



Agricultural and Veterinary Chemicals Act 1994

Act No. 36 of 1994 as amended

This compilation was prepared on 30 July 2004
taking into account amendments up to Act No. 79 of 2004

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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An Act to make a law for the government of certain Territories in relation to the evaluation, registration and control of agricultural and veterinary chemical products, and for related purposes

Recognising:

- (a) that the protection of the health and safety of human beings, animals and the environment is essential to the well-being of society and can be enhanced by putting in place a system to regulate agricultural chemical products and veterinary chemical products; and
- (b) that the principle of ecologically sustainable development requires a regulatory system that is designed to ensure that the use of such products today will not impair the prospects of future generations; and
- (c) that 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 of a domestic industry for manufacturing and formulating such products, are essential for the well-being of the economy and require a system for regulating such products that is cost-effective, efficient, predictable, adaptive and responsive; and
- (d) that it is desirable to establish a regulatory system that is open and accountable and gives opportunity for public input with respect to the regulation of such products; and
- (e) that the system should, so far as practicable, be uniform throughout Australia; and

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- (f) that uniformity could best be achieved by the enactment of legislation by the Parliament of the Commonwealth as a law for the government of the Australian Capital Territory and the adoption of that legislation by the Parliaments and legislatures of the States and the Northern Territory:

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title [see Note 1]

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

2 Commencement [see Note 1]

- (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.
- (2) If this Act does not commence under subsection (1) within the period of 12 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that period.

3 Object

- (1) The object of this Act is to make a law for the government of certain Territories in relation to the evaluation, registration and control of agricultural chemical products and veterinary chemical products, and for related purposes.
- (2) This Act has effect, and is to be interpreted, accordingly.
- (3) Despite subsection (1) and section 9, this Act, the *Agricultural and Veterinary Chemicals Code Act 1994* and the Agvet Code of the participating Territories are not, for the purposes of subsection 22(3) of the *Acts Interpretation Act 1901*, Acts providing for the administration or government of a Territory.

4 Definitions

In this Act, unless the contrary intention appears:

Agvet Code of the participating Territories has the meaning given by subsection 5(1) of the *Agricultural and Veterinary Chemicals Code Act 1994*.

Agvet Codes has the meaning given by section 12.

Agvet Regulations has the meaning given by section 12.

Agvet Regulations of the participating Territories has the meaning given by subsection 5(2) of the *Agricultural and Veterinary Chemicals Code Act 1994*.

applicable provision, in relation to a jurisdiction, means a provision of:

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

APVMA means the Australian Pesticides and Veterinary Medicines Authority continued in existence by section 6 of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

Australia includes the external Territories to which this Act extends.

authority, in relation to the Commonwealth, includes:

- (a) a body corporate, or an unincorporated body, established for a public purpose by or under an Act; and
- (b) a tribunal or authority established by or in accordance with an Act.

chemical product has the same meaning as in the Agvet Code of the participating Territories.

confer, in relation to a duty, includes impose.

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corresponding Act means an Act of a State 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 a State; or
- (d) rules of court made under a corresponding Act.

instrument means any document whatever, including:

- (a) an Act or an instrument made under an Act; or
- (b) a law of a participating Territory or an instrument made under such a law; 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 in connection with, a legal or other proceeding.

jurisdiction means:

- (a) a State; or
- (b) the participating Territories.

modifications includes additions, omissions and substitutions.

officer, in relation to the Commonwealth, includes:

- (a) a Minister; and
- (b) a person holding:
 - (i) an office established by or under an Act; or
 - (ii) an appointment made under an Act; or
 - (iii) an appointment made by the Governor-General or a Minister but not under an Act; and

- (c) a person who is a member or officer of an authority of the Commonwealth; and
- (d) a person who is in the service or employment of the Commonwealth, or of an authority of the Commonwealth, or is employed or engaged under an Act.

participating Territory means:

- (a) the Australian Capital Territory; or
- (b) another Territory that is declared by regulations in force under section 25 to be a participating Territory.

repealed Act means the *Agricultural and Veterinary Chemicals Act 1988*.

State includes the Northern Territory.

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

5 Jervis Bay Territory

For the purposes of this Act, the Jervis Bay Territory is taken to be part of the Australian Capital Territory.

6 Extension to external Territories

This Act extends to every external Territory that is a participating Territory.

