



Australian Capital Territory

# **Pesticides Act 1989**

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This is a republication of the *Pesticides Act 1989* effective 6 October 1989 to 30 November 1992.

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Australian Capital Territory

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*Reprinted as at 31 August 1991*

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Australian Capital Territory

## PESTICIDES ACT 1989

An Act to regulate dealings with pesticides

### PART I—PRELIMINARY

#### Short title

1. This Act may be cited as the *Pesticides Act 1989*.<sup>1</sup>

#### Commencement

2.<sup>1</sup> (1) This section and section 1 commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions of this Act commence on such date as is, or such dates as respectively are, fixed by the Minister by notice in the *Gazette*.

#### Interpretation

3. (1) In this Act, unless the contrary intention appears—

“address” means—

- (a) in the case of a natural person—the person’s business, trade or occupational address; or
- (b) in the case of a body corporate—the address of its registered office, or its principal place of business or operation;

“analyst” means a person appointed as an analyst under section 65;

“container”, in relation to a pesticide, includes any covering of the pesticide, but does not include any inner lining included in a container

for the purpose only of preventing the pesticide from being in contact with the container;

“deal” means possess, supply, transport, store, use or dispose of;

“defined offence” means an offence under this Act or under the 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 this Act or the regulations;

“determined fee” means the fee determined under section 83 for the purposes of the provision in which the expression occurs;

“director”, in relation to a body incorporated for a public purpose by a law of the Territory, of the Commonwealth, of another Territory, or of a State, or in relation to an association incorporated under such a law, includes any office holder of the body or association;

“dispose of” includes destroy, but does not include supply, store or use;

“emergency permit” means a permit granted under section 37;

“inspector” means a person appointed as an inspector under section 64;

“label”, in relation to a container of pesticide, means anything attached to, or painted, printed or embossed on, that container which—

- (a) identifies the pesticide and its manufacturer; or
- (b) contains or constitutes any instruction or warning about dealing with the pesticides;

“labels book” means the Labels Book established under section 10;

“NSW Act” means the *Pesticides and Allied Chemicals Act 1978* of the State of New South Wales;

“pest” means any vermin or other troublesome or destructive form of biological entity;

“pesticide” means any substance, or mixture of substances, that is ordinarily used as a means of—

- (a) destroying, stupefying, repelling or inhibiting the feeding of any pest;
- (b) preventing infestation or attacks by any pest;

- (c) attracting any pest for the purpose of its destruction;
- (d) destroying vegetation or altering its natural development, productivity, quality or reproductive capacity; or
- (e) destroying, rendering ineffective, or regulating the effect of, a fungus or other parasitic vegetation, virus or bacteria—
  - (i) on or in any substance other than a manufactured food or beverage;
  - (ii) on, but not in, livestock; or
  - (iii) on or in any other form of life except man;

but does not include such a substance, or such a mixture of substances, that is ordinarily used—

- (f) for internal administration to animals other than pests;
- (g) solely as a fertilizer; or
- (h) as a means of remedying or assisting to remedy any imbalance in soil or any other matter in which vegetation is grown;

“premises” includes any vacant land, vehicle, aircraft or vessel;

“proprietary information”, in relation to a pesticide or a pesticide constituent, means—

- (a) a trade secret relating to the pesticide or constituent;
- (b) any other information relating to the pesticide or constituent that has a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were made public; or
- (c) information concerning the lawful commercial or financial affairs of a person, organisation or undertaking, being affairs—
  - (i) relating to the manufacture, distribution or sale of the pesticide or constituent; and
  - (ii) in respect of which the person, organisation or undertaking could be unreasonably affected in an adverse manner by the information being made public;

“register” means the Register of Pesticides established under section 9;

“registered” means registered under Part II;

“Registrar” means the person appointed to be the Registrar of Pesticides under section 7;

“research permit” means a permit under section 28;

“responsible person”, in relation to a registered pesticide, means the person specified in the entry in the register in relation to that pesticide as the manufacturer of the pesticide, or as the agent of the manufacturer in respect of the supply of the pesticide in the Territory;

“restricted permit” means a permit granted under section 19;

“State pesticides law” means—

- (a) the NSW Act;
- (b) the Victorian Act; or
- (c) such laws of a State or another Territory as are prescribed;

“substance” includes an organism;

“supply” includes—

- (a) sell or exchange;
- (b) send, forward or deliver for, or on, sale or exchange;
- (c) supply under a hire-purchase agreement;
- (d) offer for supply; or
- (e) give away;

“Tribunal” means the Australian Capital Territory Administrative Appeals Tribunal;

“Victorian Act” means the *Agricultural Chemicals Act 1958* of the State of Victoria.

(2) For the purposes of this Act, where a pesticide is supplied together with instructions that in order to use the pesticide it may, or should, be mixed with another substance—

- (a) a manufacturer or supplier of the pesticide shall be taken to be a manufacturer or supplier, as the case may be, of the resultant mixture; and

- (b) a person who mixes the pesticide with the other substance in accordance with those instructions shall not be taken to be a manufacturer of that mixture.

(3) For the purposes of this Act, where a pesticide undergoes a chemical change due only to the passage of time, the resultant substance is nevertheless to be taken to continue to be the same pesticide.

### **Inconsistent directions, notices and permits**

4. (1) For the purposes of this Act, where, in relation to a pesticide, there is an inconsistency between instructions in 2 instruments, the instruction in the earlier instrument is, to the extent of the inconsistency, of no effect.

(2) For the purposes of this Act, where, in relation to a pesticide, an instrument is given or published later than inspector's directions and includes an instruction which is inconsistent with an instruction in the inspector's directions, the instruction in the inspector's directions is, to the extent of the inconsistency, of no effect.

(3) In this section—

“inspector's directions” means directions given under section 73 or 74;

“instrument” means—

- (a) directions given under section 44;
- (b) a notice published under subsection 15 (4) or section 45; or
- (c) a restricted permit, a research permit, or an emergency permit;

which are, or is, in force for the time being.

### **Reasonable excuse**

5. (1) A person shall not be taken to have a reasonable excuse for an act that is due to—

- (a) a reasonable mistake caused by the person's reliance on information supplied by another person; or
- (b) an act of another person;

if, when the first-mentioned act occurred, that other person was—

- (c) the first-mentioned person's servant or agent; or

- (d) if the first-mentioned person is a body corporate—a director, officer, servant or agent of the body corporate.

(2) In a prosecution for a defined offence, the defendant is not, without leave of the court, entitled to rely on a defence of reasonable excuse for an act which the defendant alleges was due to—

- (a) a reasonable mistake caused by the defendant's reliance on information supplied by another person; or
- (b) an act of another person;

unless the defendant has, not later than 7 days before the day on which that defence is sought to be relied on, served on the person who instituted the proceedings a notice in writing giving such information as would identify or assist in the identification of the other person as is then in the defendant's possession.

- (3) In this section, "act" includes omission.

#### **Application to the Crown**

6. (1) Subject to subsection (2), this Act binds the Crown.

(2) Section 51, subsection 52 (2) and sections 54, 55 and 56 do not apply to the Registrar, or a person under the supervision of the Registrar, in relation to the performance or purported performance by that person on behalf of the Crown of a power or duty under this Act.

## **PART II—REGISTRATION**

### **Registrar**

7. (1) The Minister shall appoint a Registrar of Pesticides.

(2) The Minister shall only appoint a public servant as Registrar.

(3) The Minister shall cause to be issued to the person appointed as Registrar an identity card that specifies the person's name and appointment, and to which is attached a recent photograph of the person.

