

1989

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

PESTICIDES BILL 1989

EXPLANATORY MEMORANDUM

Circulated by authority of the Minister for Housing and Urban Services

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ATTACHMENT

Pesticides Bill 1989

Part I of the Bill will consist of clauses 1 to 6 and will deal with preliminary matters in respect of the Bill.

Clause 1 will cite the Bill, when enacted, as the Pesticides Act 1989.

Clause 2 will provide for the commencement of the Bill.

Subclause 2(1) will provide that sections 1 and 2 will commence when the Act is notified in the Gazette.

Subclause 2(2) will provide that the remaining sections of the Bill will commence on such a date as is, or such dates as are, specified by notice in the Gazette.

Implementations

Clause 3 will deal with interpretation

Subclause 3(1) will define certain terms.

Subclause 3(2) will provide that where it is intended that a pesticide may be mixed with another substance before use, the manufacturer or supplier of the pesticide shall be taken to be the manufacturer or supplier of the resultant mixture.

Subclause 3(3) will provide that when a pesticide undergoes a chemical change due only to the passage of time, the resultant substance shall be taken to be the same pesticide.

Clause 4 will deal with possible inconsistencies between directions, notices and permits issued under the Bill.

Subclause 4(1) will provide where there is an inconsistency between instructions in two instruments the later instrument will prevail and the instruction in the earlier instrument that relates to the inconsistency shall have no effect.

Subclause 4(2) will provide that an instrument given or published later than a direction by an inspector shall take precedent where there is any inconsistency and the instruction in the inspector's direction will be, to the extent of the inconsistency, of no effect.

Subclause 4(3) will, for the purpose of clause 4, define the terms 'inspector's directions' and 'instrument'.

Clause 5 will limit the term 'reasonable excuse' for the purposes of the Bill.

Subclause 5(1) will provide that a person shall not be taken to have a reasonable excuse for an act that is due to a reasonable mistake caused by that person's reliance on information supplied by, or the act of, that person's agent or servant or in the case of a body corporate an officer, agent or servant of the body corporate.

Subclause 5(2) will provide that a defendant in a prosecution for an offence under the Bill, a regulation, or an offence under Part VIII of the Crimes Act 1900 of the State of New South Wales in its application to the Territory in relation to an offence under the Bill or regulations shall not, without leave of the Court, be entitled to rely on a defence of reasonable excuse for an act alleged to be due to a reasonable mistake caused by the defendant's reliance on information supplied by another person or an act of another person unless a notice has been served by the defendant on the prosecution. The notice must be given at least 7 days before the defence is relied upon and must give such information as could identify or assist in the identification of the other person.

Subclause 5(3) will provide that for the purpose of clause 5 the term 'act' includes omission.

Clause 6 will bind the Crown in right of the Territory.

Subclause 6(1) will provide that subject to subclause 6(2) the Crown in right of the Territory will be bound by the provisions of the Bill.

Subclause 6(2) will provide that the Registrar of Pesticides appointed under clause 7 of the Bill or a person under the supervision of the Registrar will not in the performance or purported performance on behalf of the Crown of a power or duty under the Bill be bound by:

- (a) clause 51 which relates to the use, storage and disposal of unregistered pesticides;
- (b) subclause 52(2) which will provide that where a notice has been published in relation to a pesticide, a person shall not, without reasonable excuse, deal with the pesticide except in accordance with the notice;
- (c) clause 54 which will create an offence of dealing with a registered pesticide after the expiry date;
- (d) clause 55 which will create an obligation to use only the specified container in respect of a pesticide; and

- (e) Clause 56 which will require a container to have a specified label.

Part II of the Bill will consist of clauses 7 to 17 and will deal with the appointment of the Registrar of Pesticides and the registration of pesticides. A decision by the Registrar to refuse to grant registration: to identify part of an entry in the register as proprietary information or to amend an entry in the register will be subject to review by the Administrative Appeals Tribunal.

Clause 7 will provide for the appointment of a Registrar of Pesticides.

Subclause 7(1) will provide that the Minister shall appoint a Registrar of Pesticides.

Subclause 7(2) will provide that the appointee must be a public servant.

Subclause 7(3) will provide that the person appointed as Registrar shall be issued with an identity card that specifies the appointee's name, appointment and has attached a recent photograph of the appointee.

Subclause 7(4) will create an obligation on the appointee to return the identity card when he or she ceases to be Registrar. A fine of \$100 will apply.

Subclause 7(5) will provide that in addition to the powers of Registrar, the Registrar will also have the powers and functions of an inspector.

Clause 8 will provide that the Registrar may delegate to a person any of his or her powers under the Bill.

Clause 9 will deal with the establishment and maintenance of the Pesticides Register.

Subclause 9(1) will require the Registrar to establish and maintain the Pesticides Register.

Subclause 9(2) will oblige the Registrar to identify that information that has been nominated as proprietary information in the application for registration of the pesticide. The requirement to isolate proprietary information will provide protection for trade secrets or information that the manufacturer or supplier considers has commercial value.

Subclause 9(3) will provide that a person may inspect an entry in the register and upon payment of the determined fee obtain a copy of an entry.

Subclause 9(4) will provide a restriction to access to an entry in the register in that only a responsible person may inspect, or obtain a copy of, an entry in the

register that has been identified as proprietary information. A responsible person is defined as the manufacturer of the pesticide or the agent of that manufacturer.

Subclause 9(5) will provide that the Registrar of Pesticides appointed under the NSW Act or the Chief General Manager of the Department of State of Victoria responsible for the administrative of the Victorian Act are exempt from the requirement to pay a fee to obtain a copy of an entry and from the restriction relating to proprietary information.

Clause 10 will create an obligation on the Registrar to establish and maintain a Labels Book which will contain a facsimile or coloured photograph of each kind of label for any container in which the pesticide is to be supplied in the Territory.

Subclause 10(1) will create an obligation on the Registrar to establish and maintain a Labels Book.

Subclause 10(2) will provide that a person may inspect or upon payment of the determined fee obtain a copy of an attachment to the labels book.

Subclause 10(3) will provide that the NSW Registrar of Pesticides will not be liable to pay a fee required under subclause 10(2).

Clause 11 will deal with the registration of a pesticide and will specify the information that must be supplied to effect registration. It will be a condition of registration in the Territory that the pesticide is registered in either NSW or Victoria.

Subclause 11(1) will specify that a person who is a manufacturer of a pesticide, or the agent of such a manufacturer in respect of the supply of the pesticide in the Territory, may apply for the registration of the pesticide.

Subclause 11(2) will provide that the application for registration must be in writing, signed by the applicant and specify:

- . the full name and address of the applicant;
- . if the applicant is not the manufacturer the full name and address of the manufacturer;
- . if the applicant does not intend to supply the pesticide in the Territory - the full name and address of the supplier;
- . each distinguishing name under which the pesticide is to be supplied in the Territory;

- . the chemical formulation or the biological description of the pesticide;
- . whether the pesticide is registered in NSW or Victoria and any registration number given when so registered; and
- . each kind of container in which the pesticide is to be supplied.

Subclause 11(2) will also enable the applicant to identify proprietary information in relation to the pesticide or any of its constituents. The subclause will also specify that the application is to be accompanied by the determined fee and by a fascimile or coloured photograph in which all writing, symbols and diagrams are legible for each kind of label for any container in which the pesticide is to be supplied. Where a registration number has not been assigned to the pesticide under the State pesticide law under which the pesticide is registered the applicant will be required to supply written evidence, in a form approved by the Registrar, of such registration.

Clause 12 will deal with registration.

