

Queensland



**AGRICULTURAL AND
VETERINARY CHEMICALS
LEGISLATION AMENDMENT
ACT 2002**

Act No. 76 of 2002

Queensland



AGRICULTURAL AND VETERINARY CHEMICALS LEGISLATION AMENDMENT ACT 2002

TABLE OF PROVISIONS

Section		Page
PART 1—PRELIMINARY		
1	Short title	6
2	Commencement	6
PART 2—AMENDMENT OF AGRICULTURAL CHEMICALS DISTRIBUTION CONTROL ACT 1966		
3	Act amended in pt 2 and sch 2	6
4	Amendment of s 6 (Definitions)	6
5	Amendment of s 6A (Words and expressions used in Agvet Code and this Act)	7
6	Insertion of new ss 16A and 16B	8
	16A When pest management technician is taken to hold commercial operator's licence	8
	16B Ground distribution contractor licence	8
7	Amendment of s 17 (Application for licences)	8
8	Replacement of ss 18 and 19	9
	18 Term of licence	9
	19 Renewal of licence	9
	19A Expiring licence continues in force	10
	19B Notice of change in circumstances	10
9	Amendment of s 21 (Cancellation or suspension of licence)	10
10	Omission of s 25 (Security against loss occasioned by aerial distribution and certain ground distribution)	11
11	Amendment of s 26 (Records to be kept)	11
12	Amendment of s 36 (Faulty or defective equipment)	12

13	Omission of s 38 (Aerial and ground distribution with approved equipment only and in compliance with s 25)	13
14	Amendment of s 39 (Aerial or ground distribution by or under supervision of licensed persons)	13
15	Amendment of s 48 (Regulations)	14
16	Insertion of schedule	14

SCHEDULE

DICTIONARY

**PART 3—AMENDMENT OF CHEMICAL USAGE
(AGRICULTURAL AND VETERINARY) CONTROL ACT 1988**

17	Act amended in pt 3 and schs 1 and 2	14
18	Amendment of s 4A (Words and expressions used in Agvet Code and this Act)	14
19	Insertion of new pt 2, div 1	15

Division 1—Chemicals generally

7	Use of registered agricultural and veterinary chemical products taken from unlabelled containers	15
20	Omission of ss 8 to 8C	15
21	Amendment of s 8D (Compliance with instructions)	16
22	Amendment of s 8E (Use of controlled chemicals)	16
23	Amendment of s 11A (Claims about unregistered chemicals)	16
24	Amendment of s 12 (Use of package that contained chemical)	17
25	Amendment of s 13 (Governor in Council may proscribe chemicals)	17
26	Insertion of new pt 2, divs 2 and 3	17

Division 2—Veterinary chemical products

Subdivision 1—Registered veterinary chemical products

12	Use of registered veterinary chemical products	18
12A	Use by veterinary surgeon on animals other than major trade species	18
12B	Use by veterinary surgeon on major trade species animals	19
12C	Supply by veterinary surgeon to others	19
12D	Use by other persons in way stated in veterinary surgeon's instructions	20

Subdivision 2—Unregistered veterinary chemical products

12E	Use of unregistered veterinary chemical products	20
-----	--	----

	12F Use by veterinary surgeon	21
	12G Supply by veterinary surgeon to others	21
	12H Use by other persons in way stated in veterinary surgeon's instructions	22
	<i>Subdivision 3—Compounded veterinary chemical products</i>	
	12I Use of compounded veterinary chemical products	22
	12J Use by veterinary surgeon	22
	12K Supply by pharmacist.	23
	12L Use by other persons in way stated in written instructions	23
	<i>Subdivision 4—Information to be given by veterinary surgeon or pharmacist about the treatment of an animal</i>	
	12M Information to be given by veterinary surgeon or pharmacist	23
	12N Information to be included in instructions	24
	12O Instructions must be kept	25
	<i>Subdivision 5—Information to be given by person other than veterinary surgeon or pharmacist</i>	
	12P Information to be given to person in charge of animal	26
	12Q Information to be included in written advice.	26
	<i>Subdivision 6—Records to be kept</i>	
	12R Records to be kept by veterinary surgeon	27
	<i>Subdivision 7—Withholding period</i>	
	12S Meaning of “withholding period”	29
	12T Identification of animals to which withholding period applies	29
	12U Notice of treatment on supply of trade species animal	30
	12V Observance of withholding period.	30
	<i>Division 3—Agricultural chemical products</i>	
	13 Use of registered agricultural chemical products in contravention of labels	31
	13A Use of unregistered agricultural chemical products.	31
27	Insertion of new ss 28A and 28B	32
	28A Application of Justices Act 1886, s 76, not limited	32
	28B Not an offence to act under direct supervision	32
28	Amendment of s 34 (Evidence, etc.)	32

29	Omission of s 35 (Exemption)	33
30	Insertion of new pt 4	33
	PART 4—TRANSITIONAL PROVISION FOR AGRICULTURAL AND VETERINARY CHEMICALS LEGISLATION AMENDMENT ACT 2002	
	39 Exemptions revoked	33
31	Amendment of sch (Dictionary)	33
	PART 4—OTHER AMENDMENTS	
32	Amendments for penalties—sch 1	36
33	Minor and consequential amendments—sch 2	36
	SCHEDULE 1	37
	AMENDMENTS FOR PENALTIES	
	CHEMICAL USAGE (AGRICULTURAL AND VETERINARY) CONTROL ACT 1988.	37
	SCHEDULE 2	39
	MINOR AND CONSEQUENTIAL AMENDMENTS	
	AGRICULTURAL CHEMICALS DISTRIBUTION CONTROL ACT 1966	39
	CHEMICAL USAGE (AGRICULTURAL AND VETERINARY) CONTROL ACT 1988.	39

Queensland



Agricultural and Veterinary Chemicals Legislation Amendment Act 2002

Act No. 76 of 2002

An Act to amend the *Agricultural Chemicals Distribution Control Act 1966* and the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*

[Assented to 13 December 2002]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Agricultural and Veterinary Chemicals Legislation Amendment Act 2002*.