(4) The person appointed as Registrar shall not, upon ceasing to be Registrar, fail, without reasonable excuse, to return his or her identity card to the Minister.

Penalty: \$100.

(5) In addition to the powers conferred on him or her under any other provision of this Act, the Registrar has the powers and functions of an inspector.

### **Delegation**

8. The Registrar may, by instrument, delegate to a person any of his or her powers under this Act.

### **Pesticides Register**

9. (1) The Registrar shall establish and maintain a register called the Pesticides Register.

(2) The Registrar shall identify, in relation to each entry in the register in relation to a registered pesticide, which part of that entry, if any, is proprietary information in relation to that pesticide or any of its constituents, taking into account the matter specified pursuant to subparagraph 11 (2) (b) (ix) in the application for registration of the pesticide.

(3) A person may inspect or, upon payment of the determined fee, obtain a copy of an entry in the register.

(4) Only the responsible person in relation to a registered pesticide may inspect, or obtain a copy of, that part of the entry in the register in relation to that pesticide which sets out the information, if any, identified by the Registrar to be proprietary information.

(5) Where the person referred to in subsection (3) is the Registrar of Pesticides appointed under the NSW Act, or the Chief General Manager of the Department of State of Victoria responsible for the administration of the Victorian Act, or a person acting on behalf of either of those persons—

- (a) in the case of the Registrar of Pesticides or a person acting on his or her behalf—no fee is payable for the purpose of subsection (3); and
- (b) subsection (4) does not apply.

### **Labels Book**

10. (1) The Registrar shall establish and maintain a book called the Labels Book.

(2) A person may inspect or, upon payment of the determined fee, obtain a copy of an attachment to the labels book.

(3) The Registrar of Pesticides appointed under the NSW Act, or a person acting on his or her behalf, is not liable to pay the determined fee.

### **Application**

**11. (1)** A person who—

- (a) is a manufacturer of a pesticide; or
- (b) is an agent for such a manufacturer in respect of the supply of the pesticide in the Territory;

may apply to the Registrar for the registration of the pesticide.

**(2)** An application for the registration of a pesticide shall—

- (a) be in writing signed by the applicant;
- (b) specify—
  - (i) the full name and address of the applicant;
  - (ii) if the applicant is not the manufacturer of the pesticide—the full name and address of the manufacturer for or on behalf of whom the applicant is acting;
  - (iii) if the applicant does not intend to supply the pesticide in the Territory—the full name and address of each person known to the applicant who intends to supply the pesticide in the Territory;
  - (iv) each distinguishing name under which the pesticide is to be supplied in the Territory;
  - (v) the chemical formulation or the biological description of the pesticide;
  - (vi) each State pesticides law under which the pesticide is registered, and the registration number (if any) for the pesticide under each such law;
  - (vii) each distinguishing name under which the pesticide is offered for supply in each State in which the pesticide is registered under a State pesticides law;
  - (viii) each kind of container in which the pesticide is to be supplied in the Territory; and

- (ix) any information identified by the applicant as proprietary information in relation to the pesticide or any of its constituents; and
- (c) be accompanied by—
  - (i) a facsimile or coloured photograph, on which all writing, symbols and diagrams are legible, of each kind of label for containers in which the pesticide is to be supplied in the Territory;
  - (ii) where no registration number is assigned to the pesticide under the State pesticides law under which it is registered, written evidence, in a form approved by the Registrar, of such registration; and
  - (iii) the determined fee.

### **Grant**

**12. (1)** Where, on application in accordance with section 11, the Registrar is satisfied that—

- (a) the pesticide is to be supplied in the Territory;
- (b) the pesticide is to be supplied in the Territory only under a State-registered distinguishing name or names;
- (c) the pesticide is not currently registered under this Act by reference to any State-registered distinguishing name;
- (d) the registration of the pesticide has not been refused, and is not cancelled, under any State pesticides law;
- (e) each type of container in which the pesticide is to be supplied in the Territory under a State-registered distinguishing name is, in relation to that name, registered or approved under a State pesticides law; and
- (f) each type of label for containers in which the pesticide is to be supplied in the Territory under a State-registered distinguishing name is, in relation to that name, registered or approved under a State pesticides law;

the Registrar shall register the pesticide.

**(2)** In this section, “State-registered distinguishing name”, in relation to a pesticide, means a distinguishing name under which the pesticide is registered under a State pesticides law.

**Registration**

**13.** The Registrar shall register a pesticide—

- (a) by causing to be entered in the register—
  - (i) a distinguishing number in relation to each distinguishing name under which the pesticide is to be supplied in the Territory;
  - (ii) the particulars referred to in subparagraphs 11 (2) (b) (i)-(viii) (inclusive) in relation to the application for the registration of the pesticide; and
  - (iii) such advisory information about dealing safely with the pesticide as the Registrar considers desirable; and
- (b) by causing to be entered in the labels book each distinguishing number shown in the entry in the register, and attaching to each such entry in the labels book each relevant facsimile and photograph attached to the application for registration.

**Amendment**

**14. (1)** Where the responsible person in relation to a pesticide has reasonable cause to believe that—

- (a) a particular entered in the register in relation to the pesticide is not accurate in a material respect; or
- (b) a type of label for containers of the pesticide, a facsimile or photograph of which is attached to an entry in the labels book in relation to that pesticide, is not, in relation to that pesticide, registered or approved under any State pesticides law;

that person shall notify the Registrar in accordance with subsection (2).

Penalty: \$1,000.

**(2)** A notice shall be—

- (a) in writing, signed by the responsible person;
- (b) if the notice is given in the circumstance referred to in paragraph (1) (b)—accompanied by a facsimile or coloured photograph, on which all writing, symbols and diagrams are legible, of any type of label for containers in which the pesticide is, or is proposed to be, supplied in the Territory, being a type of label—

- (i) which is, in relation to that pesticide, registered or approved under a State pesticides law; and
  - (ii) a facsimile or photograph of which is not attached to any entry in the label book in relation to the pesticide; and
- (c) accompanied by the determined fee.

(3) The Registrar shall, if satisfied of a matter referred to in paragraph (1) (a) or (b), amend each relevant entry in the register and the labels book accordingly.

### **Cancellation**

15. (1) Where the Registrar becomes aware that a registered pesticide is no longer registered under any State pesticides law, the Registrar shall cancel the registration of that pesticide.

(2) Where the Registrar becomes aware that—

- (a) a registered pesticide that was registered under a State pesticides law is no longer registered under that law; and
- (b) that pesticide is registered under another State pesticides law;

the Registrar shall, if satisfied that in the circumstances it is reasonable to do so, cancel the registration of that pesticide.

(3) If the Registrar becomes aware that a distinguishing name under which a pesticide is registered is no longer used in the Territory in relation to the supply of that pesticide, the Registrar shall cancel the registration of the pesticide in relation to that name.

(4) Where the Registrar cancels the registration of a pesticide, he or she shall cause 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 a notice—

- (a) specifying each distinguishing name in relation to which the registration of the pesticide is cancelled;
- (b) including a statement to the effect that the registration of the pesticide has been cancelled in relation to each such specified distinguishing name;
- (c) including such instructions as the Registrar considers reasonable in the circumstances for dealing with the pesticide and any container of the

pesticide, including the time within which any such dealing is to be effected;

- (d) including such warnings as the Registrar considers desirable in relation to dealings with the pesticide;
- (e) including a statement to the effect that it is an offence under this Act to deal with the pesticide except in accordance with the instructions in the notice; and
- (f) including a statement to the effect that—
  - (i) subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Tribunal for a review of the decision to cancel registration, or to include an instruction in the notice of cancellation; and
  - (ii) except where subsection 26 (11) of that Act applies—a person whose interests are affected by such a decision may request a statement pursuant to section 26 of that Act.

