

AGRICULTURAL AND VETERINARY CHEMICALS LEGISLATION AMENDMENT BILL 2002

EXPLANATORY NOTES

General Outline

Short Title

The short title of the Bill is the *Agricultural and Veterinary Chemicals Legislation Amendment Bill 2002* (the 'Act').

Objectives of the Legislation

The Act amends the following Acts administered by the Minister for Primary Industries and Rural Communities:

- *Agricultural Chemicals Distribution Control Act 1966* (ACDC Act); and the
- *Chemical Usage (Agricultural and Veterinary) Control Act 1988* (Chem Use Act).

The primary objective of the Act is to implement the reforms recommended by the independent National Competition Policy (NCP) review of Commonwealth and State agricultural and veterinary chemicals legislation. These reforms relate to:

- ensuring uniformity of the licensing provisions for agricultural chemical use across all States and Territories by amendments to the ACDC Act; and the
- harmonisation of controls over the use of veterinary chemicals across all States and Territories by amendments to the Chem Use Act.

The Act increases penalties relating to current provisions in the Chem Use Act to align them with similar contemporary legislation throughout Australia. The penalties for offences in this Act now reflect the seriousness

of the possible implications of harm to Queensland's reputation as a producer of safe and ethical food that could arise from misuse of agricultural and veterinary chemicals. (*See attached table that contains current and proposed penalties.*)

The Act makes minor and consequential amendments to both the ACDC Act and the Chem Use Act.

Alternatives to the Act

Three options in relation to the NCP reforms were considered:

Option 1. Progress the agreed reforms as quickly as possible to meet NCP timeline requirements. The Queensland Government is committed to the Competition Principles Agreement under the NCP arrangements endorsed by members of the Council of Australian Governments in April 1995. Accordingly, this is the **preferred option**.

Option 2. Progress the reforms in due course. The Department of Primary Industries is conducting a review of all agricultural and veterinary chemicals control of use legislation within its portfolio. This review is expected to result in integration of all control of use issues into a single piece of legislation. The process is expected to be completed with 12 to 18 months. This option has been rejected, as it is inconsistent with timeframes for the implementation of NCP reforms.

Option 3. Make no changes to the legislation. The failure to implement the recommended reforms would result in a lack of harmony between Queensland's control of use legislation and similar legislation in other States and Territories. This would be a clear contravention of NCP recommendations for uniformity between jurisdictions. In addition, the Queensland government could incur financial penalties. This is not a satisfactory option.

Estimated costs for government implementation

The Act will not have any significant financial impact on government. The costs associated with public education and promotion activities in relation to the legislative changes, along with any increased monitoring activities, will be met by resource re-allocation within the Department of Primary Industries.

Consistency with fundamental legislative principles

While the provisions of the Act are consistent generally with the standards required to be met under the *Legislative Standards Act 1992*, issues concerning conformity with fundamental legislative principles may be raised in relation to the following provisions of the Act.

Amended section 8E Chem Use Act (Use of Controlled Chemicals)

s4(2)(b) Legislative Standards Act – that legislation has sufficient regard to the institution of Parliament

It is important to have a mechanism to declare chemicals to be controlled chemicals by regulation, so that urgent action can be taken to introduce appropriate controls where necessary. This is essential to protect export markets, the health and safety of human beings, and the environment. In addition, the penalty allocated to this section should be an effective deterrent that is consistent with other serious offences relating to the misuse of registered and unregistered chemicals that are proposed in the Act.

Amendments for Penalties Chem Use Act

s4(2)(a) Legislative Standards Act – that legislation has sufficient regard to the rights

and liberties of individuals

The penalties for current offences have been increased to be consistent with those proposed for the new offences created in the Act. The penalties have been set at contemporary levels that are consistent with similar legislation in other States and Territories and with other legislation dealing with chemical issues in Queensland.

s4(3)(d) Legislative Standards Act – that legislation does not reverse the onus of proof in criminal proceedings without adequate justification

The Bill inserts new sections 7, 12, 12E, 12I and 13 consistent in structure with current section 8 which is re-written as section 13A. The new sections provide a defence to a prosecution if certain matters are proved. In these circumstances, it is considered fair and reasonable that the defendant would be responsible for proving certain matters that are within their knowledge.

Amended section 4 Chem Use Act (Dictionary)

s4(4)(c) Legislative Standards Act – whether the Act authorises the amendment of an Act only by another Act

Major trade species animals are defined as cattle, sheep, pigs or domestic fowl (*Gallus domesticus*). Unacceptable residues of veterinary chemical products in food or fibre products derived from major trade species animals have the potential to damage Queensland's reputation for safe and ethical products. Accordingly the more rigorous controls are imposed on the use of veterinary chemical products on major trade species animals.

The definition allows other emerging significant trade species animals to be declared under a regulation to be major trade species animals. To have the capacity to declare another species major trade species animal at relatively short notice under a regulation demonstrates to our trading partners that effective and responsive controls exist over the use of chemical products in Australia.

By having the capacity to extend the definition, this will allow additional trade species animals to be defined as major trade species animals should they become a major source of food for human beings, or the trade in products derived from the animal becomes a significant part of Queensland's trade with other countries.

CONSULTATION

Community

Consultation has been undertaken with the Australian Veterinary Association (including the Queensland Division), Australian Association of Cattle Veterinarians, Veterinary Surgeons Board, Queensland Farmers Federation, Agforce Queensland, Groundrig Operators Association Inc., Safe Food Queensland, Association of Independent Schools of Queensland, Brisbane Catholic Education Centre and the Local Government Association of Queensland Inc.

