

# NORTHERN TERRITORY OF AUSTRALIA

## AGRICULTURAL AND VETERINARY CHEMICALS (CONTROL OF USE) ACT

As in force at 21 September 2011

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 21 September 2011

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## AGRICULTURAL AND VETERINARY CHEMICALS (CONTROL OF USE) ACT

**An Act to control the use of agricultural and veterinary chemicals and the manufacture, sale and use of fertilisers and stockfoods, to manage land and agricultural produce contaminated by chemicals, and for related purposes**

### **Part 1                      Preliminary**

#### **1                      Short title**

This Act may be cited as the *Agricultural and Veterinary Chemicals (Control of Use) Act*.

#### **2                      Commencement**

The provisions of this Act come into operation on the date, or respective dates, fixed by the Administrator by notice in the *Gazette*.

#### **3                      Purposes**

(1) The purposes of this Act are:

- (a) to impose controls relating to the possession, sale, use and application of chemical products, and the manufacture, sale and use of fertilisers and stockfoods, that ensure sustainable agriculture by protecting:
  - (i) the health of the general public and the users of those substances;
  - (ii) the environment;
  - (iii) the health and welfare of animals; and
  - (iv) domestic and export trade in agricultural produce; and

- (b) to promote the harmonisation of legislation in Australia controlling the use of chemical products by regulating the possession and use of those products in accordance with labels and permits under the Agvet Code.
- (2) The controls referred to in subsection (1)(a) include the following:
- (a) the prohibition and regulation of the possession and use of chemical products, including the prescription and supply of chemical products by veterinarians and pharmacists;
  - (b) the regulation of ground and aerial spraying and the use of S7 chemical products;
  - (c) the declaration of chemical control areas and agricultural emergencies;
  - (d) the management of land and agricultural produce contaminated by chemicals.

#### 4 Interpretation

- (1) In this Act:

**active constituent** has the same meaning as in section 3 of the Agvet Code.

**Advisory Committee** means an Advisory Committee established under section 103.

**aerial spraying** means the spraying, spreading or dispersing of an agricultural chemical product from an aircraft in flight.

**aerial spraying business licence** means an aerial spraying business licence under Part 5, Division 2.

**aerial spraying business licensee** means a person who holds an aerial spraying business licence under Part 5, Division 2.

**affected person**, for a reviewable decision, has the meaning in section 115(2).

**agricultural chemical product** has the meaning in section 5.

**agricultural chemical spraying** means the spraying, spreading or dispersing of an agricultural chemical product from a machine or other piece of equipment or from an aircraft.

**agricultural industry** includes the aquacultural industry.



**agricultural produce** means:

- (a) a plant or part of a plant;
- (b) an animal or part of an animal; or
- (c) the produce of a plant or animal,

whether processed or not, that is intended or normally used for human or animal consumption.

**agriculture** includes aquaculture.

**Agvet Code** means the Agvet Code of the Northern Territory.

**Agvet Regulations** means the Agvet Regulations of the Northern Territory.

**air** includes any layer of the atmosphere.

**aircraft** means a fixed-wing aircraft or helicopter but does not include an ultra-light aircraft.

**animal** has the same meaning as in section 3 of the Agvet Code.

**approved form** means a form approved by the Chemicals Coordinator under section 88.

**approved label**, for a chemical product, means a label approved under Part 2 of the Agvet Code for containers of the product.

**aquatic life** has the meaning in section 10.

**chemical adviser** means a chemical adviser appointed under section 90 and includes the Chemicals Coordinator.

**chemical control area** means an area for which a declaration under Part 6 is in force.

**chemical product** means an agricultural chemical product or veterinary chemical product.

**Chemicals Coordinator** means the Chemicals Coordinator appointed under section 85.

**code of practice** means a code of practice approved under section 128.

**compounded product** means a product that is compounded by a veterinarian or by a pharmacist on the prescription of a veterinarian.

**container**, of a substance, includes anything by which or in which the substance is covered, enclosed, contained or packaged but does not include a container in which other containers of the substance are placed for transport.

**contaminated land** means land contaminated by chemicals.

**contravene** includes fail to comply with.

**decision maker**, for a reviewable decision, means the person who made the decision.

**determined fee** means a fee determined under section 126.

**environment** means land, air, water, organisms and ecosystems and includes:

- (a) the well-being of humans;
- (b) structures made or modified by humans;
- (c) the amenity values of an area; and
- (d) economic, cultural and social conditions.

**expiry date**, of a chemical product, means the date after which the product must not be used, whether the product has been used before that date or not.

**fertiliser** has the meaning in section 7.

**food-producing species** has the same meaning as in section 3 of the Agvet Code.

**ground spray applicator's licence** means a ground spray applicator's licence under Part 5, Division 2.

**ground spraying** means the spraying, spreading or dispersing of an agricultural chemical product from a machine or other piece of equipment other than from an aircraft (including an ultra-light aircraft) in flight.