(5) The Registrar shall not issue an instruction in a notice under subsection (4) requiring a pesticide to be disposed of.

(6) Where a pesticide is acquired by the Registrar on behalf of the Territory from a person pursuant to an instruction in a notice under subsection (4), the Territory shall compensate the owner.

(7) The validity of a decision referred to in subparagraph (4) (f) (i) shall not be taken to be affected by a failure to include a statement referred to in paragraph (4) (f) in a notice under subsection (4).

(8) The circumstances referred to in this section include the following:

- (a) in relation to subsection (2)—the likelihood that the registration of the relevant pesticide under the law referred to in paragraph (2) (b) will be cancelled;
- (b) in any case—the need to ensure the minimisation of—
  - (i) any risk to public health; and
  - (ii) any risk of damage to the environment or to property;resulting from dealings with the relevant pesticide.

## **Duration**

**16.** The registration of a pesticide shall remain in force, unless sooner cancelled, until the expiration of 3 years after the date on which it was granted, and may be renewed in accordance with section 17.

### **Renewal**

**17. (1)** The responsible person in relation to a pesticide may, before the expiration of the term of the registration of the pesticide, apply to the Registrar for its renewal.

**(2)** An application for renewal shall be in writing signed by the responsible person, and accompanied by the determined fee.

**(3)** On application in accordance with this section, the Registrar shall renew the registration of the pesticide for a period of 3 years commencing on the day immediately following the day on which, but for its renewal, the registration would have expired.

**(4)** Where, before the expiration of the term of the registration of a pesticide, the Registrar does not receive an application for its renewal in accordance with this section, the registration of the pesticide is to be taken to be cancelled for the purpose of subsection 15 (4).

## **PART III—RESTRICTED PERMITS**

### **Application**

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

**(2)** An application for a restricted permit shall—

- (a)** be in writing signed by the applicant;
- (b)** specify—
  - (i)** the full name and address of the applicant;
  - (ii)** each distinguishing name of the unregistered pesticide that the applicant proposes to use;
  - (iii)** the full name and address of the supplier from whom the applicant proposes to obtain the pesticide;
  - (iv)** the purpose for which the pesticide is required; and
  - (v)** the quantity of the pesticide required; and

- (c) be accompanied by the determined fee.

### **Grant**

**19. (1)** On application in accordance with section 18, the Registrar, if satisfied that in the circumstances it is reasonable to do so, shall grant a restricted permit to the applicant in relation to the pesticide specified in the application for a period not exceeding 1 year.

**(2)** In making a decision under subsection (1), the Registrar shall have regard to any representations the manufacturer or supplier of the pesticide makes about the proposed use of the pesticide.

**(3)** The circumstances referred to in subsection (1) include the following:

- (a) whether any registered pesticide is available for supply in the Territory which could be used by the applicant for the purpose specified in the application instead of the specified unregistered pesticide;
- (b) the effect of refusal of the application on the applicant's business, trade, occupation or employment;
- (c) whether the applicant is a fit and proper person to hold a restricted permit;
- (d) the need to ensure the minimisation of—
  - (i) any risk to public health; and
  - (ii) any risk of damage to the environment or property;resulting from dealings with the specified unregistered pesticide.

**(4)** A restricted permit shall specify—

- (a) the particulars referred to in subparagraphs 18 (2) (b) (i), (ii), (iii) and (iv) in relation to the application for the permit;
- (b) the conditions (if any) to which the permit is subject;
- (c) the period for which the permit is granted; and
- (d) such other particulars (if any) as are prescribed.

**(5)** Upon granting a restricted permit, the Registrar shall enter in the register, under each distinguishing name of the pesticide in relation to which the permit is granted, the particulars specified under subsection (4), together

with such advisory information about dealing safely with the pesticide as the Registrar considers desirable.

(6) Notwithstanding subsection (5), a pesticide in relation to which a restricted permit is granted is not, for the purposes of this Act, to be taken to be registered by virtue of the grant of that permit.

### **Conditions**

20. (1) The conditions that may be specified in a restricted permit are such conditions as the Registrar considers reasonable for ensuring the minimisation of—

- (a) any risk to public health; and
- (b) any risk of damage to the environment or property;

resulting from dealings with the specified unregistered pesticide.

(2) The Registrar may vary the conditions specified in a restricted permit, with effect from a date specified in the notices of variation given pursuant to section 80, being not less than 28 days after the date on which the latest such notice is given.

(3) Within 28 days of service to the relevant permit holder of a notice referred to in subsection (2), he or she shall submit the permit to the Registrar.

Penalty: \$500.

(4) On receipt of the restricted permit, the Registrar shall amend the permit and register accordingly and return the permit to its holder.

### **Change of address**

21. (1) If a change occurs in the address of the holder of a restricted permit, that person shall, within 14 days after the change, submit the permit to the Registrar together with written notice of the change.

Penalty: \$500.

(2) On receipt of a notice, the Registrar shall amend the permit and the register accordingly and return the permit to its holder.

**Surrender**

**22. (1)** The holder of a restricted permit may surrender it by notifying the Registrar accordingly by writing accompanied by the permit.

**(2)** The surrender of a restricted permit takes effect on the date the notice of surrender is given in accordance with subsection (1).

**Cancellation**

**23. (1)** The Registrar may cancel a restricted permit if—

- (a) the permit holder has been convicted—
  - (i) of a defined offence; or
  - (ii) in Australia or elsewhere of any other offence relating to a pesticide; or
- (b) the Registrar is satisfied on reasonable grounds that the permit holder—
  - (i) has contravened the terms of the permit;
  - (ii) has used the relevant pesticide for a purpose other than that in relation to which the permit was granted; or
  - (iii) no longer needs to use pesticide for the purpose in relation to which the permit was granted.

**(2)** The cancellation of a permit takes effect from the date specified in the notices of cancellation given pursuant to section 80, being a date no earlier than that on which the latest such notice is given.

**Renewal**

**24. (1)** The holder of a restricted permit may, before the expiration of the term of the permit, apply to the Registrar for its renewal.

**(2)** An application for the renewal of a restricted permit shall be in writing signed by the applicant and accompanied by the determined fee.

**(3)** On application in accordance with this section, the Registrar shall renew the permit for a period not exceeding 12 months, commencing on the day immediately following the day on which, but for its renewal, the permit would have expired.

### **Expiration**

**25.** Upon the expiration of a restricted permit by cancellation or lapse of time, the permit holder shall not, without reasonable excuse, fail to return the permit to the Registrar.

Penalty: \$1,000.

## **PART IV—RESEARCH PERMITS**

### **Interpretation**

**26.** In this Part, “deal with” includes manufacture.

### **Application**

**27. (1)** 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 in relation to that pesticide.

**(2)** An application for a research permit shall—

- (a) be in writing signed by the applicant;
- (b) specify—
  - (i) the full name, address and scientific qualifications (if any) of the applicant;
  - (ii) the distinguishing name, or the type, of each pesticide the applicant proposes to deal with;
  - (iii) the full name and address of the supplier (if any) from whom the applicant proposes to obtain each such pesticide;
  - (iv) the maximum residue limit (if any) for each such pesticide as specified by the National Health and Medical Research Council; and
  - (v) in general terms, the nature of the proposed research, including the manufacturing methods (if any) and the research methods, to be employed; and
- (c) be accompanied by the determined fee.

