



Agricultural and Veterinary Chemicals (Queensland) Act 1994

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Reprint note

Section 19 was incorrectly omitted from an earlier version of this reprint due to an incorrect code that set the status of the provision as repealed.

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Queensland

Agricultural and Veterinary Chemicals (Queensland) Act 1994

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Agricultural and Veterinary Chemicals (Queensland) Act 1994

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

Preamble

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

- 1 The protection of the health and safety of human beings, animals and the environment is essential to the wellbeing of society and can be enhanced by putting in place a system to regulate agricultural chemical products and veterinary chemical products (*chemical products*).
- 2 The principle of ecologically sustainable development requires a regulatory system designed to ensure the use of chemical products today will not impair the prospects of future generations.
- 3 The furthering of trade and commerce between Australia and places outside Australia, and the present and future economic viability and competitiveness of primary industry and a domestic industry for manufacturing and formulating chemical products—
 - (a) are essential for the wellbeing of the economy; and
 - (b) require a system for regulating chemical products that is cost effective, efficient, predictable, adaptive and responsive.
- 4 It is desirable to establish a regulatory system that is open and accountable and gives opportunity for public input about the regulation of chemical products.

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- 5 The system should, as far as practicable, be uniform throughout Australia.
- 6 Uniformity could best be achieved by the enactment of legislation by the Commonwealth Parliament as a law for the government of the Australian Capital Territory and the adoption of the legislation by the Parliaments and legislatures of the States and the Northern Territory.

Part 1 Preliminary

1 Short title

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

2 Commencement

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

3 Definitions

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

4 Jervis Bay Territory

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

Part 2 **The Agvet Code, and Agvet Regulations, of this jurisdiction**

5 Application of Agvet Code in this jurisdiction

The Code set out in the schedule to the Agricultural and Veterinary Chemicals Code Act—

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

6 Application of Agvet Regulations in this jurisdiction

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

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

6A Application of legislative instruments made under Agricultural and Veterinary Chemicals Code Act

- (1) A legislative instrument in force under the Agricultural and Veterinary Chemicals Code Act applies as a legislative instrument for the purposes of the Agvet Code of Queensland and the Agvet Regulations of Queensland.
- (2) In this section—

legislative instrument means a legislative instrument under the *Acts Interpretation Act 1901* (Cwlth), section 15AE.

7 Interpretation of Agvet Code and Agvet Regulations of this jurisdiction

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

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

the Minister for this jurisdiction means the Minister.

this jurisdiction means Queensland.

- (2) Subject to part 1 of the Agvet Code of this jurisdiction, the Commonwealth Interpretation Act applies as a law of this jurisdiction to—
 - (a) the Agvet Code, and Agvet Regulations, of this jurisdiction; and
 - (b) any instrument made, granted or issued under the Code or Regulations.
- (3) For the purposes of subsection (2), the Commonwealth Interpretation Act applies as if—
 - (a) the Agvet Code of this jurisdiction were a Commonwealth Act; and
 - (b) the Agvet Regulations of this jurisdiction or instruments mentioned in the subsection were regulations or instruments made under a Commonwealth Act.
- (4) The *Acts Interpretation Act 1954* does not apply to—
 - (a) the Agvet Code, or Agvet Regulations, of Queensland; or
 - (b) any instrument made, granted or issued under the Code or Regulations.

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

- (1) In this section—

Commonwealth ancillary criminal laws means—

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

-
- (2) The Commonwealth ancillary criminal laws apply as laws of this jurisdiction to an offence against the Agvet Code, or Agvet Regulations, of this jurisdiction—
 - (a) as if a reference in the laws to a law of the Commonwealth were a reference to the Code or Regulations; and
 - (b) to the exclusion of laws of this jurisdiction to the same or a similar effect.
 - (3) In the Agvet Code, or Agvet Regulations, of this jurisdiction, a reference to an offence against the Code or Regulations includes a reference to a related offence against the Commonwealth ancillary criminal laws.

