954* does not apply to—
- (a) the Agvet Code, or Agvet Regulations, of Queensland; or
  - (b) any instrument made, granted or issued under the Code or Regulations.

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

8.(1) In this section—

**“Commonwealth ancillary criminal laws”** means—

- (a) section 5, 6, 7 or 7A of the *Crimes Act 1914* (Cwlth); or
- (b) section 86(1) of the *Crimes Act 1914* (Cwlth) because of paragraph (a) of that subsection.

(2) The Commonwealth ancillary criminal laws apply as laws of this jurisdiction to an offence against the Agvet Code, or Agvet Regulations, of this jurisdiction—

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

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

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

### **References to Agvet Codes and Agvet Regulations of other jurisdictions**

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

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

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

### **References to Agvet Codes and Agvet Regulations**

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

**(2)** A reference in an instrument to the Agvet Codes, or Agvet Regulations, is taken, for the purposes of the laws of this jurisdiction—

- (a)** to be a reference to the Agvet Code, or Agvet Regulations, of this jurisdiction; and
- (b)** to include a separate reference to the Agvet Code, or Agvet Regulations, of each other jurisdiction.

**(3)** Subsection (2) has effect except so far as the contrary intention appears in the instrument or the context of the reference otherwise requires.

## **PART 4—APPLICATION OF AGVET CODES TO THE COMMONWEALTH, STATES AND TERRITORIES**

### **Agvet Code of this jurisdiction**

**11.** The Agvet Code of this jurisdiction binds the State and, so far as the legislative power of the Parliament permits, the Commonwealth, the other States and the Territories.

### **Agvet Code of other jurisdictions**

**12.** The Agvet Code of each jurisdiction other than this jurisdiction binds the State.

### **No liability to prosecution**

**13.** Nothing in this Part, or the Agvet Code of this jurisdiction, makes the Commonwealth or a State or Territory liable to be prosecuted for an offence.

### **Overriding the prerogative**

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

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

### **Object**

**15.** The object of this Part is to help ensure the Agvet Code of this

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jurisdiction and the Agvet Code of each other jurisdiction are administered on a uniform basis.

### **Application of Commonwealth administrative laws in relation to applicable provisions**

**16.(1)** The Commonwealth administrative laws apply as laws of this jurisdiction to any matter arising in relation to the applicable provisions of this jurisdiction as if the provisions were Commonwealth laws and were not laws of this jurisdiction.

**(2)** The provisions of the Agvet Code of this jurisdiction that require the NRA to give brief particulars of reasons for decisions do not affect the obligations of the NRA under section 28 of the *Administrative Appeals Tribunal Act 1975* (Cwlth), or section 13 of the *Administrative Decisions (Judicial Review) Act 1977* (Cwlth), as the section applies as a law of this jurisdiction under subsection (1) of this section.

**(3)** The provisions of the Agvet Code of this jurisdiction about the disclosure of confidential commercial information do not affect the operation of the *Freedom of Information Act 1982* (Cwlth) as the Act applies as a law of this jurisdiction under subsection (1) of this section.

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

- (a) is taken to be a matter arising in relation to Commonwealth laws in the same way as if the provisions were Commonwealth laws; and
- (b) is taken not to be a matter arising in relation to laws of this jurisdiction.

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

### **Functions and powers conferred on Commonwealth officers and authorities.**

**17.(1)** A Commonwealth administrative law applying because of section 16 that confers on a Commonwealth officer or authority a function

or power also confers on the officer or authority the same function or power in relation to a matter arising in relation to an applicable provision of this jurisdiction.

(2) In performing a function or exercising a power conferred by subsection (1), the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power under the Commonwealth administrative law.

### **Reference in Commonwealth administrative law to a provision of another law**

18. For the purposes of section 16, a reference in a Commonwealth administrative law to a provision of that or another Commonwealth administrative law is taken to be a reference to the provision as applying because of the section.

## **PART 6—JURISDICTION OF COURTS**

### **Jurisdiction of Federal Court**

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

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

### **Exercise of jurisdiction under cross-vesting provisions**

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



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

### **Conferral of functions and powers on NRA**

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

**(2)** Besides the powers mentioned in subsection (1), the NRA may do all things necessary or convenient to be done in performing its functions and, in particular, may—

- (a) enter into contracts; and
- (b) acquire, hold and dispose of real and personal property; and
- (c) occupy, use and control any land or building owned or held under lease by the Commonwealth, a State or a Territory and made available for the purposes of the NRA; and
- (d) appoint agents and attorneys, and act as agent for other persons; and
- (e) do anything incidental to any of its powers.

### **Agreements and arrangements**

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

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

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

**23.** The NRA may do acts in this jurisdiction in the performance or exercise of any function or power—

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

### **Commonwealth Minister may give directions in exceptional circumstances**

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

## **PART 8—MISCELLANEOUS**

### **Orders**

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

### **Manufacturing principles**

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

**Delegation**

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

**Conferral of powers on State officers**

28.(1) This section applies if an officer of a department, administrative unit or authority is authorised, under section 69F of the Agricultural and Veterinary Chemicals (Administration) Act, by the Chief Executive Officer of the NRA to exercise the powers or perform the functions of an inspector for the purposes of a particular relevant law.

(2) The powers and functions are conferred on the officer.

(3) The powers and functions are to be exercised or performed under the authorisation but are taken to have been validly exercised or performed despite any failure to comply with a condition or restriction of the authorisation.

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

**Application of fees and taxes**

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

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

30. An authority of this jurisdiction that, immediately before the commencement of this section, performed functions under a provision of the law of this jurisdiction that corresponded to a provision of the Agvet

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

### **Section 30 has effect despite any other law**

**31.** Section 30 has effect despite any other law of this jurisdiction, including, for example, the *Libraries and Archives Act 1988*.

### **Regulations**

**32.** The Governor in Council may make regulations under this Act.

### **Eligible laws**

**33.** A regulation may declare any law, or provision of a law, to be an eligible law for the purposes of the definition “permit” in section 109 of the Agvet Code of this jurisdiction.

## **PART 9—IMPOSITION OF FEES AND TAXES**

### **Fees (including taxes)**

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

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

### **Conferral of functions on Commonwealth Director of Public Prosecutions**

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

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

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## PART 11—TRANSITIONAL PROVISIONS

### Transitional regulations

**36.(1)** A regulation may make provision about any matter of a savings or transitional nature for which—

- (a) it is necessary or convenient to make provision because of the enactment of this Act; and
- (b) this Act does not make provision or adequate provision.

**(2)** A regulation under subsection (1) may be given retrospective operation to a date not earlier than the commencement of this section.