Subclause 12(1) will provide that following the submission of an application in accordance with clause 11, the Registrar shall register the pesticide where the Register is satisfied that:

- . the pesticide is to be supplied in the Territory;
- . the pesticide is to be supplied in the Territory only under a distinguishing name or names registered in New South Wales, Victoria or such other State or Territory as may be prescribed;
- . the pesticide is not currently registered in the Territory under any other distinguishing name registered in New South Wales, Victorian or such other State or Territory as may be prescribed;
- . the registration of the pesticide has not been refused or cancelled in NSW, Victoria or any prescribed State or Territory;
- . each type of container in which the pesticide is to be supplied in the Territory is registered or approved in NSW or Victoria or in any prescribed State or Territory; and
- . each type of label is registered or approved in NSW or Victoria or any prescribed State or Territory.

Subclause 12(2) will provide that the term 'State-registered distinguishing name' means a distinguishing name registered in NSW or Victoria or in a prescribed State or Territory.

Clause 13 will provide that registration shall be effected by completing appropriate entries in the register and the labels book.

Paragraph 13(a) will provide that the Registrar shall enter in the register:

- . a distinguishing number for each distinguishing name under which the pesticide is to be supplied in the Territory;
- . the details supplied by the manufacturer or agent in the application for registration submitted under clause 11; and
- . such advisory information about dealing safely with the pesticide as the Registrar considers desirable.

Paragraph 13(b) will require the Registrar to enter in the labels book each distinguishing number shown in register together with relevant facsimiles and photographs of labels attached to the application for registration.

Clause 14 will create an obligation on the manufacture, or agent of the manufacturer, who registered a pesticide to advise the Registrar of any inaccuracies in an entry in the register or labels book.

Subclause 14(1) will provide that the person who registered a pesticide shall notify the Registrar in accordance with a notice under subclause 14(2) where that person has reasonable cause to believe that a particular entry in the register is not accurate in a material respect or that a type of container label, the facsimile or photograph of which accompanied the application for registration, is not registered in either NSW or Victoria or in a prescribed State or Territory. A fine of \$1000 will apply.

Subclause 14(2) will detail the information that is to be included in a notice to satisfy the obligation created by subclause 14(1). The notice shall be accompanied by the determined fee, be in writing and be signed by the manufacture or agent. If the notice is being submitted because the label is not registered in NSW, Victoria or in a prescribed State or Territory then the notice is to be accompanied by a facsimile or photograph of a label that has been registered in NSW, Victoria or in a prescribed State or Territory and has not been previously included in the label book in relation to that pesticide.

Subclause 14(3) will require the Registrar, if satisfied as to the inaccuracy, to amend each relevant entry in the register and labels book accordingly.

Clause 15 will deal with the cancellation of registration of a pesticide.

Subclause 15(1) will require the Registrar to cancel the registration of a pesticide where the Registrar becomes aware that the pesticide is no longer registered in NSW, Victoria or a prescribed State or Territory.

Subclause 15(2) will provide that the Registrar shall, if satisfied that in the circumstance it is reasonable to do so, cancel the registration of a pesticide where the Registrar becomes aware that the pesticide which was registered under a pesticide law in NSW, Victoria or a prescribed State or Territory is no longer registered under that law and is registered under a different State pesticide law.

Subclause 15(3) will oblige the Registrar to cancel the registration of a pesticide in relation to a distinguishing name where the Registrar becomes aware that the particular distinguishing name is not longer used in the Territory.

Subclause 15(4) will provide that where the Registrar cancels the registration of a pesticide, he or she shall publish a notice in the Gazette and in a daily newspaper published and circulating in the Territory. The notice shall:

- specify each distinguishing name of the pesticide;
- include a statement to the effect that the registration of the pesticide has been cancelled in relation to each distinguishing name;
- include such instructions as the Register considers reasonable in the circumstances for dealing with the pesticide;
- include such warnings as the Registrar consider desirable in relation to the pesticide;
- include a statement to the effect that it is an offence to deal with the pesticide except in accordance with the instructions in the notice; and
- include a statement that an application may be made to the Administrative Appeal Tribunal for a review of the decision to cancel the registration or to include an instruction in the notice of cancellation and that except where subsection 26(11) of the Administrative Appeals Tribunal Act 1989 applies, a person whose interests are affected by the decision may request a statement of reasons for the decision.

Subclause 15(5) will provide that the Registrar shall not issue an instruction under subclause 15(4) requiring a pesticide to be disposed of.

Subclause 15(6) will provide that where a pesticide is acquired by the Register as a result of a notice issued under subclause 15(4) the Territory shall compensate the owner.

Subclause 15(7) will provide that the validity of a decision to cancel registration shall not be affected by a failure to include a statement advising of the availability of a review of the decision by the Administrative Appeals Tribunal or that a person whose interests are affected by such a decision may request a statement of reasons for the decision.

Subclause 15(8) will specify the circumstance that the Registrar is to consider when deciding what action to take in respect of a cancellation of registration. The circumstance are:

- . where the registration of a pesticide under a State pesticide law is cancelled and the pesticide is registered under another State law the likelihood that the registration of the relevant pesticide under the other State law will be cancelled; and
- . in any other case, the need to ensure the minimisation of any risk to public health or damage to the environment or to property resulting from dealing with the relevant pesticide.

Clause 16 will provide that the registration of a pesticide will be current for 3 years unless the registration is cancelled under clause 15 or renewed under clause 17.

Clause 17 will provide for the renewal of registration of a pesticide.

Subclause 17(1) will provide that the manufacturer of the pesticide, or the agent of the manufacturer, may apply to the Registrar for renewal before the expiration of the registration.

Subclause 17(2) will provide that the application for renewal shall be in writing, signed by the applicant and be accompanied by the determined fee.

Subclause 17(3) will oblige the Registrar to renew the registration of a pesticide for a period of 3 years commencing on the day immediately following the day on which, but for the application for renewal, the registration would have expired.

Subclause 17(4) will provide that if the Registrar has not received an application for renewal before the expiration of the registration period then registration shall be taken as cancelled and the Registrar shall publish a notice in the Gazette and a daily newspaper in accordance with subclause 15(4).

Part III of the Bill will consist of clauses 18 to 25 and will deal with restricted permits. A restricted permit will allow the Registrar to authorize, in appropriate circumstances, the use of

an unregistered pesticide by a person in the course of his or her occupation, employment, trade or business. A decision by the Registrar to refuse to grant a restricted permit, to cancel a restricted permit or to impose or vary a condition on such a permit will be subject to review by the Administrative Appeals Tribunal.

Clause 18 will deal with the application for a restricted permit.

Subclause 18(1) will allow a person who proposes to use an unregistered pesticide in the course of his or her business, trade, occupation or employment to apply to the Registrar for a restricted permit to use that pesticide.

Subclause 18(2) will specify the detail that is to be included in an application for a restricted permit. A application for a restricted permit must be accompanied by the determined fee, be in writing, be signed by the applicant and specify:

- . the full name and address of the applicant;
- . each distinguishing name of the unregistered pesticide that the applicant proposes to use;
- . the full name and address of the supplier from whom the applicant proposes to obtain the pesticide;
- . the purpose for which the pesticide is required;
- and
- . the quantity of the pesticide required.

Clause 19 will deal with the granting of a restricted permit to use an unregistered pesticide.

Subclause 19(1) will provide that on receipt of an application the Registrar shall, if satisfied that it is reasonable to do so in the circumstances, grant a restricted permit to use the unregistered pesticide specified in the application for a period not exceeding 1 year.

Subclause 19(2) will provide that in making a decision whether to grant a restricted permit the Registrar is to consider any representations the manufacturer or supplier of the pesticide has made about the proposed use of the pesticide.