2 Commencement

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

PART 2—AMENDMENT OF AGRICULTURAL CHEMICALS DISTRIBUTION CONTROL ACT 1966

3 Act amended in pt 2 and sch 2

This part and schedule 2 amend the *Agricultural Chemicals Distribution Control Act 1966*.

4 Amendment of s 6 (Definitions)

(1) Section 6, ‘In this Act—’—

omit, insert—

‘The dictionary in the schedule defines particular words used in this Act.’.

(2) Section 6, definition “**agricultural chemical product**”—

omit.

(3) Section 6—

insert—

‘**“agricultural chemical product”**’ see the Agvet Code, section 3.

“chemical product” see the Agvet Code, section 3.

“distinguishing number”, for a chemical product, means a number, together with 1 or more letters or symbols, given to the product on its registration by the NRA.

“distribution contractor” means an aerial distribution contractor or ground distribution contractor.

“ground distribution contractor” means a person who carries on the business of ground distribution or at whose direction or on whose authority, ground equipment is used to carry out ground distribution.

“information notice”, for a decision of the chief executive or board under this Act, means a notice stating—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) that the person given the notice may appeal against the decision within 28 days after the notice is given; and
- (d) how the person may appeal.

“NRA” see the Agvet Code, section 3.

“pest management technician” see the *Pest Management Act 2001*, schedule 3.

“pest management qualification” see the *Pest Management Act 2001*, schedule 3.’.

(4) Section 4, definitions, as amended—

relocate to the schedule as inserted by this Act.

5 Amendment of s 6A (Words and expressions used in Agvet Code and this Act)

Section 6A—

insert—

‘(2) Words and expressions mentioned in subsection (1) that are expressly defined in section 3 of the Agvet Code are also signposted in the dictionary.’.

6 Insertion of new ss 16A and 16B

Part 4—

insert—

‘16A When pest management technician is taken to hold commercial operator’s licence

‘(1) For a provision of this Act relating to ground distribution, a pest management technician who holds a relevant pest management qualification is taken to hold a commercial operator’s licence.

‘(2) Sections 20 to 23 apply, with necessary changes, to the operation, under this Act, of the pest management technician’s licence as if it were a commercial operator’s licence.

‘(3) For subsection (2), a reference in sections 20 to 23 to the suspension or cancellation of a commercial operator’s licence is taken to be a reference to the suspension or cancellation of the operation of the pest management technician’s licence under this Act as a commercial operator’s licence.

‘(4) In subsection (1)—

“relevant pest management qualification” means a qualification prescribed for the subsection under a regulation.

‘16B Ground distribution contractor licence

‘The board may grant a ground distribution contractor’s licence.’.

7 Amendment of s 17 (Application for licences)

(1) Section 17(1)(a), ‘standards officer’—

omit, insert—

‘board’.

(2) Section 17(4)—

omit, insert—

‘(4) If the board decides to grant the application, the board must, as soon as practicable, issue a licence to the applicant.

‘(5) The board may grant an application for a pilot chemical rating licence or commercial operator’s licence only if the board is satisfied the applicant is at least 17 years of age.

‘(6) If the board decides to refuse to grant the application, the board must, as soon as practicable—

- (a) give the applicant an information notice about the decision; and
- (b) refund the fee mentioned in subsection (1)(b).’.

8 Replacement of ss 18 and 19

Sections 18 and 19—

omit, insert—

‘18 Term of licence

‘(1) A licence has effect from the day it is issued.

‘(2) The board may issue, or renew, a licence for up to 3 years.

‘19 Renewal of licence

‘(1) A licensee may apply to the board to renew a licence within 60 days before the licence expires.

‘(2) If the board does not receive an application to renew a licence by the day the licence is to expire, the licence expires.

‘(3) The application must be—

- (a) made in the approved form; and
- (b) accompanied by the fee prescribed under a regulation.

‘(4) The applicant must give the board any relevant information or document the board reasonably requires to decide the application.

‘(5) The board must consider the application and either grant, or refuse to grant, the application.

‘(6) If the board decides to grant the application, the board must, as soon as practicable, issue a new licence to the applicant.

‘(7) The new licence takes effect from the day the licence being renewed would otherwise have expired.

‘(8) If the board decides to refuse to grant the application, the board must, as soon as practicable—

- (a) give the applicant an information notice about the decision; and
- (b) refund the fee mentioned in subsection (3)(b).

‘19A Expiring licence continues in force

‘(1) If a licensee has applied, under section 19, to renew a licence, the licence continues in force from the day it would, apart from this section, have expired until—

- (a) if the application is granted—a new licence is issued to the applicant; or
- (b) if the application is withdrawn—the day the application is withdrawn; or
- (c) if the application is refused—the day the information notice about the decision is given to the applicant.