Part 2—The Agvet Code, and the Agvet Regulations, of the participating Territories

7 Application of Agvet Code in the participating Territories

- (1) The Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* as in force for the time being applies as a law for the government of the participating Territories.
- (2) The provisions of that Code as so applying are in addition to, and do not affect, the *Industrial Chemicals (Notification and Assessment) Act 1989*, the *Food Standards Australia New Zealand Act 1991* and the *Therapeutic Goods Act 1989*.
- (3) The powers to require the recall of chemical products that are conferred on the APVMA under that Code as so applying are in addition to, and do not affect, the powers conferred by section 65F of the *Trade Practices Act 1974*.
- (4) The provisions of that Code as so applying that require the APVMA to give brief particulars of reasons for decisions do not affect the obligations of the APVMA under section 28 of the *Administrative Appeals Tribunal Act 1975* or section 13 of the *Administrative Decisions (Judicial Review) Act 1977*.
- (5) The provisions of that Code as so applying that relate to the disclosure of confidential commercial information do not affect the operation of the *Freedom of Information Act 1982*.

8 Application of Agvet Regulations in the participating Territories

The regulations in force for the time being under section 6 of the *Agricultural and Veterinary Chemicals Code Act 1994* apply as regulations in force for the purposes of the Agvet Code of the participating Territories.

9 Agvet Code of the participating Territories taken to be an Act

The Agvet Code of the participating Territories is taken for all purposes to be an Act.

10 Relationship between the Agvet Code and Agvet Regulations of the participating Territories and the laws of a participating Territory

(1) In this section:

the Code means the Agvet Code, and the Agvet Regulations, of the participating Territories.

(2) The object of this section is to avoid or resolve inconsistencies between the Code and the laws of a participating Territory.

(3) Regulations under section 25:

(a) may provide that specified laws of a participating Territory have effect despite the Code or specified provisions of the Code; and

(b) may provide that the Code, or specified provisions of the Code, has or have effect with such modifications as the regulations prescribe.

(4) Regulations under section 25 that take effect within 12 months after an external Territory becomes a participating Territory may amend or repeal laws of that Territory.

Part 3—Citing the Agvet Code and the Agvet Regulations

11 References to Agvet Code and Agvet Regulations of other jurisdictions

- (1) This section has effect for the purposes of an Act, a law of a participating Territory, or an instrument made under an Act or such a law.
- (2) If a law of a State provides that the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* as in force for the time being applies as a law of that State, the Agvet Code of that State is the Code so set out, applying as a law of that State.
- (3) If a law of a State provides that the regulations in force for the time being under section 6 of the *Agricultural and Veterinary Chemicals Code Act 1994* apply as regulations in force for the purposes of the Agvet Code of that State, the Agvet Regulations of that State are those regulations as so applying.

12 References to Agvet Codes and Agvet Regulations

- (1) The object of this section is to help ensure that the Agvet Code of the participating Territories can operate, in appropriate circumstances, as if that Code, together with the Agvet Code of each State, constituted a single national Agvet Code applying throughout Australia.
- (2) Subject to this section, a reference in an instrument to the Agvet Codes, or to the Agvet Regulations, is taken, for the purposes of the laws of the Commonwealth and of the laws of the participating Territories:
 - (a) to be a reference to the Agvet Code, or to the Agvet Regulations, as the case may be, of the participating Territories; and

- (b) to include a separate reference to the Agvet Code, or to the Agvet Regulations, as the case may be, of each State.
- (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 Crown

13 Agvet Code of the participating Territories

The Agvet Code of the participating Territories binds the Crown in all its capacities.

14 Agvet Code of other jurisdictions

The Agvet Code of each State binds the Crown in right of the Commonwealth, of the Australian Capital Territory and of Norfolk Island.

15 Crown not liable to prosecution

Nothing in this Part, or in the Agvet Code of any jurisdiction, renders the Crown liable to be prosecuted for an offence.

16 This Part overrides the prerogative

If, because of this Part, a provision of a law of the Commonwealth or of a State binds the Crown in right of the Commonwealth, of the Australian Capital Territory or of Norfolk Island, the Crown in that capacity is subject to that provision despite any prerogative right or privilege.

Part 5—Performance of functions that corresponding laws of States confer on Commonwealth authorities and officers

17 Ministers

A corresponding law may confer prescribed functions and powers on a Minister.

18 Commonwealth authorities and officers

- (1) A corresponding law of a jurisdiction may confer duties, functions and powers in respect of any matter arising in relation to the applicable provisions of the jurisdiction:
 - (a) upon the Administrative Appeals Tribunal; or
 - (b) upon an inspector appointed under subsection 69F(1) of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*; or
 - (c) upon an analyst approved under section 69G of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

Note: Subsection 7(2) of the *Agricultural and Veterinary Chemicals (Administration) Act 1992* deals with functions and powers conferred on the APVMA by State laws.