Subclause 19(3) will identify the circumstances the Registrar is to consider when deciding whether to grant a restricted permit. The circumstances are:

- . whether there is a registered pesticide available in the Territory that the applicant could use instead of the unregistered pesticide;
- . the effect that a refusal to grant a restricted permit would have on the applicant's business, trade, occupation or employment;

- . whether the applicant is a fit and proper person to hold a restricted permit; and
- . the need to ensure the minimisation of any risk to public health and damage to the environment or property resulting from dealing with the specified unregistered pesticide.

Subclause 19(4) will specify the detail that is to be stated on the restricted permit. The restricted permit shall specify:

- . the full name and address of the applicant, each distinguishing name of the unregistered pesticide, the full name and address of the supplier and the purpose for which the pesticide is required;
- . any condition the Registrar may have imposed;
- . the period for which the restricted permit is granted; and
- . any such other particulars that may be prescribed.

Subclause 19(5) will oblige the Registrar to enter in the register under each distinguishing name of the pesticide, the particulars endorsed on the restricted permit together with such advisory information about dealing safely with the pesticide as the Registrar considers desirable.

Subclause 19(6) will provide that although a restricted permit has been issued for a specific pesticide that pesticide shall not be considered to have been registered for the purposes of the Bill.

Clause 20 will deal with the conditions the Registrar may impose in a restricted permit.

Subclause 20(1) will provide that the conditions that may be specified on a restricted permit are such conditions as the Registrar considers reasonable for ensuring the minimisation of any risks to public health or damage to the environment or property resulting from dealing with the specified unregistered pesticide.

Subclause 20(2) will allow the Registrar to vary the conditions specified on a restricted permit. The Registrar will be required to advise the permit holder by notice of any changes to conditions and such changes will take effect from a date specified in the notice provided the date of effect is not less than 28 days after the date of the latest notice given.

Subclause 20(3) will require the permit holder to submit the restricted permit to the Registrar within 28 days of the service of a notice advising the permit holder of a change of conditions. A fine of \$500 will apply.

Subclause 20(4) will create an obligation on the Registrar on receipt of a restricted permit, to amend

the restricted permit and the register to reflect the changed conditions and to return the permit to the permit holder.

Clause 21 will create an obligation on the holder of a restricted permit to advise the Registrar of any change of address.

Subclause 21(1) will require the holder of a restricted permit to give written advice to the Registrar of any change of address within 14 days of the change. The permit holder will also be required to submit the restricted permit to the Registrar. A fine of \$500 will apply.

Subclause 21(2) will require the Registrar on receipt of the notice to record the change of address on the restricted permit and the register and to return the permit to the permit holder.

Clause 22 will deal with the surrender of a restricted permit.

Subclause 22(1) will provide that a permit holder may surrender a restricted permit by notifying the Registrar in writing and returning the permit.

Subclause 22(2) will provide that the surrender of a restricted permit will take effect on the date of the notice of surrender given to the Registrar under subclause 22(1).

Clause 23 will detail the circumstances under which the Registrar may cancel a restricted permit.

Paragraph 23(1)(a) will enable the Registrar to cancel a restricted permit if the permit holder has been convicted:

- . of an offence under the Bill or regulations or under Part VIII of the Crimes Act 1900 of the State of New South Wales in its application to the Territory in relation to an offence under the Bill or regulations; or
- . in Australia or elsewhere for any other offence relating to a pesticide.

Paragraph 23(1)(b) will allow the Registrar to also cancel a restricted permit if he or she is satisfied on reasonable grounds that the permit holder:

- . has contravened the terms of the permit;
- . has used the relevant pesticide for a purpose other than the purpose for which the permit was granted; or
- . no longer needs to use the pesticide for the purpose for which the permit was granted.

Subclause 23(2) will provide that the cancellation shall take effect from the date specified in the notice of cancellation given pursuant to section 80.

Clause 24 will deal with the renewal of a restricted permit.

Subclause 24(1) will provide that the holder of a restricted permit may before expiration of the permit apply to the Registrar for renewal of the permit.

Subclause 24(2) will provide that an application for renewal shall be in writing signed by the applicant and accompanied by the determined fee.

Subclause 24(3) will provide that on receipt of the application the Registrar shall renew the permit for a period not exceeding 12 months. The period of renewal shall commence on the day following the date the permit would have expired.

Clause 25 will provide that a permit holder shall not, without a reasonable excuse, fail to return to the Registrar a restricted permit that has been cancelled or has expired through a lapse of time. A fine of \$1000 will apply.

Part IV of the Bill will consist of clauses 26 to 35 and will deal with research permits. A research permit may be issued by the Registrar to enable a person to deal with an unregistered pesticide in the course of scientific research. A decision to refuse to grant, to impose or vary a condition or to cancel a research permit will be subject to review by the Administrative Appeals Tribunal.

Clause 26 will provide that for the purposes of Part IV of the Bill the term 'deal with' will include manufacture.

Clause 27 will outline the form of application for a research permit.

Subclause 27(1) will provide that a person who, in the course of scientific research, proposes to deal with an unregistered pesticide may apply to the Registrar for a research permit.

Subclause 27(2) will provide that an application for a research permit shall be in writing, signed by the applicant and be accompanied by the determined fee. The application shall specify:

- . the full name, address and scientific qualifications of the applicant;
- . the distinguishing name, or the type, of each pesticide the applicant proposes to use;
- . the full name and address of the supplier;
- . the maximum residue limit for each pesticide as specified by the National Health and Medical Research Council; and

the nature of the proposed research and the manufacturing and research methods to be employed.

Clause 28 will deal with the granting of a research permit.

Subclause 28(1) will provide that for the purposes of clause 28 the term 'specified pesticide' will mean a pesticide or a pesticide of a type specified in the application for a research permit.

Subclause 28(2) will provide that on receipt of an application the Registrar shall, if satisfied that in the circumstances it is reasonable to do so, grant a research permit to the applicant in relation to a specified pesticide for a period not exceeding 1 year.

Subclause 28(3) will identify the circumstances the Registrar is to consider when deciding whether to issue a research permit. The circumstances are:

- . whether any registered pesticide is available for supply in the Territory which could be used instead of the specified pesticide;
- . whether the research could effectively be carried out without dealing with a specified pesticide;
- . whether the applicant is a fit and proper person to hold a permit; and
- . the need to ensure the minimisation of any risk to public health or damage to the environment or property resulting from dealings with any specified pesticide.

Subclause 28(4) will provide that a research permit shall specify:

- . the full name and address and scientific qualifications of the permit holder;
- . the distinguishing name, or the type, of each pesticide in relation to which the permit is granted;
- . information identifying the supplier, the maximum residue limit, the nature of the research and the manufacturing and research methods;
- . any conditions the permit may be subject to;
- . the period of the permit; and
- . such other matters as may be prescribed.

Subclause 28(5) will require the Registrar, upon granting a research permit, to enter in the register under each distinguishing name, or type, of each pesticide, the detail that has been specified on the permit together with such advisory information about dealing safely with each pesticide as the Registrar considers desirable.

Subclause 28(6) will provide that where a research permit has been granted in respect of a pesticide, that pesticide shall not be taken to have been registered.

Clause 29 will deal with the conditions that the Registrar may impose on a research permit.

Subclause 29(1) will specify that the Registrar may impose such conditions on a research permit as the Registrar considers reasonable for ensuring the minimisation of any risk to public health and damage to the environment or property resulting from dealing with a pesticide specified in the permit.