**(3)** This Part expires 1 year after it commences.

## PART 12—AMENDMENTS

### Acts amended in Schedule

**37.** The Schedule amends the Acts mentioned in it.

**SCHEDULE****AMENDMENTS**

section 37

**CHEMICAL USAGE (AGRICULTURAL AND  
VETERINARY) CONTROL ACT 1988****1. Section 4, heading—***omit, insert—***‘Definitions’.****2. Section 4(1), definitions “Board”, “chemical”, “disease”,  
“inspector”, “label”, “manufactured stock food”, “registered”,  
“standards officer”, “stock” and “wholesale dealer”—***omit.***3. Section 4(1)—***insert—***“Agvet Code”** means the provisions applying because of section 5 of the  
*Agricultural and Veterinary Chemicals (Queensland) Act 1994.***“approved label”** has the meaning given by the Agvet Code.**“authorised veterinary purpose”** see section 8C.**“chemical”** means—

- (a) a chemical product; or
- (b) another substance prescribed by regulation to be a chemical.

**“chemical product”** has the meaning given by the Agvet Code.

## SCHEDULE (continued)

“**container**” has the meaning given by the Agvet Code.

“**crop**” has the meaning given under the Standards Act.

“**disease**” has the meaning given under the Standards Act.

“**executive officer**” of a corporation means a person who—

- (a) is a member of the corporation’s governing body; or
- (b) is concerned with, or takes part in, the corporation’s management; whatever the person’s position is called and whether or not the person is a director of the corporation.

“**inspector**” means an inspector appointed under this Act, and includes the standards officer and a deputy standards officer.

“**instruction**” has the meaning given by the Agvet Code.

“**label**” has the meaning given by the Agvet Code.

“**manufactured stock food**” has the meaning given under the Standards Act.

“**National Registration Authority**” means the National Registration Authority for Agricultural and Veterinary Chemicals established by the *Agricultural and Veterinary Chemicals (Administration) Act 1992* (Cwlth).

“**obstruct**” includes hinder, resist and attempt to obstruct.

“**officer**” means—

- (a) the standards officer or a deputy standards officer; or
- (b) an inspector; or
- (c) an analyst.

“**permit**” has the meaning given by the Agvet Code.

“**primary dealer**” of a chemical means the person responsible for placing the chemical on the market in Queensland (whether as manufacturer, importer, distributor, seller, agent or in another capacity).

“**registered chemical product**” has the meaning given by the Agvet Code.



## SCHEDULE (continued)

**“representative”** of a person means—

- (a) if the person is a corporation—an executive officer, employee or agent of the corporation; or
- (b) if the person is an individual—an employee or agent of the individual.

**“Standards Act”** means the *Agricultural Standards Act 1994*.

**“stock”** has the meaning given under the Standards Act.

**“unregistered chemical”** means a chemical that is not a registered chemical product.

**“veterinary surgeon”** means a person registered as a veterinary surgeon under the *Veterinary Surgeons Act 1936*.

**4. Section 4(2)—**

*omit.*

**5. After section 4—**

*insert—*

**‘Words and expressions used in Agvet Code and this Act**

**‘4A.** Words and expressions used in the Agvet Code and this Act have the same meanings in this Act as they have in the Agvet Code.

**‘Appointment of standards officers**

**‘4B.** A standards officer and deputy standards officers may be appointed under the *Public Service Management and Employment Act 1988*.

**‘Powers and functions of standards officers**

**‘4C.(1)** The standards officer has the functions and powers given to the officer under this or another Act.

## SCHEDULE (continued)

‘(2) A deputy standards officer has the functions and powers given to the officer under this Act or by the standards officer.

**‘Delegation by standards officer**

‘4D. The standards officer may delegate to a deputy standards officer or another officer of the department the standards officer’s powers under this or another Act, including any powers delegated to the standards officer under this or another Act.’.

**6. Section 5—**

*omit, insert—*

**‘Appointment of inspectors and analysts**

‘5.(1) The chief executive may appoint officers of the department as inspectors and analysts for this Act.

‘(2) The chief executive may appoint a person as an inspector only if—

- (a) in the chief executive’s opinion, the person has the necessary expertise or experience to be an inspector; or
- (b) the person has satisfactorily finished training approved by the chief executive.

‘(3) In this section—

“**inspector**” does not include the standards officer or a deputy standards officer.

**‘Limitation of inspector’s powers**

‘5A. The powers of an inspector may be limited—

- (a) under a regulation; or
- (b) under a condition of appointment; or
- (c) by written notice of the chief executive given to the inspector.

## SCHEDULE (continued)

**‘Inspector’s identity card**

‘**5B.(1)** The chief executive must give each inspector an identity card.

‘**(2)** The identity card must—

- (a) contain a recent photograph of the inspector; and
- (b) be signed by the inspector; and
- (c) identify the person as an inspector under this Act.

‘**(3)** A person who ceases to be an inspector must return the person’s identity card to the chief executive as soon as practicable (but within 21 days) after the person ceases to be an inspector, unless the person has a reasonable excuse for not returning it.

Maximum penalty—10 penalty units.

‘**(4)** This section does not prevent the giving of a single identity card to a person under this Act and for other Acts or purposes.

**‘Production or display of inspector’s identity card**

‘**5C.(1)** An inspector may exercise a power under this Act in relation to someone else only if the inspector—

- (a) first produces his or her identity card for the person’s inspection;  
or
- (b) has the identity card displayed so it is clearly visible to the person.

‘**(2)** However, if for any reason it is not practicable to comply with subsection (1), the inspector must produce the identity card for the person’s inspection at the first reasonable opportunity.’

**7. Section 7—**

*omit.*

## SCHEDULE (continued)

**8. Section 8—**

*omit, insert—*

**‘Use of unregistered chemical products**

‘**8.(1)** A person must not use a chemical product unless it is a registered chemical product.

Maximum penalty—40 penalty units.

‘**(2)** Subsection (1) does not apply if—

- (a) the use of the product by the person is authorised by a permit; or
- (b) the product is a product declared by regulation to be an exempt chemical product; or
- (c) the product is used for an authorised veterinary purpose.

‘**(3)** In a prosecution for an offence against subsection (1), it is a defence for the defendant to prove—

- (a) the product was a registered chemical product at some time in the 2 years immediately before its use by the defendant; and
- (b) the product’s registration ended under section 47(2) or (3) of the Agvet Code; and
- (c) the defendant’s use of the product did not contravene an instruction that appeared on the approved label for containers for the product immediately before the product’s registration ended; and
- (d) the label was attached to the product’s container immediately before the product was taken from the container.

‘**(4)** This section is an eligible law for the definition “permit” in section 109 of the Agvet Code.