**Grant**

**28. (1)** In this section, “specified pesticide”, in relation to an application for a research permit, means a pesticide, or a pesticide of a type, specified in the application.

**(2)** On application in accordance with section 27, the Registrar, if satisfied that in the circumstances it is reasonable to do so, shall grant a research permit to the applicant in relation to a specified pesticide for a period not exceeding 1 year.

**(3)** The circumstances referred to in subsection (2) include the following:

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

**(4)** A research permit shall specify—

- (a) the full name, address and scientific qualifications (if any) of the permit holder;
- (b) the distinguishing name, or the type, of each pesticide in relation to which the permit is granted;
- (c) the particulars referred to in subparagraphs 27 (2) (b) (iii), (iv) and (v) in relation to the application for the permit, in respect of each such pesticide;
- (d) the conditions (if any) to which the permit is subject;
- (e) the period for which the permit is granted; and
- (f) such other particulars as are prescribed.

(5) Upon granting a research permit, the Registrar shall enter in the register, under each distinguishing name, or the type, of each pesticide in relation to which the permit is granted, the particulars specified under subsection (4), together with such advisory information about dealing safely with each such pesticide as the Registrar considers desirable.

(6) Notwithstanding subsection (5), a pesticide in relation to which a research permit is granted shall not, for the purposes of this Act, be taken to be registered by virtue of the grant of that permit.

### **Conditions**

29. (1) The conditions that may be specified in a research permit are such conditions as the Registrar considers reasonable for ensuring the minimisation of—

- (a) any risk to public health; and
- (b) any risk of damage to the environment or property;

resulting from dealings with any pesticide, or any pesticide of any type, specified in the permit.

(2) The Registrar may vary the conditions specified in a research permit, with effect from a date specified in the notices of variation given pursuant to section 80, being not less than 28 days after the date on which the latest such notice is given.

(3) Within 28 days of service to the relevant permit holder of a notice referred to in subsection (2), he or she shall submit the permit to the Registrar.

Penalty: \$500.

(4) On receipt of a research permit, the Registrar shall amend the permit and the register accordingly and return the permit to its holder.

### **Variation**

30. (1) In this section, “specified pesticide”, in relation to a research permit, means a pesticide, or a pesticide of a type, specified in the permit.

(2) Where the holder of a research permit no longer needs to deal with a specified pesticide (being 1 of 2 or more specified pesticides) in the course of the research in relation to which the permit was granted, the permit holder shall notify the Registrar accordingly by writing accompanied by the permit.

Penalty: \$500.

**(3) Where—**

- (a) a holder of a research permit notifies the Registrar in accordance with subsection (2); or
- (b) the Registrar is otherwise satisfied on reasonable grounds that the holder of a research permit no longer needs to deal with a specified pesticide for the purpose of the research in relation to which the permit was granted;

the Registrar shall amend the permit to delete the reference to the relevant specified pesticide, with effect from a date specified in the notices of amendment given pursuant to section 80, being not less than 28 days after the date on which the latest such notice is given.

**(4)** In the circumstances referred to in paragraph (3) (b), within 28 days of service to the relevant permit holder of a notice referred to in subsection (3), he or she shall submit the permit to the Registrar.

Penalty: \$1,000.

**(5)** On receipt of the research permit, the Registrar shall amend the permit and the register accordingly and return the permit to its holder.

**Change of address**

**31. (1)** If a change occurs in the address of the holder of a research permit, that person shall, within 14 days after the change, submit the permit to the Registrar together with written notice of the change.

Penalty: \$500.

**(2)** On receipt of a notice, the Registrar shall amend the permit and the register accordingly and return the permit to its holder.

**Surrender**

**32. (1)** The holder of a research permit may surrender it by notifying the Registrar accordingly by writing accompanied by the permit.

**(2)** The surrender of a research permit takes effect on the date the notice of surrender is given in accordance with subsection (1).

**Cancellation**

**33. (1)** The Registrar may cancel a research permit if—

- (a) the permit holder has been convicted—

- (i) of a defined offence; or
  - (ii) in Australia or elsewhere of any other offence relating to a pesticide; or
- (b) the Registrar is satisfied on reasonable grounds that the permit holder—
- (i) has contravened the terms of the permit;
  - (ii) has dealt with a pesticide in relation to which the permit is granted for a purpose other than that in relation to which the permit was granted; or
  - (iii) does not need to deal with any of the pesticides in relation to which the permit was granted for the purpose for which the permit was granted.

(2) The cancellation of a permit takes effect from the date specified in the notices of cancellation given pursuant to section 80, being a date no earlier than that on which the latest such notice is given.

### **Renewal**

**34. (1)** The holder of a research permit may, before the expiration of the term of the permit, apply to the Registrar for its renewal.

(2) An application for the renewal of a research permit shall be in writing signed by the applicant and accompanied by the determined fee.

(3) On application in accordance with this section, the Registrar shall renew the permit for a period not exceeding 1 year, commencing on the day immediately following the day on which, but for its renewal, the permit would have expired.

### **Expiration**

**35.** Upon the expiration of a research permit by cancellation or lapse of time, the permit holder shall not, without reasonable excuse, fail to return the permit to the Registrar.

Penalty: \$1,000.

**PART V—EMERGENCY PERMITS****Application**

**36. (1)** A person who proposes to use an unregistered pesticide to relieve an emergency may apply to the Registrar for an emergency permit in relation to that pesticide.

**(2)** An application for an emergency permit shall—

- (a) be in writing signed by the applicant;
- (b) specify—
  - (i) the full name and address of the applicant;
  - (ii) the distinguishing name of each unregistered pesticide that the applicant proposes to use;
  - (iii) the full name and address of the supplier from whom the applicant proposes to obtain each such pesticide;
  - (iv) the nature of the emergency; and
  - (v) the quantity of the pesticide required; and
- (c) be accompanied by the determined fee.

**Grant**

**37. (1)** On application in accordance with section 36, the Registrar, if satisfied that in the circumstances it is reasonable to do so, shall grant an emergency permit to the applicant in relation to a pesticide specified in the application for a period not exceeding 14 days.

**(2)** The circumstances referred to in subsection (1) include the following:

- (a) the extent to which the emergency specified in the application would be relieved by the use of any pesticide specified in the application;
- (b) whether any other means are available to relieve the specified emergency instead of the use of any pesticide specified in the application, and the effectiveness of such means;
- (c) any—
  - (i) risk to public health; and
  - (ii) risk of damage to the environment or to property;

resulting from dealings with any pesticide specified in the application for the purpose of relieving the specified emergency, compared with any such risk if that pesticide were not to be used to relieve the emergency;

- (d) the need to ensure the minimisation of any such risk resulting from dealings with any pesticide specified in the application.

**(3)** An emergency permit shall specify—

- (a) the distinguishing name of each unregistered pesticide in relation to which the permit is granted;
- (b) the particulars referred to in subparagraphs 36 (2) (b) (i), (iii) and (iv) in relation to the application for the permit;
- (c) the conditions (if any) to which the permit is subject;
- (d) the period for which the permit is granted; and
- (e) such other particulars (if any) as are prescribed.

**(4)** Upon granting an emergency permit, the Registrar shall enter in the register in relation to each distinguishing name of each pesticide in respect of which the permit is granted, the particulars specified in subsection (3), together with such advisory information about dealing safely with the pesticide as the Registrar considers desirable.

