



New South Wales

# Pesticides Amendment Bill 2015

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are:

- (a) to amend the *Pesticides Act 1999*:
  - (i) to provide for a new licensing regime for pesticide work, and
  - (ii) to rename certificates of competency under the Act as restricted pesticide authorisations, and
  - (iii) to align the provisions of the Act with recent changes made to the Agvet Code, and
  - (iv) to enact provisions to improve the administration and enforcement of the Act, and
  - (v) to make amendments in the nature of statute law revision, and
  - (vi) to enact savings and transitional provisions consequent on the enactment of the proposed Act, and
- (b) to make consequential amendments to the *Land and Environment Court Act 1979* and *Work Health and Safety Regulation 2011*.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act.

## Schedule 1 Amendment of Pesticides Act 1999 No 80

### 1.1 Licensing and restricted pesticide authorisations

Currently, Division 1 of Part 6 of the *Pesticides Act 1999* (the *principal Act*) provides for the licensing of pilots who apply pesticides using aircraft and persons who run businesses that do so. Certain other work involving the application of pesticides and the use of fumigants is regulated under the *Work Health and Safety Regulation 2011*, which continues in operation Part 9.1 of the repealed *Occupational Health and Safety Regulation 2001* in relation to such work (the *continued OHS provisions*). The continued OHS provisions require (with some exceptions) certificates of competency in order to do that work.

The proposed Act provides for the cessation of the continued OHS provisions and the transfer of licensing of the application of pesticides and use of fumigants to new provisions to be inserted in the principal Act.

Schedule 1.1 amends the principal Act:

- (a) to enable the regulations to prescribe certain kinds of activities involving pesticides as kinds of *prescribed pesticide work*, and
- (b) to make it an offence for a person to carry out prescribed pesticide work (or employ a person to carry out prescribed pesticide work) unless the person carrying out the work holds the kind of licence prescribed by the regulations for that work, and
- (c) to provide for the granting of such licences, licence conditions, duration of licences and the suspension and revocation of licences, and
- (d) to require the Environment Protection Authority to keep a Register of Licences and to enable it to make information in the Register available to members of the public, and
- (e) to rename certificates of competency under the principal Act as restricted pesticide authorisations to avoid confusion with certificates of competency issued under the continued OHS provisions (which will become licences under the Act).

### 1.2 Harmonisation with Agvet Code

Schedule 1.2 amends the principal Act to align its provisions with those of the Agvet Code following recent amendments to the Code. In particular, Schedule 1.2:

- (a) updates notes and definitions in the principal Act to reflect changes in the Agvet Code, and
- (b) includes certain deemed permits under the Agvet Code in the definition of *permit* for the principal Act, and
- (c) includes certain pesticides the approvals of which have been suspended or cancelled under the Agvet Code in the definition of *unregistered pesticide* for the principal Act, and
- (d) makes changes to the Act consequent on the introduction of the concept of reserved chemical products in the Agvet Code.

### 1.3 Administration and enforcement

Schedule 1.3 amends the principal Act:

- (a) to make it clear that offences under the principal Act involving damage to property resulting from pesticide use extend to situations where pesticide use prevents, or is likely to prevent, any part of premises used for agricultural operations from being used for such operations or reduces, or is likely to reduce, the capacity of a part of premises to be used for such operations, and
- (b) to make it an offence for a person to use a pesticide in a manner that harms a companion animal that is in or on premises with the consent of the owner or occupier of the premises, and
- (c) to enable the Minister to delegate the Minister's functions with respect to the making of pesticide control orders to the Chairperson of the Environment Protection Authority, and

- (d) to enable a prohibited residue notice or order to extend to persons involved in growing or supplying produce to which the notice or order relates, and
- (e) to enable a prohibited residue notice or order to require a person to whom it applies to report on and monitor prohibited residue in produce and to arrange for analysis to be undertaken of prohibited residue and the findings of the analysis to be reported to the Environment Protection Authority, and
- (f) to enable the Environment Protection Authority to enforce written undertakings given to it in connection with a matter in relation to which the Authority has a function under the principal Act, and
- (g) to enable regulations to be made for or with respect to the analysis, reporting and monitoring of pesticide residues by growers and suppliers of produce.

#### **1.4 Statute law revision**

Schedule 1.4 makes certain amendments in the nature of statute law revision, including providing for the abolition of the now defunct Pesticides Implementation Committee.

#### **1.5 Savings and transitional provisions**

Schedule 1.5 amends the principal Act:

- (a) to update provisions concerning the making of savings and transitional regulations, and
- (b) to include savings and transitional provisions consequent on the enactment of the proposed Act.

### **Schedule 2 Consequential amendment of other legislation**

Schedule 2.1 makes an amendment to the *Land and Environment Court Act 1979* to ensure that proceedings to enforce undertakings by the Environment Protection Authority under its new powers are allocated to Class 4 of the Court's jurisdiction.

Schedule 2.2 amends the *Work Health and Safety Regulation 2011* to provide for the continued OHS provisions to cease to have effect on a day declared by regulations under the principal Act.