‘**(5)** In a prosecution for an offence against subsection (1), it is a defence for the defendant to prove—

- (a) the product was registered under the *Agricultural Standards Act 1952* at some time in the 2 years immediately before the

SCHEDULE (continued)

commencement of this subsection; and

- (b) the product was withdrawn from sale before its use by the defendant or its registration had expired; and
- (c) the defendant's use of the product did not contravene an instruction that appeared on the label for containers for the product immediately before it was withdrawn from sale; and
- (d) the label was attached to the product's container immediately before the product was taken from the container.

‘(6) Subsection (5) and this subsection expire 2 years after the commencement.

**‘Use of registered chemical products in contravention of labels**

‘8A.(1) A person must not use a registered chemical product in a way that contravenes an instruction on the approved label for containers for the product.

Maximum penalty—40 penalty units.

‘(2) Subsection (1) does not apply if—

- (a) the use of the product by the person in the particular way is authorised by a permit; or
- (b) the product is used for an authorised veterinary purpose; or
- (c) the use of the product is permitted under the regulations.

‘(3) Section 8D (Compliance with instructions) applies to subsection (1).

‘(4) This section is an eligible law for the definition “permit” in section 109 of the Agvet Code.

**‘Use of registered chemical products taken from unlabelled containers**

‘8B.(1) A person must not use a registered chemical product taken from a container—

- (a) unless the approved label for containers for the product was

## SCHEDULE (continued)

attached to the container immediately before the product was taken from the container; or

- (b) unless—
- (i) the product was put in the container in preparing the product for use after having been taken from another container (the “**original container**”); and
  - (ii) the approved label for containers for the product was attached to the original container immediately before the product was taken from the original container.

Maximum penalty—40 penalty units.

‘(2) Subsection (1) does not apply if the product is used for an authorised veterinary purpose.

**‘Use of chemical products for authorised veterinary purpose**

‘8C. For the purposes of sections 8(2)(c), 8A(2)(b) and 8B(2), a chemical product is used for an authorised veterinary purpose if it is used—

- (a) by a veterinary surgeon, or someone else under directions given by a veterinary surgeon, in carrying on the veterinary surgeon’s practice; and
- (b) in a way that complies with any conditions prescribed by regulation.

**‘Compliance with instructions**

‘8D.(1) This section applies to section 8A (Use of registered chemical products in contravention of labels).

‘(2) A person does not contravene an instruction by using a chemical product at a concentration less than the concentration stated, unless the instruction states the product must be used at a stated concentration or a concentration not less than the concentration stated.

‘(3) A person does not contravene an instruction by using a chemical

## SCHEDULE (continued)

product (whether or not diluted) at a rate lower than the rate stated, unless the instruction states the product must be used at a rate not lower than the rate stated.

‘(4) A person does not contravene an instruction by using a chemical product more than once for the same plant or stock, with the period between a use and the next being longer than the period stated, unless the instruction states that the period must not be longer than the period stated.

‘(5) A person does not contravene an instruction about the use of a chemical product to control a disease in a plant or stock by using the product to control another disease in the plant or stock, unless the instruction states the product must not be used to control the other disease or for a use other than the stated use.

‘(6) A person does not contravene an instruction about the use of a chemical product to destroy, or prevent the spread of, a plant in relation to a crop by using the product to destroy, or prevent the spread of, another plant in relation to the same crop, unless the instruction states the product must not be used to destroy, or prevent the spread of, the other plant in relation to the crop or for a use other than the stated use.

‘(7) A person does not contravene an instruction by using a chemical product in a way that is different from the way stated, unless the instruction states the way must not be used.

‘(8) A person does not contravene an instruction by mixing a chemical product with another chemical product or a fertiliser or other substance, unless the instruction states the chemical product must not be mixed with—

- (a) the other chemical product or the fertiliser or other substance; or
- (b) another chemical product or any fertiliser or other substance.

**‘Use of controlled chemicals**

‘8E.(1) A regulation may—

- (a) declare an unregistered chemical to be a controlled chemical (the **“controlled chemical”**); and

## SCHEDULE (continued)

(b) set conditions for use of the chemical.

‘(2) A person must not use a controlled chemical in a way that contravenes a condition for use of the chemical.

Maximum penalty for subsection (2)—40 penalty units.’.

**9. Section 11—**

*omit, insert—*

**‘Claims inconsistent with labels**

‘**11.(1)** This section applies to a claim—

- (a) about a registered chemical product, or a chemical product containing a registered chemical product; and
- (b) inconsistent with an instruction on an approved label for containers for the registered chemical product.

‘(2) For the purposes of section 84(2) of the Agvet Code—

- (a) the standards officer or a deputy standards officer, or a person acting under the direction of either officer, may make a claim under this Act; and
- (b) an officer of the public service or another employee of the State may make a claim in the course of the person’s employment by the State; and
- (c) a person prescribed by regulation may make a claim in the circumstances prescribed by regulation.

‘(3) Subsection (2) applies only if the claim is made honestly and without negligence.

**‘Claims about unregistered chemicals**

‘**11A.(1)** A person must not make a claim about the use of an unregistered chemical.

Maximum penalty—40 penalty units.



## SCHEDULE (continued)

‘(2) Subsection (1) does not apply if—

- (a) the use of the unregistered chemical is authorised by a permit; or
- (b) the unregistered chemical is used for an authorised veterinary purpose.

‘(3) Subsection (1) also does not apply to the making or reporting of a statement about the unregistered chemical if the statement—

- (a) is made—
  - (i) in a scientific paper or other scientific literature; or
  - (ii) in a scientific report or presentation; or
  - (iii) at a conference or seminar, or in an address, meeting or discussion, about chemical products;and is based on data published in a reputable scientific refereed journal or of a standard publishable in a reputable scientific refereed journal; or
- (b) is made on radio or television, or in a newspaper, journal or newsletter, as fair comment on any material—
  - (i) published for the purposes of a conference or seminar; and
  - (ii) based on data mentioned in paragraph (a).’.

**10. Section 12(1)—**

*insert—*

‘Maximum penalty—40 penalty units.’.

**11. Section 13—**

*omit, insert—*

**‘Governor in Council may proscribe chemicals**

‘**13.(1)** This section applies if the chief executive is satisfied, on reasonable grounds, that it is in the public interest to proscribe a chemical

## SCHEDULE (continued)

having regard to the harm that may be caused by the use of the chemical to any property, human or animal life, the environment or the State's trade whether within Australia or overseas.

‘(2) If this section applies, a regulation may proscribe a chemical.’.

**12. Section 14(1), ‘Minister’—**

*omit, insert—*

‘chief executive’.

**13. Section 14(1), ‘wholesale dealer’—**

*omit, insert—*

‘primary dealer’.