‘(2) Subsection (1) does not apply if the licence is earlier suspended or cancelled.

‘19B Notice of change in circumstances

‘(1) Subsection (2) applies if there is a change of the following type in a licensee’s circumstances—

- (a) a change in the licensee’s name or address;
- (b) another change in the licensee’s circumstances prescribed under a regulation.

‘(2) The licensee must, within 21 days after the change, give the board written notice of the change.

Maximum penalty—10 penalty units.’.

9 Amendment of s 21 (Cancellation or suspension of licence)

(1) Section 21(1)(a), ‘section’ to ‘made under’—

omit, insert—

‘the *Health (Drugs and Poisons) Regulation 1996*, section 290, made under’.

(2) Section 21(1)(da), ‘licensee’ to ‘aerial’—

omit, insert—

‘licensed’.

(3) Section 21(5)—

omit, insert—

‘(5) As soon as practicable after the chief executive makes a decision under subsection (2), (3) or (4), the chief executive must give the licensee or former licensee an information notice about the decision.’.

10 Omission of s 25 (Security against loss occasioned by aerial distribution and certain ground distribution)

Section 25—

omit.

11 Amendment of s 26 (Records to be kept)

(1) Section 26(1), ‘Every’ to ‘cause to be made’—

omit, insert—

‘A distribution contractor must make’.

(2) Section 26(1)(d)—

omit, insert—

‘(d) for each agricultural chemical used in the distribution—particulars to identify the chemical and, if the chemical has a distinguishing number, the number;

Examples of particulars for paragraph (d)—

1. Name of the chemical.
2. Name of the manufacturer of the chemical.
3. Name and amount of the active constituent in the chemical.

(3) Section 26(1)(h)—

omit, insert—

‘(h) the estimated velocity and direction of the wind at the time and place of the distribution, any change in the velocity or direction during the distribution, and the time of the change;’.

(4) Section 26(2), from ‘by the licensed’—

omit, insert—

‘by the distribution contractor.’.

12 Amendment of s 36 (Faulty or defective equipment)

(1) Section 36(1) and (1A)—

omit, insert—

‘(1) This section applies if an inspector reasonably believes ground equipment or aerial equipment, or part of the equipment, to be faulty or defective or likely to cause loss of, or damage to, stock or crops.

‘(1A) The inspector may give to the owner or distribution contractor responsible for the use of the equipment, written notice requiring the owner or contractor to do any 1 or more of the following—

- (a) stop using the equipment immediately, or after a date stated in the notice, until the equipment is repaired or altered in the way stated in the notice;
- (b) repair or alter the equipment in the way, and within the time, stated in the notice;
- (c) refrain from selling, hiring, or otherwise disposing of, or parting with possession of, the equipment until the requirements under paragraph (a) or (b) have been satisfied.’.

(2) Section 36(2), penalty, ‘subsection (2)’—

omit, insert—

‘subsection (3)’.

(3) Section 36(1A) and (2)—

renumber as section 36(2) and (3).

(4) Section 36—

insert—

‘(4) If it is not practicable to give written notice, the inspector may give the notice orally but must, as soon as practicable, give notice again in writing.’.

13 Omission of s 38 (Aerial and ground distribution with approved equipment only and in compliance with s 25)

Section 38—

omit.

14 Amendment of s 39 (Aerial or ground distribution by or under supervision of licensed persons)

(1) Section 39(2)(a) and (b)—

omit, insert—

‘(a) either—

- (i) holds a commercial operator’s licence and carries out the ground distribution under the licence; or
- (ii) operates the equipment under the supervision of the holder of a commercial operator’s licence, who is authorised under the licence to carry out the distribution and is present during the whole of the distribution; and

(b) carries out the ground distribution in the course of the business of, at the direction of, or under the authority of—

- (i) a licensed aerial distribution contractor; or
- (ii) a licensed ground distribution contractor.’.

(2) Section 39(3)(b)—

omit, insert—

‘(b) any unallocated State land, reserve or road under the *Land Act 1994* that adjoins land mentioned in paragraph (a) with the permission of the entity that holds or controls the unallocated State land, reserve or road.’.

15 Amendment of s 48 (Regulations)

(1) Section 48, heading—

omit, insert—

‘48 Regulation-making power’.

(2) Section 48(2)(g)—

omit, insert—

‘(g) the types of aerial and ground equipment that may be used;’.

16 Insertion of schedule

After part 7—

insert—

‘SCHEDULE**‘DICTIONARY**

sections 6 and 6A(2)’.

**PART 3—AMENDMENT OF CHEMICAL USAGE
(AGRICULTURAL AND VETERINARY) CONTROL ACT
1988****17 Act amended in pt 3 and schs 1 and 2**

This part and schedules 1 and 2 amend the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*.

18 Amendment of s 4A (Words and expressions used in Agvet Code and this Act)

Section 4A—

insert—

‘(2) Words and expressions mentioned in subsection (1) that are expressly defined in section 3 of the Agvet Code are also signposted in the dictionary.’.

19 Insertion of new pt 2, div 1

Part 2—

insert—

‘Division 1—Chemicals generally

‘7 Use of registered agricultural and veterinary chemical products taken from unlabelled containers

‘(1) A person must not use a registered agricultural or veterinary chemical product taken from a container that does not have attached to it an approved label for containers for the product.

Maximum penalty—300 penalty units.

‘(2) Subsection (1) does not apply if the product was taken from a container with a label for which the NRA issued a permit.

