



New South Wales

# Pesticides Amendment (Notification of Proposed Use) Regulation 2008

under the

Pesticides Act 1999

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Pesticides Act 1999*.

CARMEL TEBBUTT, M.P.,  
Minister for Climate Change and the Environment

## Explanatory note

The object of this Regulation is to amend the *Pesticides Regulation 1995*:

- (a) to require a pest management technician to give notice of the proposed use of a pesticide before using a pesticide on land adjacent to certain sensitive places, and
- (b) to replace references to the Air Navigation Regulations of the Commonwealth with references to the appropriate provisions of the *Civil Aviation Act 1988* and the *Civil Aviation Regulations 1988* of the Commonwealth, and
- (c) to provide that a public authority may, in a prescribed public place that is owned by or under the control of the public authority, allow another public authority to use a pesticide if that other authority has prepared, finalised and notified the Environment Protection Authority of a pesticide use notification plan and has given notice in accordance with that plan, and
- (d) to update references to the *Food Standards Code* of the Commonwealth, and to apply *The MRL Standard—Maximum residue limits in food and animal feedstuff*, published by the Australian Pesticides and Veterinary Medicines Authority, for the purpose of determining maximum permissible concentrations of certain substances in agricultural produce.

This Regulation is made under the *Pesticides Act 1999*, including sections 46, 48, 63 and 119 (the general regulation-making power).

## **2008 No 508**

Clause 1            Pesticides Amendment (Notification of Proposed Use) Regulation 2008

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# **Pesticides Amendment (Notification of Proposed Use) Regulation 2008**

under the

Pesticides Act 1999

### **1 Name of Regulation**

This Regulation is the *Pesticides Amendment (Notification of Proposed Use) Regulation 2008*.

### **2 Amendment of Pesticides Regulation 1995**

The *Pesticides Regulation 1995* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Clause 2)

**[1] Clause 3 Definitions**

Omit the definition of *Food Standards Code* from clause 3 (1).

Insert instead:

*Food Standards Code* means the *Australia New Zealand Food Standards Code* as defined in the *Food Standards Australia New Zealand Act 1991* of the Commonwealth.

*MRL Standard* means the document entitled *The MRL Standard—Maximum residue limits in food and animal feedstuff* published by the Australian Pesticides and Veterinary Medicines Authority.

**[2] Clause 5 Particulars to accompany application for licence: section 46**

Omit clause 5 (1). Insert instead:

- (1) For the purposes of section 46 (3) (c) of the Act, evidence that the applicant is the holder of an air operator's certificate issued under Division 2 of Part III of the *Civil Aviation Act 1988* of the Commonwealth is required.

**[3] Clause 5 (2) (a)**

Omit the paragraph. Insert instead:

- (a) evidence that the applicant holds a current commercial pilot (aeroplane) licence or commercial pilot (helicopter) licence issued under the *Civil Aviation Regulations 1988* of the Commonwealth endorsed with an agricultural rating, and

**[4] Clause 6 Prescribed qualifications for issue of licence: section 48**

Omit "the Air Navigation Regulations" from clause 6 (1).

Insert instead "Division 2 of Part III of the *Civil Aviation Act 1988*".

**[5] Clause 6 (2) (a)**

Omit the paragraph. Insert instead:

- (a) the applicant holds a current commercial pilot (aeroplane) licence or commercial pilot (helicopter) licence issued under the *Civil Aviation Regulations 1988* of the Commonwealth endorsed with an agricultural rating, and

## 2008 No 508

Pesticides Amendment (Notification of Proposed Use) Regulation 2008

Schedule 1 Amendments

---

### [6] Clause 10

Omit the clause. Insert instead:

#### 10 Prohibited residues: section 63

- (1) For the purposes of paragraph (b) of the definition of *agricultural produce* in section 63 of the Act the following are prescribed as agricultural produce:
  - (a) any produce of a kind referred to in Schedule 1 or 2 to Standard 1.4.2 of the Food Standards Code and any vegetation from which produce of a kind so referred to is obtained,
  - (b) any produce, other than produce referred to in paragraph (a), of a kind referred to in the second column of Table 1 or 4 of the MRL Standard and any vegetation from which produce of a kind so referred to is obtained.
- (2) For the purposes of section 63 (2) (a) of the Act, the following are *prescribed substances*:
  - (a) a substance referred to in the shaded boxes in Schedule 1 or 2 to Standard 1.4.2 of the Food Standards Code,
  - (b) a substance specified in the first column of Table 1 or 4 of the MRL Standard.
- (3) For the purposes of section 63 (2) (a) of the Act:
  - (a) the concentration of a prescribed substance specified in Schedule 1 or 2 to Standard 1.4.2 of the Food Standards Code in respect of any agricultural produce is prescribed as the maximum permissible concentration of that substance in respect of that produce, and
  - (b) the concentration of a prescribed substance specified in the third column of Table 1 or 4 to the MRL standard in respect of any agricultural produce is prescribed as the maximum permissible concentration of that substance in respect of that produce.
- (4) If there is an inconsistency between the maximum permissible concentration prescribed by subclause (3) (a) and the maximum permissible concentration prescribed by subclause (3) (b) in respect of the same prescribed substance and agricultural produce, the maximum permissible concentration prescribed by subclause (3) (a) prevails.