Government

There has been consultation on the amendments of the Act with Queensland Treasury, Office of Rural Communities, Office of the Queensland Parliamentary Counsel, Environmental Protection Agency and the Departments of Premier and Cabinet, State Development (Business

Regulation Reform Unit), Main Roads, Employment and Training, Justice and Attorney-General, Queensland Health, Natural Resources and Mines, Local Government and Planning, Education, Corrective Services, Public Works (QBuild) and Tourism, Racing and Fair Trading.

RESULTS OF CONSULTATION

Community

No objections to the proposed amendments have been raised by stakeholders.

Government

All agencies consulted support the amendments.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Short title

Clause 1 describes the short title of the Act as being the *Agricultural and Veterinary Chemicals Legislation Amendment Bill 2002*.

Commencement

Clause 2 provides that the Act is to commence on a date to be fixed by proclamation.

PART 2—AMENDMENT OF AGRICULTURAL CHEMICALS DISTRIBUTION CONTROL ACT 1966

Act amended in pt 2 and sch 2

Clause 3 declares that Part 2 and Schedule 2 of the Act amends the *Agricultural Chemicals Distribution Control Act 1966*.

Amendment of s6 (Definitions) and Insertion of New Schedule

Clause 4 amends section 6 ‘*Definitions*’ to be consistent with modern drafting practice by placing this section into new Schedule ‘*Dictionary*’. The amendment includes additional definitions that define particular words contained in the Act.

Amendment of s6A (Words and expressions used in Agvet Code and this Act)

Clause 5 amends section 6A to be consistent with modern drafting practice by reference to the Agvet Code words and expressions that appear in the new Schedule ‘*Dictionary*’. The Agvet Code means a Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994 (Cth)*.

Insertion of new ss 16A and 16B

Clause 6 inserts new sections 16A and 16B.

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

New section 16A(1) states that a pest management technician who holds a pest management qualification as defined in the *Pest Management Act 2001*, is considered to hold a commercial operator’s licence. This will ensure that the provisions of the ACDC Act complement Queensland Health legislation.

New section 16A(2) states that sections 20 to 23 of the ACDC Act apply to a pest management technician (PMT) licence as if it were a commercial operator’s licence. These sections of the Act provide for the suspension or cancellation of licences, the right of appeal to the Magistrates Court, how

to start an appeal, the stay of operation of decisions, hearing procedures, the powers of the Court of Appeal, appeal to the District Court, and the effect of suspension of a licence.

16B Ground distribution contractor licence

New section 16B provides for a ground distribution contractor's licence. This new licence extends the scope of licensing in Queensland pursuant to NCP recommendations and will affect any business that employs one or more persons who are required to be licensed as commercial operators to conduct weed control. This includes sporting clubs, garden care or landscaping businesses, pest control operator businesses and government departments.

Amendment of s17 (Application for licences)

Clause 7 amends section 17(1)(a), inserts new subsections 17(4), 17(5) and 17(6)(a), and renumbers 17(4) as new subsection 17(6)(b).

Section 17(1)(a) is amended by replacing 'standards officer' with 'board', so that an application for a licence must be made to the Agricultural Chemicals Distribution Control Board (the '*Board*') who will consider the application.

To ensure consistency with section 21 of the *Pest Management Act 2001*, a pilot chemical rating licence or a commercial operator's licence will not be issued unless the Board is satisfied that the applicant is at least 17 years old.

These new amendments provide that if the board decides to grant an application for a licence, it must be issued to the applicant as soon as practicable. If the board decides to refuse to grant an application, the board must give the applicant an information notice about the decision, and refund the application fee as soon as practicable.

Replacement of ss18 and 19

Clause 8 replaces sections 18 and 19 with new sections 18 and 19.

18 Term of licence

New section 18 redefines the term of a licence by removing the reference to expiry on 30 June of each year, and increases the term of licence (including licence renewals) to a period of up to 3 years from the date of issue. This amendment is consistent with Queensland government licensing initiatives and improves administrative efficiency.

19 Renewal of licence

New section 19 sets out new conditions for the renewal of a licence by removing the requirement for licensees to lodge an application for renewal of a licence to the board by 31 May each year. Under the new provisions an application for renewal of a licence may be made within 60 days before a licence expires. If the board does not receive an application to renew a licence by the date of expiry, the licence will expire.

A new requirement under this section is that applicants must give the board any relevant information or document that the board reasonably requires to decide the application. If the board decides to grant the application, the board must, as soon as practicable, issue a new licence to the applicant. If the board refuses to grant the application, the board must give the applicant an information notice about the decision and refund the application fee as soon as practicable.

This amendment is consistent with Queensland government licensing initiatives and improves administrative efficiency.

19A Expiring licence continues in force

This section makes provision for an expiring licence to continue in force until a new licence is issued, provided an application has been made in accordance with section 19 and the application has not been withdrawn or refused. Section 19A(2) provides that subsection (1) does not apply if a licence is earlier suspended or cancelled.

19B Notice of change in circumstances

This section provides that if there are changes to the licensee's name, address or other circumstances prescribed under a regulation, then the licensee must give the board written notice of the change within 21 days

after the change. This provision is consistent with the requirements of the *Pest Management Act 2001*.

Amendment of s21 (Cancellation or suspension of licence)

Clause 9 amends section 21 by updating the reference to relevant Queensland Health legislation. This minor amendment is consistent with section 14(1) of the *Agricultural Chemicals Distribution Control Regulation 1998*.

Section 21(1)(da) is amended so that it applies to both aerial and ground distribution contractors.

Section 21(5) provides that after the chief executive makes a decision, the chief executive must give the licensee or former licensee an information notice about the decision as soon as practicable.

Omission of s25 (Security against loss occasioned by aerial distribution and certain ground distribution)

Clause 10 removes the compulsory requirement for the owners of aerial and ground equipment to hold chemical liability insurance prior to the commencement of chemical distribution activities by licensed operators. This does not prevent people from taking out insurance on a voluntary basis as a part of normal business practice.