**ground spraying business licence** means a ground spraying business licence under Part 5, Division 2.

**ground spraying business licensee** means a person who holds a ground spraying business licence under Part 5, Division 2.

**grower**, of agricultural produce, includes the owner of the land on which the produce is growing.

***injectable anabolic steroid*** means a veterinary chemical product that is an anabolic steroid capable of being administered by injection.

***label***, on a container, includes a tag, leaflet, brand, stamp, mark, stencil or written statement attached to or marked on the container.

***land*** includes water and air on, above or under land.

***major food-producing species*** has the meaning in section 9.

***maximum residue limit***, for the residue of a substance in agricultural produce, means the concentration prescribed by the Regulations as the maximum residue limit of the substance for the produce.

***permit*** means a permit under Part 7 of the Agvet Code.

***pest*** has the same meaning as in section 3 of the Agvet Code.

***pharmacist*** means a person who:

- (a) is registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession (other than as a student); and
- (b) is engaged in the practice of the profession.

***pilot (chemical rating) licence*** means a pilot (chemical rating) licence under Part 5, Division 2.

***plant*** has the same meaning as in section 3 of the Agvet Code.

***possession*** includes custody and control.

***registered*** means registered under Part 2 of the Agvet Code.

***registered agricultural chemical product*** means an agricultural chemical product that is registered under Part 2 of the Agvet Code.

***registered chemical product*** means a chemical product registered under Part 2 of the Agvet Code.

***registered veterinary chemical product*** means a veterinary chemical product that is registered under Part 2 of the Agvet Code.

***Regulations*** mean the Regulations made under this Act.

***remedial plan*** means a remedial plan approved under section 80 and includes a remedial plan as amended under section 81.

**restricted chemical product** means a chemical product declared by regulation 45 of the Agvet Regulations to be a restricted chemical product.

**reviewable decision** has the meaning in section 115(1).

**S7 chemical product** means a chemical product that is, or an active constituent of which is, specified in Schedule 7 in Part 4 of the latest edition of the document entitled "Standard for the Uniform Scheduling of Drugs and Poisons" published by the Commonwealth.

**sell** means to dispose of for valuable consideration and includes:

- (a) to barter;
- (b) to dispose of to an agent for sale on consignment;
- (c) to offer for sale;
- (d) to receive, or have possession of, for sale;
- (e) to expose for sale;
- (f) to send or deliver for sale; and
- (g) to cause or permit to be sold, offered or exposed for sale.

**stockfood** has the meaning in section 8.

**substance** has the same meaning as in section 3 of the Agvet Code.

**target area**, for agricultural chemical spraying, means the area within which pests are intended to be controlled by the spraying.

**this Act** includes the Regulations and codes of practice.

**veterinarian** means a person who is a registered veterinarian under the *Veterinarians Act* and is engaged in the practice of that profession.

**veterinary chemical product** has the meaning in section 6.

**water** includes:

- (a) surface water, ground water and tidal waters;
- (b) coastal waters of the Territory within the meaning of the *Coastal Waters (Northern Territory Powers) Act 1980* of the Commonwealth; and

- (c) water containing an impurity.

**wholesale distributor**, of a chemical product, fertiliser or stockfood, means a person who places on the market for sale by wholesale the chemical product, fertiliser or stockfood and includes an agent of a wholesale distributor but does not include the manufacturer of the chemical product, fertiliser or stockfood.

**withholding period**, for a chemical product, means the minimum period that needs to elapse:

- (a) between:
- (i) the last use of the product on a crop, pasture or animal; and
  - (ii) the harvesting or cutting of, or the grazing of animals on, the crop or pasture, the shearing or slaughtering of the animal, or the collection of milk or eggs from the animal for human consumption, as the case may be; or
- (b) between the last use of the product on a crop or pasture after it has been harvested and the consumption of the crop or pasture by humans or animals,

as the case requires, to ensure the product's residues fall below the maximum residue limit.

- (2) A reference in this Act to agricultural produce growing on land includes a reference to produce that has been grown on land in the past and produce that may be grown on land in the future.