‘(3) It is a defence to a prosecution for an offence against subsection (1) to prove—

- (a) the product was put in the container ready for use after being taken from another container having attached to it an approved label for containers for the product; or
- (b) the product was supplied by a veterinary surgeon in the container and the person uses the product in the way stated in the written instructions or dispensing label supplied with the product.

‘(4) This section is an eligible law for the definition ‘permit’ under section 109 of the Agvet Code.’.

20 Omission of ss 8 to 8C

Sections 8 to 8C—

omit.

21 Amendment of s 8D (Compliance with instructions)

(1) Section 8D, ‘a chemical product’—

omit, insert—

‘an agricultural chemical product’.

(2) Section 8D(3), ‘or stock’—

omit.

(3) Section 8D(6), ‘another chemical product’—

omit, insert—

‘another agricultural chemical product’.

(4) Section 8D(6), ‘the chemical product’—

omit, insert—

‘the product’.

(5) Section 8D(6)(a), ‘other chemical product’—

omit, insert—

‘other agricultural chemical product’.

(6) Section 8D—

renumber and relocate as section 13B.

22 Amendment of s 8E (Use of controlled chemicals)

(1) Section 8E(2), penalty, ‘40 penalty units’—

omit, insert—

‘600 penalty units’.

(2) Section 8E—

renumber as section 8.

23 Amendment of s 11A (Claims about unregistered chemicals)

(1) Section 11A(1), penalty, ‘40 penalty units’—

omit, insert—

‘300 penalty units’.

(2) Section 11A(2), from ‘if’—

omit, insert—

‘if use of the unregistered chemical is authorised by a permit.’.

(3) Section 11A(3)—

insert—

‘(c) is made by a veterinary surgeon about a use under section 12F.’.

24 Amendment of s 12 (Use of package that contained chemical)

(1) Section 12(1), penalty, ‘40 penalty units’—

omit, insert—

‘300 penalty units’.

(2) Section 12—

renumber as section 11B.

25 Amendment of s 13 (Governor in Council may proscribe chemicals)

Section 13—

renumber as section 11C.

26 Insertion of new pt 2, divs 2 and 3

Part 2, after section 11C, as renumbered—

insert—

‘Division 2—Veterinary chemical products

‘Subdivision 1—Registered veterinary chemical products

‘12 Use of registered veterinary chemical products

‘(1) A veterinary surgeon must not use, or prescribe, supply or recommend a registered veterinary chemical product for use to treat an animal other than in a way stated in the instructions on the approved label for containers for the product.

Maximum penalty for subsection (1)—600 penalty units.

‘(2) Subsection (1) does not apply if the product is used, or prescribed, supplied or recommended for use in a way authorised by a permit or prescribed under a regulation.

‘(3) It is a defence to a prosecution for an offence against subsection (1) to prove the product was used, or prescribed, supplied or recommended for use in a way authorised under section 12A, 12B or 12C.

‘(4) A person, other than a veterinary surgeon, must not use a registered veterinary chemical product other than in a way stated in the instructions on the approved label for containers for the product.

Maximum penalty for subsection (4)—600 penalty units.

‘(5) Subsection (4) does not apply if the product is used in a way authorised by a permit or prescribed under a regulation.

‘(6) It is a defence to a prosecution for an offence against subsection (4) to prove the product was used in a way authorised under section 12D.

‘(7) This section is an eligible law for the definition ‘permit’ under section 109 of the Agvet Code.

‘12A Use by veterinary surgeon on animals other than major trade species

‘(1) A veterinary surgeon may use, or prescribe, supply or recommend a registered veterinary chemical product for use other than in a way stated in the instructions on the approved label for containers for the product, to treat animals under the care of the veterinary surgeon other than major trade species animals.

‘(2) However, subsection (1) does not allow a use—

- (a) contrary to a restraint statement on the label other than to treat a single animal; or
- (b) by injection unless the label gives instructions for use by injection.

‘12B Use by veterinary surgeon on major trade species animals

‘(1) A veterinary surgeon may use, or prescribe, supply or recommend a registered veterinary chemical product for use other than in a way stated in the instructions on the approved label for containers for the product, to treat—

- (a) if instructions for use on a major trade species animal are mentioned on the label—any major trade species animals; or
- (b) if there are no instructions for use on a major trade species animal mentioned on the label—a single major trade species animal.

‘(2) Subsection (1) applies only to animals under the care of the veterinary surgeon.

‘(3) However, subsection (1) does not allow a use—

- (a) contrary to a restraint statement on the label other than to treat a single animal; or
- (b) by injection unless the label gives instructions for use by injection.

‘12C Supply by veterinary surgeon to others

‘(1) A veterinary surgeon may supply a registered veterinary chemical product that is not packed and labelled in the way stated in the Agvet Code—

- (a) for an animal under the care of the veterinary surgeon; or
- (b) to another veterinary surgeon in the same veterinary practice.

‘(2) However, subsection (1)(b) applies only if a pharmacologically equivalent registered veterinary chemical product with instructions for use for the particular animal species being treated is not reasonably available in the particular circumstances.

‘12D Use by other persons in way stated in veterinary surgeon’s instructions

‘(1) A person, other than a veterinary surgeon, may use a registered veterinary chemical product, other than in a way stated in the instructions on the approved label for containers for the product if the person uses the product in the way stated in written instructions given by the veterinary surgeon who prescribed, supplied or recommended the product.