**14. Section 14(3)—**

*renumber* as section 14(4).

**15. Section 14—**

*insert—*

‘(3) A person must not contravene a notice under subsection (1), unless the person has a reasonable excuse for the contravention.

Maximum penalty—100 penalty units.’.

**16. Section 15—**

*insert—*

‘Maximum penalty—40 penalty units.’.

## SCHEDULE (continued)

**17. Section 16(6)—**

*renumber* as section 16(7).

**18. Section 16—**

*insert—*

‘(6) A person must not contravene a notice under subsection (1) or (2), unless the person has a reasonable excuse for the contravention.

Maximum penalty—100 penalty units.’.

**19. Section 18, heading, ‘Minister’—**

*omit, insert—*

‘**chief executive**’.

**20. Section 18(1), ‘Minister’—**

*omit, insert—*

‘chief executive’.

**21. Section 18(2)—**

*insert—*

‘Maximum penalty for subsection (2)—40 penalty units.’.

**22. Section 20(2)—**

*insert—*

‘Maximum penalty—40 penalty units.’.

## SCHEDULE (continued)

**23. Section 22—***omit, insert—***‘Right of appeal to Magistrates Court****‘22.(1)** This section applies to the following decisions—

- (a) a direction contained in a notice under section 16;
- (b) a decision of an inspector to refuse an application under section 17;
- (c) a decision of an inspector to seize a thing under section 20.

**‘(2)** A person who is dissatisfied with the decision may appeal against it.**‘(3)** The appeal may be made to the Magistrates Court nearest the place where the appellant resides, is employed or carries on business.**‘How to start appeal****‘22A.(1)** An appeal is started by filing a written notice of appeal with the clerk of the court of the Magistrates Court.**‘(2)** A copy of the notice must be served on the decision maker.**‘(3)** The notice of appeal must be filed within 28 days after the appellant receives notice of the decision appealed against.**‘(4)** However, the Court may extend the period for filing the notice of appeal at any time.**‘(5)** The notice of appeal must state the grounds of the appeal.**‘Stay of operation of decisions****‘22B.(1)** The Court may grant a stay of a decision appealed against to secure the effectiveness of the appeal.**‘(2)** A stay—

- (a) may be granted on conditions the Court considers appropriate;  
and

## SCHEDULE (continued)

- (b) operates for the period stated by the Court; and
- (c) may be revoked or amended by the Court.

‘(3) The period of a stay stated by the Court must not extend past the time when the Court decides the appeal.

‘(4) An appeal against a decision affects the decision, or carrying out the decision, only if the decision is stayed.

**‘Hearing procedures**

‘22C.(1) The power under the *Magistrates Courts Act 1921* to make rules for Magistrates Courts includes power to make rules for appeals to Magistrates Courts under this Act.

‘(2) The procedure for an appeal to a Magistrates Court under this Act is to be in accordance with—

- (a) the rules made under the *Magistrates Courts Act 1921*; or
- (b) in the absence of relevant rules, directions of the Court.

‘(3) An appeal is to be by way of rehearing, unaffected by the decision maker’s decision.

‘(4) In deciding an appeal, the Court—

- (a) has the same powers as the decision maker; and
- (b) is not bound by the rules of evidence; and
- (c) must observe natural justice; and
- (d) may hear the appeal in court or chambers.

**‘Powers of Court on appeal**

‘22D.(1) In deciding an appeal, the Court may—

- (a) confirm the decision appealed against; or
- (b) set aside the decision and substitute another decision; or
- (c) set aside the decision and return the issue to the decision maker

## SCHEDULE (continued)

with directions the Court considers appropriate.

‘(2) If the Court substitutes another decision, the substituted decision is, for the purposes of this Act, taken to be the decision maker’s decision.’

**‘Appeal to District Court**

‘22E. A party dissatisfied by the decision of the Court may appeal to a District Court, but only on a question of law.’.

**24. Section 23—**

*omit.*

**25. Section 24—**

*omit, insert—*

**‘Production of records**

‘24.(1) An inspector may ask a person to produce for inspection a record made or kept by the person under this Act.

‘(2) The person must immediately produce the record for inspection by the inspector, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

‘(3) The inspector may keep the record to make a copy of it.

‘(4) However, the inspector must return the record to the person as soon as practicable after making a copy of it.’.

**26. Section 25—**

*insert—*

‘Maximum penalty—40 penalty units.’.

## SCHEDULE (continued)

**27. Section 26—***insert—*

‘Maximum penalty—40 penalty units.’.

**28. Section 28—***omit, insert—***‘Prosecutions generally**

‘**28.(1)** An offence against this Act is a summary offence.

‘**(2)** A proceeding for an offence against this Act must start—

- (a) within 1 year after the offence is committed;
- (b) within 1 year after the offence comes to the complainant’s knowledge, but within 2 years after the offence is committed.

‘**(3)** The summons in a proceeding in which a report of the result of an analysis is to be used for the complainant is not returnable for at least 7 days after it is served.

‘**(4)** A copy of the report must be served with the summons.’.

**29. Section 30—***omit, insert—***‘Responsibility for acts or omissions of representatives**

‘**30.(1)** If, in a proceeding for an offence against this Act, it is relevant to prove a person’s state of mind about a particular act or omission, it is enough to show—

- (a) the act or omission was done or omitted to be done by a representative of the person within the scope of the representative’s actual or apparent authority; and
- (b) the representative had the state of mind.

‘**(2)** An act or omission done or omitted to be done for a person by a

## SCHEDULE (continued)

representative of the person within the scope of the representative's actual or apparent authority is taken, in a proceeding for an offence against this Act, to have been done or omitted to be done also by the person, unless the person proves the person took all reasonable steps to prevent the act or omission.

'(3) If—

- (a) an individual is convicted of an offence against this Act; and
- (b) the individual would not have been convicted of the offence if subsections (1) and (2) had not been enacted;

the individual is not liable to be punished by imprisonment for the offence.

**'Executive officers must ensure corporation complies with Act**

'30A.(1) The executive officers of a corporation must ensure that the corporation complies with this Act.

'(2) If a corporation commits an offence against a provision of this Act, each of the executive officers of the corporation also commits an offence, namely, the offence of failing to ensure the corporation complies with this Act.

Maximum penalty—the penalty for the contravention of the provision by an individual.

'(3) Evidence that the corporation committed an offence against this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with this Act.

'(4) However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer took all reasonable steps to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.'