The primary focus of the ACDC Act is to ensure the competency of operators through accreditation and licensing, accompanied by penal sanctions for behaviour that may cause a risk of damage to property.

Government strategies that address licensing and accreditation reduce the risk of damage by ensuring operators have appropriate skills and knowledge to select the most appropriate agricultural chemical and application technique for distributing the chemicals.

The requirement for contractors to be insured against damage to property, is only one of many risk reduction strategies available under the ACDC Act. Existing insurance provisions provide limited coverage, therefore, it is considered that these measures will afford better protection against damage to property.

Since the introduction of the ACDC Act in 1966, increased legislative controls for persons using agricultural chemicals have been introduced, including the provisions of the *Chemical Usage (Agricultural and*

Veterinary) Control Act 1988 and the *Environmental Protection Act 1994*. Many of the regulatory controls and codes of practice adopted as part of modern legislative responses have reduced many of the risks previously associated with the off-target drift of agricultural chemicals.

Amendment of s26 (Records to be kept)

Clause 11 amends section 26(1) by providing that the new ground distribution contractor is required to keep records of ground distribution in lieu of the previous requirement on owners of ground equipment. There are also minor amendments that are consistent with modern drafting practice.

Amendment of s36 (Faulty or defective equipment)

Clause 12 amends sections 36(1) & 36(1A), and renumbers section 36(1A) and 36(2) as sections 36(2) and 36(3). This section has been amended so that provisions relating to faulty or defective equipment now apply to the ground distribution contractor. The section has also been redrafted to be consistent with modern drafting practice.

Notices about faulty or defective equipment may be given orally where it is not practicable to give a written notice, but a notice must be given again in writing as soon as practicable.

Omission of s38 (Aerial and ground distribution with approved equipment only and in compliance with s25)

Clause 13 removes section 38. The ability to approve all individual equipment models is now impracticable because of the vast array of equipment available on the market. In the absence of this provision, safeguards in relation to faulty and defective equipment are contained in section 36. Section 28 of the *Agricultural Chemicals Distribution Control Regulation 1998* requires operators to use equipment responsibly and in such a manner as to avoid damage to crops and stock.

Section 38(b) has been removed as it is redundant with the omission of section 25.

Amendment of s39 (Aerial or ground distribution by or under supervision of licensed persons)

Clause 14 amends section 39(2)(a) and (b) and 39(3)(b). Amendments to this section mean that ground distribution licensing is subject to the same requirements as for aerial distribution licensing.

Therefore, a person carrying out ground distribution can now work under the business licence of either a ground distribution contractor or an aerial distribution contractor. This prevents the need for an aerial distribution contractor to also hold a ground distribution contractor licence. The classes of commercial operator's licences are contained in section 6 of the *Agricultural Chemicals Distribution Control Regulation 1998*.

Section 39(3)(b) is amended by inserting the correct reference to the *Land Act 1994*.

Amendment of s 48 (Regulations)

Clause 15 amends the heading of section 48 and subsection 48(2)(g).

The heading now reads 'Regulation-making power' and 48(2)(g) has been replaced to provide for the regulation of the types of aerial and ground equipment that may be used. Because of the omission of section 38, there is now no requirement for a regulation to specify the entity to give approval to the types of aerial and ground equipment that may be used.

Insertion of new Schedule

Clause 16 provides that new schedule 'Dictionary' is to be inserted after Part 7 'General'.

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

Act amended in pt 3 and sch 1 and 2

Clause 17 declares that Part 3 and Schedules 1 and 2 of the Act amend the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*.

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

Clause 18 amends section 4A to be consistent with modern drafting practice by reference to the Agvet Code words and expressions that appear in the amended Schedule ‘*Dictionary*’. The Agvet Code means a Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994 (Cth)*.

Restructure of Part 2

Part 2 has been restructured to include all existing and new requirements in relation to the use of agricultural and veterinary chemical products. The specific requirements for the use of chemical products have been categorised into four divisions:

Division 1 – Chemicals generally

Division 2 – Veterinary chemical products

Division 3 – Agricultural chemical products

Division 4 – Chemical Residues

Insertion of New Division 1 – CHEMICALS GENERALLY

New section 7 – Use of registered agricultural and veterinary chemical products taken from unlabelled containers

Clause 19 inserts new heading Division 1 and inserts new section 7 to replace section 8B. The amendments clarify that the section applies to both registered agricultural and registered veterinary chemical products.

This section has been redrafted to be consistent with modern drafting practice.

This section has been amended so that a person may use a product taken from an unlabelled container in certain circumstances, including when the product is supplied by and used in the way stated in the written instructions of a veterinary surgeon, or where the National Registration Authority for Agricultural and Veterinary Chemicals (NRA) has issued a permit.

The maximum penalty for the offence in this section has been increased from 40 to 300 penalty units.

Omission of ss8 to 8C

Clause 20 These sections have been omitted as they are consequential drafting amendments. Sections 8 and 8A have been rewritten as sections 13A and 13 respectively.

Amendment of s8D (Compliance with instructions)

Clause 21 amends section 8D so that it applies to agricultural chemical products. Previous section 8D applied to both agricultural and veterinary chemical products. This section has been renumbered and relocated as section 13B under new Division 3 – Agricultural chemical products.

Amendment of s8E (Use of controlled chemicals)

Clause 22 amends this section by increasing the penalty from 40 to 600 penalty units. This section has been renumbered and relocated as section 8 under new Division 1 – Chemicals generally.

Amendment of s11A (Claims about unregistered chemicals)

Clause 23 increases the maximum penalty for section 11A(1) from 40 to 300 penalty units. Section 11A is located under new Division 1 – Chemicals generally.