- (2) A corresponding law may confer such other duties, functions and powers as are prescribed upon authorities and officers of the Commonwealth.
- (3) In enacting subsections (1) and (2), it is the intention of the Parliament to rely on all powers available to it under the Constitution.

Section 18A

18A Conferral of duties, functions and powers

- (1) To the extent that an authority or officer of the Commonwealth (including a Minister) has a duty, function or power that is conferred, or taken to be conferred, by a corresponding law:
 - (a) that duty, function or power is not taken to be conferred by Commonwealth law; and
 - (b) section 18 is not taken to authorise the conferral of the duty, function or power;if the conferral or authorisation would contravene a constitutional doctrine restricting the duties that may be conferred on authorities or officers of the Commonwealth, or would otherwise exceed the legislative power of the Commonwealth.
- (2) If, to ensure the validity of the conferral of a duty, function or power purportedly conferred on an authority or officer of the Commonwealth (including a Minister) by a corresponding law, it is necessary that the duty, function or power be conferred by a law of the Commonwealth, rather than by a law of a State, the duty, function or power is taken to be conferred by this Act to the extent necessary to ensure that validity.
- (3) If, because of subsection (2), this Act is taken to confer a duty, function or power upon an authority or officer of the Commonwealth (including a Minister), it is the intention of the Parliament to rely on all powers available to it under the Constitution to support the conferral of the duty, function or power.
- (4) Subsections (2) and (3) do not limit section 18.

19 Gazette notices under corresponding laws

A corresponding law may require or permit a document, or a copy of a document, to be published in the *Gazette*.

Part 6—Jurisdiction of courts

20 Jurisdiction of Federal Court and courts of Territories

- (1) Jurisdiction is conferred on the Federal Court of Australia with respect to all civil matters arising under the Agvet Code of the participating Territories or the Agvet Regulations of the participating Territories.
- (2) Subject to section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, jurisdiction is conferred on the courts of the participating Territories with respect to all civil matters arising under the Agvet Code of the participating Territories or the Agvet Regulations of the participating Territories.
- (3) Jurisdiction is conferred on the courts of the participating Territories with respect to all criminal matters arising under the Agvet Code of the participating Territories or the Agvet Regulations of the participating Territories.
- (4) The Federal Court of Australia may exercise jurisdiction (whether original or appellate) conferred on that Court by a law of the Northern Territory corresponding to this Part with respect to matters arising under the Agvet Code or the Agvet Regulations of the Northern Territory.

21 Exercise of jurisdiction under cross-vesting provisions

This Act does not affect the operation of a provision of any other law of the Commonwealth, or any law of a State or of a participating Territory, relating to cross-vesting of jurisdiction.

Part 7—Miscellaneous

22 Orders

Orders in force for the time being under section 7 of the *Agricultural and Veterinary Chemicals Code Act 1994* have the same effect for the purposes of the Agvet Code of the participating Territories as they would have if they were provisions of the Agvet Regulations of those Territories.

23 Manufacturing principles

- (1) The APVMA may determine for the purposes of Part 8 of the Agvet Code of the participating Territories written principles to be observed in the manufacture of chemical products that are consistent with the Agvet Codes, the Agvet Regulations and the laws of any jurisdiction that relate to occupational health or safety.
- (2) The manufacturing principles may relate to:
 - (a) the standards to be maintained, and the equipment to be used, at premises used for the manufacture of chemical products; or
 - (b) procedures for quality assurance and quality control to be employed in the manufacture of chemical products; or
 - (c) the qualifications and experience required of persons employed in the manufacture of chemical products; or
 - (d) the manufacturing practices to be employed in the manufacture of chemical products; or
 - (e) other matters relevant to the quality, safety and efficacy of chemical products that are manufactured in this jurisdiction; and may include codes of good manufacturing practice.
- (3) Manufacturing principles are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

24 Repeal and transitional provisions

- (1) The *Agricultural and Veterinary Chemicals Act 1988* is repealed.
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- (2) Despite subsection (1), section 47 of the repealed Act:
- (a) continues in force for the purposes of its application in relation to the period beginning on 1 July 1993 and ending immediately before the commencement of this Act; and
 - (b) if that period is shorter or longer than one year—applies as if that period were a year.

25 Regulations

The Governor-General may make regulations prescribing matters required or permitted by this Act to be prescribed.