**(5)** Notwithstanding subsection (4), a pesticide in relation to which an emergency permit is granted shall not, for the purposes of this Act, be taken to be registered by virtue of the grant of that permit.

### **Conditions**

**38.** The conditions that may be specified in an emergency permit are such conditions as the Registrar considers reasonable for ensuring the minimisation of—

- (a) any risk to the public health; and
- (b) any risk of damage to the environment or to property;

resulting from dealings with any pesticide specified in the application.

### **Cancellation**

**39. (1)** The Registrar may cancel an emergency permit if satisfied on reasonable grounds that—

- (a) the emergency for the relief of which the permit was granted has ceased to exist;
- (b) the circumstances referred to in subsection 37 (2) in relation to the grant of the permit no longer justify any dealing with any pesticide specified in the permit;
- (c) the permit holder has contravened the terms of the permit; or
- (d) the permit holder has used a pesticide specified in the permit for a purpose other than relieving the emergency specified in the permit.

(2) Where the Registrar cancels a permit, he or she shall cause written notice of cancellation to be give to—

- (a) the person to whom the permit was granted; and
- (b) each pesticide supplier specified in the permit.

(3) The cancellation of a permit takes effect on the date on which the latest notice referred to in subsection (2) is given.

### **Renewal**

40. (1) The holder of an emergency permit may, before the expiration of the term of the permit, apply to the Registrar for its renewal.

(2) An application for the renewal of an emergency permit shall be in writing signed by the applicant and accompanied by the determined fee.

(3) On application in accordance with this section, the Registrar, if satisfied that the relevant emergency still exists, and that in the circumstances referred to in subsection 37 (2) it is reasonable to do so, shall renew the permit for a period not exceeding 14 days, commencing on the day immediately following the day on which, but for its renewal, the permit would have expired.

### **Expiration**

41. Upon the expiration of an emergency permit, whether by cancellation or lapse of time, the permit holder shall not, without reasonable excuse, fail to return the permit to the Registrar within 14 days of that expiration.

Penalty: \$1,000.

## **PART VI—REGISTRAR’S DIRECTIONS AND PUBLIC NOTICES**

### **Interpretation**

**42.** In this Part—

“directions” means directions issued under section 44;

“notice” means a notice published under section 45.

### **Circumstances**

**43.** The circumstances referred to in this Part include the following:

- (a) the effect that dealing with the relevant pesticide in the manner referred to in the relevant directions or notice could have on the business, trade, occupation or employment of any person;
- (b) the need to ensure the minimisation of—
  - (i) any risk to public health; and
  - (ii) any risk of damage to the environment or to property;resulting from dealings with the relevant pesticide.

### **Directions**

**44.** Where the Registrar—

- (a) receives a written application from a person; or
- (b) considers it reasonable in the circumstances;

the Registrar shall give written directions to the applicant, or to any person possessing a pesticide, as the case may be, for dealing with any pesticide in that person’s possession.

### **Public notices**

**45.** Where the Registrar considers it reasonable in the circumstances, he or she shall cause 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, a notice about dealing with a pesticide.

### **Disposal and surrender**

**46. (1)** The Registrar shall not issue an instruction in directions or a notice requiring a pesticide to be disposed of.

(2) Where a pesticide is acquired by the Registrar on behalf of the Territory from a person pursuant to an instruction in directions or a notice, the Territory shall compensate the owner.

### Form

47. (1) Directions, or a notice, shall—

- (a) specify each distinguishing name of the relevant pesticide—
  - (i) under which the pesticide is supplied; and
  - (ii) if the pesticide is registered, or if its registration has been cancelled—which appears in the register, or which last appeared in the register before that cancellation, in relation to the pesticide;
- (b) include such instructions as the Registrar considers reasonable in the circumstances for dealing with the pesticide and any container of the pesticide, including the time within which any such dealing is to be effected;
- (c) include such warnings as the Registrar considers reasonable in the circumstances in relation to dealings with the pesticide; and
- (d) include a statement to the effect that—
  - (i) subject to the *Administrative Appeals Tribunal Act 1989*, an application may be made to the Tribunal for a review of the decision to issue directions or a notice, or to include an instruction in those directions or that notice; and
  - (ii) except where subsection 26 (11) of that Act applies—a person whose interests are affected by that decision may request a statement pursuant to section 26 of that Act.

(2) The validity of a decision referred to in subparagraph (1) (d) (i) shall not be taken to be affected by a failure to include the statement referred to in paragraph (1) (d) in the relevant set of directions or notice.

## **PART VII—OFFENCES**

### **Interpretation**

**48.** In this Part—

“directions” means directions for dealing with a quantity of a pesticide, being directions given to a person—

- (a) under section 44; or
- (b) by an inspector under section 73 or 74;

“notice” means a notice in relation to dealings with a pesticide published under subsection 15 (4) or section 45;

“permit” means a restricted permit, a research permit or an emergency permit.

### **Manufacture of unregistered pesticides**

**49.** A person shall not, without reasonable excuse, manufacture an unregistered pesticide, except in accordance with a research permit.

Penalty: \$2,000.

### **Supply of unregistered pesticides**

**50. (1)** A person shall not, without reasonable excuse, supply an unregistered pesticide except in accordance with subsection (2).

Penalty: \$2,000.

**(2)** A person may supply an unregistered pesticide—

- (a) to a permit holder;
- (b) where the supplier holds a research permit;
- (c) where directions have been given to the supplier; or
- (d) where a notice has been published;

in relation to that pesticide, where its supply is in accordance with that permit, those directions or that notice, as the case may be.

**Use, storage and disposal of unregistered pesticides**

**51. (1)** A person shall not, without reasonable excuse, use, store or dispose of an unregistered pesticide except in accordance with subsection (2) or (3).

Penalty: \$2,000.

**(2)** A person may use, store or dispose of an unregistered pesticide in accordance with a permit, directions or a notice.

**(3)** A person may store or dispose of an unregistered pesticide where the pesticide was obtained for the purposes of supply to a permit holder.

**(4)** In a prosecution under subsection (1) it is a defence if the defendant establishes that—

- (a) the pesticide was obtained outside the Territory but within Australia;
- (b) the pesticide was supplied in accordance with the law in the State or Territory where it was obtained;
- (c) the pesticide was purchased only for domestic purposes; and
- (d) the pesticide was used in the Territory only for domestic purposes or not at all.

**(5)** In subsection (4), “domestic purposes” does not include a purpose connected with a business, trade or occupation.

**Dealing where directions, notice, or permit issued**

**52. (1)** Where directions have been given to a person in relation to a pesticide, that person shall not, without reasonable excuse, deal with that pesticide except in accordance with the directions.

**(2)** 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.

**(3)** Where a permit has been granted to a person in relation to a pesticide, that person shall not, without reasonable excuse, deal with that pesticide except in accordance with the permit.

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

Penalty: \$2,000.

**Dealing with registered pesticides—instructions on labels**

**53. (1)** A person shall not, without reasonable excuse, deal with a registered pesticide except in accordance with subsection (2).

Penalty: \$2,000.

(2) Subject to subsections 52 (1) and (2), a person may deal with a registered pesticide—

(a) where—

- (i) the person is not a supplier of the pesticide;
- (ii) there are instructions for dealing with the pesticide on a container of the pesticide, or on a label affixed to such a container, or otherwise supplied with the pesticide; and
- (iii) the person has no reasonable grounds for believing that those instructions are inappropriate for dealing with the pesticide;

in accordance with those instructions; or

(b) in any case—in accordance with the instructions (if any) for dealing with the pesticide on a facsimile or photograph of a label attached to the entry in the labels book in respect of that pesticide.