## 5 **Agricultural chemical products**

- (1) An agricultural chemical product is a substance or mixture of substances that is represented, imported, manufactured, supplied or used as a means of directly or indirectly:
- (a) destroying, stupefying, repelling, inhibiting the feeding of, or preventing infestation by or attacks of, any pest of any plant, place or thing;
  - (b) destroying a plant;
  - (c) modifying the physiology of a plant or pest so as to alter its natural development, productivity, quality or reproductive capacity;
  - (d) modifying the effect of another agricultural chemical product; or

- (e) attracting a pest to destroy it.
- (2) An agricultural chemical product includes:
- (a) a substance or mixture of substances declared by the Agvet Regulations to be an agricultural chemical product; and
  - (b) a substance or mixture of substances declared under subsection (4) to be an agricultural chemical product.
- (3) An agricultural chemical product does not include:
- (a) a veterinary chemical product;
  - (b) a substance or mixture of substances declared by the Agvet Regulations not to be an agricultural chemical product; or
  - (c) a substance or mixture of substances declared under subsection (5) not to be an agricultural chemical product.
- (4) The Minister may, by notice in the *Gazette*, declare:
- (a) a substance or mixture of substances to be an agricultural chemical product; or
  - (b) a class of substances or class of mixtures of substances to be agricultural chemical products.
- (5) The Minister may, by notice in the *Gazette*, declare:
- (a) a substance or mixture of substances not to be an agricultural chemical product; or
  - (b) a class of substances or class of mixtures of substances not to be agricultural chemical products.

## **6 Veterinary chemical products**

- (1) A veterinary chemical product is a substance or mixture of substances that is represented as being suitable for, or is manufactured, supplied or used for, administration or application to an animal by any means, or consumption by an animal, as a way of directly or indirectly:
- (a) preventing, diagnosing, curing or alleviating a disease or condition in the animal or an infestation of the animal by a pest;
  - (b) curing or alleviating an injury suffered by the animal;

- (c) modifying the physiology of the animal so as to:
    - (i) alter its natural development, productivity, quality or reproductive capacity; or
    - (ii) make it more manageable; or
  - (d) modifying the effect of another veterinary chemical product.
- (2) A veterinary chemical product includes:
- (a) a vitamin, mineral substance or additive if the vitamin, mineral substance or additive is used for a purpose mentioned in subsection (1)(a), (b), (c) or (d);
  - (b) a substance or mixture of substances prepared by:
    - (i) a veterinarian; or
    - (ii) a pharmacist in accordance with the instructions of a veterinarian;
  - (c) a substance or mixture of substances declared by the Agvet Regulations to be a veterinary chemical product; and
  - (d) a substance or mixture of substances declared under subsection (4) to be a veterinary chemical product.
- (3) A veterinary chemical product does not include:
- (a) a substance or mixture of substances declared by the Agvet Regulations not to be a veterinary chemical product; or
  - (b) a substance or mixture of substances declared under subsection (5) not to be a veterinary chemical product.
- (4) The Minister may, by notice in the *Gazette*, declare:
- (a) a substance or mixture of substances to be a veterinary chemical product; or
  - (b) a class of substances or class of mixtures of substances to be veterinary chemical products.
- (5) The Minister may, by notice in the *Gazette*, declare:
- (a) a substance or mixture of substances not to be a veterinary chemical product; or
  - (b) a class of substances or class of mixtures of substances not to be veterinary chemical products.

## 7 Fertilisers

- (1) A fertiliser is a substance that is manufactured, represented, supplied or used as a means of directly or indirectly:
  - (a) fertilising the soil;
  - (b) supplying nutrients to plants; or
  - (c) conditioning the soil by altering the chemical, physical or biological composition of the soil.
- (2) A fertiliser includes a substance declared by the Regulations to be a fertiliser.
- (3) A fertiliser does not include a substance declared by the Regulations not to be a fertiliser.

## 8 Stockfood

- (1) A stockfood is a basic food or food mixture that:
  - (a) contains one or more nutritional ingredients; and
  - (b) is intended to be fed to animals for the maintenance of life, normal growth, production, work, reproduction or performance.
- (2) A stockfood includes the following:
  - (a) a lick, other than a medicated lick;
  - (b) a premix, including a medicated premix;
  - (c) a medicated stockfood;
  - (d) a stockfood supplement.
- (3) A stockfood does not include a veterinary chemical product.
- (4) In subsection (1):

***nutritional ingredient*** has the same meaning as in the Agvet Regulations.

## 9 Major food-producing species

- (1) A major food-producing species is cattle, pig, poultry, sheep, bee or aquatic life (other than ornamental aquatic life).



- (2) A major food-producing species includes a food-producing species declared under subsection (3) to be a major food-producing species.
- (3) The Minister may, by notice in the *Gazette*, declare a food-producing species to be a major food-producing species for this Act.

## **10 Aquatic life**

- (1) A species of animal is aquatic life during all stages of its life history if it inhabits water during one or more of those stages.
- (2) Aquatic life includes a species of plant declared under subsection (4) to be aquatic life.
- (3) Aquatic life does not include:
  - (a) a species of bird; or
  - (b) a species of animal declared under subsection (5) not to be aquatic life.
- (4) The Minister may, by notice in the *Gazette*, declare a species of plant to be aquatic life.
- (5) The Minister may, by notice in the *Gazette*, declare a species of animal not to be aquatic life.