## SCHEDULE (continued)

**30. Section 31—***omit, insert—***‘Protection from liability****‘31.(1)** In this section—**“official”** means the chief executive or an officer.**‘(2)** An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.**‘(3)** If subsection (2) prevents a civil liability attaching to an official, the liability attaches instead to the State.’.**31. Section 34(b)—***omit, insert—***‘(b)** a certificate purporting to be signed by the standards officer and stating any of the following matters is evidence of the matter—

- (i) on a stated day, or during a stated period, a chemical product mentioned in the certificate was or was not a registered chemical product;
- (ii) on a stated day, or during a stated period, a chemical mentioned in the certificate was a controlled or unregistered chemical;
- (iii) on a stated day, or during a stated period, a label mentioned in the certificate was or was not an approved label for containers for a chemical product;
- (iv) on a stated day, or during a stated period, a permit mentioned in the certificate was or was not in force;
- (v) a statement mentioned in the certificate is identical to an instruction that appeared on an approved label mentioned in the certificate on a stated day, or during a stated period;
- (vi) a notice mentioned in the certificate was given under this Act at a stated time to a stated person;’.

## SCHEDULE (continued)

**32. Section 34(j), ‘a chemical registered under the *Agricultural Standards Act 1952–1981*’—***omit, insert—*

‘a registered chemical product’.

**33. Section 34(j), from ‘with the directions’—***omit, insert—*

‘with the instructions on the approved label for containers for the product’.

**34. Section 35, ‘Minister’—***omit, insert—*

‘chief executive’.

**35. Section 36—***omit.***36. Section 37—***omit.***37. Section 38(1)—***omit, insert—*‘**38.(1)** The Governor in Council may make regulations under this Act.’.**38. Section 38(2), ‘Without’ to ‘respect to’—***omit, insert—*

‘A regulation may be made about’.

## SCHEDULE (continued)

**39. Section 38(3) to (5)—**

*omit.*

**AGRICULTURAL CHEMICALS DISTRIBUTION  
CONTROL ACT 1966****1. Section 3—**

*omit, insert—*

**‘Application of Act**

‘3. The Governor in Council, by regulation, may declare that this Act, or a specified provision of this Act, does not apply in a specified part of the State.’.

**2. Section 6, heading—**

*omit, insert—*

**‘Definitions’.****3. Section 6(1), definitions “Active constituent”, “Agricultural chemical”, “Air Navigation regulations”, “Analyst”, “Board”, “Hazardous area”, “Herbicide”, “Inspector”, “Minister”, “Officer”, “Owner”, “Part”, “Registered name”, “Standards officer” and “Under Secretary”—**

*omit.*

**4. Section 6(1)—**

*insert—*

**“agricultural chemical” means—**

- (a) an agricultural chemical product; or

## SCHEDULE (continued)

(b) another material prescribed by regulation to be an agricultural chemical.

**“agricultural chemical product”** has the meaning given by the Agvet Code.

**“Agvet Code”** means the provisions applying because of section 5 of the *Agricultural and Veterinary Chemicals (Queensland) Act 1994*.

**“analyst”** means an analyst appointed under this Act.

**“approved form”** means a form approved by the chief executive.

**“Board”** means the Agricultural Chemicals Distribution Control Board.

**“chairperson”** means chairperson of the Board.

**“Civil Aviation Orders”** means orders in force under the *Civil Aviation Act 1988* (Cwlth).

**“Civil Aviation Regulations”** means the regulations in force under the *Civil Aviation Act 1988* (Cwlth).

**“decision maker”** means—

- (a) for a decision made by the Board—the Board; or
- (b) for a decision made by the chief executive—the chief executive.

**“deputy chairperson”** means deputy chairperson of the Board.

**“deputy standards officer”** means a deputy standards officer appointed under the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*.

**“executive officer”** of a corporation means a person who is—

- (a) a member of the governing body of the corporation; or
  - (b) concerned with, or takes part in, the corporation’s management;
- whatever the person’s position is called and whether or not the person is a director of the corporation.

**“hazardous area”** means an area declared under the regulations to be a hazardous area.

## SCHEDULE (continued)

**“herbicide”** means—

- (a) a material used, or intended for use, for destroying, or preventing the spread of, plants; or
- (b) another material prescribed by regulation to be a herbicide;

but does not include a material used, or intended for use, for destroying, or preventing the spread of, plants if the material is declared by regulation to be a material to which this Act does not apply.

**“inspector”** means an inspector appointed under this Act, and includes the standards officer and a deputy standards officer.

**“member”** means a member of the Board.

**“obstruct”** includes hinder, resist and attempt to obstruct.

**“officer”** means—

- (a) the standards officer or a deputy standards officer; or
- (b) an inspector; or
- (c) an analyst; or
- (d) another officer appointed under this Act; or
- (e) a member of the Board.

**“owner”** means—

- (a) for aircraft or ground equipment subject to a bill of sale—the grantor of the bill of sale within the meaning of the *Bills of Sale and Other Instruments Act 1955*; or
- (b) for aircraft or equipment subject to a lease—the lessee; or
- (c) for land—the person (other than the State) who—
  - (i) is entitled to receive rent for the land; or

## SCHEDULE (continued)

- (ii) would be entitled to receive rent for the land if it were leased at a rack-rent;<sup>1</sup>

and, for land, includes a lessee or sublessee of land held from the State and the holder of a licence or permission to occupy from the State.

**“representative”** of a person means—

- (a) if the person is a corporation—an executive officer, employee or agent of the corporation; or
- (b) if the person is an individual—an employee or agent of the individual.

**“standards officer”** means the standards officer appointed under the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*.

**5. Section 6(2), (3) and (4)—**

*omit.*

**6. After section 6—**

*insert—*

**‘Words and expressions used in Agvet Code and this Act**

**‘6A.** Words and expressions used in the Agvet Code and this Act have the same meanings in this Act as they have in the Agvet Code.

**‘Reference to loss or damage**

**‘6B.** A reference in this Act to loss or damage caused by aerial or ground distribution, or by the distribution of agricultural chemicals by aerial or ground distribution, includes loss or damage caused by the drift of any agricultural chemical used in the distribution.’.

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<sup>1</sup> Rack-rent of land is a rent for the land that is the highest possible rent for the land. It implies that the land is leased commercially.

## SCHEDULE (continued)

**7. Sections 7 and 7A—**

*omit, insert—*

**‘Appointment of inspectors and analysts**

‘7.(1) The chief executive may appoint officers of the department as inspectors and analysts for this Act.

‘(2) The chief executive may appoint a person as an inspector only if—

- (a) in the chief executive’s opinion, the person has the necessary expertise or experience to be an inspector; or
- (b) the person has satisfactorily finished training approved by the chief executive.

‘(3) In this section—

“**inspector**” does not include the standards officer or a deputy standards officer.

**‘Limitation of inspector’s powers**

‘7A. The powers of an inspector may be limited—

- (a) under a regulation; or
- (b) under a condition of appointment; or
- (c) by written notice of the chief executive given to the inspector.