**Dealing with registered pesticides after expiry date**

**54. (1)** Where there is an instruction referred to in subparagraph 53 (2) (a) (ii) that a pesticide should not be used after a specified date, a person shall not, without reasonable excuse, deal with that pesticide after that date, except—

- (a) by way of disposal in a manner specified in directions given to the person; or
- (b) if the Registrar grants an approval under subsection (3)—in the manner and within the time specified in the approval.

Penalty: \$2,000.

(2) A person may apply to the Registrar in writing accompanied by the determined fee for an approval to deal with a pesticide after the date referred to in subsection (1).

(3) On application in accordance with subsection (2), the Registrar, if satisfied that in the circumstances it is reasonable to do so, shall grant an approval to the applicant to deal with the pesticide specified in the application in a specified manner for a period expiring not later than 14 days after the date referred to in subsection (1).

(4) The circumstances referred to in subsection (3) include the following:

- (a) the manner in which the pesticide will be dealt with;
- (b) the likelihood that the pesticide will have undergone a chemical or an organic change;
- (c) the need to ensure the minimisation of—
  - (i) any risk to public health; and
  - (ii) any risk of damage to the environment or to property;

resulting from dealings with the relevant pesticide after the date specified in subsection (1).

### **Containers**

**55.** A person shall not, without 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 a type specified, or previously specified, as the case may be, in the register in relation to that pesticide.

Penalty: \$2,000.

### **Labels**

**56.** A person shall not, without 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 the label a facsimile or photograph of which—

- (a) is, or was immediately before the registration was cancelled, attached to the entry in the labels book in relation to the pesticide; or

- (b) was attached to such an entry in the labels book at any time during the preceding 12 months.

Penalty: \$2,000.

### **Interference with labels**

**57. (1)** A person shall not, without reasonable excuse, detach, alter, obliterate or destroy a label on a container of a pesticide, except in accordance with subsection (2).

Penalty: \$1,000.

**(2)** A person may detach, alter, obliterate or destroy a label on a container of a pesticide—

- (a) if the pesticide is registered—
  - (i) in the course of disposing of the container; or
  - (ii) for the purpose of attaching to the container a label identical to the label a facsimile or photograph of which is attached to the entry in the labels book in respect of that pesticide; or
- (b) in any case, in accordance with directions, a notice or a permit.

**(3)** For the purpose of this section, where anything is attached to a label, or to the container to which a label is affixed, in such a way as to obscure anything printed on the label, the label shall be taken to be obliterated.

### **Dealings causing injury or damage**

**58. (1)** A person shall not deal with a pesticide in a manner which is likely to cause disease or injury to another person.

**(2)** A person shall not deal with a pesticide in a manner which is likely to cause damage to the property of another person.

Penalty: \$10,000 or imprisonment for 2 years, or both.

### **Production of permit**

**59.** A permit holder shall not, upon a request by an inspector, fail, without reasonable excuse, to produce the permit for inspection.

Penalty: \$1,000.

**False information**

**60. (1)** A person shall not, in relation to any matter arising under this Act, knowingly or recklessly furnish information that is false or misleading in a material particular.

Penalty: \$2,000.

**(2)** Subsection (1) does not apply to a person in relation to a document which contains information which is false or misleading in a material particular where that person accordingly informs the person to whom the document is furnished.

**Conduct of directors, servants and agents**

**61. (1)** Where, in proceedings for a defined offence, it is necessary to establish the state of mind of a person or body in relation to particular conduct, it is sufficient to show—

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

**(2)** A reference in subsection (1) to the state of mind of a person or body includes a reference to—

- (a) the knowledge, intention, opinion, belief or purpose of the person or body; and
- (b) the person's or body's reasons for the intention, opinion, belief or purpose.

**(3)** Any conduct engaged in on behalf of a person or body by a director, servant or agent of the person or a body within the scope of his or her actual or apparent authority is to be taken, for the purposes of a prosecution for a defined offence, 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.

**(4)** Where—

- (a) a natural person is convicted of a defined offence; and
- (b) the person would not have been convicted of the offence if subsections (1), (2) and (3) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(5) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

### **Corporations—penalties**

62. Where a body corporate is convicted of a defined offence, the penalty that the Court may impose is a fine not exceeding 5 times the maximum amount that, but for this section, the Court could impose as a pecuniary penalty for that offence.

## **PART VIII—ENFORCEMENT**

### **Interpretation**

63. (1) For the purposes of this Part, a thing is connected with a particular offence if—

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

(2) A reference in this Part 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.

(3) Where an inspector is authorised under this Part to enter premises, and enters those premises, a reference to the occupier of such premises shall include a reference to a person the inspector believes on reasonable grounds to be the occupier, or to be in charge, of those premises.

### **Inspectors**

64. (1) The Registrar may, by instrument, appoint persons to be inspectors for the purposes of this Act.

(2) An inspector shall perform such duties for the purposes of this Act as the Registrar directs.

(3) The Registrar shall cause to be issued to a person appointed under subsection (1) an identity card that specifies the person's name and appointment, and to which is attached a recent photograph of the person.

(4) A person who was appointed under subsection (1) shall not, upon ceasing to be an inspector, fail, without reasonable excuse, to return his or her identity card to the Registrar.

Penalty for breach of subsection (4): \$100.

### **Analysts**

65. (1) The Registrar may, by instrument, appoint persons to be analysts for the purposes of this Act.

(2) Within 4 weeks of the first appointment under subsection (1), and thereafter annually, the Registrar shall publish, by notice in the *Gazette*, the name and address of each person currently appointed as an analyst.

### **Entry of non-residential premises where pesticide present**

66. An inspector may enter any premises, other than residential premises, at any reasonable hour of the day or night, with such assistance and by such force as is reasonable, and may exercise any power under subsection 71 (1), if the inspector believes on reasonable grounds—

- (a) that a pesticide is on the premises; and
- (b) that it is necessary to do so for the purposes of this Act.

### **Entry of premises—generally**

67. Where an inspector believes on reasonable grounds that it is necessary to do so for the purposes of this Act, he or she may enter any premises and exercise any power under subsection 71 (1) in respect of any thing the inspector believes on reasonable grounds to be connected with a defined offence—

- (a) with the consent of the occupier of the premises;
- (b) pursuant to a warrant issued under section 70; or
- (c) 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 immediate exercise of those powers without the authority of a warrant issued under section 70.

### **Consent to entry**

68. (1) Before seeking the consent of the occupier of premises for the purposes of section 67, an inspector shall inform the occupier that he or she may refuse to give that consent.

(2) If an inspector obtains the occupier's consent for those purposes, the inspector shall ask the occupier to sign a written acknowledgment—

- (a) that the occupier has been informed that he or she may refuse to give consent, for the purposes of section 67, for the inspector to enter the occupier's premises and to exercise any power under subsection 71 (1);
- (b) that the occupier has given the inspector that consent; and
- (c) of the day on which, and the time at which, the consent was given.

(3) Where it is material, in any proceedings, for a court to be satisfied that an occupier has consented for the purposes of section 67 and an acknowledgment, in accordance with subsection (2), signed by the occupier, is not produced in evidence, it shall be presumed that the occupier did not consent, but that presumption is rebuttable.

#### **Display of identity cards**

**69. (1)** An inspector who enters premises under section 66 or 67 is not authorised to remain on the premises if, on the request of the occupier of the premises, the inspector does not show his or her identity card to the occupier.