## **11 Act binds Crown**

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

## **12 *Waste Management and Pollution Control Act* not affected**

This Act does not affect the operation of the *Waste Management and Pollution Control Act*.

## **Part 2 General duties**

### **13 Duty to ensure harm does not result from use of chemical products, fertilisers or stockfoods**

A person who uses a chemical product, fertiliser or stockfood must take all measures that are reasonable and practicable to ensure the use does not result in harm to:

- (a) the health of the general public;

- (b) the health of an animal;
- (c) the environment; or
- (d) domestic or export trade in agricultural produce.

Maximum penalty:      If the offender is a natural person –  
500 penalty units  
  
If the offender is a body corporate –  
2 500 penalty units.

**14      Duty to ensure fertilisers and stockfoods manufactured in Territory or imported from elsewhere are safe**

- (1) This section applies to a person who:
  - (a) manufactures fertiliser or stockfood in the Territory; or
  - (b) imports fertiliser or stockfood into the Territory for sale by wholesale.
- (2) The person must take all measures that are reasonable and practicable to ensure that the fertiliser or stockfood does not contain a substance at a concentration greater than the concentration prescribed by the Regulations for the fertiliser or stockfood.

Maximum penalty:      If the offender is a natural person –  
500 penalty units.  
  
If the offender is a body corporate –  
2 500 penalty units.

**Part 3              Chemical products**

**Division 1          Preliminary**

**15      When will the use of a chemical product be prohibited by or contrary to the instructions on a label?**

For this Part:

- (a) the instructions on a label prohibit use of a chemical product in a particular way if the instructions specify that the product must not be used in that way; and

- (b) a chemical product is used in a way that is contrary to the instructions on a label if the particular way in which the product is used is not specified by the instructions but is not prohibited by the instructions.

**16 Use by veterinarian includes use by veterinarian's employees**

For Division 4, use of a veterinary chemical product by a veterinarian includes use of the product by an employee of the veterinarian at the veterinarian's direction or under the veterinarian's supervision.

**Division 2 Containers and labels**

**17 Registered chemical products to be kept in suitable containers labelled with approved labels**

- (1) A person must keep a registered chemical product in a suitable container to which is attached the approved label.

Maximum penalty: If the offender is a natural person –  
100 penalty units.

If the offender is a body corporate –  
500 penalty units.

- (2) Subsection (1) applies:

(a) whether the container in which the product is kept is the container in which the product was supplied to the person or is a container into which the product was transferred by the person or another person; or

(b) whether the product has been mixed with another substance or not.

- (3) Subsection (1) does not apply if the container is:

(a) the container in which the product was supplied by a veterinarian or pharmacist; or

(b) a container into which the product was transferred for immediate use.

(4) In subsection (1):

***suitable container***, for a product, means a container that:

- (a) is impervious to, and incapable of chemical reaction with, the product when under conditions of temperature and pressure likely to be encountered in normal service;
- (b) has sufficient strength and impermeability to prevent leakage of the product during handling, transport and storage under normal handling conditions;
- (c) if it is intended to be opened more than once – can be securely and readily closed and reclosed;
- (d) has sufficient excess capacity to prevent it from breaking if its contents expand during handling, transport or storage; and
- (e) enables all or any part of the product to be removed or discharged in such a way that, with the exercise of no more than reasonable care, the product cannot:
  - (i) harm any person; or
  - (ii) have an unintended effect that is harmful to the environment.

## **18 Requirement to read label or permit**

- (1) A person must on each occasion before using a registered chemical product:
  - (a) read the instructions on the approved label; or
  - (b) have another person explain the instructions on the approved label to the person.

Maximum penalty: If the offender is a natural person –  
200 penalty units.

If the offender is a body corporate –  
1 000 penalty units.

- (2) A person does not contravene subsection (1) if the person:
  - (a) uses the registered chemical product in accordance with the instructions on the label; or

- (b) uses the registered chemical product in accordance with the instructions on another version of the approved label that, when the product is used, is on the container from which the product is used.
- (3) If a permit is in force for a chemical product, a person to whom the permit applies must on each occasion before using the chemical product:
- (a) read the permit; or
  - (b) have another person explain the permit to the person.

Maximum penalty:        If the offender is a natural person –  
200 penalty units.

  If the offender is a body corporate –  
1 000 penalty units.

- (4) A person does not contravene subsection (3) if the person uses the chemical product in accordance with the permit.

#### **19        Record of use required by label or permit**

- (1) If:
- (a) a person uses a chemical product in accordance with:
    - (i) the instructions on the approved label; or
    - (ii) a permit; and
  - (b) the instructions or permit requires a person using the chemical product to record the use,

the person must:

- (c) record the use in accordance with the instructions or permit;  
and
- (d) keep the record for 2 years after the use.