**‘Inspector’s identity card**

‘7B.(1) The chief executive must give each inspector an identity card.

‘(2) The identity card must—

- (a) contain a recent photograph of the inspector; and
- (b) be signed by the inspector; and
- (c) identify the person as an inspector under this Act.

‘(3) A person who ceases to be an inspector must return the person’s

## SCHEDULE (continued)

identity card to the chief executive as soon as practicable (but within 21 days) after the person ceases to be an inspector, unless the person has a reasonable excuse for not returning it.

Maximum penalty—10 penalty units.

‘(4) This section does not prevent the giving of a single identity card to a person under this Act and for other Acts or purposes.

**‘Production or display of inspector’s identity card**

‘7C.(1) An inspector may exercise a power under this Act in relation to someone else only if the inspector—

- (a) first produces his or her identity card for the person’s inspection;  
or
- (b) has the identity card displayed so it is clearly visible to the person.

‘(2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must produce the identity card for the person’s inspection at the first reasonable opportunity.’.

**8. Section 8—**

*omit, insert—*

**‘Agricultural Chemicals Distribution Control Board**

‘8.(1) The Agricultural Chemicals Distribution Control Board is continued in existence.

‘(2) The Board consists of the following members appointed by the Governor in Council—

- (a) an officer of the department;
- (b) the standards officer;
- (c) 2 persons nominated by the Minister chiefly responsible for issues about land;
- (d) 5 other persons (at least 1 of whom has extensive knowledge of,



## SCHEDULE (continued)

or experience in, aerial distribution).

‘(3) The Board may ask officers of any department to act in an advisory capacity on agricultural chemicals distribution issues.

‘(4) The member of the Board mentioned in subsection (2)(a) is the chairperson.

‘(5) The Governor in Council may appoint a member of the Board to be the deputy chairperson.

‘(6) A member of the Board mentioned in subsection (2)(c) or (d) is appointed for the term (not longer than 3 years) stated in the member’s instrument of appointment.

‘(7) The Minister may appoint a deputy of a member of the Board to act for the member during any period or all periods when the member is unable, for any reason, to attend Board meetings.

‘(8) To remove any doubt, it is declared that the members holding office immediately before the commencement of this section continue to hold office for the terms for which they were appointed.

‘(9) Subsection (8) and this subsection expire 3 months after the commencement of this section.’

**9. Section 9—**

*omit, insert—*

**‘Time and place of meetings**

‘9.(1) Meetings of the Board are to be held at the times and places it decides.

‘(2) The chairperson—

- (a) may at any time call a meeting of the Board; and
- (b) must call a meeting if asked by at least 4 members.

## SCHEDULE (continued)

**‘Procedures for conduct of proceedings**

**‘9A.(1)** The chairperson must preside at all meetings at which the chairperson is present.

**‘(2)** If the chairperson is absent, the deputy chairperson must preside.

**‘(3)** If both the chairperson and deputy chairperson are absent, the member chosen by the members present must preside.

**‘(4)** At a meeting of the Board—

- (a) the number that is at least half of the number of persons appointed as members form a quorum; and
- (b) a question is decided by a majority of the votes of the members present and voting; and
- (c) each member present has a vote on each question to be decided and, if the votes are equal, the member presiding has a casting vote.

**‘(5)** The Board may conduct its proceedings (including its meetings) as it considers appropriate.

**‘(6)** The Board may hold meetings, or allow members to take part in meetings, by telephone, closed circuit television or another form of communication.

**‘(7)** A member who takes part in a meeting of the Board under permission under subsection (6) is taken to be present at the meeting.

**‘(8)** A resolution is a valid resolution of the Board, even though it was not passed at a meeting of the Board, if—

- (a) all members give written agreement to the proposed resolution; and
- (b) notice of the proposed resolution was given under procedures approved by the Board.

## SCHEDULE (continued)

**‘Disclosure of interests**

**‘9B.(1)** This section applies to a member if—

- (a) the member has a direct or indirect financial interest in an issue being considered, or about to be considered, by the Board; and
- (b) the interest could conflict with the proper performance of the member’s duties about the consideration of the issue.

**‘(2)** As soon as practicable after the relevant facts come to the member’s knowledge, the member must disclose the nature of the interest to a meeting of the Board.

**‘(3)** The disclosure must be recorded in the Board’s minutes and, unless the Board otherwise decides, the member must not—

- (a) be present when the Board considers the issue; or
- (b) take part in a decision of the Board on the issue.

**‘(4)** The member must not be present when the Board is considering its decision under subsection (3).

**‘(5)** Another member who also has a direct or indirect financial interest in the issue must not—

- (a) be present when the Board is considering its decision under subsection (3); or
- (b) take part in making the decision.

**‘Minutes**

**‘9C.** The Board must keep minutes of its proceedings.’.

**10. Section 10B—**

*omit, insert—*

## SCHEDULE (continued)

**‘Delegations by Board**

‘**10B.** The Board may delegate its powers under this Act to the standards officer or an executive committee.’.

**11. Section 11—**

*omit.*

**12. Section 12(2)—**

*omit, insert—*

‘**(2)** A person may apply for, and hold, a pilot chemical rating licence only if the person has—

- (a) a commercial pilot’s licence or senior commercial pilot’s licence, endorsed with an agricultural rating, issued under the Civil Aviation Regulations or Orders (Cwlth); and
- (b) the qualifications prescribed by regulation.’.

**13. Section 15(2)—**

*omit, insert—*

‘**(2)** A person may apply for, and hold, an aerial distribution contractor licence only if the person has an aerial work licence, endorsed to conduct agricultural operations, issued under the Civil Aviation Regulations or Orders (Cwlth).’.

**14. Section 17—**

*omit, insert—*

**‘Application for licences**

‘**17.(1)** An application for a licence must—

- (a) be made to the standards officer in the approved form; and

## SCHEDULE (continued)

(b) be accompanied by the fee (if any) prescribed by regulation.

‘(2) If asked by the Board, the applicant must give the further relevant information or evidence the Board reasonably requires to decide the application.

‘(3) The Board must consider an application for a licence and may grant, or refuse to grant, the licence.

‘(4) If the application is refused, the fee mentioned in subsection (1)(b) must be refunded.’

**15. Section 19, ‘prescribed form’—**

*omit, insert—*

‘approved form’.

**16. Section 21(1), ‘Minister’—**

*omit, insert—*

‘chief executive’.

**17. Section 21(2) to (4)—**

*omit, insert—*

‘(2) If a recommendation is made by the Board, the chief executive may—

(a) if cancellation of the licence is recommended—

(i) cancel the licence; or

(ii) suspend the licence for a period; or

(b) if suspension of the licence is recommended—suspend the licence for a period not longer than the period recommended.