(2) In subsection (1), "identity card" means—

- (a) in relation to an inspector—the identity card issued to the inspector under subsection 64 (3); or
- (b) in relation to the Registrar, where he or she is exercising a power or performing a function of an inspector—the identity card issued to the Registrar under subsection 7 (3).

#### **Search warrants**

**70. (1)** Where an inspector suspects on reasonable grounds that there may be, or that within the next following 28 days there may be, on any premises, a thing of a particular kind connected with a particular defined offence, the inspector may—

- (a) lay before a magistrate an information on oath setting out those grounds; and
- (b) apply for the issue of a warrant to search the premises for things of that kind.

(2) Where an application is made under subsection (1) for a warrant to search premises, 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—

- (a) to enter the premises;
- (b) to search the premises for things of the kind specified in the warrant; and
- (c) to seize any thing found in the course of the search that the inspector believes, on reasonable grounds, to be a thing of that kind connected with the relevant offence.

(3) A magistrate shall not issue a warrant unless—

- (a) the informant or another person has given the magistrate, either orally or by affidavit, any further information that the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
- (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(4) A warrant shall—

- (a) state the purpose for which it is issued;
- (b) specify the nature of the offence in relation to which the entry and search are authorised;
- (c) specify particular hours during which the entry is authorised, or state that the entry is authorised at any time of day or night;
- (d) include a description of the kind of things in relation to which any power under subsection 71 (1) may be exercised; and
- (e) 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.

### **Powers of inspection**

**71. (1)** Subject to this Part, where an inspector enters premises in accordance with this Part, he or she may—

- (a) require the occupier of the premises to give the inspector his or her name and residential address;
- (b) 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;

- (c) take a sample of any pesticide on the premises for analysis;
- (d) take an extract from, or make a copy of, any book, document or record inspected;
- (e) take such photographs as the inspector believes on reasonable grounds to be necessary for the purposes of this Act;
- (f) seize any pesticide, or any thing, that the inspector believes on reasonable grounds to be connected with a defined offence;
- (g) 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—
  - (i) any risk to public health; or
  - (ii) any risk of damage to the environment or to property;
- (h) seize a pesticide for the purposes of its disposal where the inspector believes on reasonable grounds that it is necessary to avert—
  - (i) an imminent and serious threat to public health; or
  - (ii) an imminent and serious threat of damage to the environment or to property; or
- (j) require the occupier to give the inspector such assistance as is reasonable to enable the inspector to exercise his or her powers under this section.

**(2)** Where an inspector takes a sample of a pesticide under paragraph (1) (c), seizes a pesticide or thing under paragraph (1) (f), or seizes a pesticide under paragraph (1) (g) or (h), he or she shall give a receipt for that sample, thing or pesticide to its owner or the person who had possession, custody or control of it immediately before it was taken or seized.

**(3)** Where an inspector seizes a pesticide under paragraph (1) (f), (g) or (h), he or she shall take a sample of the pesticide for analysis.

(4) A person shall not, without reasonable excuse, contravene a requirement made of him or her under this section.

Penalty: \$1,000.

(5) In this section, “pesticide” means a substance which the relevant inspector believes on reasonable grounds to be a pesticide.

### **Samples**

**72. (1)** Where an inspector takes a sample of a pesticide under section 71, he or she shall—

- (a) divide the sample into 3 parts;
- (b) place each of those parts in a separate container and seal each container;
- (c) attach to each container a label bearing the signature of the inspector and particulars of the date and time when, and the place at which, the sample was taken; and
- (e) deliver one container to the person who had possession custody or control of the relevant pesticide immediately before the sample was taken, another to an analyst and the third container to the Registrar.

(2) Except in the case of a sample of a pesticide seized under paragraph 71 (1) (h), where subsection (1) applies and the relevant inspector is unable, after making reasonable inquiries, to locate the person who had possession, custody or control of the relevant pesticide immediately before the sample was taken, the inspector shall leave the first container referred to in paragraph (1) (e) at the premises from which the sample was taken.

(3) Where a sample of a pesticide is taken under section 71, the Territory shall compensate the owner.

(4) In this section, “pesticide” means a substance which the relevant inspector believes on reasonable grounds to be a pesticide.

### **Inspector’s directions**

**73. (1)** Where an inspector enters premises in accordance with this Part, he or she 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 it is necessary to ensure the minimisation of—

- (a) any risk to public health; and
- (b) any risk of damage to the environment or to property.

(2) An inspector shall not give a direction under subsection (1) requiring a person to dispose of a pesticide.

(3) An inspector shall not give a direction to a person under subsection (1) which conflicts with a direction issued under section 44, a notice published under subsection 15 (4) or section 45, or with a restricted permit, a research permit or an emergency permit.

(4) Directions given under subsection (1) shall include a statement to the effect that—

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

(5) The validity of directions given under subsection (1) shall not be taken to be affected by a failure to comply with subsection (4).

(6) In this section, “pesticide” means a substance which the relevant inspector believes on reasonable grounds to be a pesticide.

#### **Disposal—inspector’s directions**

**74. (1)** In the circumstances referred to in paragraph 71 (1) (g), at the request of the owner, or the person who has possession, custody or control of the relevant pesticide, the inspector may, instead of seizing the pesticide for the purpose of its disposal, give that person written directions requiring the person to dispose of it.

(2) In directions given under subsection (1), the inspector may specify the manner in which, and the time within which, the pesticide is to be disposed of.

(3) Where a pesticide is disposed of pursuant to directions given under subsection (1), the Territory shall compensate the owner.

(4) An inspector shall not give a direction to a person under subsection (1) which conflicts with a direction issued under section 44, a notice published under subsection 15 (4) or section 45, or with a restricted permit, a research permit or an emergency permit.

(5) Directions given under subsection (1) shall include a statement to the effect that—

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

(6) The validity of directions given under subsection (1) shall not be taken to be affected by a failure to comply with subsection (5).

### **Disposal notices**

75. (1) Where a pesticide is seized under paragraph 71 (1) (g), the inspector who seizes it shall give written notice to its owner, or the person who had possession, custody or control of it immediately before the seizure, requesting that person to show cause why the pesticide should not be disposed of.

(2) A notice under this section shall specify—

- (a) the grounds upon which the inspector bases his or her belief that the disposal of the pesticide is necessary; and
- (b) the period, not being less than 2 working days after the time at which the notice was given, after which the Registrar may cause the pesticide to be disposed of under subsection (3).

(3) Where a notice is given under subsection (1), the Registrar shall cause the pesticide to be disposed of after the expiration of the period specified in the notice, if, taking into account any representation 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—

- (a) any risk to public health; or
- (b) any risk of damage to the environment or to property.

(4) Where a notice is given under subsection (1), if the Registrar is not satisfied on reasonable grounds pursuant to subsection (3) of the necessity of the disposal of the pesticide, he or she shall cause the pesticide to be released to its owner, or to the person from whom it was seized.

(5) Where a pesticide is disposed of pursuant to subsection (3), the Territory shall compensate the owner.

(6) In this section, “pesticide” means a substance which the inspector who seizes it believes on reasonable grounds to be a pesticide.

### **Emergency disposal**

**76. (1)** Where a pesticide is seized under paragraph 71 (1) (h), the Registrar shall cause the pesticide to be disposed of immediately, if satisfied on reasonable grounds that it is necessary to avert—

- (a) an imminent and serious threat to public health; or
- (b) an imminent and serious threat of damage to the environment or to property.

