

Western Australia

**Agricultural and Veterinary Chemicals
(Western Australia) Amendment Bill 2001**

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Western Australia

LEGISLATIVE COUNCIL

(As amended during consideration in detail)

**Agricultural and Veterinary Chemicals
(Western Australia) Amendment Bill 2001**

A Bill for

An Act to amend the *Agricultural and Veterinary Chemicals (Western Australia) Act 1995* with respect to the functions and powers of certain Commonwealth authorities and officers of the Commonwealth, and for other purposes.

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Agricultural and Veterinary Chemicals (Western Australia) Amendment Act 2001*.

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2. Commencement

- (1) Subject to subsection (2) this Act comes into operation on the day on which it receives the Royal Assent.
- (2) Sections 4(b), 5, 7 and 8 come into operation immediately before section 4(1) of the *Co-operative Schemes (Administrative Actions) Act 2001* comes into operation.

3. The Act amended

The amendments in this Act are to the *Agricultural and Veterinary Chemicals (Western Australia) Act 1995**

[* Act No. 3 of 1995.

5 For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 9.]

4. Section 3 amended

Section 3 is amended as follows:

- 10 (a) in the definition of “Commonwealth administrative laws” by deleting subparagraph (a)(ii);
- (b) by inserting in the appropriate alphabetical positions the following definitions —

“

- 15 “**confer**” includes impose;
- “**function**” includes a duty;

”.

5. **Part 5 replaced**

Part 5 is repealed and the following Part is inserted instead —

“

**Part 5 — Application of Commonwealth
administrative laws to the Agvet Code and
Agvet Regulations of this jurisdiction**

15. **Object**

The object of this Part is to help ensure that the Agvet Code of this jurisdiction and the Agvet Code of each other jurisdiction are administered on a uniform basis.

16. **Application of Commonwealth administrative laws in relation to applicable provisions**

- (1) The Commonwealth administrative laws apply as laws of this jurisdiction to any matter arising in relation to the applicable provisions of this jurisdiction as if those provisions were laws of the Commonwealth and were not laws of this jurisdiction.
- (2) The provisions of the Agvet Code of this jurisdiction that require the NRA to give brief particulars of reasons for decisions do not affect the obligations of the NRA under section 28 of the *Administrative Appeals Tribunal Act 1975* of the Commonwealth as that section applies as a law of this jurisdiction under subsection (1).
- (3) The provisions of the Agvet Code of this jurisdiction that relate to the disclosure of confidential commercial information do not affect the operation of the *Freedom of Information Act 1982* of the Commonwealth as that Act applies as a law of this jurisdiction under subsection (1).

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- 5
- (4) For the purposes of a law of this jurisdiction, a matter arising in relation to the applicable provisions of this jurisdiction —
- (a) is taken to be a matter arising in relation to laws of the Commonwealth in the same way as if those provisions were laws of the Commonwealth; and
- (b) is taken not to be a matter arising in relation to laws of this jurisdiction.
- 10
- (5) Subsection (4) has effect for the purposes of a law of this jurisdiction except as prescribed by regulations under section 32.

17. Duties, functions and powers conferred on Commonwealth officers and authorities

- 15
- (1) A Commonwealth administrative law applying because of section 16 that confers on a Commonwealth officer or authority a function or power also confers on the officer or authority the same function or power in relation to a matter arising in relation to an applicable provision of this jurisdiction.
- 20
- (2) In performing a function or exercising a power conferred by subsection (1), the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power under the Commonwealth administrative law.
- 25

18. Reference in Commonwealth administrative law to a provision of another law

- 30
- For the purposes of section 16, a reference in a Commonwealth administrative law to a provision of that or another Commonwealth administrative law is

taken to be a reference to that provision as applying because of that section.