Subclause 29(2) will provide that the Registrar may vary conditions specified in a research permit. The Registrar will be required to advise the permit holder by notice of any variation and the variation will take effect from a date specified in the notice provided the date of effect is not less than 28 days after the date on which the latest notice is given.

Subclause 29(3) will require the permit holder to submit the research permit to the Registrar within 28 days of the service of the notice advising the permit holder of the change of conditions. A fine of \$500 will apply.

Subclause 29(4) will create an obligation on the Registrar on receipt of a research permit for which a notice of variation of a condition has been issued, to amend the permit and register and return the permit to the permit holder.

Clause 30 will deal with a variation of a requirement of the holder of a research permit in respect of a pesticide specified in the permit.

Subclause 30(1) will define the term 'specified pesticide' for the purposes of clause 30 as meaning a pesticide or a pesticide of the type specified in the permit.

Subclause 30(2) will require the holder of a research permit who no longer needs to deal with a specified pesticide to notify the Registrar in writing of the change and to also forward the permit to the Registrar. A fine of \$500 will apply.

Subclause 30(3) will provide that where the holder of a research permit notifies the Registrar under subclause 30(2) of a change of requirement, or the Registrar is satisfied on reasonable grounds that the permit holder no longer needs to deal with a specified pesticide, the Registrar shall amend the research permit and the register to delete the reference to the relevant pesticide. The Registrar will be required to advise the permit holder by notice of the effective date of the deletion of the relevant pesticide and the effective date must not be less than 28 days after the date of the notice.

Subclause 30(4) will require the holder of a research permit to submit to the Registrar the research permit within 28 days of the service of a notice under advising of a decision by the Registrar to delete a pesticide. A fine of \$1000 will apply.

Subclause 30(5) will provide that on receipt of a research permit the Registrar shall amend the permit and the register and return the permit to the permit holder.

Clause 31 will deal with the change of address of the holder of a research permit.

Subclause 31(1) will require the holder of a research permit to give the Registrar written notice of any change of address within 14 days of the change. The permit holder will also be required to submit the research permit to the Registrar. A fine of \$500 will apply.

Subclause 31(2) will require the Registrar to amend by the register and the permit on receipt of notice advising of the change and the permit. The Registrar will be required to return the permit to the permit holder.

Clause 32 will deal with surrender of a research permit.

Subclause 32(1) will provide that the holder of a research permit may surrender a permit by advising the Registrar in writing and forwarding the permit.

Subclause 32(2) will provide that the surrender of a research permit will take effect on the date the notice of surrender is given to the Registrar.

Clause 33 will deal with grounds upon which the Registrar may cancel a research permit.

Subclause 33(1) will provide that the Registrar may cancel a research permit if the permit holder has been convicted of an offence under the Bill or of any other offence relating to pesticides. The Registrar may also cancel a research permit if the Registrar is satisfied on reasonable grounds that the permit holder:

- . has contravened the terms of the permit;
- . has dealt with a pesticide for which he or she has a permit otherwise than in accordance with the permit; or
- . does not need to deal with any of the pesticides for which the permit was granted.

Subclause 33(2) will provide that the cancellation of a permit will take effect from the date specified in the notice of cancellation given pursuant to clause 80

provided the date is no earlier than that on which the latest such notice is given.

Clause 34 will deal with the renewal of a research permit.

Subclause 34(1) will provide that the holder of a research permit may before the expiration of the permit apply to the Registrar for renewal of the permit.

Subclause 34(2) will provide that an application for renewal of a research permit must be in writing, signed by the applicant and be accompanied by the determined fee.

Subclause 34(3) will provide that on receipt of an application the Registrar shall renew the research permit for a period not exceeding 1 year. The date of commencement of the renewal will be the day following the date the permit would have expired.

Clause 35 will create an obligation on the holder of a research permit not to fail, without a reasonable excuse, to return to the Registrar a research permit that has expired whether by cancellation or lapse of time. A fine of \$1000 will apply.

Part V of the Bill will consist of clauses 36 to 41 and will deal with emergency permits. An emergency permit will provide for the use of a specified unregistered pesticides during some emergency.

Clause 36 will deal with the application for an emergency permit.

Subclause 36(1) will enable a person who proposes to use an unregistered pesticide to relieve an emergency to apply to the Registrar for an emergency permit to use that pesticide.

Subclause 36(2) will provide that an application for an emergency permit shall be in writing, signed by the applicant and be accompanied by the determined fee. The application shall specify:

- . the full name and address of the applicant;
- . the distinguishing name of each unregistered pesticide that the applicant proposes to use;
- . the full name and address of the supplier;
- . the nature of the emergency; and
- . the quantity of the pesticide required.

Clause 37 will deal with the granting by the Registrar of an emergency permit

Subclause 37(1) will provide that following receipt of an application the Registrar shall, if satisfied that it is reasonable in the circumstances to do so, grant an emergency permit for a period not exceeding 14 days.

Subclause 37(2) will identify the circumstances the Registrar is to consider before deciding whether to grant an emergency permit. The circumstances include:

- . the extent to which the emergency would be relieved by the use of any pesticide specified;
- . whether any other means are available to relieve the emergency and the effectiveness of such means;
- . any risk to public health and damage to the environment or to property resulting from dealing with any specified pesticide compared with any such risk if that pesticide was not used to relieve the emergency; and
- . the need to ensure the minimisation of any such risk resulting from dealings with any pesticide specified in the application.

Subclause 37(3) will provide that an emergency permit shall specify:

- . the details of the applicant and supplier, the distinguishing name of each unregistered pesticide and the nature of the emergency;
- . any conditions to which the permit is subject;
- . the period for which the permit is granted;
- . such other particulars as may be prescribed; and
- . the quantity of pesticide authorised.

Subclause 37(4) will require the Registrar when granting an emergency permit to enter in the register in relation to each distinguishing name the detail included in the emergency permit together with such other advisory information about dealing safely with the pesticide as the Registrar considers desirable.

Subclause 37(5) will provide that the granting of an emergency permit to use on unregistered pesticide does not mean that the pesticide is registered.

Clause 38 will provide that the Registrar may endorse an emergency permit with such conditions as the Registrar considers reasonable for ensuring the minimisation of any risk to public health or damage to the environment or to property resulting from dealings with any pesticide specified in the application.

Clause 39 will deal with the cancellation by the Registrar of an emergency permit.

Subclause 39(1) will provide that the Registrar may cancel an emergency permit if satisfied on reasonable grounds that:

- . the emergency has ceased to exist;
- . the circumstances referred to in subclause 37(2) no longer justify any dealing with any of the pesticides specified in the permit;

- . the permit holder has contravened the terms of the permit; or
- . the permit holder has used a pesticide specified in the permit for a purpose other than relieving the emergency specified the permit.

Subclause 39(2) will require the Registrar to give the permit holder and supplier a written notice of any decision by the Registrar to cancel a permit.

Subclause 39(3) will provide that the cancellation of a permit will take effect from either the date the notice is given to the permit holder or the date the notice is given to the supplier whichever is the later.

Clause 40 will deal with the renewal of an emergency permit.

Subclause 40(1) will provide that the holder of an emergency permit may apply to the Registrar for the renewal of the permit before the expiration of the term of the permit.

Subclause 40(2) will provide that the application for renewal must be in writing, signed by the applicant and accompanied by the determined fee.

Subclause 40(3) will provide that the Registrar shall, if satisfied that the emergency still exists and it is reasonable to do so in the circumstances that warranted the granting of the permit, renew the permit for a period not exceeding 14 days. The period of renewal shall commence on the day following the date the permit would have expired.

Clause 41 will provide that the holder of an emergency permit that has expired, whether by cancellation or lapse of time, shall not, without a reasonable excuse, fail to return the permit to the Registrar within 14 days of the expiration. A fine of \$1000 will apply.