(2) Where a pesticide is seized under paragraph 71 (1) (h), if the Registrar is not satisfied on reasonable grounds pursuant to subsection (1) of the necessity of the disposal of the pesticide, he or she shall cause the pesticide to be released to its owner, or to the person from whom it was seized.

(3) Where a pesticide is disposed of pursuant to subsection (1), the Territory shall compensate the owner.

(4) In this section, “pesticide” means a substance which the inspector who seizes it believes on reasonable grounds to be a pesticide.

### **Certificate evidence**

**77. (1)** In proceedings for a defined offence, a certificate purporting to be signed by the Registrar and stating—

- (a) 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;
- (b) 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
- (c) that a person named in the certificate was an inspector or an analyst on a date, or during a period, specified in the certificate;

is evidence of the matters stated in the certificate and the facts on which they are based.

(2) In proceedings for a defined offence, a certificate purporting to be signed by an analyst and stating in relation to a substance seized under this Part—

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

is evidence of the matters stated in the certificate and the facts on which they are based.

(3) Subsection (1) or (2) only applies 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 order, before the commencement of the proceedings.

(4) For the purposes of subsection (1) or (2), a certificate that purports to be signed by the Registrar or an analyst, as the case requires, shall, unless the contrary is proved, be taken to have been so signed.

(5) Subject to subsection (6), where under subsection (1) or (2), a certificate of the Registrar or an analyst, as the case requires, is admitted in evidence in a proceeding for a defined offence, the person charged with the offence may require the Registrar or analyst, as the case requires, to be called as a witness for the prosecution and the Registrar or analyst may be cross-examined as if he or she had given evidence of the matters stated in the certificate.

(6) Subsection (5) does not entitle a person to require the Registrar or analyst, as the case requires, to be called as a witness for the prosecution unless—

- (a) the prosecutor has been given at least 4 days notice of the person's intention to require the Registrar or analyst to be called; or

- (b) the Court, by order, allows the person to require the Registrar or analyst to be so called.

**Return and disposal of seized property**

**78. (1)** The Registrar may authorise any pesticide, or any thing, seized under paragraph 71 (1) (f) to be released to its owner or to the person from whom it was seized.

**(2)** Where—

- (a) a pesticide or thing has been seized under paragraph 71 (1) (f);
- (b) either—
  - (i) at the expiration of a period of 90 days commencing on the date of seizure, no proceedings have been commenced in relation to any defined offence to which it is alleged that the pesticide or thing is connected; or
  - (ii) if such proceedings were commenced within that period—the proceedings (including any appeal in relation to those proceedings) have been determined; and
- (c) the pesticide or thing has not been released to a person under subsection (1), and no order has been made under subsection 79 (1);

the Registrar shall—

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

**(3)** Where a pesticide or thing has been seized under paragraph 71 (1) (f), the Registrar shall cause it to be disposed of if he or she is satisfied on reasonable grounds that it is necessary to avert—

- (a) an imminent and serious threat to public health; or
- (b) an imminent and serious threat of damage to the environment or to property.

**(4)** Where—

- (a) a pesticide or thing is disposed of in accordance with subsection (3); and

- (b) either—
- (i) at the expiration of a period of 90 days commencing on the date of seizure, no proceedings have been commenced in relation to any defined offence to which it is alleged that the pesticide or thing is connected; or
  - (ii) if such proceedings were commenced within that period—the proceedings (including any appeal in relation to those proceedings) have been determined, and no-one stands convicted of a defined offence to which that pesticide or thing is connected;

the Territory shall compensate the owner of the pesticide.

### **Forfeiture of pesticides**

**79. (1)** Where a court convicts a person of a defined offence, the court may order the forfeiture to the Territory of any pesticide, or thing, connected with the offence and any container in which such a pesticide is contained.

**(2)** Any pesticide or thing forfeited under this section may be dealt with as the Registrar thinks fit.

**(3)** Where a pesticide or thing is disposed of under subsection (2), an amount equal to the amount of any costs incurred by the Territory in relation to that disposal is due and payable to the Territory by the person who committed the offence.

## **PART IX—ADMINISTRATIVE REVIEW**

### **Notice of decisions**

- 80. (1)** Where the Registrar makes a decision—
- (a) 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;
  - (b) to refuse to grant registration of a pesticide;
  - (c) to amend an entry in the register in relation to a registered pesticide;
  - (d) to refuse to grant a restricted permit;
  - (e) to grant a restricted permit subject to conditions;
  - (f) to vary the conditions under which a restricted permit was granted;
  - (g) to cancel a restricted permit;

- (h) to refuse to grant a research permit;
- (j) to grant a research permit subject to conditions;
- (k) to vary the conditions under which a research permit was granted;
- (m) to amend a research permit under section 30; or
- (n) to cancel a research permit;

he or she shall, within 28 days of the date of the decision, cause notice in writing of the decision to be given—

- (o) in the case of a decision referred to in paragraph (a), (b) or (c)—the responsible person in relation to the relevant pesticide;
- (p) in the case of a decision referred to in paragraph (d), (e), (f) or (g)—
  - (i) the relevant permit holder; and
  - (ii) each pesticide supplier specified in the permit; or
- (q) in the case of a decision referred to in paragraph (h), (j), (k), (m) or (n)—
  - (i) the relevant permit holder;
  - (ii) any pesticide supplier specified in the permit; and
  - (iii) any other person the Registrar believes on reasonable grounds to be dealing with a pesticide specified in the permit in accordance with the terms of the permit.

(2) A notice under subsection (1) shall—

- (a) 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
- (b) 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.

(3) The validity of a decision referred to in subsection (1) shall not be taken to be affected by a failure to comply with that subsection.

### **Review by Tribunal**

**81.** Application may be made to the Tribunal for a review of a decision—

- (a) referred to in subsection 80 (1);
- (b) of the Registrar to—
  - (i) cancel the registration of a pesticide;
  - (ii) include an instruction in a notice of cancellation of registration published under subsection 15 (4);
  - (iii) give directions, or a direction, under section 44; or
  - (iv) publish a notice, or an instruction in a notice, under section 45; or
- (c) of an inspector to give directions, or a direction, under section 73 or 74.

## **PART X—MISCELLANEOUS**

### **Annual report**

**82. (1)** The Registrar shall furnish to the Minister for presentation to the Legislative Assembly a report relating to the activities of the Registrar during each financial year.

**(2)** The report in respect of a financial year shall be furnished to the Minister within 3 months after the end of that year.

**(3)** The Minister shall present a copy of each report to the Legislative Assembly within 6 sitting days of the Assembly after the day on which the Minister receives the report.

### **Power of Minister to determine fees**

**83. (1)** The Minister may, by notice in writing published in the *Gazette*, determine fees for the purposes of this Act.

**(2)** At the same time the Minister causes the tabling in the Assembly of any determination of fees made pursuant to this section, the Minister shall table—

- (a) a document approximating the costs which the Minister estimates will be incurred in carrying out or giving effect to this Act, during the financial year in which the determination is made, and the next succeeding financial year; and

- (b) an estimate by the Minister as to the amount that will be collected during the financial year in which the particular fee is determined, and the following financial year.

### **Regulations**

**84. (1)** The Minister may make regulations, not inconsistent with this Act, prescribing all matters which are by this Act required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

**(2)** The regulations may prescribe penalties not exceeding \$2,000 for offences against the regulations.

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### **NOTE**

1. Act No. 7, 1989; notified in *Commonwealth of Australia Gazette* on 11 August 1989; ss. 1 and 2 commenced on 11 August 1989; remainder commenced on 6 October 1989 (see *Gazette* 1989, No. S28).

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