



Australian Capital Territory

Environment Protection Amendment Regulation 2021 (No 1)

Subordinate Law SL2021-26

The Australian Capital Territory Executive makes the following regulation under the *Environment Protection Act 1997*.

Dated 25 August 2021.

ANDREW BARR
Chief Minister

REBECCA VASSAROTTI
Minister



Australian Capital Territory

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[Environment Protection Act 1997](#)

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Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

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1 Name of regulation

This regulation is the *Environment Protection Amendment Regulation 2021 (No 1)*.

2 Commencement

This regulation commences 6 months after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Legislation amended

This regulation amends the [Environment Protection Regulation 2005](#).

4 Part 6

substitute

Part 6 Agvet chemical products

Division 6.1 Interpretation

53 Definitions—pt 6

In this part:

agricultural chemical product—see the [agvet code](#), section 4.

agvet chemical product means—

- (a) an agricultural chemical product; or
- (b) a veterinary chemical product.

agvet code means the Agvet Code of the ACT, under the *Agricultural and Veterinary Chemicals Code Act 1994* (Cwlth) as in force from time to time.

Note 1 The Agvet Code of the ACT is set out in the *Agricultural and Veterinary Chemicals Code Act 1994* (Cwlth), sch (see that Act, s 5 (1)).

Note 2 See s 67 (Displacement of *Legislation Act*, s 47 (5) and (6)).

agvet permit means a permit issued under the **agvet code**, part 7.

approved label, for a registered agvet chemical product—see the **agvet code**, section 3.

instruction on the approved label for a registered agvet chemical product—see the **agvet code**, section 3.

registered, for an agvet chemical product, means registered under the **agvet code**, part 2.

veterinary chemical product—see the **agvet code**, section 5.

53A Using registered agvet chemical product in accordance with instructions

- (1) In this part, a registered agvet chemical product is taken to be used in accordance with the instructions on the approved label for the product if—
 - (a) the person uses the product—
 - (i) at a concentration less than the concentration stated in the instructions; or
 - (ii) at a rate of application lower than the rate stated in the instructions; or
 - (iii) less frequently than is stated in the instructions; or
 - (iv) to control a pest not stated in the instructions; or
 - (v) by mixing the product with another substance; and

(b) the use is not prohibited by the instructions.

(2) In this section:

pest—see the [agvet code](#), section 3.

53B Agvet permits—eligible laws for agvet code

For the [agvet code](#), section 3, definition of *eligible law*, each of the following sections is declared to be an eligible law for the [agvet code](#), section 109, definition of *permit*, paragraph (b):

(a) section 55 (Use of agricultural chemical products);

(b) section 55A (Use of veterinary chemical products).

Note Under the agvet code, the APVMA may issue a permit allowing a person to do something with an agvet chemical product that would otherwise be an offence under an ACT law declared to be an eligible law (see the [agvet code](#), s 3, definition of *eligible law* and s 109, definition of *permit*, par (b)).

Division 6.2 Agvet chemical products causing environmental harm

54 Agvet chemical products taken to cause environmental harm—Act, s 5 (b)

(1) An agvet chemical product is taken to cause environmental harm if it enters the environment.

(2) Subsection (1) does not apply if the agvet chemical product enters the environment while being used in accordance with—

(a) an agvet permit; or

(b) for a registered agvet chemical product—the instructions on the approved label for the product.

Note It is an offence for a person to pollute the environment causing environmental harm (see [Act](#), s 137, s 138 and s 139).

Division 6.3 Using agvet chemical products

55 Use of agricultural chemical products

- (1) A person commits an offence if—
 - (a) the person stores, uses or disposes of a registered agricultural chemical product; and
 - (b) the storage, use or disposal is not in accordance with the instructions on the approved label for the product.

Maximum penalty: 10 penalty units.

- (2) A person commits an offence if—
 - (a) the person stores, uses or disposes of an agricultural chemical product; and
 - (b) the product is not a registered agricultural chemical product.

Maximum penalty: 10 penalty units.

- (3) An offence against this section is a strict liability offence.

- (4) Subsections (1) and (2) do not apply if—
 - (a) the person holds an agvet permit for the product; and
 - (b) the storage, use or disposal is in accordance with the permit.

Note The defendant has an evidential burden in relation to the matters mentioned in s (4) (see [Criminal Code](#), s 58).

