Chemical Usage (Agricultural and Veterinary) Control Regulation 2017

Explanatory notes for SL 2017 No. 136

made under the

Chemical Usage (Agricultural and Veterinary) Control Act 1988

General Outline

Short title

Chemical Usage (Agricultural and Veterinary) Control Regulation 2017

Authorising law

Section 38 of the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*

Policy objectives and the reasons for them

The purpose of the subordinate legislation is to ensure that adequate controls remain in place for the usage of agricultural and veterinary (agvet) chemicals and continue to provide for the effective administration of the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* (the Act).

The subordinate legislation will remake the *Chemical Usage (Agricultural and Veterinary) Control Regulation 1999* (the expiring Regulation) prior to its expiry on 31 August 2017.

There are several minor differences between the subordinate legislation and the expiring Regulation.

There are no longer any provisions relating to prescribed and proscribed chemicals in the subordinate legislation. The prescribed and proscribed chemicals listed in Schedule 1 of the expiring Regulation are no longer registered or approved for use as agvet chemical products in Australia. These substances are therefore subject to the primary provisions of the Act preventing the use of unregistered chemical products.

Prescribed maximum residue limits for agvet chemicals in animal feeds in the subordinate legislation now reference those in the *Agricultural and Veterinary Chemicals Code Instrument No. 4 (MRL Standard) 2012* (Cwlth), similar to the *Code of Practice for Feed for Food Producing Animals* in Schedule 3 of the *Biosecurity Regulation 2016*.

The requirements for the authorised use of restricted chemical products will be clearer in the subordinate legislation. The subordinate legislation clarifies that a person must be licensed for a pest control activity for timber pests under the *Pest Management Act 2001* to use a restricted chemical product that is a pre-termiticide product containing bifenthrin or chlorpyrifos.

The regulatory requirements for the possession and use of restricted chemical products containing fluoroacetic acid (also known as 1080) and para-aminopropiophenone (PAPP) in the subordinate legislation are now consistent with the requirements under the *Health (Drugs and Poisons) Regulation 1996* (Health Regulation). Fluoroacetic acid and PAPP represent significant public health risk and controls have been established under the Health Regulation to ensure that there is an adequate level of surveillance of who is using these poisons and where they are being used.

Pindone is not a regulated poison under the Health Regulation, therefore authorisation for use of restricted chemical products containing pindone will now fall under the provisions in the subordinate legislation that apply to other restricted chemical products.

The subordinate legislation provides for the recognition of alternative units of competency for the authorised use of restricted chemical products containing rabbit haemorrhagic disease virus (RHDV). The units of competency that were required under the expiring Regulation are no longer offered under the Australian Qualifications Framework, however these will still be recognised under the subordinate legislation.

There are no provisions about listed chemical products in the subordinate legislation. Following amendments to Federal legislation listed chemical products now fall under the primary controls of the Act that apply to any registered chemical products. The controls that were provided for under the expiring Regulation are therefore no longer required.

Achievement of policy objectives

The subordinate legislation will remake the expiring Regulation and will therefore continue to provide for maximum residue limits that trigger intervention controls under the Act, conditions for the authorisation for the use of restricted chemical products, prescribed agricultural ERA products and conditions for use and earmarking and record keeping obligations for the use of hormonal growth promotants in cattle.

Alternative ways of achieving policy objectives

Three alternative options were identified. However, these alternative options do not achieve the policy objectives.

Option 1 was to remake the expiring Regulation without any amendments.

Option 2 was to seek further extension to exemption from expiry for the expiring Regulation. This was possible because the Act is still under national review through the ‘Intergovernmental Agreement for the single National Regulatory Framework for Agvet Chemicals’.

Option 1 and 2 would not take into account changes to the relevant State and Federal legislation. Certain provisions would remain outdated and out of line with these changes

and several provisions would be redundant. This would potentially cause confusion if these provisions were included in a new regulation or continued in the expiring Regulation.

Option 3 was to allow the expiring Regulation to lapse without remaking it. This would mean that maximum residue limits would no longer apply to agricultural commodities. Triggers needed for intervention controls to manage agvet chemical risks would no longer be in place that may result in negative trade and/or human health outcomes.

Additionally, if the expiring Regulation was not remade there would be no authorisations to enable the use of certain restricted chemical products needed to manage wild dogs and rabbits, insects through timber protective treatments or weeds in irrigation channels. This would disadvantage stakeholders who use these chemical products and those affected by the pests they are used to control.

The expiring Regulation also provides for specific obligations for earmarking and record keeping controls of hormonal growth promotants used in cattle which are essential for enabling ongoing market access arrangements with countries such as China and the Russian Federation.

Consistency with policy objectives of authorising law

The subordinate legislation is consistent with the purpose of the Act, which is to control the use of certain chemicals and the use of substances in or on which is the residue of certain chemicals and for related purposes.

Inconsistency with policy objectives of other legislation

The subordinate legislation is not inconsistent with policy objectives of other legislation.

Benefits and costs of implementation

The subordinate legislation will benefit users of certain restricted chemical products because the requirements for authorisation of their use will be clearer. This includes the recognition of currently available units of competency required for the use of restricted chemical products containing RHDV. This reduces the burden on new users that would otherwise require individual consideration of equivalent training by the chief executive. More consistent controls of restricted chemical products with those in the Health Regulation will ensure adequate surveillance of who is using these poisons and where they are being used in order to minimise public health risks.

The remake of the expiring Regulation does not impose additional cost on the government.

Consistency with fundamental legislative principles

The subordinate legislation is consistent with fundamental legislative principles.

Consultation

The Darling Downs-Moreton Rabbit Board was consulted about the authorisations for the use of restricted chemical products containing RHDV and pindone. The Board supports the proposed changes and noted that training is necessary in order to ensure safe work and environmental practices across the industry.

The Local Government Association of Queensland was consulted about the use of restricted chemical products containing RHDV. The majority of individual local governments supported the proposal and the need for persons handling these types of chemicals to be appropriately trained.

AgForce has been involved with ongoing discussions with Queensland Health on the approval process required for access and use of restricted chemical products that are also Schedule 7 regulated poisons under the Health Regulation.

Growcom was consulted about prescribed chemicals, maximum residue limits and restricted chemical product authorisations. Growcom supports the proposed changes and user training requirements that apply to restricted chemical products used in the horticulture industry.

The Queensland Productivity Commission (QPC) was consulted about the proposed amendments through a Preliminary Impact Assessment. QPC advised that the Department had considered the key issues required when undertaking a sunset review of a regulation and that the Regulation was excluded from further assessment under the Queensland Government Guide to Better Regulation. The exclusion was made on the basis that the changes from the expiring Regulation were either consequential, machinery in nature or unlikely to lead to significant adverse impacts.