Part 3 **Citing the Agvet Codes, and Agvet Regulations, of other jurisdictions**

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

- (1) This section has effect for the purposes of an Act, a law of this jurisdiction or an instrument made under an Act or law of this jurisdiction.
- (2) If a law of a jurisdiction other than this jurisdiction provides that the Code set out in the schedule to the Agricultural and Veterinary Chemicals Code Act as in force for the time being applies as a law of the jurisdiction, the Agvet Code of the jurisdiction is the Agvet Code so set out, applying as a law of the jurisdiction.
- (3) If a law of a jurisdiction other than this jurisdiction provides that the regulations in force for the time being under the Agricultural and Veterinary Chemicals Code Act, section 6 apply as regulations in force for the purposes of the Agvet

Code of the jurisdiction, the Agvet Regulations of the jurisdiction are the regulations so applying.

10 References to Agvet Codes and Agvet Regulations

- (1) The object of this section is to help ensure the Agvet Code of this jurisdiction can operate, in appropriate circumstances, as if the Code, together with the Agvet Code of each other jurisdiction, made up a single national Agvet Code applying throughout Australia.
- (2) A reference in an instrument to the Agvet Codes, or Agvet Regulations, is taken, for the purposes of the laws of this jurisdiction—
 - (a) to be a reference to the Agvet Code, or Agvet Regulations, of this jurisdiction; and
 - (b) to include a separate reference to the Agvet Code, or Agvet Regulations, of each other jurisdiction.
- (3) Subsection (2) has effect except so far as the contrary intention appears in the instrument or the context of the reference otherwise requires.

Part 4 Application of Agvet Codes to the Commonwealth, States and Territories

11 Agvet Code of this jurisdiction

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

12 Agvet Code of other jurisdictions

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

13 No liability to prosecution

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

14 Overriding the prerogative

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

Part 5 Application of Commonwealth administrative laws to Agvet Code and Agvet Regulations of this jurisdiction

15 Object of pt 5

The object of this part is to help ensure the Agvet Code of this jurisdiction and the Agvet Code of each other jurisdiction are administered on a uniform basis.

16 Application of Commonwealth administrative laws in relation to applicable provisions

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

- (2) The provisions of the Agvet Code of this jurisdiction that require the APVMA to give brief particulars of reasons for decisions do not affect the obligations of the APVMA under the *Administrative Appeals Tribunal Act 1975* (Cwlth), section 28, as that section applies as a law of this jurisdiction under subsection (1).
- (3) The provisions of the Agvet Code of this jurisdiction that relate to the disclosure of confidential commercial information do not affect the operation of the *Freedom of Information Act 1982* (Cwlth) as that Act applies as a law of this jurisdiction under subsection (1).
- (4) For a law of this jurisdiction, a matter arising in relation to the applicable provisions of this jurisdiction is taken—
 - (a) to be a matter arising in relation to laws of the Commonwealth in the same way as if the provisions were laws of the Commonwealth; and
 - (b) not to be a matter arising in relation to laws of this jurisdiction.
- (5) Subsection (4) has effect except as prescribed by a regulation under section 32.

17 Functions and powers conferred on Commonwealth officers and authorities

- (1) A Commonwealth administrative law applying because of section 16 that confers on a Commonwealth officer or authority a function or power also confers on the officer or authority the same function or power in relation to a matter arising in relation to an applicable provision of this jurisdiction.
- (2) In performing a function or exercising a power conferred under subsection (1), the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power under the Commonwealth administrative law.

18 Reference in Commonwealth administrative law to a provision of another law

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

19 Construction of references to Part IVA of Commonwealth AAT Act

For section 16, a reference in a provision of the *Administrative Appeals Tribunal Act 1975* (Cwlth) (as the provision applies as a law of this jurisdiction) to the whole or any part of Part IVA of that Act is taken to be a reference to the whole or any part of that part as it has effect as a law of the Commonwealth.