Part VI of the Bill will consist of sections 42 to 47 and will deal with directions by the Registrar and public notices.

Clause 42 will provide that for the purposes of Part VI of Bill the term 'directions' will mean directions issued by the Registrar under clause 44, and the term 'notice' will mean a notice published by the Registrar under clause 45.

Clause 43 will provide that a reference to the term 'circumstances' in Part VI of the Bill will include:

- . the effect that dealing with the relevant pesticide in the manner referred to in the relevant direction or notice could have on the business, trade occupation or employment of any person; and
- . the need to ensure the minimisation of any risk to public health and damage to the environment or to

property resulting from dealings with the relevant pesticide.

Clause 44 will provide that where the Registrar receives a written application from a person, or considers it reasonable in the circumstances, the Registrar shall give written directions to the applicant, or to any person possessing a pesticide, about dealing with any pesticide in that person's possession.

Clause 45 will provide that where the Registrar considers it reasonable in the circumstance, he or she shall cause a notice about dealing with a pesticide to be published in the Gazette and, on at least 3 occasions during a period of 2 consecutive weeks, in a daily newspaper published and circulating in the Territory.

Clause 46 will deal with the disposal and surrender of a pesticide and will provide for compensation when a pesticide is surrendered.

Subclause 46(1) will prevent the Registrar from issuing an instruction in a direction or a notice requiring a pesticide to be disposed of.

Subclause 46(2) will provide that where a pesticide is acquired by the Registrar from a person pursuant to an instruction in a direction or a notice, the Territory shall compensate the person.

Clause 47 will deal with the form of a direction or notice issued by the Registrar.

Subclause 47(1) will provide that a direction or notice shall:

- specify each distinguishing name of the relevant pesticide;
- include such instructions as the Registrar consider reasonable in the circumstances for dealing with the pesticide and any container including the time within which any such dealing is to be effected;
- include such warnings as the Registrar considers reasonable in the circumstances for dealing with the pesticide; and
- include a statement to the effect that an application may be made to the Administrative Appeals Tribunal for a review of the decision to issue directions or a notice, or to include an instruction in those directions or notice and that a person whose interests are affected by that decision may request a statement pursuant to section 26 of the Administrative Appeals Tribunal Act 1989.

Subclause 47(2) will provide that a decision by the Registrar to issue a direction or notice shall not be invalid because of a failure to include a statement outlining rights under the Administrative Appeals Tribunal Act 1989

Part VII of the Bill will consist of clauses 48 to 62 and will deal with offences.

Clause 48 will provide that for the purposes of Part VII of the Bill the term 'directions' will mean a direction issued by the Registrar under clause 44 or by an inspector under either clause 73 or 74, the term 'notice' will mean a notice published under subclause 15(4) or clause 45 and the term 'permit' will mean a restricted permit, a research permit or an emergency permit.

Clause 49 will provide that a person shall not, without a reasonable excuse, manufacture an unregistered pesticide except in accordance with a research permit. A fine of \$2000 will apply.

Clause 50 will deal with the supply of unregistered pesticides.

Subclause 50(1) will provide that a person shall not without a reasonable excuse, supply an unregistered pesticide except in accordance with subclause 50(2). A fine of \$2000 will apply.

Subclause 50(2) will provide that a person may supply an unregistered pesticide to a permit holder; where the supplier holds a research permit; where directions have been given to the supplier or where a notice has been published in relation to that pesticide and where its supply is in accordance with that permit, those directions or that notice, as the case may be.

Clause 51 will deal with the use, storage and disposal of an unregistered pesticide.

Subclause 51(1) will provide that a person shall not, without a reasonable excuse, use, store or dispose of any unregistered pesticide except in accordance with subclause 51(2) or 51(3). A fine of \$2000 will apply.

Subclause 51(2) will provide that a person may use, store or dispose of an unregistered pesticide in accordance with a permit, direction or a notice.

Subclause 51(3) will provide that a person may store or dispose of an unregistered pesticide where the pesticide was obtained for the purpose of supply to a permit holder.

Subclause 51(4) will provide that it will be a defence to a prosecution under subclause 51(1) if the defendant establishes that:

- . the pesticide was obtained outside the Territory but within Australia;
- . the pesticide was supplied in accordance with the law in the State or Territory where it was obtained;

- . the pesticide was purchase only for domestic purposes; and
- . the pesticide was not used in the Territory for anything other than a domestic purposes.

Subclause 51(5) will provide that for the purposes of subclause 51(4) the term 'domestic purposes' does not include a purpose connected with a business, trade or occupation.

Clause 52 will relate to dealing where a direction, notice or permit has been issued. A fine of \$2000 will apply to the clause.

Subclause 52(1) will provide that where a direction has been given to a person in relation to a pesticide that person shall not without a reasonable excuse, deal with that pesticide except in accordance with the direction.

Subclause 52(2) will provide that where a notice has been published in relation to a pesticide a person shall not, without reasonable excuse, deal with the pesticide except in accordance with the notice.

Subclause 52(3) will provide that where a permit has been granted to a person in relation to a pesticide that person shall not, without a reasonable excuse, deal with that pesticide except in accordance with the permit.

Subclause 52(4) will provide that where a pesticide is supplied to a person in accordance with a research permit held by a supplier the person to whom the pesticide is supplied shall not, without reasonable excuse, deal with that pesticide except in accordance with the permit.

Clause 53 will deal with instructions on labels relating to registered pesticide.

Subclause 53(1) will provide that a person shall not, without a reasonable excuse, deal with a registered pesticide except in accordance with subclause 53(2). A fine of \$2000 will apply.

Subclause 53(2) will provide that subject to subclause 52(1) and 52(2) a person may deal with a registered pesticide according to the instructions where:

- . the person is not a supplier of the pesticide;
- . there are instructions for dealing with the pesticide on the container, or otherwise supplied with the pesticide; and
- . the person has no reasonable grounds for believing that those instructions are inappropriate for dealing with the pesticide.

Subclause 53(2) will also provide that a person may, where there are no instructions on the container, deal with the registered pesticide in accordance with the instructions (if any) on a facsimile or photograph of a relevant label attached to the relevant entry in the labels book.

Clause 54 will contain proposals for dealing with a registered pesticide after expiry date.

Subclause 54(1) will provide that where there is an instruction on the pesticide container, or on a label to such a container, specifying that a pesticide should not be used after a specified date a person shall not, without a reasonable excuse, deal with that pesticide after that date except by way of disposal in a manner specified in directions given to that person or where approved by the Registrar under subclause 54(3). A fine of \$2000 will apply.

Subclause 54(2) will provide that a person may apply to the Registrar for approval to deal with a pesticide after the specified expiry date. The application is to be in writing and must be accompanied by the determined fee.

Subclause 54(3) will provide that on receipt of an application submitted under subclause 54(2) the Registrar shall, if satisfied it is reasonable to do so in the circumstances, grant an approval to deal with the pesticide in a specified manner for a period not exceeding 14 days.

Subclause 54(4) will identify the circumstances the Registrar is to consider when deciding whether to approve an application to deal with a pesticide after the specified expiry date. The circumstances include:

- . the manner in which the pesticide will be dealt with;
- . the likelihood that the pesticide will have undergone a chemical or an organic change; and
- . the need to ensure the minimisation of any risk to public health or damage to the environment or to property resulting from dealings with the relevant pesticide after the specified expiry date.

Clause 55 will provide that a person shall not, without a reasonable excuse, possess, supply, transport or store a registered pesticide, or a pesticide the registration of which has been cancelled, otherwise than in a container of the type specified in the register for that pesticide. A fine of \$2000 will apply.