55A Use of veterinary chemical products

- (1) A person commits an offence if—
 - (a) the person stores, uses or disposes of a registered veterinary chemical product; and

- (b) the storage, use or disposal is not in accordance with the instructions on the approved label for the product.

Maximum penalty: 10 penalty units.

- (2) A person commits an offence if—
 - (a) the person stores, uses or disposes of a veterinary chemical product; and
 - (b) the product is not a registered veterinary chemical product.

Maximum penalty: 10 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) Subsections (1) and (2) do not apply if—
 - (a) the person holds an agvet permit for the product; and
 - (b) the storage, use or disposal is in accordance with the permit.
- (5) Subsection (1) does not apply if the person—
 - (a) is a veterinary practitioner storing, using or disposing of the product in the course of treating an animal in their care; or
 - (b) stores, uses or disposes of the product in accordance with instructions provided by a veterinary practitioner in the course of treating an animal in their care.

Note The defendant has an evidential burden in relation to the matters mentioned in s (4) and s (5) (see [Criminal Code](#), s 58).

55B Recording use of agricultural chemical products

- (1) A person commits an offence if the person—
 - (a) uses an agricultural chemical product; and
 - (b) fails to do any of the following:
 - (i) record the required information about the use;

- (ii) make the record within 48 hours after the use;
- (iii) keep the record for 2 years after the date of the use.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) The record of use of an agricultural chemical product must include the following information (the *required information*):
 - (a) the trade name of the product;
 - (b) the date and time the product was used;
 - (c) the rate at which the product was applied or information that would allow the rate to be worked out;
 - (d) the crop or commodity to which, or the circumstance in which, the product was applied;
 - (e) the address of the parcel of land, and a description of the location within the parcel, where the product was used;
 - (f) the name and contact details of the person who used the product;
 - (g) for a product used in providing a service—the name and contact details of the recipient of the service;
 - (h) for a registered agricultural chemical product—any other information required to be kept by an instruction on the approved label for the product;
 - (i) for an agricultural chemical product used under an agvet permit—any other information required to be kept under the permit.
- (4) This section does not apply to the use of an agricultural chemical product if the product is—
 - (a) a household product or a home garden product that is—
 - (i) ordinarily used for household use; and

- (ii) ordinarily available in a retail store; and
 - (iii) applied by hand or by using a hand-held device; or
- (b) used to sanitise pool or spa water.

Note Under the *Agricultural and Veterinary Chemicals Code Regulations 1995* (Cwlth), sch 3, certain pool and spa products are declared to be, or not to be, agricultural chemical products.

(5) In this section:

hand-held device, for applying an agricultural chemical product, means a device—

- (a) operated manually by a person to apply the product; and
- (b) in which the product is stored before it is applied; and
- (c) that the person is reasonably able to carry while the device is being used to store or apply the product.

Example

a manually operated backpack spray unit

pool or spa means a structure ordinarily holding or using water that is ordinarily used for recreation or mainly for recreation, whether intended for public or private use.

Division 6.4 Training requirements for use of certain agvet chemical products

55C Definitions—div 6.4

In this division:

approved VET course unit of competency—see section 55E (1)

registered training organisation—see the *National Vocational Education and Training Regulator Act 2011* (Cwlth), section 3, as in force from time to time.

restricted agvet chemical product—see the [agvet code](#), section 3, definition of *restricted chemical product*.

schedule 7 poison means a chemical mentioned in the [Poisons Standard](#), schedule 7.

statement of attainment means a VET statement of attainment under the [National Vocational Education and Training Regulator Act 2011](#) (Cwlth), section 3, as in force from time to time.

VET course see the [National Vocational Education and Training Regulator Act 2011](#) (Cwlth), section 3, as in force from time to time.

55D Declared agvet chemical products

- (1) The authority may declare a restricted agvet chemical product, or an agvet chemical product containing a schedule 7 poison, that is—
 - (a) a liquid fumigant to be a *declared liquid fumigant* for section 55F (1); and
 - (b) a vertebrate poison to be a *declared vertebrate poison* for section 55G (1); and
 - (c) an avicide to be a *declared avicide* for section 55H (1); and
 - (d) an industrial timber treatment to be a *declared industrial timber treatment* for section 55I (1); and
 - (e) a termiticide to be a *declared termiticide* for section 55J (1).
- (2) A declaration is a notifiable instrument.