Maximum penalty:        If the offender is a natural person –  
100 penalty units.

  If the offender is a body corporate –  
500 penalty units.

(2) For subsection (1):

- (a) if the instructions or permit specify the time at or within which the record is to be made – the record must be made at or within that time; or
- (b) if no time is specified – the record must be made as soon as practicable after the chemical product is used.

## **20 Reuse of containers**

(1) A person must not reuse a container that has contained a chemical product for another purpose.

Maximum penalty:     If the offender is a natural person –  
                                    20 penalty units.

                                    If the offender is a body corporate –  
                                    100 penalty units.

(2) A person does not contravene subsection (1) if:

- (a) the container is reused in accordance with a recycling program approved by:
  - (i) the Chemicals Coordinator; or
  - (ii) a body or organisation that represents the agricultural industry at the national level; or
- (b) all trace of the chemical product that was in the container is removed, the person reuses the container to contain a chemical product and the container is suitably labelled.

## **21 Disposal of containers**

A person must dispose of a container that has contained a chemical product:

- (a) in accordance with the instructions on the approved label; or
- (b) as directed by a chemical adviser.

Maximum penalty:     If the offender is a natural person –  
                                    20 penalty units.

                                    If the offender is a body corporate –  
                                    100 penalty units.

## **Division 3 Agricultural chemical products**

### **22 Use of registered agricultural chemical products**

- (1) A person must not use a registered agricultural chemical product in a way that is contrary to the instructions on the approved label unless authorised under a permit.

Maximum penalty:      If the offender is a natural person –  
200 penalty units.

   If the offender is a body corporate –  
1 000 penalty units.

- (2) A person who uses a registered agricultural chemical product does not contravene subsection (1) because the instructions on the approved label specify use of the product only in another State or Territory.
- (3) A person does not contravene subsection (1) if the person uses the registered agricultural chemical product in any of the following ways unless the instructions on the approved label prohibit use in that way:
- (a) at a concentration that is lower than the concentration specified in the instructions;
  - (b) at a rate of application that is lower than the rate of application specified in the instructions;
  - (c) less frequently than is specified in the instructions;
  - (d) to control a pest not specified in the instructions;
  - (e) by mixing the product with another substance;
  - (f) by applying the product using a method not specified in the instructions.
- (4) Subsection (3) does not apply in relation to the use of a registered agricultural chemical product that is a restricted chemical product.

**23 Observance of withholding period before harvest**

A grower who uses a registered agricultural chemical product to treat a crop or pasture must not harvest or cut any part of the crop or pasture until after the expiry of the withholding period specified in the instructions on the approved label unless authorised under a permit.

Maximum penalty: If the offender is a natural person –  
200 penalty units.

If the offender is a body corporate –  
1 000 penalty units.

**24 Sale of agricultural produce business before withholding period expires**

(1) This section applies if:

- (a) an agricultural produce business is sold;
- (b) before the completion date, agricultural produce included in the sale was treated with an agricultural chemical product; and
- (c) as at that date, the withholding period had not expired.

(2) The person who conducted or managed the business immediately before the completion date must, as soon as possible on or after that date, give the purchaser of the business the following information:

- (a) the identity and location of the produce;
- (b) the name of the product;
- (c) the last date on which the produce was treated with the product;
- (d) the withholding period.

Maximum penalty: If the offender is a natural person –  
200 penalty units.

If the offender is a body corporate –  
1 000 penalty units.

(3) In this section:

**completion date** means the date on which the sale of the business is completed.





- (2) An offence against subsection (1) is a regulatory offence.

**27            Use, prescription, recommendation or supply of registered veterinary chemical products by veterinarian contrary to label**

- (1) A veterinarian must not use, or prescribe, recommend or supply for use, a registered veterinary chemical product in a way that is contrary to the instructions on the approved label unless use in that way is authorised under a permit.

Maximum penalty:        200 penalty units.

- (2) A veterinarian does not contravene subsection (1) if the veterinarian uses the product, or prescribes, recommends or supplies the product for use, to treat an animal in any of the following ways:
- (a) by administering the product in a dose, or at a frequency of dosage, that is not specified in the instructions on the label;
  - (b) subject to paragraph (c), by administering the product to an animal of a species that is not specified in the instructions on the label;
  - (c) by administering the product to an animal of a major food-producing species that is not specified in the instructions on the label but only if the instructions specify that the product is for use in relation to another major food-producing species.
- (3) Without limiting subsection (1), a veterinarian contravenes subsection (1) if the veterinarian uses the product, or prescribes, recommends or supplies the product for use, to treat an animal by injection if the instructions on the label specify that the product is to be administered topically or orally.
- (4) An offence against subsection (1) is a regulatory offence.