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**[7] Clause 11HA**

Insert after clause 11H:

**11HA Records to be provided to authorised officer on request**

A person required to keep a record under this Regulation must, on the request of an authorised officer, provide the authorised officer with a copy of the record within a reasonable period that is specified in the request.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, and
- (b) in the case of an individual—200 penalty units.

**[8] Part 4B Notification of proposed use of pesticide**

Omit Division 1 of Part 4B and the heading to Division 2. Insert instead:

**Division 1 Preliminary****[9] Clause 11J Definitions**

Omit “Division” from clause 11J (1). Insert instead “Part”.

**[10] Clause 11J (1)**

Insert in alphabetical order:

*pest management technician* means a person who:

- (a) holds a certificate of competency or recognised qualification (within the meaning of Part 9.1 of Chapter 9 of the *Occupational Health and Safety Regulation 2001*) in relation to the kind of work referred to under the subheading “**Application of pesticides**” or “**Use of fumigants**” in the Schedule to clause 266 of that Regulation, or
- (b) is a trainee doing work of the type referred to in paragraph (a) and who is excepted under clause 271 of that Regulation from the requirement of that Regulation to hold a certificate of competency or recognised qualification in relation to that work, or
- (c) holds a former authority (pest control operator’s licence) that is taken to be a certificate of competency under clause 268 of that Regulation.

## 2008 No 508

Pesticides Amendment (Notification of Proposed Use) Regulation 2008

Schedule 1 Amendments

---

**[11] Part 4B, Division 2, heading**

Insert after clause 11J:

**Division 2 Notification by public authorities**

**[12] Clause 11K Obligations on public authorities concerning use of pesticide**

Insert after clause 11K (2):

- (3) Subclause (1) does not apply in respect of the use of pesticide in a prescribed public place that is owned by or is under the control of a public authority if the pesticide is used by another public authority and that other public authority has:
  - (a) prepared, finalised and notified the Environment Protection Authority of a pesticide use notification plan in accordance with this Division, and
  - (b) given public notice in accordance with that plan.
- (4) Subclause (1) does not apply in relation to the use of pesticide in public baths or in any swimming pool or spa.

**[13] Clause 11L Contents of pesticide use notification plans**

Omit “owned by the public authority or under its control” from clause 11L (1).

**[14] Clause 11L (2) (g)**

Omit “what will be included in that notification”.

Insert instead “the information that will be provided to the affected persons that are notified”.

**[15] Clause 11L (2) (k)**

Insert “or class of prescribed public places” after “prescribed public places”.

**[16] Clause 11L (4)**

Insert after clause 11L (3):

- (4) Without limiting subclause (2) (f), a pesticide use notification plan may provide that the public authority will provide information to affected persons of the proposed use of pesticide in the prescribed public places by a combination of methods and, if the plan does so provide, must specify the information that will be provided by each method.

**[17] Clause 11Q Definitions**

Omit the definition of *pest management technician*.

**[18] Clause 11R Prior notice of application of pesticide to be given by management**

Omit clause 11R (3). Insert instead:

- (3) The notice must be given:
  - (a) to each resident in person or by post, facsimile transmission, email or telephone or by placing a written notice in the resident's letter box or under the resident's front door, or
  - (b) by placing a written notice:
    - (i) on the main notice boards at the residential complex (if available), and
    - (ii) if the pesticide is to be used in a common area within a building—at each entrance to the building concerned, and
    - (iii) if the pesticide is to be used in a common area outside a building—at each entrance to each building adjoining the common area concerned.

**[19] Clause 11R (7)**

Insert after clause 11R (6):

- (7) If notice required under subclause (1) is given in person or by telephone the pest management technician must make a record of the giving of the notice.

**[20] Clause 11U Provision of Material Safety Data Sheet**

Omit "a person at". Insert instead "a member of staff at".