Clause 56 will provide that a person shall not, without a reasonable excuse, possess, supply, transport or store a registered pesticide, or a pesticide the registration of which

has been cancelled, otherwise than in a container that bears a label that is identical to a label the facsimile or photograph of which is attached to the appropriate entry in the labels book or was attached to such an entry at any time during the preceeding 12 months. A fine of \$2000 will apply.

Clause 57 will deal with the interference with labels.

Subclause 57(1) will provide that a person shall not without a reasonable excuse, detach, alter, obliterate or destroy a label on a container of a pesticide except in accordance with subclause 57(2). A fine of \$1000 will apply.

Subclause 57(2) will provide that a person may detach, alter, obliterate or destroy a label on a container of a registered pesticide in the course of disposing of the container or when attaching a label a facsimile or photograph of which is attached to the relevant entry in labels book. Where the pesticide is not registered a person will be exempt from subclause 57(1) where he or she is acting in accordance with a direction, notice or a permit.

Subclause 57(3) will provide that for the purposes of clause 57 a label shall be taken to be obliterated where anything is attached to a label or to a container in such a way as to obscure anything printed on the label.

Clause 58 will contain provisions concerning dealings that cause injury or damage. A fine of \$10,000 or imprisonment for 2 years or both will apply.

Subclause 58(1) will provide that a person shall not deal with a pesticide in such a manner as is likely to cause disease or injury to another person.

Subclause 58(2) will provide that a person shall not deal with a pesticide in such a manner as is likely to cause damage to the property of another person.

Clause 59 will provide that a permit holder shall not, without a reasonable excuse, fail to produce a permit when requested to do so by an inspector. A fine of \$1000 will apply.

Clause 60 will deal with the supplying of false information.

Subclause 60(1) will provide that a person shall not knowingly or recklessly furnish information that is false or misleading in a material particular in relation to any matter arising under this Bill. A fine of \$2000 will apply.

Subclause 60(2) will provide that subclause 60(1) will not apply in relation to a document where the person submitting the document informs the recipient that the document does contain information which is false or misleading in a material particular.

Clause 61 will deal with the conduct of directors, servants and agents.

Subclause 61(1) will provide that in proceedings for an offence under the Bill, regulations or under Part VIII of the Crimes Act 1900 of the State of New South Wales in its application to the Territory in relation to an offence under the Bill or regulations, where it is necessary to establish the state of mind of a person or body in relation to particular conduct, it will be sufficient to show:

- . that a director, servant or agent of the person or body had that state of mind; and
- . that the conduct was engaged in by that director, servant or agent within the scope of his or her actual or apparent authority.

Subclause 61(2) will provide that a reference in subclause 61(1) to the state of mind of a person or body will include a reference to the knowledge, intention, opinion, belief or purpose of the person or body and that person's or body's reasons for the intention, opinion, belief or purpose.

Subclause 61(3) will provide that any conduct engaged in on behalf of a person or body by a servant or agent of the person or body within the scope of his or her actual or apparent authority shall be taken to have been engaged in also by the person or body unless the person or body establishes that reasonable precautions were taken and due diligence was exercised to avoid the conduct.

Subclause 61(4) will provide that where a natural person is convicted of an offence and that person would not have been convicted of the offence if subclauses 61(1) and 61(3) had not been enacted then that person shall not be imprisoned for the offence.

Subclause 61(5) will provide that a reference to engaging in conduct shall for the purposes of clause 61 include a reference to failing or refusing to engage in conduct.

Clause 62 will provide that where a body corporate is convicted of an offence under the Bill, the penalty the Court may impose is a fine not exceeding 5 times the maximum amount stated for that offence.

Part VIII of the Bill will consist of clauses 63 to 79 and will deal with enforcement.

Clause 63 will deal with interpretation of certain terms for the purposes of Part VIII of the Bill.

Subclause 63(1) will provide that a thing will be connected with a particular offence if:

- . the offence has been committed with respect to it;
- . it will afford evidence of the commission of the offence; or
- . it was used, or it is intended to be used for the purpose of committing the offence.

Subclause 63(2) will provide that a reference to an offence shall be read as including a reference to an offence that there are reasonable grounds for believing has been or will be committed.

Subclause 63(3) will provide that where an inspector is authorised to enter premises and he or she enters the premises then a reference to the occupier of such premises should include a reference to a person the inspector believes on reasonable grounds to be the occupier or the person in charge of those premises.

Clause 64 will provide for the appointment of inspectors.

Subclause 64(1) will provide that the Registrar may, by instrument, appoint persons to be inspectors.

Subclause 64(2) will provide that an inspector shall perform such duties for the purposes of the Bill as the Registrar directs.

Subclause 64(3) will require the Registrar to issue an identity card to a person appointed as inspector. The identity card is to specify the person's name and appointment and is to have attached a recent photograph of the appointee.

Subclause 64(4) will specify that a person appointed as inspector shall not fail, without a reasonable excuse, to return the identity card to the Registrar when he or she ceases to be an inspector. A fine of \$100 will apply.

Clause 65 will provide for the appointment of analysts.

Subclause 65(1) will provide that the Registrar may, by instrument, appoint persons to be analysts.

Subclause 65(2) will require the Registrar within four weeks of the appointment of an analyst, and thereafter annually, to publish by a notice in the Gazette the name and address of all analysts.

Clause 66 will provide that an inspector may enter any premises, other than a residential premises, at any reasonable time of the day or night with such assistance and with such force as is reasonable and may exercise any power of inspection specified in subclause 71(1) if the inspector believes on reasonable grounds

that a pesticide is on the premises and that it is necessary to do so for the purposes of the Bill.

Clause 67 will provide that where an inspector believes on reasonable grounds that it is necessary to do so for the purposes of this Bill, he or she may enter any premises and exercise any power of inspection specified in subclause 71(1) in respect of any thing the inspector believes on reasonable grounds to be connected with an offence under this Bill or under the regulations, or an offence under Part VIII of the Crimes Act 1900 of the State of New South Wales in its application to the Territory in relation to an offence under the Bill or the regulations:

- . with the consent of the occupier of the premises;
- . pursuant to a search warrant issued under clause 70; or
- . with such assistance and by such force as is reasonable, where the inspector believes on reasonable grounds that the circumstances are of such seriousness and urgency as to require the exercise of those powers without the authority of a search warrant issued under clause 70.

Clause 68 will deal with an inspector obtaining the consent of an occupier to enter premises.

Subclause 68(1) will require an inspector, before seeking the consent of the occupier to enter premises, to inform the occupier that he or she may refuse to give that consent.

Subclause 68(2) will provide that where an inspector obtains the occupier's consent to enter a premises, the inspector shall ask the occupier to sign on written acknowledgement:

- . that the occupier has been informed that he or she may refuse to give consent for the inspector to enter the occupier's premises and exercise any power of inspection under subclause 71(1);
- . that the occupier had given the inspector that consent; and
- . of the date and time the consent was given.

Subclause 68(3) will provide that where it is material in any court proceeding for a court to be satisfied that the occupier consented to the entry of the inspector, a failure to produce the acknowledgement shall lead to the presumption that the occupier did not consent, however, the presumption will be rebuttable.

Clause 69 will deal with the display of identity cards.

Subclause 69(1) will specify that an inspector who enters premises under clause 66 or clause 67 is not authorized to remain on the premises if on the request

of the occupier the inspector fails to produce his or her identity card.

Subclause 69(2) will provide that for the purposes of subclause 69(1) the term 'identity card' means

- . in relation to an inspector the identity card issued under subclause 64(3); or
- . in relation to the Registrar the identity card issued to the Registrar under subclause 7(3).