‘(2) However, subsection (1) does not allow a use—

- (a) contrary to a restraint statement on the label other than to treat a single animal; or
- (b) by injection unless the label gives instructions for use by injection.

‘Subdivision 2—Unregistered veterinary chemical products

‘12E Use of unregistered veterinary chemical products

‘(1) A veterinary surgeon must not use, or prescribe, supply or recommend an unregistered veterinary chemical product for use to treat an animal.

Maximum penalty for subsection (1)—600 penalty units.

‘(2) Subsection (1) does not apply if the product is used, or prescribed, supplied or recommended for use in a way authorised by a permit or prescribed under a regulation.

‘(3) It is a defence to a prosecution for an offence against subsection (1) to prove the product was used, or prescribed, supplied or recommended for use in a way authorised under section 12F or 12G.

‘(4) A person, other than a veterinary surgeon, must not use an unregistered veterinary chemical product to treat an animal.

Maximum penalty for subsection (4)—600 penalty units.

‘(5) Subsection (4) does not apply if the product is used in a way authorised by a permit or prescribed under a regulation.

‘(6) It is a defence to a prosecution for an offence against subsection (4) to prove the product was used in a way authorised under section 12H.

‘(7) It is also a defence to a prosecution for an offence against subsection (1) or (4) to prove—

- (a) the product was a registered veterinary 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.

‘(8) This section is an eligible law for the definition ‘permit’ under section 109 of the Agvet Code.

‘12F Use by veterinary surgeon

‘(1) A veterinary surgeon may use, or prescribe, supply or recommend an unregistered veterinary chemical product for use to treat—

- (a) animals other than trade species animals; or
- (b) a single trade species animal.

‘(2) Subsection (1) applies only to animals under the care of the veterinary surgeon.

‘12G Supply by veterinary surgeon to others

‘(1) A veterinary surgeon may supply an unregistered veterinary chemical product to another veterinary surgeon in the same veterinary practice.

‘(2) However, subsection (1) applies only if a pharmacologically equivalent registered veterinary chemical product with instructions for use for the particular animal species being treated is not reasonably available in the particular circumstances.

‘12H Use by other persons in way stated in veterinary surgeon’s instructions

‘A person, other than a veterinary surgeon, may use an unregistered veterinary chemical product to treat an animal in the way stated in written instructions given by the veterinary surgeon who prescribed, supplied or recommended the product.

‘Subdivision 3—Compounded veterinary chemical products

‘12I Use of compounded veterinary chemical products

‘(1) A veterinary surgeon must not use, or prescribe, supply or recommend a compounded veterinary chemical product for use to treat an animal.

Maximum penalty for subsection (1)—600 penalty units.

‘(2) It is a defence to a prosecution for an offence against subsection (1) to prove the product was used, or prescribed, supplied or recommended for use in a way authorised under section 12J.

‘(3) A pharmacist must not supply a compounded veterinary chemical product for use to treat an animal.

Maximum penalty for subsection (3)—600 penalty units.

‘(4) It is a defence to a prosecution for an offence against subsection (3) to prove the supply of the product was authorised under section 12K.

‘(5) A person, other than a veterinary surgeon, must not use a compounded veterinary chemical product to treat an animal.

Maximum penalty for subsection (5)—600 penalty units.

‘(6) It is a defence to a prosecution for an offence against subsection (5) to prove the product was used in a way authorised under section 12L.

‘12J Use by veterinary surgeon

‘(1) A veterinary surgeon may use, or prescribe, supply or recommend for use a compounded veterinary chemical product in a quantity needed for a single course of treatment of—

- (a) animals other than trade species animals; or

(b) a single trade species animal.

‘(2) Subsection (1) applies only to animals under the care of the veterinary surgeon.

‘12K Supply by pharmacist

‘A pharmacist may supply a compounded veterinary chemical product in a quantity needed for a single course of treatment.

‘12L Use by other persons in way stated in written instructions

‘A person, other than a veterinary surgeon, may use a compounded veterinary chemical product to treat an animal in the way stated in written instructions given by—

- (a) the veterinary surgeon who prescribed, supplied or recommended the product; or
- (b) the pharmacist who supplied the product.

‘Subdivision 4—Information to be given by veterinary surgeon or pharmacist about the treatment of an animal

‘12M Information to be given by veterinary surgeon or pharmacist

‘(1) This section applies to—

- (a) a veterinary surgeon who uses, or prescribes, supplies or recommends a veterinary chemical product or compounded veterinary chemical product for use to treat an animal under the care of the veterinary surgeon; or
- (b) a pharmacist who supplies a compounded veterinary chemical product under a prescription given by a veterinary surgeon to treat an animal.

‘(2) The veterinary surgeon or pharmacist must give to the person in charge of the animal at the time of the treatment full and appropriate instructions about the treatment including the instructions mentioned in section 12N.

Maximum penalty for subsection (2)—300 penalty units.

‘(3) For subsection (2), the instructions—

- (a) must be in writing, which may include the instructions on the approved label for containers for the product (the “**label instructions**”); and
- (b) must explain whether or not the label instructions form part of the instructions; and
- (c) must include an explanation of the meaning of the instructions including the meaning of the label instructions that are equivalent to the matters mentioned in section 12N; and
- (d) for a registered veterinary chemical product to be used other than in a way stated in the label instructions—must include an explanation of the extent to which the label instructions do not form part of the instructions.