**[21] Part 4B, Division 4**

Insert after Division 3 of Part 4:

**Division 4 Notification by pest management technicians  
in relation to sensitive places**

**11W Application of Division**

- (1) In this Division, *sensitive place* does not include a hospital.
- (2) This Division does not apply to any thing done before 1 September 2009.

## 2008 No 508

Pesticides Amendment (Notification of Proposed Use) Regulation 2008

Schedule 1 Amendments

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### **11X Prior notice of application of pesticide to be given by pest management technician**

- (1) A pest management technician must give notice in accordance with this Division, before spraying a pesticide outdoors, or injecting a pesticide into the ground outdoors, within 20 metres of any common boundary between the land on which the pesticide is to be used and a sensitive place.

Maximum penalty:

- (a) in the case of a corporation—400 penalty units, and
  - (b) in the case of an individual—200 penalty units.
- (2) If the premises of a sensitive place consist only of a building or part of a building, the reference in subclause (1) to within 20 metres of any common boundary between the land on which the pesticide is to be used and the sensitive place is to be read as a reference to within 20 metres of the building or part of the building.
  - (3) A pest management technician does not commit an offence under subclause (1) if he or she could not have reasonably known that the place where the pesticide is to be used is within 20 metres of a common boundary between the land on which the pesticide is used and a sensitive place.
  - (4) Nothing in this clause prevents a pest management technician from giving any other notice before using a pesticide whether or not within 20 metres of the boundary of a sensitive place.

### **11Y Form of notice**

- (1) A pest management technician must give notice to the principal, director, manager or other person having the care, control or management of a sensitive place at least 5 working days before the proposed use of a pesticide.
- (2) The notice must be given in person or by post, facsimile transmission, email or telephone or by placing a written notice in the person's letter box.
- (3) The notice must include the following:
  - (a) the date, dates, or range of dates on which the pesticide will be used,
  - (b) where the pesticide will be used,
  - (c) the full product name of the pesticide that will be used,
  - (d) the purpose for which the pesticide will be used,



- (e) the period (if any) during which the affected area should not be entered (but only if the approved label for the pesticide or the permit for use of the pesticide requires that such a period be observed),
  - (f) the contact details of the pest management technician, or of his or her office.
- (4) Despite subclause (1), a pest management technician may give the notice required by this clause immediately before the use of a pesticide in an emergency so as to deal with biting or dangerous pests (such as rodents, wasps, bees, venomous spiders, fleas, bird mites or similar creatures) as long as the technician makes a record, at that time, of the emergency and use of the pesticide.
- (5) It is sufficient compliance with subclause (1) that notice is provided in accordance with this clause to the agent of a person referred to in that subclause.
- (6) If notice required under subclause (1) is given in person or by telephone, the pest management technician must make a record of the giving of the notice.

**11Z Provision of Material Safety Data Sheet**

If a person who is required to be notified under this Division makes a request to the pest management technician, or a member of staff at his or her office, to see a copy of the Material Safety Data Sheet for the relevant pesticide, the pest management technician must give the person, or ensure that the person is given, a copy of the Material Safety Data Sheet as soon as practicable after the request is made.

Maximum penalty:

- (a) in the case of a corporation—30 penalty units, and
- (b) in the case of an individual—15 penalty units.

**11ZA Records that must be kept**

A pest management technician who is required by this Division to give any notice or make any record must keep a paper copy of the notice or record for at least 3 years after the notice, or notice to which the record relates, was given.

Maximum penalty:

- (a) in the case of a corporation—100 penalty units, and
- (b) in the case of an individual—50 penalty units.

## 2008 No 508

Pesticides Amendment (Notification of Proposed Use) Regulation 2008

Schedule 1 Amendments

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### [22] Clause 15

Insert after clause 14:

#### 15 Savings and transitional provision

A notice of the proposed use of a pesticide given in accordance with this Regulation, as in force immediately before the amendment of this Regulation by the *Pesticides Amendment (Notification of Proposed Use) Regulation 2008*, is taken to have been given in accordance with this Regulation as so amended.

### [23] Schedule 1 Penalty notice offences

Insert in order of provisions of the regulation:

Clause 11X (1)	400	800
Clause 11Z	100	200
Clause 11ZA	100	200

### [24] Schedule 2 Qualifying examination

Omit clause 4 of Schedule 2. Insert instead:

- 4** A candidate for examination must be the holder of a current commercial pilot (aeroplane) licence or commercial pilot (helicopter) licence issued under the *Civil Aviation Regulations 1988* of the Commonwealth endorsed with an agricultural rating.

BY AUTHORITY

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