Part 8—Imposition of fees and taxes

26 Fees (including taxes)

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

Table of Acts**Notes to the *Agricultural and Veterinary Chemicals Act 1994*****Note 1**

The *Agricultural and Veterinary Chemicals Act 1994* as shown in this compilation comprises Act No. 36, 1994 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions see Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Agricultural and Veterinary Chemicals Act 1994</i>	36, 1994	15 Mar 1994	15 Mar 1995	
<i>National Food Authority Amendment Act 1995</i>	152, 1995	16 Dec 1995	Ss. 1 and 2: Royal Assent Remainder: 1 July 1996 (see <i>Gazette</i> 1996, No. S230)	—
<i>Jurisdiction of Courts Legislation Amendment Act 2000</i>	57, 2000	30 May 2000	Schedule 1 (items 28–30): 1 July 2000 (see <i>Gazette</i> 2000, No. GN25) (a)	—
<i>Australia New Zealand Food Authority Amendment Act 2001</i>	81, 2001	10 July 2001	S. 2(6): Royal Assent (b) Schedule 3 (item 1): 1 July 2002 (see <i>Gazette</i> 2002, No. GN30) (b)	S. 2(6)
<i>Agricultural and Veterinary Chemicals Legislation Amendment Act 2001</i>	83, 2001	11 July 2001	Schedule 2: (c) Remainder: Royal Assent	Sch. 1 (item 4)
<i>Agricultural and Veterinary Chemicals Legislation Amendment (Name Change) Act 2004</i>	79, 2004	23 June 2004	Schedule 1 (items 1–6): 30 July 2004 (see <i>Gazette</i> 2004, No. GN30)	—

Act Notes

- (a) The *Agricultural and Veterinary Chemicals Act 1994* was amended by Schedule 1 (items 28–30) only of the *Jurisdiction of Courts Legislation Amendment Act 2000*, subsection 2(2) of which provides as follows:
- (2) The items in Schedule 1, other than items 77 to 90, commence on a day or days to be fixed by Proclamation.
- (b) The *Agricultural and Veterinary Chemicals Act 1994* was amended by Schedule 3 (item 1) only of the *Australia New Zealand Food Authority Amendment Act 2001*, subsections 2(1)(a), (2) and (5) of which provide as follows:
- (1) The following provisions commence on the day on which this Act receives the Royal Assent:
 - (a) sections 1, 2 and 3;
 - (2) Part 1 of Schedule 1 (other than item 120A), and Schedule 3, commence on the first day after the commencement of this section on which an amendment of the Australia New Zealand Joint Food Standards Agreement comes into force in accordance with Article 10 of that Agreement.
 - (5) As soon as practicable after the commencement of the following provisions:
 - (a) Part 1 of Schedule 1 (other than item 120A);
 - (b) Schedule 3;the Minister must cause to be published in the *Gazette* a notice specifying the day on which those provisions commenced.
- (c) The *Agricultural and Veterinary Chemicals Act 1994* was amended by the *Agricultural and Veterinary Chemicals Legislation Amendment Act 2001*, subsection 2(2)(b) of which provides as follows:
- (2) Schedule 2 commences at the later of:
 - (b) the time when Parts 4 to 10 of the *Administrative Review Tribunal Act 2001* commence.

The *Administrative Review Tribunal Bill* has not been enacted. Therefore this amendment does not commence.

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
S. 4.....	am. No. 57, 2000; No. 83, 2001; No. 79, 2004
Part 2	
S. 7.....	am. No. 152, 1995; No. 81, 2001; No. 79, 2004
Part 5	
S. 18.....	rs. No. 83, 2001
Note to s. 18(1).....	am. No. 79, 2004
S. 18A.....	ad. No. 83, 2001
Part 6	
S. 20.....	am. No. 57, 2000
Part 7	
S. 23.....	am. No. 79, 2004

Table A

Table A

Application, saving or transitional provisions

Australia New Zealand Food Authority Amendment Act 2001 (No. 81, 2001)

2(6) In this section:

Australia New Zealand Joint Food Standards Agreement means the Agreement between the Government of Australia and the Government of New Zealand Establishing a System for the Development of Joint Food Standards, signed at Wellington on 5 December 1995.

Agricultural and Veterinary Chemicals Legislation Amendment Act 2001
(No. 83, 2001)

Schedule 1

4 Application of amendment

The amendment made by item 2 of this Schedule applies in relation to matters arising before, on or after the commencement of that item.