‘(4) Subsection (2) applies to the treatment of an animal other than a trade species animal only if the treatment involves the use of—

- (a) a registered veterinary chemical product other than in a way stated in the label instructions; or
- (b) a veterinary chemical product that is a prescription animal remedy; or
- (c) an unregistered veterinary chemical product; or
- (d) a compounded veterinary chemical product.

‘(5) If the person who receives the instructions mentioned in subsection (2) is not usually in charge of the animal, the person must give the instructions to the person usually in charge of the animal when that person again becomes in charge of the animal.

Maximum penalty for subsection (5)—100 penalty units.

‘12N Information to be included in instructions

‘(1) For treatment of a trade species animal, the instructions mentioned in section 12M must include—

- (a) whether there is a withholding period for use of the product and the length of the period; and

- (b) for a registered veterinary chemical product—particulars to identify the product and, if the product has a distinguishing number, the number; and
- (c) for a product other than a registered veterinary chemical product—particulars to identify the product; and
- (d) the name of the product’s active constituent; and
- (e) the dosage; and
- (f) the frequency of the dosage; and
- (g) the treatment period; and
- (h) how the product is to be used to treat the animal; and
- (i) the species of animal to be treated; and
- (j) details to identify the particular animal; and
- (k) the date the product was used, prescribed, supplied or recommended for use; and
- (l) the expiry date of the product; and
- (m) the name and address of the veterinary surgeon or pharmacist who gave the instructions; and
- (n) the name and address of the person to whom the product is supplied; and
- (o) for a recommendation, the period the recommendation is to apply; and
- (p) other information prescribed under a regulation.

‘(2) For treatment of an animal other than a trade species animal, the instructions mentioned in section 12M must include the matters mentioned in subsection (1)(b) to (p).

‘12O Instructions must be kept

‘A person given instructions under section 12M, for treatment of trade species animals, must keep the instructions for—

- (a) the period prescribed under a regulation; or
- (b) if no period is prescribed—2 years.

Maximum penalty—100 penalty units.

‘Subdivision 5—Information to be given by person other than veterinary surgeon or pharmacist

‘12P Information to be given to person in charge of animal

‘(1) This section applies to a person, other than a person mentioned in subsection (4), who uses a veterinary chemical product or compounded veterinary chemical product to treat a trade species animal.

‘(2) The person must give the person in charge of the animal at the time of the treatment, full and appropriate written advice about the treatment including any written instructions given by a veterinary surgeon or pharmacist.

Maximum penalty for subsection (2)—300 penalty units.

‘(3) If the person who receives the advice is not usually in charge of the animal, the person must give the advice to the person usually in charge of the animal when that person again becomes in charge of the animal.

Maximum penalty for subsection (3)—100 penalty units.

‘(4) This section does not apply to—

- (a) a veterinary surgeon; or
- (b) the person usually in charge of the animal; or
- (c) an employee of the person usually in charge of the animal who uses the product in the course of the employment.

‘12Q Information to be included in written advice

‘(1) The written advice mentioned in section 12P must include—

- (a) whether there is a withholding period for use of the product and the length of the period; and
- (b) for a registered veterinary chemical product—particulars to identify the product and, if the product has a distinguishing number, the number; and
- (c) for a product other than a registered veterinary chemical product—particulars to identify the product; and
- (d) the name of the product’s active constituent; and
- (e) the dosage; and

- (f) the frequency of the dosage; and
- (g) the treatment period; and
- (h) how the product was used to treat the animal; and
- (i) the species of animal treated; and
- (j) details to identify the particular animal; and
- (k) the date the product was used; and
- (l) the name and address of the person using the product; and
- (m) the name and address of the person usually in charge of the animal; and
- (n) any other information prescribed under a regulation.

‘(2) Subsection (3) applies to—

- (a) a person mentioned in section 12P(1); and
- (b) a person usually in charge of an animal, who receives written advice under section 12P(2) or (3).

‘(3) Each person mentioned in subsection (2) must keep a copy of the advice for—

- (a) the period prescribed under a regulation; or
- (b) if no period is prescribed—2 years.

Maximum penalty for subsection (3)—100 penalty units.

‘Subdivision 6—Records to be kept

‘12R Records to be kept by veterinary surgeon

‘(1) This section applies to a veterinary surgeon who uses, or prescribes, supplies or recommends for use, to treat a trade species animal any of the following—

- (a) a registered veterinary chemical product to be used other than in a way stated in the instructions on the approved label for containers for the product;
- (b) a veterinary chemical product that is a prescription animal remedy;

- (c) an unregistered veterinary chemical product;
- (d) a compounded veterinary chemical product.

‘(2) The veterinary surgeon must keep a record of the treatment including—

- (a) whether there is a withholding period for use of the product and the length of the period; and
- (b) for a registered veterinary chemical product—particulars to identify the product and, if the product has a distinguishing number, the number; and
- (c) for a product other than a registered veterinary chemical product—particulars to identify the product; and
- (d) the name of the product’s active constituent; and
- (e) the dosage; and
- (f) the frequency of the dosage; and
- (g) the treatment period; and
- (h) how the product was used to treat the animal; and
- (i) the species of animal treated; and
- (j) details to identify the particular animal; and
- (k) the date the product was used or prescribed, supplied or recommended for use; and
- (l) the expiry date of the product; and
- (m) the name and address of the person using, prescribing, supplying or recommending the product; and
- (n) the name and address of the person to whom the product is supplied; and
- (o) for a recommendation—the period the recommendation is to apply; and
- (p) other information prescribed under a regulation.