Current subsection 11A(2)(b), which allows claims to be made about the use of unregistered chemicals for an authorised veterinary purpose, has been replaced by the new provisions relating to controls over the use of unregistered veterinary chemical products contained in new Division 2, Subdivision 2.

Section 11A(3) inserts a new subsection (c) that ensures that a veterinary surgeon can make recommendations about the use of unregistered chemical products in accordance with s 12F ‘*Use by veterinary surgeon*’.

Amendment of s12 (Use of package that contained chemical)

Clause 24 increases the maximum penalty for section 12(1) from 40 to 300 penalty units. This section has been renumbered and relocated as section 11B under new Division 1 – Chemicals generally.

Amendment of s13 (Governor in Council may proscribe chemicals)

Clause 25 This section is a consequential drafting amendment, and has been renumbered and relocated as section 11C.

Insertion of new Divisions 2 and 3

Clause 26 inserts new Division 2 - ‘*Veterinary chemical products*’ that contains 7 Subdivisions that provide for specific requirements for the use of veterinary chemical products and compounded veterinary chemical products, and inserts new Division 3 – ‘*Agricultural chemical products*’ that provides for the use of agricultural chemical products.

Division 2 – Veterinary Chemical Products:

Subdivision 1- Registered veterinary chemical products

Subdivision 2- Unregistered veterinary chemical products

Subdivision 3- Compounded veterinary chemical products

Subdivision 4- Information to be given by veterinary surgeon or pharmacist in relation to treatment of animal

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

Subdivision 6- Records to be kept

Subdivision 7- Withholding Period

Subdivision 1—Registered Veterinary Chemical Products

A core principle of chemical control of use legislation is that all persons must use registered veterinary chemicals according to label instructions. This minimises the risk of unacceptable chemical residues in food and fibre commodities, or other unintended damage, to animals.

Registered veterinary chemical products must be used in accordance with label instructions to control the following risks:

- unacceptable residues of chemical products in food and fibre commodities;
- risks to human health from ineffective treatment of animal diseases;
- ineffective treatment compromising animal welfare; and the
- potential risk of contamination of the environment from chemicals in animal excretions.

This subdivision authorises use, in certain circumstances, of registered products, other than in accordance with instructions on the approved label, by veterinary surgeons and by other persons, under the instructions of a veterinary surgeon. The effect is that a wider range of chemical options is available to treat diseases and other conditions in animals.

The unauthorised use of veterinary chemical products contrary to approved label instructions could also threaten the long-term availability of the product which could potentially limit the range of options for the treatment of animals.

Controls over the use of registered veterinary chemical products ensure that confidence in Queensland's reputation for safe and ethically produced food and fibre products is maintained. The retention of domestic and export markets, and also the ability to obtain new markets, depends on this continued confidence.

New section 12 - Use of registered veterinary chemical products

The effect of this section is that it prevents all persons supplying and using registered veterinary chemical products other than in accordance with the instructions on the approved label, unless the use is authorised by a permit or prescribed by regulation.

New section 12A - Use by veterinary surgeon on animals other than major trade species

Because of the operation of section 12, a veterinary surgeon requires the authority to use a registered veterinary chemical product, other than in accordance with the instructions on the approved label, to treat animals that are not major trade species animals. ‘*Major trade species animal*’ is defined in the amended Schedule ‘*Dictionary*’.

Currently veterinary surgeons are exempt from the requirements of the Chem Use Act and are therefore not restricted in the way they use registered veterinary chemical products. As new section 12 prevents all persons using these products other than in accordance with the label, sections 12A, 12B & 12C are necessary so that in specific circumstances a veterinary surgeon may use a registered veterinary chemical product other than in accordance with the approved label.

Trade species animals that are not major trade species animals are a relatively small but significant part of food and fibre production industries in Australia. The range of registered veterinary chemicals available for use on these animals (eg. alpacas, goats, crocodiles, and emus) is limited. This situation has occurred because veterinary chemical manufacturers do not consider there is sufficient economic return to justify the expense of developing and registering the products for these types of animals.

Many of these animals are affected by the same or related diseases and conditions as major trade species animals. Flexibility in chemical control of use legislation enables veterinary chemicals to be used on these animals for animal welfare purposes and to support the development of emerging industries.

Veterinary surgeons are also permitted to use registered veterinary chemical products, other than in accordance with the instructions on the approved label, on animals that are not used for food and fibre production, for example, dogs, cats, and caged birds. This provides veterinary surgeons with the flexibility to treat animals in this group according to the needs of the animal.

Veterinary surgeons’ qualifications and skills are acknowledged in the Act by allowing them to use registered veterinary chemical products contrary to label instructions within the restrictions of the Act.

A veterinary surgeon is also able to use professional judgement in the use of a registered veterinary chemical product contrary to a restraint statement on the approved label. In some circumstances, this may be the

only product available or suitable to treat a specific disease in an animal. However, because of the risks associated with this type of treatment use is restricted to treatment of a single major trade species animal.

Restraint statements on veterinary chemical product labels define situations of limitation or restriction about the use of the product, for example, residues, antibiotic resistance, environmental issues, or possible adverse consequences to the welfare of an animal.

‘Restraint statement’ and *‘Single’* are defined in the amended Schedule *‘Dictionary’*.

The Act does not allow a use by injection unless the label gives instructions for this use. It is considered unsafe to allow use by injection of products that are labeled for use orally or topically and, therefore, this is not authorised under any circumstances.

The unauthorised use of a registered veterinary chemical product by injection or contrary to a restraint statement on the label is also applicable to Sections 12B and 12D of the Act.

New section 12B - Use by veterinary surgeon on major trade species animals

As mentioned in 12A, section 12 prevents the use of registered veterinary chemical products other than in accordance with the label, therefore this section is required so that a veterinary surgeon may use a registered veterinary chemical product, other than in accordance with the instructions on the approved label, to treat major trade species animals. *‘Major trade species animal’* is defined in the amended Schedule *‘Dictionary’*.