‘(3) If the chief executive cancels the licence, the chief executive may later—

## SCHEDULE (continued)

- (a) terminate the cancellation; or
- (b) replace the cancellation with a period of suspension.

‘(4) If the chief executive suspends the licence, the chief executive may later—

- (a) terminate the suspension; or
- (b) reduce the period of suspension.

‘(5) The standards officer must notify the licensee, or former licensee, of any action taken by the chief executive under subsection (2), (3) or (4).

‘(6) In this section—

“**licensee**” includes a person whose licence is suspended under section 20.’.

**18. Section 22—**

*omit, insert—*

**‘Right of appeal to Magistrates Court**

‘**22.(1)** This section applies to the following decisions—

- (a) a decision of the Board to refuse an application for a licence or the renewal of a licence;
- (b) a decision of the chief executive to cancel or suspend a licence.

‘(2) The applicant or licensee may appeal against the decision.

‘(3) The appeal may be made to the Magistrates Court nearest the place where the applicant or licensee resides, is employed or carries on business.

**‘How to start appeal**

‘**22A.(1)** An appeal is started by filing a written notice of appeal with the clerk of the court of the Magistrates Court.

‘(2) A copy of the notice must be served on the decision maker.

‘(3) The notice of appeal must be filed within 28 days after the appellant receives notice of the decision appealed against.

## SCHEDULE (continued)

‘(4) However, the Court may extend the period for filing the notice of appeal at any time.

‘(5) The notice of appeal must state the grounds of the appeal.

**‘Stay of operation of decisions**

‘22B.(1) The Court may grant a stay of a decision appealed against to secure the effectiveness of the appeal.

‘(2) A stay—

(a) may be granted on conditions the Court considers appropriate; and

(b) operates for the period stated by the Court; and

(c) may be revoked or amended by the Court.

‘(3) The period of a stay stated by the Court must not extend past the time when the Court decides the appeal.

‘(4) An appeal against a decision affects the decision, or carrying out the decision, only if the decision is stayed.

**‘Hearing procedures**

‘22C.(1) The power under the *Magistrates Courts Act 1921* to make rules for Magistrates Courts includes power to make rules for appeals to Magistrates Courts under this Act.

‘(2) The procedure for an appeal to a Magistrates Court under this Act is to be in accordance with—

(a) the rules made under the *Magistrates Courts Act 1921*; or

(b) in the absence of relevant rules, directions of the Court.

‘(3) An appeal is to be by way of rehearing, unaffected by the decision maker’s decision.

‘(4) In deciding an appeal, the Court—

## SCHEDULE (continued)

- (a) has the same powers as the decision maker; and
- (b) is not bound by the rules of evidence; and
- (c) must observe natural justice; and
- (d) may hear the appeal in court or chambers.

**‘Powers of Court on appeal**

**‘22D.(1)** In deciding an appeal, the Court may—

- (a) confirm the decision appealed against; or
- (b) set aside the decision and substitute another decision; or
- (c) set aside the decision and return the issue to the decision maker with directions the Court considers appropriate.

**‘(2)** If the Court substitutes another decision, the substituted decision is, for the purposes of this Act, taken to be the decision maker’s decision.

**‘Appeal to District Court**

**‘22E.** A party dissatisfied by the decision of the Court may appeal to a District Court, but only on a question of law.’.

**19. Section 23, from ‘by a Judge’ to ‘standards officer’—**

*omit, insert—*

‘(whether by the Court, chief executive or standards officer)’.

**20. Section 25(1)—**

*omit, insert—*

**‘25.(1)** Before starting aerial distribution, the owner of the aircraft from which the distribution is to be carried out must—

- (a) lodge with the standards officer the security for the aircraft



## SCHEDULE (continued)

prescribed by regulation; or

- (b) satisfy the standards officer that the security prescribed for the aircraft by regulation is lodged in another State or a Territory with a person acceptable to the standards officer (an **“acceptable person”**).’.

**21. Section 25(5)—**

*omit.*

**22. Section 25(6)—**

*renumber* as section 25(5).

**23. Section 25(7)—**

*omit, insert—*

**‘(6)** In this section—

**“approved company”** means a company approved by the standards officer or an acceptable person (even if the company is acting for a group of companies that have not, or some of which have not, been approved).

**“owner”** does not include the State.’.

**24. Section 26(1)(e) to (l)—**

*renumber* as (1)(f) to (m).

**25. Section 26(1)(d)—**

*omit, insert—*

**‘(d)** for each agricultural chemical used in the distribution—

- (i) if the chemical has a distinguishing number—the number; or

## SCHEDULE (continued)

- (ii) if the chemical does not have a distinguishing number—particulars to identify the chemical;
- (e) a description of any diluent, wetter, spreader, emulsifier or other material added to an agricultural chemical used in the distribution;’.

**26. Section 26(2A), from ‘and shall be liable’—**

*omit.*

**27. Section 26(2A)—**

*insert—*

‘Maximum penalty—20 penalty units.’.

**28. Section 26(3), from ‘and shall be liable’—**

*omit.*

**29. Section 26—**

*insert—*

‘Maximum penalty—

- (a) on indictment—50 penalty units or imprisonment for 5 years; or
- (b) on a summary proceeding—50 penalty units or imprisonment for 1 year.’.

**30. Section 27—**

*omit, insert—*

**‘Production of distribution records**

‘**27.(1)** This section applies to a record of a distribution that a person is

## SCHEDULE (continued)

required under section 26 to keep for 2 years after the distribution.

‘(2) An inspector may, within the 2 years, ask the person to produce the record for inspection.

‘(3) The person must immediately produce the record for inspection by the inspector, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

‘(4) The inspector may keep the record to make a copy of it.

‘(5) However, the inspector must return the record to the person as soon as practicable after making a copy of it.’.

**31. Section 28—**

*omit, insert—*

**‘Hazardous areas**

‘28.(1) A regulation may declare an area to be a hazardous area and prescribe conditions for carrying out aerial or ground distribution in the area.

‘(2) The chief executive must publish a notice of the declaration and conditions in a newspaper circulating generally in the hazardous area.’.

**32. Section 29—**

*omit, insert—*

**‘Carrying out of distributions in hazardous areas**

‘29. A person must not carry out aerial or ground distribution in a hazardous area unless the distribution is carried out under the conditions prescribed by regulation for the area.

Maximum penalty—100 penalty units or imprisonment for 6 months.’.

## SCHEDULE (continued)

**33. Section 30(3), ‘or any officer’—**

*omit, insert—*

‘, another officer’.