**28            Use, prescription, recommendation or supply of registered veterinary chemical products by veterinarian to treat food-producing species if use prohibited by label restraint**

- (1) This section applies despite section 27.
- (2) A veterinarian must not use, or prescribe, recommend or supply for use, a registered veterinary chemical product to treat an animal of a food-producing species in a way that is contrary to the label restraint on the approved label unless authorised by a permit.

Maximum penalty:        200 penalty units.

- (3) An offence against subsection (2) is a regulatory offence.

**29            Use, prescription, recommendation or supply of unregistered veterinary chemical products by veterinarian**

- (1) A veterinarian must not use, or prescribe, recommend or supply for use, a veterinary chemical product that is not registered unless authorised under a permit.

Maximum penalty:        200 penalty units.

- (2) A veterinarian does not contravene subsection (1) if the veterinarian:

(a) uses the product, or prescribes, recommends or supplies the product for use, to treat an animal of a species other than a food-producing species;

(b) has actual rather than nominal responsibility for treating the animal; and

(c) when prescribing, recommending or supplying a compounded product, prescribes, recommends or supplies a quantity sufficient only for a single course of treatment.

- (3) A veterinarian does not contravene subsection (1) if the veterinarian uses the product, or prescribes, recommends or supplies the product for use, where:

(a) there is no registered veterinarian chemical product available; or

(b) the registered veterinarian chemical products that are available are demonstrably ineffective or unsuitable for the intended use.

- (4) A veterinarian does not contravene subsection (1) if the veterinarian supplies the product to another veterinarian in the same veterinarian practice.

- (5) An offence against subsection (1) is a regulatory offence.

- (6) In this section:

***veterinary chemical product*** includes a compounded product.

**30 Use, prescription, recommendation or supply of human pharmaceuticals by veterinarian**

- (1) A veterinarian must not use, or prescribe, recommend or supply for use, a registered human pharmaceutical unless authorised under a permit.

Maximum penalty: 200 penalty units.

- (2) A veterinarian does not contravene subsection (1) if the veterinarian uses the pharmaceutical, or prescribes, recommends or supplies the pharmaceutical for use, where:

- (a) there is no registered veterinary chemical product available; or  
(b) the registered veterinary chemical products that are available are demonstrably ineffective or unsuitable for the intended use.

- (3) A veterinarian does not contravene subsection (1) if the veterinarian:

- (a) uses the pharmaceutical, or prescribes, recommends or supplies the pharmaceutical for use, to treat an animal of a species other than a food-producing species; and  
(b) has actual rather than nominal responsibility for treating the animal.

- (4) An offence against subsection (1) is a regulatory offence.

- (5) In this section:

**registered human pharmaceutical** means therapeutic goods that are included in the part of the Australian Register of Therapeutic Goods maintained under the *Therapeutic Goods Act 1989* of the Commonwealth for goods known as registered goods.

**31 Use, prescription, recommendation or supply of agricultural chemical products by veterinarian**

- (1) A veterinarian must not use, or prescribe, recommend or supply for use, an agricultural chemical product unless authorised under a permit.

Maximum penalty: 200 penalty units.

- (2) A veterinarian does not contravene subsection (1) if the veterinarian:
  - (a) uses the product, or prescribes, recommends or supplies the product for use, to treat an animal of a species other than a food-producing species; and
  - (b) has actual rather than nominal responsibility for treating the animal.
- (3) A veterinarian does not contravene subsection (1) if the veterinarian uses the product, or prescribes, recommends or supplies the product for use, where:
  - (a) there is no registered veterinarian chemical product available; or
  - (b) the registered veterinarian chemical products that are available are demonstrably ineffective or unsuitable for the intended use.
- (4) An offence against subsection (1) is a regulatory offence.

**32            Application of and prescribed information for sections 33 and 34**

- (1) Sections 33 and 34 apply in relation to the following veterinary chemical products:
  - (a) a veterinary chemical product that is not registered;
  - (b) a registered veterinary chemical product prescribed or recommended by a veterinarian, or supplied by a veterinarian or a pharmacist, with instructions for use in a way that is prohibited by or contrary to the instructions on the approved label;
  - (c) a registered veterinary chemical product supplied by a veterinarian or a pharmacist in a container that does not have an approved label.
- (2) For sections 33 and 34, the following information is prescribed in relation to a veterinary chemical product to which sections 33 and 34 apply:
  - (a) the name of the veterinarian prescribing, recommending or supplying the product and the name, address and telephone number of the veterinarian's practice;