This enables veterinary surgeons to treat a particular major trade species animal with products not registered for the species. If the label does not include instructions for the treatment of any major trade species animal the veterinary surgeon may only treat a single animal. This is because, although the product is registered for use on animals, the risks in relation to use on major trade species animals were not considered at the time of registration of the product by the NRA.

However, if the label does include instructions for one or more major trade species animals, the product may be used to treat another major trade species animal. For example, a veterinary surgeon may use a chemical product registered for the treatment of cattle (a major trade species) to treat

sheep (a major trade species), providing the label does not include a restraint statement prohibiting use on sheep.

The information contained in 12A in relation to the unauthorised use of a registered veterinary chemical product by injection or contrary to a restraint statement on the label applies to this section.

New section 12C - Supply by veterinary surgeon to others

Section 12 prevents the supply of registered veterinary chemical products for use other than in accordance with the label, therefore this section is required so that a veterinary surgeon may supply to other persons a registered veterinary chemical product, that is not packed and labelled in the way stated in the Agvet Code, for the treatment of an animal under the care of a veterinary surgeon. Without this provision, this practice would constitute an offence under the Agvet Code.

Veterinary surgeons often dispense small quantities of veterinary chemicals, for example, 1-2 heartworm tablets for the ongoing treatment of an animal after the initial consultation. This product is taken from the original container with the approved label attached and placed in another container.

Supplying veterinary chemicals in this way avoids the need for a person to be supplied more of the chemical product than is required to treat the animal. Providing the person is given adequate instructions for the treatment of the animal, this is an acceptable practice. Limiting the quantity of veterinary chemicals supplied to lay persons reduces the risk of misuse of these products.

New section 12D – Use by other persons in way stated in veterinary surgeon’s instructions

Under the Act, persons other than veterinary surgeons must only use registered veterinary chemical products in accordance with the approved label. However, this section allows these persons to treat animals other than in accordance with the approved label, providing they follow the instructions of the veterinary surgeon.

Permitting persons to use registered veterinary chemical products in accordance with written instructions provided by the veterinary surgeon is necessary to facilitate ongoing treatment of an animal after the initial consultation with the veterinary surgeon.

The information contained in 12A in relation to the unauthorised use of a registered veterinary chemical product by injection or contrary to a restraint statement on the label applies to this section.

Subdivision 2—Unregistered Veterinary Chemical Products

Previous legislation exempted veterinary surgeons from having to comply with control of use legislation and did not restrict the use of unregistered chemical products by veterinary surgeons. This subdivision provides for restricted controls for the use of unregistered veterinary chemical products by all persons, including veterinary surgeons, for the treatment of an animal under the care of a veterinary surgeon. ‘*Unregistered veterinary chemical product*’ is defined in the amended Schedule ‘*Dictionary*’.

Unregistered chemical products have not been subject to the rigorous evaluation required by the NRA. The labels on unregistered products have not been assessed and are unlikely to contain adequate instructions required under the approval process to ensure information critical to the safe and effective use of the product appears on the label.

Unregistered products also include previously registered products which have had registration cancelled or suspended because it has been determined that the continued use of these products could pose unacceptable risks of residues or threaten the welfare of animals.

New section 12E – Use of unregistered veterinary chemical products

The effect of this section is that the unauthorised supply and use of unregistered veterinary chemical products by all persons is prevented, unless it is authorised by a permit or prescribed by regulation.

Such use of chemicals could lead to unacceptable residues of veterinary chemicals in food or fibre products. Adequate regulatory controls assist in continued market access for Queensland food and fibre products by ensuring continued confidence in Queensland’s reputation for safe and ethically produced food and fibre products.

New section 12F – Use by veterinary surgeon

As 12E prevents the unauthorised use of unregistered veterinary chemical products by all persons, this section is required so that in some

circumstances, a veterinary surgeon may use an unregistered veterinary chemical product, where the product is the best treatment for the animal.

They may treat any number of animals other than trade species animals. This poses no risk of unacceptable residues as these animals are not used to provide food and fibre products.

However, as these products have generally not been subjected to NRA evaluation, use on trade species animals is restricted to treatment of single animals. ‘*Trade species animal*’ is defined in the amended Schedule ‘*Dictionary*’.

The use of unregistered veterinary chemical products on animals other than trade species animals poses no risk of unacceptable residues as they are not used to provide food and fibre products.

New section 12G – Supply by veterinary surgeon to others

Section 12E prevents the unauthorised supply of unregistered veterinary chemical products, however, within a veterinary practice, circumstances may arise where a veterinary surgeon may need to supply a small quantity of unregistered veterinary chemical products to another veterinary surgeon. This supply can only occur in situations where an equivalent product, which is registered for the particular animal species, is not reasonably available. Without this provision, this practice would constitute an offence under the Agvet Code.

New section 12H – Use by other persons in way stated in veterinary surgeon’s instructions

Because of the operation of 12E, this section is necessary for situations where a person other than a veterinary surgeon, uses an unregistered veterinary chemical product. They may use the product, provided they use it in accordance with the written instructions given by the veterinary surgeon. This is necessary to facilitate the ongoing treatment of an animal after the initial consultation with the veterinary surgeon.

Subdivision 3—Compounded Veterinary Chemical Products

This section provides for restricted controls over the use of compounded veterinary chemical products by all persons including veterinary surgeons, for the treatment of an animal under the care of a veterinary surgeon.

'*Compounded veterinary chemical product*' is defined in the amended Schedule '*Dictionary*'.

The use and supply of compounded veterinary chemical products, prepared by the veterinary surgeon or by a pharmacist under a veterinary surgeon's prescription, pose risks identical to the use of unregistered veterinary chemical products.