Part 7 Australian Pesticides and Veterinary Medicines Authority

21 Conferral of functions and powers on APVMA

- (1) The APVMA has the functions and powers conferred or expressed to be conferred on it under this Act or the Agvet Code of this jurisdiction.
- (2) Besides the powers mentioned in subsection (1), the APVMA may do all things necessary or convenient to be done in performing its functions and, in particular, may—
 - (a) enter into contracts; and
 - (b) acquire, hold and dispose of real and personal property; and
 - (c) occupy, use and control any land or building owned or held under lease by the Commonwealth, a State or a Territory and made available for the purposes of the APVMA; and

- (d) appoint agents and attorneys, and act as agent for other persons; and
- (e) do anything incidental to any of its powers.

22 Agreements and arrangements

- (1) The Minister, or a person authorised in writing by the Minister, may enter into an agreement or arrangement with the Commonwealth Minister for the performance of functions or the exercise of powers by the APVMA as an agent of the State.
- (2) The APVMA has the functions and powers mentioned in the agreement or arrangement.

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

The APVMA may do acts in this jurisdiction in the performance or exercise of any function or power—

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

23A Consultation with gene technology regulator

- (1) A function or power conferred on the APVMA under section 8A of the Agricultural and Veterinary Chemicals (Administration) Act about any matter arising in relation to the Code set out in the schedule to the Agricultural and Veterinary Chemicals Code Act extends to any corresponding matter arising in relation to the applicable provisions of this jurisdiction, and the section applies accordingly.
- (2) If the APVMA gives the regulator within the meaning of the *Gene Technology Act 2001* a notice under section 8A(3) of the

Agricultural and Veterinary Chemicals (Administration) Act (as that section applies by force of subsection (1) of this section), the regulator may give written advice to the APVMA about the application, reconsideration or issue.

- (3) The advice must be given within the period stated in the notice.
- (4) A reference in the Agvet Code of this jurisdiction to a provision of section 8A of the Agricultural and Veterinary Chemicals (Administration) Act has effect as if it were a reference to that provision as applying by force of subsection (1) of this section.

Note—

This section does not appear in the Commonwealth Act but is consistent with amendments to Commonwealth Acts made by the *Gene Technology (Consequential Amendments) Act 2000* (Cwlth), schedule 1, items 1 to 7.

24 Commonwealth Minister may give directions in exceptional circumstances

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

Part 8 Miscellaneous

25 Orders

Orders in force for the time being under the Agricultural and Veterinary Chemicals Code Act, section 7 have the same effect for the purposes of the Agvet Code of this jurisdiction

as they would have if they were provisions of the Agvet Regulations of this jurisdiction.

26 Manufacturing principles

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

27 Delegation

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

28 Conferral of powers on State officers

- (1) This section applies if an officer of a department, administrative unit or authority is authorised, under the Agricultural and Veterinary Chemicals (Administration) Act, section 69F, by the chief executive officer of the APVMA to exercise the powers or perform the functions of an inspector for the purposes of a particular relevant law.
- (2) The powers and functions are conferred on the officer.
- (3) The powers and functions are to be exercised or performed under the authorisation but are taken to have been validly exercised or performed despite any failure to comply with a condition or restriction of the authorisation.
- (4) Words and expressions used in this section have the same meanings as they have in the Agricultural and Veterinary Chemicals (Administration) Act, section 69F.

28A Inspectors and analysts

- (1) This section applies for each person as follows (an *officer*)—
 - (a) an inspector appointed under the Agricultural and Veterinary Chemicals (Administration) Act, section 69F(1);
 - (b) an analyst approved under the Agricultural and Veterinary Chemicals (Administration) Act, section 69G.
- (2) An officer has, for a matter arising in relation to an applicable provision of this jurisdiction, the functions and powers conferred or expressed to be conferred on him or her under the applicable provisions of this jurisdiction.

28B Validation of actions of inspectors and analysts

- (1) In this section—

officer means an officer as defined under section 28A.

relevant section means the *Agricultural and Veterinary Chemicals (Queensland) Amendment Act 2001*, section 5.

relevant time, in relation to a thing, means the time at which the thing was done or omitted to be done or purported to have been done or omitted to be done.

- (2) Anything done or omitted to be done by an officer before the commencement of the relevant section that would have been validly done or omitted had the relevant section come into operation before the relevant time has, and is taken always to have had, the same force and effect as it would have had if the relevant section had come into operation before the relevant time.