- (b) the name of the product or the chemical name or common name of the active constituent of the product;
- (c) the concentration of the active constituent of the product;
- (d) the dose of the product;
- (e) the frequency of the dosage;
- (f) the period over which the product is to be administered;
- (g) the route by which the product is to be administered;
- (h) the species in relation to which the product is to be administered;
- (i) if applicable – the expiry date of the product;
- (j) if applicable – the period, commencing on the date on which the product is first used, after which any remaining product is to be discarded (which for a compounded product is the period of treatment);
- (k) if the product is to be administered to an animal of a food-producing species – the withholding period;
- (l) if applicable – advice about the handling of animals to which the product is to be administered during the period over which the product is to be administered and, if the animals are not to be handled during that period, advice about the period that is to elapse before the animals are handled again;
- (m) if the product is a registered veterinary chemical product – a statement to the effect that, if there is a difference between the instructions on the approved label on the container in which the product is supplied and the information specified in the prescription in accordance with section 33(1) or provided in accordance with section 34 when the product is supplied, the product is to be used in accordance with the information so specified or provided and not in accordance with the instructions on the label.

### **33            Veterinarian must provide information about veterinary chemical products**

- (1) A veterinarian who prescribes a veterinary chemical product specified in section 32(1) must specify in the prescription the information prescribed by section 32(2).

Maximum penalty:        200 penalty units.

- (2) A veterinarian who recommends or supplies a veterinary chemical product specified in section 32(1) must give the person to whom the product is being supplied the information prescribed by section 32(2) by:
- (a) specifying the information on the label of the container in which the veterinarian supplies the product; or
  - (b) otherwise providing the information in writing to the person when the veterinarian recommends or supplies the product.

Maximum penalty:        200 penalty units.

- (3) If a veterinarian supplies a registered veterinary chemical product specified in section 32(1) in a container that has an approved label, it is sufficient for subsections (1) and (2) if the veterinarian specifies that the product is to be used in accordance with the instructions on the approved label except as otherwise specified:
- (a) in the prescription; or
  - (b) on the label of the container in which the product is supplied or in the written information that is otherwise provided when the product is supplied,

as the case may be.

#### **34            Pharmacist must provide information about veterinary chemical products**

A pharmacist who supplies a veterinary chemical product specified in section 32(1) on the prescription of a veterinarian must give to the person to whom the product is being supplied:

- (a) so much of the information prescribed by section 32(2) as is specified in the prescription; and
- (b) the name of the pharmacist and the name, address and telephone number of the pharmacist's practice,

by:

- (c) specifying the information referred to in paragraphs (a) and (b) on the label of the container in which the product is supplied; or

- (d) otherwise providing the information referred to in paragraphs (a) and (b) in writing to the person when the product is supplied.

Maximum penalty:        200 penalty units.

**35        Veterinarian etc. must provide information about withholding periods**

- (1) A veterinarian who administers a veterinary chemical product to an animal of a food-producing species for which a withholding period applies must, as soon as practicable after administering the product, give the information prescribed by subsection (4) in writing to the person responsible for the care of the animal.

Maximum penalty:        200 penalty units.

- (2) A veterinarian who prescribes or supplies a veterinary chemical product for use in relation to an animal of a food-producing species for which a withholding period applies must give the information prescribed by subsection (4) in writing to the person to whom the prescription is being given or the product is being supplied.

Maximum penalty:        200 penalty units.

- (3) If a person who is given information by a veterinarian in accordance with subsection (2) is not responsible for the care of the animal to which the information relates, the person must give the information to the person who is responsible for the care of the animal.

Maximum penalty:        200 penalty units.

- (4) For this section, the following information is prescribed:

- (a) the name of the veterinarian administering the product;
- (b) the name, address and telephone number of the veterinarian's practice;
- (c) the name of the product administered;
- (d) the date the product was administered;
- (e) the withholding period.

**36        Stockfood seller must provide certain information**

- (1) A person who is in the business of selling stockfoods (*the seller*) must not sell to another person (*the purchaser*) a stockfood to which the seller knows, or could reasonably be expected to know, a





unless authorised under a permit, the person must not shear or slaughter the animal, or collect milk or eggs from the animal for human consumption, until after the expiry of the withholding period specified:

- (c) in the written instructions provided by the veterinarian who prescribed, recommended or supplied the product; or
- (d) if no written instructions were provided – in the instructions on the approved label.

Maximum penalty: If the offender is a natural person –  
200 penalty units.

If the offender is a body corporate –  
1 000 penalty units.

### **38 Sale or purchase of animal before withholding period expires**

- (1) A person must not sell an animal of a food-producing species that has been treated with a veterinary chemical product before the withholding period expires unless the person has given the purchaser written notice of:

- (a) the name of the veterinary chemical product administered;
- (b) the last date on which the product was administered before the sale;
- (c) the dose, and the frequency of the dosage, that was being administered before the sale; and
- (d) the withholding period.

Maximum penalty: If the offender is a natural person –  
200 penalty units.