New section 12I – Use of compounded veterinary chemical products

This section prevents the unauthorised supply of compounded veterinary chemical products, by veterinary surgeons and pharmacists, and the unauthorised use of these products by all persons.

New section 12J – Use by veterinary surgeon

As 12I prevents the unauthorised use of compounded veterinary chemical products by all persons, this section is required so that, in some circumstances, a veterinary surgeon may use a compounded veterinary chemical product where the product is the best treatment for the animal.

These products are prepared by the veterinary surgeon or a pharmacist in accordance with the prescription of a veterinary surgeon and, therefore, knowledge about the residue and safety implications of such products is limited. For this reason, they may only be used in a quantity needed for a single course of treatment. In addition, use on trade species animals is restricted to treatment of single animals.

However, any number of animals other than trade species animals may be treated. The use of compounded veterinary chemical products on animals other than trade species animals poses no risk of unacceptable residues as they are not used to provide food and fibre products.

This section provides the veterinary surgeon with the flexibility to use this type of treatment where it is considered to provide the best option for treatment of the animal.

New section 12K – Supply by pharmacist

Because of the operation of 12I, this section is needed to authorise the supply of compounded veterinary chemical products by pharmacists, in a quantity needed for a single course of treatment.

New section 12L – Use by other persons in way stated in written instructions

Because of the operation of 12I, this section is necessary for situations where a person other than a veterinary surgeon, uses a compounded veterinary chemical product. They may use the product, provided they use the product in accordance with the written instructions given by the veterinary surgeon or pharmacist. This is necessary to facilitate the ongoing treatment of an animal after the initial consultation with the veterinary surgeon.

Subdivision 4—Information to be Given by Veterinary Surgeon or Pharmacist in Relation to Treatment of Animal

New section 12M – Information to be given by veterinary surgeon or pharmacist

Detailed written instructions about the treatment of animals with veterinary chemical products and compounded veterinary chemical products are necessary to ensure that the person in charge of the animal is fully informed. The instructions inform the person about the treatment undertaken by the veterinary surgeon and/or provide details to allow the person to effectively and safely use the chemical product to treat the animal. “*In charge*” has been defined in the amended Schedule ‘*Dictionary*’.

This information, particularly details of any withholding period that may apply as a result of the treatment, is critical to enable correct management decisions to be made by the person, such as the suitability of the animal for sale or slaughter, or for collection of food and fibre products.

The veterinary surgeon or pharmacist is responsible for explaining the meaning of the instructions to the person receiving the instructions, to ensure that they are fully aware of the treatment.

New section 12N – Information to be included in instructions

This section lists the specific details that the veterinary surgeon or pharmacist must include in the instructions mentioned in section 12M.

New section 12O – Instructions must be kept

It is important that people keep the written instructions given to them by the veterinary surgeon or pharmacist for a sufficient period of time to allow correct management decisions to be made in relation to the treated animals.

In addition, the details included in the instructions will facilitate the investigation of any problems that may occur, for example, unacceptable levels of residues in food and fibre produce. Domestic and export markets can be confident that Queensland is effectively regulating the use of veterinary chemicals and is able to correct problems if they occur.

Subdivision 5—Information to be Given by Person Other than Veterinary Surgeon or Pharmacist

New section 12P – Information to be given to person in charge of animal

Detailed written advice about the treatment of trade species animals with veterinary chemical products and compounded veterinary chemical products is necessary to ensure that the person in charge of the animal is fully informed.

The advice, provided by the person who has temporary custody of the animal, informs the person in charge about the details of the treatment undertaken. For example, a person will have temporary custody of an animal when they are engaged by the owner to muster and treat stock in the absence of the owner.

This information, particularly details of any withholding period that may apply as a result of the treatment, is critical to enable correct management decisions to be made by the person in charge, such as the suitability of the animal for sale or slaughter, or for collection of food and fibre products.

New section 12Q – Information to be included in written advice

This section lists the specific details that must be contained in the written advice mentioned in section 12P. These details must be provided by the person who has temporary custody of the animal. This information will ensure appropriate management decisions are made by the person in charge, in relation to the treated animals.

It is important that the person who provided the advice and the person usually in charge of the animal each keep a copy of the written advice for a sufficient period of time to facilitate the investigation of any problems that may occur, for example, unacceptable levels of residues in food and fibre produce. Domestic and export markets can be confident that Queensland is effectively regulating the use of veterinary chemicals and is able to correct problems if they occur.

Subdivision 6—Records To Be Kept

New section 12R – Records to be kept by veterinary surgeon

It is essential that veterinary surgeons make and keep detailed records of the treatment of trade species animals under their care, particularly when the treatment involves the use of a chemical product that has not been registered for that use by the NRA. The section makes veterinary surgeons accountable for the decisions they make in relation to the treatment of the animal.

Records need to be kept for a sufficient period of time to facilitate the investigation of any problems that may occur, for example, unacceptable levels of residues in food and fibre produce. Domestic and export markets can be confident that Queensland is effectively regulating the use of veterinary chemicals and is able to correct problems if they occur.

Subdivision 7—Withholding Period

New section 12S – Meaning of “withholding period”

This section defines “*Withholding period*”.

New section 12T – Identification of animals to which withholding period applies

It is critical that trade species animals that have been treated with chemical products, and a withholding period applies, be readily identified. This is to prevent such animals from unknowingly being sheared or slaughtered, and also to prevent milk or eggs from being collected, prior to the end of the withholding period. This reduces the risk of unacceptable chemical residue contamination of food and fibre products.

New section 12U – Notice of treatment on supply of trade species animal

A person may wish to supply a trade species animal that has been treated with a chemical product, and a withholding period applies, to another person before the end of the withholding period. If this happens, it is essential that sufficient details about the treatment of the animal, including in relation to the withholding period, are supplied with the animal. This ensures that the new owner of the animal is able to meet specified requirements in legislation in relation to withholding periods.