55E Approved VET course units of competency

- (1) The authority may approve a VET course unit of competency (an *approved VET course unit of competency*) for the following provisions:
 - (a) section 55F (3) (a);

- (b) section 55G (3) (a);
 - (c) section 55H (3) (a);
 - (d) section 55I (3) (a);
 - (e) section 55J (3) (a);
 - (f) section 55K (3) (a);
 - (g) section 55L (3) (a).
- (2) An approval is a notifiable instrument.

55F Training—use of declared liquid fumigants

- (1) A person commits an offence if the person uses a declared liquid fumigant.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) Subsection (1) does not apply if the person holds—
- (a) a VET statement of attainment issued by a registered training organisation stating that the person has successfully completed each approved VET course unit of competency required for this section; or
 - (b) a qualification that is substantially equivalent to the statement of attainment mentioned in paragraph (a).

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

55G Training—use of declared vertebrate poisons

- (1) A person commits an offence if the person uses a declared vertebrate poison.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) Subsection (1) does not apply if the person holds—
- (a) a VET statement of attainment issued by a registered training organisation stating that the person has successfully completed each approved VET course unit of competency required for this section; or
 - (b) a qualification that is substantially equivalent to the statement of attainment mentioned in paragraph (a).
- (4) Subsection (1) does not apply if—
- (a) the declared vertebrate poison is in the form of a prepared bait; and
 - (b) the use is in accordance with an environmental authorisation.

Note 1 **Environmental authorisation**—see the [Act](#), dictionary.

Note 2 It is an offence to conduct a class A activity without an environmental authorisation—see the [Act](#), s 42. The commercial use of a registered agvet chemical product for pest control or turf management is a class A activity—see the [Act](#), sch 1, table 1.2, item 29.

Note 3 The defendant has an evidential burden in relation to the matters mentioned in s (3) and s (4) (see [Criminal Code](#), s 58).

55H Training—use of declared avicides

- (1) A person commits an offence if the person uses a declared avicide.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.

- (3) Subsection (1) does not apply if the person—
- (a) holds—
 - (i) a VET statement of attainment issued by a registered training organisation stating that the person has successfully completed each approved VET course unit of competency required for this section; or
 - (ii) a qualification that is substantially equivalent to the statement of attainment mentioned in subparagraph (i); and
 - (b) has successfully completed an approved avicide training course.
- Note* The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).
- (4) The authority may approve a VET course unit of competency or other training course for this section (an *approved avicide training course*) if satisfied that it includes appropriate training in—
- (a) identifying pest birds and understanding their behaviour; and
 - (b) assessing how to manage pest birds and control them using agvet chemical products.
- (5) An approval is a notifiable instrument.

551 Training—use of declared industrial timber treatments

- (1) A person commits an offence if the person uses a declared industrial timber treatment.
- Maximum penalty: 10 penalty units.
- (2) An offence against this section is a strict liability offence.

- (3) Subsection (1) does not apply if the person holds—
- (a) a VET statement of attainment issued by a registered training organisation stating that the person has successfully completed each approved VET course unit of competency required for this section; or
 - (b) a qualification that is substantially equivalent to the statement of attainment mentioned in paragraph (a).

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

55J Training—use of declared termiticides

- (1) A person commits an offence if the person uses a declared termiticide as a pre-construction termiticide product.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) Subsection (1) does not apply if the person holds—
- (a) a VET statement of attainment issued by a registered training organisation stating that the person has successfully completed each approved VET course unit of competency required for this section; or
 - (b) a qualification that is substantially equivalent to the statement of attainment mentioned in paragraph (a).

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

- (4) For subsection (1), a person uses a declared termiticide as a pre-construction termiticide product if the person uses the declared termiticide to install a chemical soil barrier to impede and discourage the concealed entry of termites into a structure before construction of the structure is completed.