18A. Construction of references to Part IVA of Commonwealth AAT Act

5 For the purposes of section 16, a reference in a provision of the *Administrative Appeals Tribunal Act 1975* of the Commonwealth (as that provision applies as a law of this jurisdiction) to the whole or any part of Part IVA of that Act is taken to be a reference to
10 the whole or any part of that Part as it has effect as a law of the Commonwealth.

”.

6. Part 6 repealed

Part 6 is repealed.

15 **7. Sections 28A and 28B inserted**

After section 28 the following sections are inserted —

“

28A. Inspectors and analysts

(1) In this section —

20 **“officer”** means —

- (a) an inspector appointed under section 69F(1) of the Agricultural and Veterinary Chemicals (Administration) Act; or
- (b) an analyst approved under section 69G of the
25 Agricultural and Veterinary Chemicals (Administration) Act.

(2) An officer has, in respect of a matter arising in relation to an applicable provision of this jurisdiction, the functions and powers conferred or expressed to be

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conferred on him or her under the applicable provisions
of this jurisdiction.

28B. Validation of actions of inspectors and analysts

(1) In this section —

5

“**officer**” has the same meaning as in section 28A;

“**relevant section**” means section 7 of the *Agricultural
and Veterinary Chemicals (Western Australia)
Amendment Act 2001*;

10

“**relevant time**”, in relation to a thing, means the time
at which the thing was done or omitted to be done
or purported to have been done or omitted to be
done.

(2) Anything done or omitted to be done by an officer
before the commencement of the relevant section that
would have been validly done or omitted had the
relevant section come into operation before the relevant
time has, and is deemed always to have had, the same
force and effect as it would have had if the relevant
section had come into operation before the relevant
time.

20

Note: Part 2 of the *Co-operative Schemes (Administrative Actions) Act 2001*
applies to administrative actions taken by an officer as affected by this
section.

”.

8. **Section 33A inserted**

After section 33 the following section is inserted —

“

5 **33A. Transitional provision — *Agricultural and
Veterinary Chemicals (Western Australia)
Amendment Act 2001***

10 Part 5 of this Act, as inserted by section 5 of the
*Agricultural and Veterinary Chemicals (Western
Australia) Amendment Act 2001*, applies in relation to
matters arising in relation to the applicable provisions
of this jurisdiction, and decisions made or other things
done or omitted to be done under the Commonwealth
administrative laws in respect of such matters, before,
on or after the commencement of that section.

15

”.

9. **Part 9A inserted**

After section 35 the following Part is inserted —

“

20 **Part 9 — Conferral of functions on
Commonwealth Director of Public Prosecutions**

**35A. Conferral of functions on Commonwealth Director
of Public Prosecutions**

25 The Director of Public Prosecutions for the
Commonwealth (“**the Commonwealth Director**”)
may —

- 30 (a) institute prosecutions on indictment for
indictable offences against the Agvet Code, or
the Agvet Regulations, of this jurisdiction;
- (b) carry on prosecutions of the kind referred to in
paragraph (a) (except prosecutions instituted by
the Attorney General or the Director of public

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- Prosecutions of the State), whether or not
instituted by the Commonwealth Director;
- 5 (c) if the Attorney General or the Director of
Public Prosecutions of the State requests the
Commonwealth Director in writing to carry on
a prosecution of the kind referred to in
paragraph (a) that was instituted by the
Attorney General or the Director of Public
Prosecutions of the State — carry on the
10 prosecution;
- (d) institute proceedings for the commitment of
persons for trial in respect of indictable
offences against the Agvet Code, or the Agvet
Regulations, of this jurisdiction;
- 15 (e) institute proceedings for the summary
conviction of persons in respect of offences
against the Agvet Code, or the Agvet
Regulations, of this jurisdiction;
- 20 (f) carry on proceedings of a kind referred to in
paragraph (d) or (e) (whether or not instituted
by the Commonwealth Director); and
- (g) do anything incidental or conducive to the
performance of any of the functions referred to
in paragraphs (a) to (f).
- 25 ”.

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