Records need to be kept for a sufficient period of time to facilitate the investigation of any problems that may occur, for example, unacceptable levels of residues in food and fibre produce. Domestic and export markets can be confident that Queensland is effectively regulating the use of veterinary chemicals and is able to correct problems if they occur.

New section 12V – Observance of Withholding Period

This section requires persons to observe withholding periods where trade species animals have been treated with chemical products. Sections 12S, 12T and 12U provide further details in relation to withholding periods.

Insertion of New Division 3 – AGRICULTURAL CHEMICAL PRODUCTS

New section 13 - Use of registered agricultural chemical products in contravention of labels

This section replaces section 8A so that it now applies only to registered agricultural chemical products in contravention of labels. Previous section 8A applied to both registered agricultural and registered veterinary chemical products.

Section 8A has been renumbered and relocated as section 13 under new Division 3 – Agricultural chemical products. The maximum penalty which applies has been increased from 40 to 600 penalty units.

Controls over the use of registered veterinary chemical products are now contained in new Division 2, Subdivision 1.

New section 13A - Use of unregistered agricultural chemical products

This section replaces section 8 so that it now applies only to unregistered agricultural chemical products. Previous section 8 applied to both unregistered agricultural and unregistered veterinary chemical products.

Section 8 has been renumbered and relocated as section 13A under new Division 3 – Agricultural chemical products. The maximum penalty which applies has been increased from 40 to 600 penalty units.

Controls over the use of unregistered veterinary chemical products are now contained in new Division 2, Subdivision 2.

Insertion of new ss 28A and 28B

Clause 27 inserts new sections 28A and 28B after section 28.

28A Application of Justices Act 1886, s76 not limited

This section provides that the express defences contained in the Act, do not limit the application of section 76 of the *Justices Act 1886*.

28B Not an offence to act under direct supervision

This section clarifies that where the Act refers to a person other than a veterinary surgeon, this does not mean a person who is acting under the direct supervision of a veterinary surgeon, for example, a veterinary nurse.

Amendment of Section 34 (Evidence etc.)

Clause 28 omits the words “and in the absence of evidence to the contrary conclusive evidence” contained in sections 34(c) to (g) and (j) to ensure conformity with fundamental legislative principles, in particular, section 4(3)(d) of the *Legislative Standards Act 1992* that legislation does not reverse the onus of proof in criminal proceedings without adequate justification.

Amendment of Section 35 (Exemption)

Clause 29 omits section 35 to conform with fundamental legislative principles, in particular section 4(4)(c) of the *Legislative Standards Act*

1992 that an Act has sufficient regard to the institution of Parliament and authorises the amendment of an Act only by another Act.

Insertion of new Part 4 – Transitional Provision for Agricultural and Veterinary Chemicals Legislation Amendment Act 2002

Clause 30 inserts new Part 4 and new section 39 ‘Exemptions Revoked’. It provides that any exemption granted under 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 of the Amendment Act.

Amendment of schedule (Dictionary)

Clause 31 amends the schedule by omitting or amending certain definitions contained in the dictionary, and inserting new definitions not previously defined.

PART 4—OTHER AMMENDMENTS

Part 4 and Schedules 1 and 2 of the Amendment Act amend the *Agricultural Chemicals Distribution Control Act 1966* and the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*.

Amendments for penalties – Schedule 1

Clause 32 provides that Schedule 1 amends penalties in the Act it mentions.

Minor and Consequential Amendments – Schedule 2

Clause 33 provides that Schedule 2 amends the Acts it mentions.

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Schedule 1 – Amendments for Penalties

Schedule 1 increases the penalties in sections 9, 16(6), 17(5), 18(2), 20(2), 24(2), 25 and 26 in the Chem Use Act.

Schedule 2 – Minor and Consequential Amendments

This Schedule contains minor and consequential amendments to the ACDC and Chem Use Acts.

TABLE OF PENALTIES UNDER THE AGRICULTURAL AND VETERINARY CHEMICALS LEGISLATION AMENDMENT BILL 2002

AGRICULTURAL CHEMICALS DISTRIBUTION CONTROL ACT 1966

Penalty Provision	Description	Current Penalty	Proposed Penalty
s. 19B(2)	<p>Notice of change in circumstances.</p> <p><i>(Where there are changes to the licensee's name, address or other circumstances prescribed under a regulation, then the licensee must give the board written notice of the change within 21 days after the change.)</i></p>	New offence	10 penalty units (PU)

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**CHEMICAL USAGE (AGRICULTURAL AND VETERINARY) CONTROL
ACT 1988**

Penalty Provision	Description	Current Penalty	Proposed Penalty
s. 5B	Inspector's identity card. <i>(Failure of person to return identity card after ceasing to be an inspector.)</i>	10 PU	No change
s. 7(1)	Use of registered agricultural and veterinary chemical products taken from unlabelled containers. <i>(Persons must not use registered agricultural or veterinary chemical products taken from a container that does not have an attached label, unless authorised.)</i>	40 PU	300 PU
s. 8(2)	Use of controlled chemicals. <i>(A person must not use a controlled chemical in a way that contravenes a condition for use of the chemical.)</i>	40 PU	600 PU
s. 9	Person not to possess or use proscribed chemical. <i>(A person who contravenes this section commits an offence, unless the possession or use is in accordance with written permission from the Minister.)</i>	100 PU	800 PU