Maximum penalty for subsection (2)—200 penalty units.

‘(3) The veterinary surgeon must keep a copy of the record for—

- (a) the period prescribed under a regulation; or

(b) if no period is prescribed—2 years.

Maximum penalty for subsection (3)—200 penalty units.

‘Subdivision 7—Withholding period

‘12S Meaning of “withholding period”

The **“withholding period”**, for use of a chemical product or compounded veterinary chemical product, is the minimum period that must elapse between the last use of the product and—

- (a) for a use in relation to a crop or pasture—the harvesting or cutting of, or the grazing of animals on, the crop or pasture; or
- (b) for a use in relation to an animal, including the feeding of an animal on feed treated with the product—the shearing or slaughtering of the animal, or the collection of milk or eggs from the animal for human consumption.

‘12T Identification of animals to which withholding period applies

‘(1) This section applies to a person in charge of a trade species animal if—

- (a) a veterinary chemical product or compounded veterinary chemical product is used to treat the animal; and
- (b) a withholding period applies to the use of the product.

‘(2) The person must take reasonable steps to ensure the animal is identifiable as an animal mentioned in subsection (1) during—

- (a) the treatment period; and
- (b) the withholding period.

Examples for subsection (2)—

1. Tagging.
2. Physical segregation.
3. Written records.

Maximum penalty for subsection (2)—300 penalty units.

‘12U Notice of treatment on supply of trade species animal

‘(1) This section applies to a person who supplies a trade species animal to another person if—

- (a) a veterinary chemical product or compounded veterinary chemical product was used to treat the animal; and
- (b) a withholding period applies to the use of the product and the period has not elapsed.

‘(2) The person must give the other person written notice of the treatment including—

- (a) the withholding period for use of the product or the date the withholding period elapses; and
- (b) the name of—
 - (i) the product used; or
 - (ii) if the product does not have a name—the product’s active constituent; and
- (c) details to identify the particular animal; and
- (d) the date of the treatment; and
- (e) other information prescribed under a regulation.

Maximum penalty for subsection (2)—300 penalty units.

‘(3) Subsection (4) applies to—

- (a) a person mentioned in subsection (1); and
- (b) a person who receives written notice under subsection (2).

‘(4) Each person mentioned in subsection (3) must keep a copy of the notice for—

- (a) the period prescribed under a regulation; or
- (b) if no period is prescribed—2 years.

Maximum penalty for subsection (4)—100 penalty units.

‘12V Observance of withholding period

‘(1) This section applies to a person in charge of a trade species animal if—

- (a) a veterinary chemical product or compounded veterinary chemical product has been used to treat the animal; and
- (b) a withholding period applies to the use of the product.

‘(2) The person must not, within the withholding period, allow the animal to be shorn or slaughtered or milk or eggs to be collected from the animal, for human consumption.

Maximum penalty for subsection (2)—600 penalty units.

‘Division 3—Agricultural chemical products

‘13 Use of registered agricultural chemical products in contravention of labels

‘(1) A person must not use a registered agricultural chemical product other than in a way stated in the instructions on the approved label for containers for the product.

Maximum penalty for subsection (1)—600 penalty units.

‘(2) Subsection (1) does not apply if the product is used in a way authorised by a permit or prescribed under a regulation.

‘(3) It is a defence to a prosecution for an offence against subsection (1) to prove the product was used in a way authorised under section 13B.

‘(4) This section is an eligible law for the definition ‘permit’ under section 109 of the Agvet Code.

‘13A Use of unregistered agricultural chemical products

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

Maximum penalty for subsection (1)—600 penalty units.

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

- (a) the product is used in a way authorised by a permit; or
- (b) the product is prescribed for this subsection under a regulation.

‘(3) It is a defence to a prosecution for an offence against subsection (1) to prove—

- (a) the product was a registered agricultural 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' under section 109 of the Agvet Code.'

27 Insertion of new ss 28A and 28B

After section 28—

insert—

'28A Application of Justices Act 1886, s 76, not limited

'A provision of this Act that expresses something as a defence does not limit the application of the *Justices Act 1886*, section 76.¹

'28B Not an offence to act under direct supervision

'A provision of this Act defining an offence that is expressed to apply to a person other than a veterinary surgeon does not apply to a person who is acting under the direct supervision of a veterinary surgeon.'

28 Amendment of s 34 (Evidence, etc.)

Section 34(c) to (g) and (j), 'and' to 'conclusive evidence'—

omit.

¹ *Justices Act 1886*, section 76 (Proof of negative etc.)

29 Omission of s 35 (Exemption)

Section 35—

omit.

30 Insertion of new pt 4

After part 3—

insert—

‘PART 4—TRANSITIONAL PROVISION FOR AGRICULTURAL AND VETERINARY CHEMICALS LEGISLATION AMENDMENT ACT 2002

‘39 Exemptions revoked

‘An exemption under repealed section 35 that was in force immediately before the commencement of the *Agricultural and Veterinary Chemicals Legislation Amendment Act 2002*, section 27, ceases to have effect on the commencement.’.

31 Amendment of sch (Dictionary)

(1) Schedule, heading, ‘section 4’—

omit, insert—

‘sections 4 and 4A(2)’.

(2) Schedule, definitions “**authorised veterinary purpose**” and “**maximum residue limit**”—

omit.

(3) Schedule—

insert—

‘**“active constituent”** see the Agvet Code, section 3.