Clause 70 will deal with search warrants.

Subclause 70(1) will provide that where an inspector suspects on reasonable grounds that there may be, or that within the next 28 days there may be, on any premises, a thing of a particular kind connected with an offence under this Bill, then the inspector may apply to a Magistrate for a search warrant to search the premises for things of that kind.

Subclause 70(2) will provide that upon an application under subclause 70(1) the Magistrate may issue a warrant authorising an inspector named in the warrant with such assistance and by such force as is necessary and reasonable:

- . to enter the premises;
- . to search the premises for things of the kind specified in the warrant; and
- . to seize anything found in the course of the search that the inspector believe on reasonable grounds to be a thing of that kind connected with the relevant offence.

Subclause 70(3) will provide that a Magistrate shall not issue a warrant unless the Magistrate is satisfied that there are reasonable grounds for issuing the warrant and the Magistrate has been given any further information the Magistrate may require concerning the grounds on which the warrant is being sought.

Subclause 70(4) will provide that the warrant shall:

- . state the purpose for which it is issued;
- . specify the nature of the offence;
- . specify the particular hours during which entry is authorized, or state that the entry is authorized at any time of the day or night;
- . include a description of the kind of things which the power of inspection under subclause 71(1) may be exercised; and
- . specify the date, being a date not later than 28 days after the date of issue of the warrant, on which the warrant ceases to have effect.

Clause 71 will specify an inspector's powers of inspection

Clause 71(1) will provide that where an inspector enter a premises in accordance with Part VIII of the Bill the inspector may:

- . require the occupier of the premises to give the inspector his or her name and residential address;
- . inspect the premises and any pesticide on the premises, or any thing on the premises, including any book, document or record, that the inspector believes on reasonable grounds to be connected with a pesticide or with any dealing with a pesticide;
- . take a sample of any pesticide on the premises for analysis;
- . take an extract from, or make a copy of, any book, document or record inspected;
- . take such photographs as the inspector believes on reasonable grounds to be necessary for the purposes of the Bill;
- . seize any pesticide, or anything, that the inspector believes on reasonable grounds to be connected with a defined offence;
- . seize a pesticide for the purpose of its disposal where the inspector believes on reasonable grounds that it is necessary to ensure the minimisation of any risk to public health or damage to the environment or to property;
- . seize a pesticide for the purposes of its disposal where the inspector believes on reasonable grounds that it is necessary to avert an imminent and serious threat to public health or an imminent and serious threat of damage to the environment or to property; or
- . require the occupier to give the inspector such assistance as is reasonable to enable the inspector to exercise his or her powers under this clause.

Subclause 71(2) will require the inspector who enters a premises under subclause 71(1) to give a receipt where he or she takes a sample of a pesticide or seizes a thing or a pesticide. The receipt is to be given to the owner of the pesticide or thing or the person who had possession, custody or control of the pesticide or thing immediately before it was taken by the inspector.

Subclause 71(3) will require an inspector who seizes a pesticide under paragraph 71(1)(f)(g) or (h) to take a sample for analysis.

Subclause 71(4) will provide that a person shall not, without reasonable excuse, contravene a requirement made of him or her under clause 71. A fine of \$1000 will apply.

Subclause 71(5) will provide that for the purposes of clause 71 the term 'pesticide' means a substance which an inspector believe a reasonable grounds to be a pesticide.

Clause 72 will deal with the taking of samples by an inspector.

Subclause 72(1) will provide that where an inspector taken a sample of a pesticide under section 71, he or she shall:

- .. divide the sample into 3 parts, place the parts into separate containers and seal each container;
- . attach to each container an identifying label; and
- . deliver one container to the person who had possession, custody or control of the pesticide immediately before the sample was taken, give the second container to an analyst and the third to the Registrar.

Subclause 72(2) will provide that the inspector who seized a sample under subclause 71(1) shall, except where the sample was seized under paragraph 71(1)(f), if unable after making reasonable enquiries to locate the person from whom the sample was seized, leave the container at the premises from which the sample was taken.

Subclause 72(3) will provide for compensation for a sample seized under clause 71.

Subclause 72(4) will provide that for the purpose of clause 72 the term 'pesticide' means a substance which the relevant inspector believes on reasonable grounds to be a pesticide.

Clause 73 will deal with directions given by an inspector.

Subclause 73(1) will provide that where an inspector enters premises in accordance with Part VIII of the Bill the inspector may give a person who has possession, custody or control of a pesticide written directions for dealing with the pesticide where the inspector is satisfied on reasonable grounds that the direction is necessary to ensure the minimisation of any risk to public health and any risk of damage to the environment or to property.

Subclause 73(2) will provide that an inspection shall not give a direction under subclause 73(1) requiring a person to dispose of a pesticide.

Subclause 73(3) will provide that an inspector shall not give a direction under subclause 73(1) which conflicts with a direction issued by the Registrar under clause 44, a notice published under subclause 15(4) or clause 45, a restricted research, a research permit or an emergency permit.

Subclause 73(4) will provide that directions given under subclause 73(1) shall include a statement to the effect that subject to the Administrative Appeal Tribunal Act

1989 an application may be made for a review of the direction and that a person whose interest are affected by the decision may request a statement pursuant to section 26 of that Act.

Subclause 73(5) will provide that the validity of a direction made by an inspector under subclause 73(1) shall not be affected by a failure to include the statement required under subclause 73(4).

Subclause 73(6) will specify that the term 'pesticide' for the purpose of clause 73 will mean a substance which the relevant inspector believe on reasonable grounds to be a pesticide.

Clause 74 will deal with advice from an inspector regarding disposal.

Subclause 74(1) will provide that where an inspector has decided under paragraph 71(1)(g) to seize a pesticide the inspector may, at the request of the owner or person who had custody or control of the relevant pesticide, give the person written directions requiring the person to dispose of the pesticide.

Subclause 74(2) will provide that when giving a direction under subclause 74(1) the inspector may specify the manner in which and the time within which the pesticide is to be disposed of.

Subclause 74(3) will provide that compensation shall be paid where a pesticide is disposed of pursuant to a direction given by an inspector under subclause 74(1).

Subclause 74(4) will provide that an inspector shall not give a direction under 74(1) which conflicts with a direction issued by the Registrar under clause 44, a notice published under subclause 15(4) or clause 45, or a restricted, research or emergency permit.

Subclause 74(5) will provide that a direction given under subclause 74(1) shall include a statement to the effect that subject to the Administrative Appeals Tribunal Act 1989 an application may be made for a review of the direction and that a person whose interests are affected by the decision may request a statement of reasons for the decision pursuant to section 26 of that Act.

Subclause 74(6) will provide that the validity of a direction given by an inspector under subclause 74(1) shall not be affected by a failure to include the statement required under subclause 74(5).

Clause 75 will deal with disposal notices.

Subclause 75(1) will provide that where a pesticide is seized by an inspector under paragraph 71(1)(g) the inspector shall give a written notice to the owner, or the person who had possession, custody or control of the pesticide, requesting that the owner, or the person, show cause why the pesticide should not be disposed of.

Subclause 75(2) will provide that the notice given under clause 75 shall specify the grounds upon which the inspector based his or her belief that disposal is necessary and the period, being not less than two working days after the time at what the notice was given, after which the Registrar may dispose of the pesticide under subclause 75(3).

Subclause 75(3) will provide that where a notice has been given under subclause 75(1) the Registrar shall dispose of the pesticide after the expiration period if, after taking into account any representations made by the person to whom the notice was directed, the Registrar is satisfied on reasonable grounds that the disposal of the pesticide is necessary to ensure the minimisation of any risk to public health or any risk of damage to the environment or to property.