**34. Section 31—**

*omit, insert—*

**‘Effect of failure to give notice**

**‘31.(1)** This section applies to an action in which damages are being claimed for the loss of, or damage to, crops or stock claimed to be caused by aerial or ground distribution.

**‘(2)** If the claimant in the action contravenes section 30, the claimant may not, without the court’s leave—

- (a) call an officer, or an officer of the department, as a witness; or
- (b) put in evidence—
  - (i) a report or statement mentioned in section 32 or 33; or
  - (ii) a document of the department or Board or a member of the Board.

**‘(3)** The court may grant leave for the purposes of subsection (2) only if—

- (a) the defendant agrees; or
- (b) the court is satisfied—
  - (i) the contravention was caused by mistake or another reasonable reason; or
  - (ii) the defendant will not be materially prejudiced by the contravention.’.

## SCHEDULE (continued)

**35. Section 32(1), ‘or any officer or any person authorized in writing by the standards officer’—***omit, insert—*

‘or another inspector’.

**36. Section 32(1)(d) and (e), ‘any officer or person other than the standards officer’—***omit, insert—*

‘another inspector’.

**37. Section 32(2)—***omit, insert—*

‘(2) A person must not obstruct the standards officer, or another inspector in the exercise of a power under this section, unless the person has a reasonable excuse.

Maximum penalty for subsection (2)—20 penalty units.’.

**38. Section 33(1), ‘an officer’—***omit, insert—*

‘another inspector’.

**39. Section 34, heading, ‘&c’—***omit.***40. Section 34(1), ‘The standards officer or an inspector’—***omit, insert—*

‘An inspector’.

## SCHEDULE (continued)

**41. Section 35—***omit.***42. Section 36—***insert—*

‘Maximum penalty for subsection (2)—20 penalty units’.

**43. Section 38—***insert—*

‘Maximum penalty—20 penalty units’.

**44. Section 39(1) and (2)—***insert—*

‘Maximum penalty—20 penalty units’.

**45. Section 40(a), (d) and (e), ‘or officer’—***omit.***46. Section 40, from ‘and shall be liable’—***omit.***47. Section 40—***insert—*

‘Maximum penalty—20 penalty units or imprisonment for 6 months.’.

## SCHEDULE (continued)

**48. Section 41—**

*omit.*

**49. Section 42 to 44—**

*omit, insert—*

**‘Prosecutions generally**

‘**42.(1)** An offence against this Act is a summary offence, unless expressly provided otherwise.

‘**(2)** A proceeding for an offence against this Act must start—

- (a) within 1 year after the offence is committed;
- (b) within 6 months after the offence comes to the complainant’s knowledge, but within 2 years after the offence is committed.

**‘Responsibility for acts or omissions of representatives**

‘**43.(1)** If, in a proceeding for an offence against this Act, it is relevant to prove a person’s state of mind about a particular act or omission, it is enough to show—

- (a) the act or omission was done or omitted to be done by a representative of the person within the scope of the representative’s actual or apparent authority; and
- (b) the representative had the state of mind.

‘**(2)** An act or omission done or omitted to be done for a person by a representative of the person within the scope of the representative’s actual or apparent authority is taken, in a proceeding for an offence against this Act, to have been done or omitted to be done also by the person, unless the person proves the person took all reasonable steps to prevent the act or omission.

‘**(3)** If—

- (a) an individual is convicted of an offence against this Act; and

## SCHEDULE (continued)

- (b) the individual would not have been convicted of the offence if subsections (1) and (2) had not been enacted;

the individual is not liable to be punished by imprisonment for the offence.

**‘Executive officers must ensure corporation complies with Act**

**‘44.(1)** The executive officers of a corporation must ensure that the corporation complies with this Act.

**‘(2)** If a corporation commits an offence against a provision of this Act, each of the executive officers of the corporation also commits an offence, namely, the offence of failing to ensure the corporation complies with this Act.

Maximum penalty—the penalty for the contravention of the provision by an individual.

**‘(3)** Evidence that the corporation committed an offence against this Act is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complies with this Act.

**‘(4)** However, it is a defence for an executive officer to prove—

- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer took all reasonable steps to ensure the corporation complied with the provision; or
- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

**‘Protection from liability**

**‘44A.(1)** In this section—

**“official”** means—

- (a) the chief executive; or
- (b) an officer; or



## SCHEDULE (continued)

(c) a member of an executive committee of the Board.

‘(2) An official does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

‘(3) If subsection (2) prevents a civil liability attaching to an official, the liability attaches instead to the State.’.

**50. Sections 46 and 47—**

*omit, insert—*

**‘Chief executive may approve forms**

‘46. The chief executive may approve forms for use under this Act.’.

**51. Section 48—**

*omit, insert—*

**‘Regulations**

‘48.(1) The Governor in Council may make regulations under this Act.

‘(2) A regulation may make provision about the following—

- (a) regulating aerial and ground distribution of agricultural chemicals over hazardous areas, including issuing permits for carrying out the distribution (and cancelling and suspending them);
- (b) regulating the flying of aircraft equipped with aerial equipment, or movement of ground equipment carrying agricultural chemicals, over hazardous areas;
- (c) providing for and regulating the cleansing of aircraft and ground equipment used to carry agricultural chemicals;
- (d) regulating aerial and ground distribution of agricultural chemicals in conditions likely to cause the chemicals to drift;
- (e) regulating the use in aerial and ground distribution of preparations containing agricultural chemicals;

## SCHEDULE (continued)

- (f) regulating the droplet or particle size in aerial and ground distribution;
- (g) approving the types of aerial and ground equipment that may be used and specifying the entity to give approval;
- (h) regulating the type of aerial and ground distribution and the appliances that may be used;
- (i) types of licences, qualifications needed to hold a licence, terms under which licences may be obtained and held and the authority the licence confers on the licensee;
- (j) testing of licensees, the entity giving the tests, the times and places the tests are to be held, and the subjects of the tests;
- (k) fees to be paid for the issue or renewal of a licence, an application for a licence or permit, undertaking a test or any other purpose of the Act;
- (l) regulating inspection, investigation and samples, including—
  - (i) the way samples are taken; and
  - (ii) the quantity or weight of samples; and
  - (iii) the labelling of samples; and
  - (iv) the delivery of samples to the standards officer;
- (m) analysis and examination of agricultural chemicals, portions, samples, material and other things for this Act, including ways of analysing and examining to decide—
  - (i) the composition or physical properties of an agricultural chemical; or
  - (ii) the nature and amount of residue on any crop or stock; or
  - (iii) damage to any crop or stock;
- (n) imposing penalties not exceeding 35 penalty units for a contravention of a regulation;
- (o) regulating cancellation and suspension of licences?.