Editor's note—

See also the *Co-operative Schemes (Administrative Actions) Act 2001*, part 2 (Validation of invalid administrative actions).

29 Application of fees and taxes

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

30 Documents or substances held by previous registering authority may be given to APVMA

An authority of this jurisdiction that, immediately before the commencement of this section, performed functions under a provision of the law of this jurisdiction that corresponded to a provision of the Agvet Code of this jurisdiction may give to the APVMA documents or substances in its possession or custody that were received by it in the performance of the functions or otherwise relate to the performance of the functions.

31 Section 30 has effect despite any other law

Section 30 has effect despite any other law of this jurisdiction, including, for example, the *Public Records Act 2002*.

32 Regulation-making power

The Governor in Council may make regulations under this Act.

33 Eligible laws

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

Part 9 Imposition of fees and taxes

34 Fees (including taxes)

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

Part 10 Conferral of functions on Commonwealth Director of Public Prosecutions

35 Conferral of functions on Commonwealth Director of Public Prosecutions

The Commonwealth Director of Public Prosecutions (the *Commonwealth Director*) may—

- (a) start prosecutions on indictment for indictable offences against the Agvet Code, or Agvet Regulations, of this jurisdiction; and
- (b) carry on prosecutions of the kind mentioned in paragraph (a) (other than prosecutions started by the Attorney-General or the Director of Prosecutions), whether or not started by the Commonwealth Director; and
- (c) if the Attorney-General or Director of Prosecutions asks the Commonwealth Director in writing to carry on a prosecution of the kind mentioned in paragraph (a) that was started by the Attorney-General or Director of Prosecutions—carry on the prosecution; and
- (d) start proceedings for the commitment of persons for trial for indictable offences against the Agvet Code, or Agvet Regulations, of this jurisdiction; and

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- (e) start proceedings for the summary conviction of persons for offences against the Agvet Code, or Agvet Regulations, of this jurisdiction; and
- (f) carry on proceedings of a kind mentioned in paragraph (d) or (e) (whether or not started by the Commonwealth Director); and
- (g) do anything incidental or conducive to the performance of any of the functions mentioned in paragraphs (a) to (f).

Part 11 Transitional provisions

36 Transitional provision for Agricultural and Veterinary Chemicals (Queensland) Amendment Act 2001

- (1) Replacement part 5 applies in relation to matters arising in relation to the applicable provisions of this jurisdiction, and decisions made or other things done or omitted to be done under the Commonwealth administrative laws relating to the matters, before, on or after the commencement of that part.
- (2) In this section—

replacement part 5 means part 5, as inserted by the *Agricultural and Veterinary Chemicals (Queensland) Amendment Act 2001*.

Schedule Dictionary

section 3

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

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

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

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

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

applicable provision of a jurisdiction means a provision of—

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

APVMA means the Australian Pesticides and Veterinary Medicines Authority under the *Agricultural and Veterinary Chemicals (Administration) Act*.

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

Commonwealth administrative laws means—

- (a) the following Commonwealth Acts—
 - (i) the *Administrative Appeals Tribunal Act 1975*, excluding part IVA;
 - (ii) the *Freedom of Information Act 1982*;

(iii) the *Ombudsman Act 1976*;

(iv) the *Privacy Act 1988*; and

(b) the regulations in force under the Acts.

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

confer includes impose.

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

corresponding law means—

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

instrument means a document, including, for example—

- (a) an Act or instrument made under an Act; or
- (b) a law of this jurisdiction or an instrument made under a law of this jurisdiction; or
- (c) an award or other industrial determination or order, or an industrial agreement; or
- (d) any other order (whether executive, judicial or otherwise); or
- (e) a notice, certificate or licence; or
- (f) an agreement; or
- (g) an application made, information or complaint laid, affidavit sworn, or warrant issued, for any purpose; or
- (h) an indictment, presentment, summons or writ; or
- (i) any other pleading in, or process issued about, a legal or other proceeding.

jurisdiction means a State or the participating Territories.

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

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

participating Territory means—

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

State includes the Northern Territory.

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

this jurisdiction means Queensland.