Subclause 75(4) will provide that if the Registrar is not satisfied on reasonable grounds that disposal of the pesticide is necessary the Registrar shall cause the pesticide to be released to the owner or to the person from whom it was seized.

Subclause 75(5) will provide that, where a pesticide is disposed of by the Registrar under subclause 75(3) the owner of the pesticide shall be compensated.

Subclause 75(6) will specify that for the purposes of clause 75 the term 'pesticide' means a substance which the inspector who seizes it believe on reasonable grounds to be a pesticide.

Clause 76, will deal with the emergency disposal of a pesticide.

Subclause 76(1) will provide that where a pesticide is seized by an inspector under paragraph 71(1)(h) the Registrar shall cause the pesticide to be immediately disposed if the Registrar is satisfied, on reasonable grounds, that disposal is necessary to avert imminent and serious threat to public health, the environment or to property.

Subclause 76(2) will provide that if the Registrar is not satisfied on reasonable grounds that disposal of the pesticide seized under paragraph 71(1)(h) is necessary then the Registrar shall cause the pesticide to be

released to its owner or to the person from whom it was seized.

Subclause 76(3) will provide that where a pesticide is disposed of pursuant to subclause 76(1) compensation will be paid to the owner of the pesticide.

Subclause 76(4) will specify that for the purpose of clause 76 the term 'pesticide' will mean a substance which the inspector who seized it believes on reasonable grounds to be a pesticide.

Clause 77 will provide for the use of certificates of evidence in court proceedings.

Subclause 77(1) will provide that in proceedings for an offence under this Bill a certificate signed by the Registrar will be evidence of the matters stated in the certificate and the facts on which the matters are based. A certificate may state:

- . that a substance described in the certificate was or was not a registered pesticide on a date, or during a period, specified in the certificate;
- . that a label described in the certificate is or is not identical to a facsimile of a label which, or a label or photograph of which, was attached to an entry in the labels book in relation to a pesticide on a date, or during a period, specified in the certificate; or
- . that a person named in the certificate was an inspector or an analyst on a date, or during a period, specified in the certificate.

Subclause 77(2) will provide that in proceedings for an offence under this Bill a certificate signed by an analyst shall be evidence of the matters stated in the certificate and the facts on which the matters are based. The certificate may state in relation to a substance seized under Part VIII of the Bill:

- . that the analyst signing the certificate is appointed as such under clause 65;
- . when and from whom the substance was received;
- . which container the substance was in when it was received;
- . which, if any, labels or other means of identifying the substance accompanied it when it was received;
- . a description, the weight, and the quantity or volume, of the substance;
- . the name, if any, and a general description of the method of analysis used; and
- . the results of the analysis.

Subclause 77(3) will provide that subclause 77(2) will only apply if a copy of the certificate was served on the defendant in the proceedings or on the defendant's

legal representative on the record in the proceedings, not later than 14 days, or such shorter period as the court orders.

Subclause 77(4) will provide that for the purposes of subclauses 77(1) and 77(2) a certificate purported to have been signed by the Registrar or by an analyst shall be taken to have been so signed unless the contrary is proved.

Clause 78 will deal with the return and disposal of seized property.

Subclause 78(1) will provide that the Registrar may authorise any pesticide, or anything, seized by an inspector under paragraph 71(1)(f) to be released to the owner, or the person from whom it was seized.

Subclause 78(2) will provide that where a pesticide or thing has been seized by an inspector under paragraph 71(1)(f) and has not been released and no court order has been made, the Registrar shall, either 90 days after seizure or if any proceedings in respect of an offence under the Bill were commenced when those proceedings have been finalized:

- cause the pesticide or thing to be released to its owner or to the person from whom it was seized; or
- if, after having made reasonable enquiries the Registrar is unable to ascertain the identity and the address of that owner or person, cause the pesticide thing to be disposed of.

Subclause 78(3) will provide that where a thing has been seized by an inspector under paragraph 71(1)(f) the Registrar shall cause the pesticide or thing to be disposed of if the Registrar is satisfied on reasonable grounds that disposal is necessary to avert an imminent and serious threat to public health, the environment or to property.

Subclause 78(4) will provide that where the Registrar disposes of a pesticide or thing pursuant to subclause 78(3) and the owner has not been convicted of an offence then the owner shall be compensated.

Clause 79 will deal with the forfeiture of pesticide.

Subclause 79(1) will provide that where a court convicts a person of an offence under the Bill, the court may order the forfeiture of the pesticide, thing or container connected with the offence.

Subclause 79(2) will provide that where a pesticide or thing is forfeited the Registrar may deal with the pesticide as he or she thinks fit.

Subclause 79(3) will provide that where the Registrar decides to dispose of a pesticide or thing under subclause 79(2) the costs incurred by the Territory in disposing of the pesticide or thing shall be recoverable from the person who committed the offence.

Part IX of the Bill consists of clauses 80 and 81 and will deal with administrative review.

Clause 80 will require the Registrar to give written notice of certain decisions made under the Bill.

Subclause 80(1) will require the Registrar to give written notice of certain decisions to a person whose interests are affected by a decision, within 28 days of making that decision. There will also be an obligation on the Registrar to advise any person the Registrar believes on reasonable grounds to be dealing with a pesticide specified on a research permit where the Registrar make a decision in respect of a research permit by refusing to grant, imposing or varying a condition, amending under clause 30 or cancelling such a permit. A notice will be required where the Registrar makes a decision:

- . identifying which part, if any, of an entry in the register is proprietary information in relation to the relevant pesticide or any of its constituents;
- . to refuse to grant registration of a pesticide;
- . to amend an entry in the register in relation to a registered pesticide;
- . to refuse to grant a restricted permit;
- . to grant a restricted permit subject to conditions;
- . to vary the conditions under which a restricted permit was granted;
- . to cancel a restricted permit;
- . to refuse to grant a research permit;
- . to grant a research permit subject to conditions;
- . to vary the conditions under which a research permit was granted;
- . to amend a research permit under clause 30; or
- . to cancel a research permit

Subclause 80(2) will provide that a notice given by the Registrar under subclause 80(1) shall -

- . include a statement to the effect that subject to the Administrative Appeals Tribunal Act 1989 an application may be made to the Tribunal for a review of the decision to which the notice relates; and
- . except where subsection 26(11) of that Act applies - include a statement to the effect that a person whose interests are affected by the decision may request a statement pursuant to section 26 of that Act.

Subclause 80(3) will provide that a decision referred to in subclause 80(1) will not be invalidated by a failure to comply within the notice requirements of that subclause.

Clause 81 will provide that an application may be made to the Tribunal for a review of a decision:

- . referred to in subclause 80(1);
- . of the Registrar to -
 - cancel the registration of a pesticide;
 - include an instruction in a notice of cancellation of registration published under subclause 15(4);
 - give directions under clause 44; or
 - publish a notice, or an instruction in a notice under clause 45; or
- . of an inspector to give directions, or a direction, under clause 73 or 74.

Part X of the Bill will consist of clause 82 and 83 and will deal with the Minister's powers to determine fees and make regulations.

Clause 82 will provide that the Minister may by notice in writing determine fees for the purposes of the Bill. A determination by the Minister is to be published in the Gazette.

Clause 83 will allow the Minister to make regulations.

Subclause 83(1) will provide that the Minister may make regulations not inconsistent with the Bill prescribing all matters required, permitted, necessary or convenient for carrying out or giving effect to the Bill.

Subclause 83(2) will provide that the maximum penalty that the regulations may prescribe shall not exceed \$2000.