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s. 11A(1)	<p>Claims about unregistered chemicals.</p> <p><i>(A person must not make a claim about the use of an unregistered chemical unless authorised.)</i></p>	40 PU	300 PU
s. 11B(1)	<p>Use of package that contained chemical.</p> <p><i>(A person shall not use a package to contain a substance if the package has at any time contained a chemical.)</i></p>	40 PU	300 PU
s. 12(1)	<p>Use of registered veterinary chemical products.</p> <p><i>(A veterinary surgeon must not use a registered veterinary chemical product other than in a way stated in the instructions on the approved label of the product container.)</i></p>	New offence	600 PU
s. 12(4)	<p>Use of registered veterinary chemical products.</p> <p><i>(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 of the product container.)</i></p>	New offence	600 PU
s. 12E(1)	<p>Use of unregistered veterinary chemical products.</p> <p><i>(A veterinary surgeon must not use an unregistered veterinary chemical product to treat an animal unless authorised.)</i></p>	New offence	600 PU

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s. 12E(4)	Use of unregistered veterinary chemical products. <i>(A person other than a veterinary surgeon must not use an unregistered veterinary chemical product to treat an animal unless authorised.)</i>	New offence	600 PU
s. 12I(1)	Use of compounded veterinary chemical products. <i>(A veterinary surgeon must not use a compounded veterinary chemical product to treat an animal unless authorised under 12J.)</i>	New offence	600 PU
s. 12I(3)	Use of compounded veterinary chemical products. <i>(A pharmacist must not supply a compounded veterinary chemical product to treat an animal unless authorised under 12K.)</i>	New offence	600 PU
s. 12I(5)	Use of compounded veterinary chemical products. <i>(A person other than a veterinary surgeon must not use a compounded veterinary chemical product to treat an animal unless authorised under 12L.)</i>	New offence	600 PU

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s. 12M(2)	Information to be given by veterinary surgeon or pharmacist. <i>(Failure of veterinary surgeon or pharmacist to give person in charge of an animal full instructions about the animal's treatment.)</i>	New offence	300 PU
s. 12M(5)	Information to be given by veterinary surgeon or pharmacist. <i>(Failure of the person who receives instructions to give the instructions to the person who is usually in charge of the animal in accordance with 12M(2).)</i>	New offence	100 PU
s. 12O	Instructions must be kept. <i>(Failure of person given instructions under 12M to keep instructions.)</i>	New offence	100 PU
s. 12P(2)	Information to be given to a person in charge of animal. <i>(Failure of person to give written advice about an animal's treatment to the person in charge of the animal.)</i>	New offence	300 PU
s. 12P(3)	Information to be given to a person in charge of animal. <i>(Failure of person who receives written advice to give the advice to the person in charge of the animal.)</i>	New offence	100 PU

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s. 12Q(3)	Information to be included in written advice. <i>(Failure of persons mentioned in 12Q(2) to keep a copy of written advice.)</i>	New offence	100 PU
s. 12R(2)	Records to be kept by veterinary surgeon. <i>(Failure of veterinary surgeon to keep record of treatment.)</i>	New offence	200 PU
s. 12R(3)	Records to be kept by veterinary surgeon. <i>(Failure of veterinary surgeon to keep copy of records for specified period.)</i>	New offence	200 PU
s. 12T(2)	Identification of animals to which withholding period applies. <i>(Failure of person to identify animal during the treatment and withholding periods.)</i>	New offence	300 PU
s. 12U(2)	Notice of treatment on supply of trade species animals. <i>(Failure of person who supplies a trade species animal to give the other person written notice of the treatment.)</i>	New offence	300 PU
s. 12U(4)	Notice of treatment on supply of trade species animals. <i>(Failure of person to keep a copy of the notice for specified period.)</i>	New offence	100 PU

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s. 12V(2)	Observance of withholding period. <i>(A person who contravenes this section commits an offence.)</i>	New offence	600 PU
s. 13(1)	Use of registered agricultural chemical products in contravention of labels. <i>(A person must not use a registered agricultural chemical product other than in a way stated in the instructions on the approved label of the product container unless authorised.)</i>	40 PU	600 PU
s. 13A(1)	Use of unregistered agricultural chemical products. <i>(A person must not use an unregistered agricultural chemical product unless authorised.)</i>	40 PU	600 PU
s. 14(3)	Recall of chemicals etc. <i>(Contravention of notice under subsection (1) by person.)</i>	100 PU	No change
s. 15	Chemical residues to be notified. <i>(Failure of analyst to notify standards officer of residue above MRL.)</i>	40 PU	No change
s. 16(6)	Agricultural produce containing chemical residues not to be used. <i>(A person must not contravene a notice in accordance with 16(1) or 16(2) unless the person has a reasonable excuse.)</i>	100 PU	800 PU

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s. 17(5)	Approval to use agricultural produce or cultivate plants on land. <i>(A person who uses, destroys, or disposes of a prescribed substance or cultivates plants on land contrary to an approval given under section 17 commits an offence.)</i>	100 PU	800 PU
s. 18(2)	Destruction of agricultural product at direction of chief executive. <i>(A person given a notice under section 18(1) must not use, destroy or dispose of the substance unless directed by the notice.)</i>	40 PU	600 PU
s. 20(2)	Powers of inspectors. <i>(Failure of a person to comply with the requirement of an inspector made under section 20(1).)</i>	40 PU	100 PU
s. 24(2)	Production of records. <i>(Failure of a person to immediately produce the record for inspection by the inspector, unless there is reasonable excuse.)</i>	40 PU	50 PU
s. 25	Obstruction of inspector. <i>(A person who contravenes this section commits an offence.)</i>	40 PU	500 PU

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s. 26	<p>Tampering with seals, samples etc.</p> <p><i>(A person who contravenes this section commits an offence.)</i></p>	40 PU	100 PU
s. 30A(2)	<p>Executive Officers must ensure corporation complies with Act.</p> <p><i>(Failure to ensure corporation complies with Act.)</i></p>	The penalty for the contravention of the provision by an individual.	No change