“agricultural chemical product” see the Agvet Code, section 3.

“compounded veterinary chemical product” means a product mentioned in section 5(4) of the Agvet Code.

“distinguishing number”, for a chemical product, means a number, together with 1 or more letters or symbols, given to the product on its registration by the NRA.

“expiry date”—

- (a) for a compounded veterinary chemical product—means the date the product’s treatment period ends; and
- (b) otherwise—see the Agvet Code, section 3.

“food-producing species” has the meaning given by the Agvet Code but does not include a horse.

“in charge”, of an animal—

1. A person is in charge of an animal if the person—
 - (a) owns or has a lease, licence or other proprietary interest in the animal; or
 - (b) has custody of the animal.
2. However, a person who holds a mortgage or other security interest in an animal becomes in charge of the animal only if the person takes a step to enforce the mortgage or other security.

“major trade species animal” means a trade species animal that is one of the following—

- (a) cattle, sheep, pigs or domestic fowl (*Gallus domesticus*);
- (b) another trade species animal declared under a regulation to be a major trade species animal.

“maximum residue limit” means the following—

- (a) for the residue of a chemical in or on agricultural produce or manufactured stock food—the maximum residue limit prescribed under a regulation;
- (b) for chemical or antibiotic residue in trade species animals or products derived from trade species animals—the maximum residue limit prescribed under the *Stock Act 1915* for the tissue of stock or a product of stock.

“NRA” see the Agvet Code, section 3.

“pharmacist” means a general registrant within the meaning of the *Pharmacists Registration Act 2001*.

“prescription animal remedy” means a chemical product that is an S4 poison under the *Health (Drugs and Poisons) Regulation 1996*.

“registered agricultural chemical product” means an agricultural chemical product that is a registered chemical product.

“registered veterinary chemical product” means a veterinary chemical product that is a registered chemical product.

“restraint statement” means a statement, on a product’s label, usually under the heading ‘restraints’, about the situations in which use of the product is restricted.

Examples of the starting words of a restraint statement—

1. ‘For use only by or under’.
2. ‘Do not use’.
3. ‘Not to be used’.
4. ‘Use only’.

“single”, for treatment of an animal, means—

- (a) the animal is on its own; or
- (b) the animal is from a group of animals in which no other animal in the group, or on the same property, is treated in the same way.

“supply” see the Agvet Code, section 3.

“trade species animal” means—

- (a) a food-producing species; or
- (b) an animal kept or used for trading in products derived from the animal, for example wool, feathers, skin or bone.

“unregistered veterinary chemical product” means a veterinary chemical product that is not a registered veterinary chemical product, and includes, for example—

- (a) a human pharmaceutical product; and
- (b) a chemical product intended for use as an agricultural chemical product.

“veterinary chemical product” see the Agvet Code, section 3.

“withholding period” see section 12S.’.

(4) Schedule, definitions “**animal**”, “**approved label**”, “**chemical product**”, “**container**”, “**instruction**”, “**label**”, “**permit**”, “**pest**”, “**plant**” and “**registered chemical product**”, ‘has the meaning given by the Agvet Code’—

omit, insert—

‘see the Agvet Code, section 3’.

(5) Schedule, definition “**proscribed chemical**”, ‘section 13’—

omit, insert—

‘section 11C’.

PART 4—OTHER AMENDMENTS

32 Amendments for penalties—sch 1

Schedule 1 amends penalties in the Act it mentions.

33 Minor and consequential amendments—sch 2

Schedule 2 amends the Acts it mentions.

SCHEDULE 1

AMENDMENTS FOR PENALTIES

sections 17 and 30

CHEMICAL USAGE (AGRICULTURAL AND VETERINARY) CONTROL ACT 1988

1 Section 9, penalty—

omit, insert—

‘Maximum penalty—800 penalty units.’.

2 Section 16(6), penalty—

omit, insert—

‘Maximum penalty for subsection (6)—800 penalty units.’.

3 Section 17(5), penalty—

omit, insert—

‘Maximum penalty for subsection (5)—800 penalty units.’.

4 Section 18(2), penalty—

omit, insert—

‘Maximum penalty for subsection (2)—600 penalty units.’.

5 Sections 20(2), penalty—

omit, insert—

‘Maximum penalty for subsection (2)—100 penalty units.’.

SCHEDULE 1 (continued)

6 Section 24(2), penalty—

omit, insert—

‘Maximum penalty for subsection (2)—50 penalty units.’.

7 Section 25, penalty—

omit, insert—

‘Maximum penalty—500 penalty units.’.

8 Sections 26, penalty—

omit, insert—

‘Maximum penalty—100 penalty units.’.

SCHEDULE 2

MINOR AND CONSEQUENTIAL AMENDMENTS

sections 3, 17 and 31

AGRICULTURAL CHEMICALS DISTRIBUTION CONTROL ACT 1966

1 Sections 12(3), 15(3) and 16(3)—

omit.

2 Section 42(2)(a), after ‘committed;’—

insert—

‘or’.

CHEMICAL USAGE (AGRICULTURAL AND VETERINARY) CONTROL ACT 1988

1 Before section 14—

insert—

‘Division 4—Chemical residues’.

SCHEDULE 2 (continued)

2 Section 15, ‘the standards officer’—

omit, insert—

‘the standards officer²’.

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² For notifying an analysis that shows chemical or antibiotic residue of more than the maximum residue limit in tissue of stock or a product of stock, see section 27(2) of the *Stock Act 1915*.