55K Training—use of other agricultural chemical products containing schedule 7 poisons

- (1) A person commits an offence if—
- (a) the person uses an agricultural chemical product; and
 - (b) the product contains a schedule 7 poison; and
 - (c) the product is not any of the following:
 - (i) a declared liquid fumigant;
 - (ii) a declared vertebrate poison;
 - (iii) a declared avicide;
 - (iv) a declared industrial timber treatment;
 - (v) a declared termiticide.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) Subsection (1) does not apply if the person holds—
- (a) a VET statement of attainment issued by a registered training organisation stating that the person has successfully completed each approved VET course unit-of competency required for this section; or
 - (b) a qualification that is substantially equivalent to the statement of attainment mentioned in paragraph (a).
- (4) Subsection (1) does not apply if—
- (a) the person uses the product—
 - (i) as part of a farming or grazing activity; and
 - (ii) under the supervision of another person (the *supervisor*) who holds a qualification mentioned in subsection (3); and

- (b) before the use, the supervisor—
 - (i) chooses the product and prepares it for the use; and
 - (ii) checks that any equipment that is to be used to apply the product is in good working order; and
 - (iii) instructs the user how to use the product; and
- (c) the person has used the product on not more than—
 - (i) 4 days in the last month; and
 - (ii) 12 days in the last year.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) and s (4) (see [Criminal Code](#), s 58).

55L Training—use of registered veterinary chemical products containing schedule 7 poisons

- (1) A person commits an offence if—
 - (a) the person uses a registered veterinary chemical product; and
 - (b) the product contains a schedule 7 poison; and
 - (c) the person is not a veterinary practitioner.Maximum penalty: 10 penalty units.
- (2) An offence against this section is a strict liability offence.
- (3) Subsection (1) does not apply if the person holds—
 - (a) a VET statement of attainment issued by a registered training organisation stating that the person has successfully completed each approved VET course unit of competency required for this section; or
 - (b) a qualification that is substantially equivalent to the statement of attainment mentioned in paragraph (a).

- (4) Subsection (1) does not apply if the person—
- (a) holds a FeedSafe accreditation for manufacturing animal feed;
and
 - (b) uses the product in manufacturing animal feed at a place where an accredited animal feed manufacturer holds a FeedSafe accreditation for manufacturing animal feed.

Note The defendant has an evidential burden in relation to the matters mentioned in s (3) and s (4) (see [Criminal Code](#), s 58).

- (5) In this section:

FeedSafe accreditation means the accreditation given by SFMCA under the quality assurance accreditation program known as FeedSafe operated by SFMCA.

SFMCA means the Stock Feed Manufacturers' Council of Australia Incorporated ABN 84 816 063 155.

5 Section 67 (2) (a)

omit

6 New section 67 (2) (fa) and (fb)

insert

- (fa) *National Vocational Education and Training Regulator Act 2011* (Cwlth);
- (fb) Poisons Standard;

7 Dictionary, new definition of *agricultural chemical product*

insert

agricultural chemical product, for part 6 (Agvet chemical products)—see section 53.

8 Dictionary, definitions of *agvet chemical product* and *agvet code*

substitute

agvet chemical product, for part 6 (Agvet chemical products)—see section 53.

agvet code, for part 6 (Agvet chemical products)—see section 53.

9 Dictionary, new definitions

insert

agvet permit, for part 6 (Agvet chemical products)—see section 53.

approved label, for part 6 (Agvet chemical products)—see section 53.

approved VET course unit of competency, for division 6.4 (Training requirements for use of certain agvet chemical products)—see section 55C.

instruction on the approved label for a registered agvet chemical product, for part 6 (Agvet chemical products)—see section 53.

Poisons Standard means the current Poisons Standard under the *Therapeutic Goods Act 1989* (Cwlth) as in force from time to time.

Note The Poisons Standard does not need to be notified under the [Legislation Act](#) because s 47 (6) does not apply (see s 67 (2) and [Legislation Act](#), s 47 (7)).

registered, for an agvet chemical product, means registered under the [agvet code](#), part 2.

restricted agvet chemical product, for division 6.4 (Training requirements for use of certain agvet chemical products)—see section 55C.

schedule 7 poison, for division 6.4 (Training requirements for use of certain agvet chemical products)—see section 55C.

statement of attainment, for division 6.4 (Training requirements for use of certain agvet chemical products)—see section 55C.

VET course, for division 6.4 (Training requirements for use of certain agvet chemical products)—see section 55C.

veterinary chemical product, for part 6 (Agvet chemical products)—see section 53.

Endnotes

1 Notification

Notified under the [Legislation Act](#) on 28 October 2021.

2 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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