If the offender is a body corporate –  
1 000 penalty units.

- (3) If the purchaser of an animal of a food-producing species receives from the seller a notice about the animal in accordance with subsection (1), the purchaser must not shear or slaughter the animal, or collect milk or eggs from the animal for human consumption, until after the expiry of the withholding period specified in the notice or unless authorised under a permit.

Maximum penalty: If the offender is a natural person –  
200 penalty units.

If the offender is a body corporate –  
1 000 penalty units.

**39 Identifying treated food-producing animals if carer does not own animals**

- (1) If:
- (a) a person (including a veterinarian) is responsible for the care of an animal of a food-producing species owned by another person; and
  - (b) the animal is being or has been treated with a veterinary chemical product,

the person must take reasonable steps to ensure that the animal is identified (for example, by tagging, physical segregation or written records) in a manner sufficient to enable the person who has control over the animal:

- (c) to identify the animal during any withholding period;
- (d) to identify the animal during any rehandling period; and
- (e) to comply with the requirements of this Act relating to the animal.

Maximum penalty: If the offender is a natural person –  
200 penalty units.

If the offender is a body corporate –  
1 000 penalty units.

- (2) Subsection (1) does not apply to a person who is an employee of the animal's owner.

(3) In subsection (1):

***rehandling period*** means the minimum period that needs to elapse between the treatment of an animal and when a person is able to safely handle the animal without wearing protective clothing.

#### **40            Veterinarian liable for residues above maximum**

A veterinarian commits an offence if:

- (a) the veterinarian uses a registered veterinary chemical product to treat an animal of a major food-producing species in a way that is contrary to the instructions on the approved label; and
- (b) as a result of that use, the concentration of the product in the animal after the expiry of the withholding period is greater than the maximum residue limit for that species of animal.

Maximum penalty:        200 penalty units.

### **Subdivision 3    Record keeping**

#### **41            Veterinarian must keep records about using, prescribing, recommending and supplying veterinary products**

- (1) A veterinarian who uses a prescribed veterinary product, or prescribes, recommends or supplies a prescribed veterinary product for use, in relation to an animal of a food-producing species must keep, for 2 years after the use, prescription, recommendation or supply, a record of the following:
  - (a) the name of the owner of the animal;
  - (b) the date on which the veterinarian used, prescribed, recommended or supplied the product;
  - (c) the name of the product;
  - (d) the form in which, and the concentration at which, the veterinarian used the product or prescribed, recommended or supplied the product for use;
  - (e) if the veterinarian used the product – the quantity of, and the way in which, the product was used;
  - (f) if the veterinarian prescribed, recommended or supplied the product – the quantity prescribed, recommended or supplied;
  - (g) the withholding period;

- (h) sufficient information to identify the animal in relation to which the veterinarian used the product or prescribed, recommended or supplied the product for use.

Maximum penalty:        100 penalty units.

- (2) In subsection (1):

***prescribed veterinary product*** means a veterinary chemical product:

- (a) the use, prescription, recommendation or supply of which by the veterinarian is contrary to the instructions on the approved label; or
- (b) that is specified in Schedule 4 in Part 4 of the latest edition of the document entitled "Standard for the Uniform Scheduling of Drugs and Poisons" published by the Commonwealth.

## **Division 5            Injectable anabolic steroids**

### **42            Use of injectable anabolic steroids by persons who are not veterinarians**

- (1) A person who is not a veterinarian must not use an injectable anabolic steroid to treat an animal.

Maximum penalty:        If the offender is a natural person –  
   100 penalty units.

   If the offender is a body corporate –  
   500 penalty units.

- (2) A person does not contravene subsection (1) if:

- (a) the steroid was supplied to the person by a veterinarian; and
- (b) the veterinarian witnesses the person treating the animal with the steroid.

### **43            Prescription or supply of injectable anabolic steroids by veterinarians**

- (1) A veterinarian must not prescribe or supply for use an injectable anabolic steroid.

Maximum penalty:        200 penalty units.

- (2) A veterinarian does not contravene subsection (1) if the veterinarian prescribes or supplies the steroid for use by another veterinarian.

- (3) A veterinarian does not contravene subsection (1) if the veterinarian:
- (a) supplies the steroid to a person who is not a veterinarian to treat an animal; and
  - (b) the veterinarian witnesses the person treating the animal with the steroid.

**44 Veterinarian to keep anabolic steroids locked away**

- (1) A veterinarian who has possession of an injectable anabolic steroid must, whenever the steroid is not actually being used, keep the steroid in a locked container that only the veterinarian is able to unlock.

Maximum penalty: 100 penalty units.

- (2) In subsection (1):

**locked container** means a box, drawer, cupboard or other container that is locked and includes a locked vehicle.

**45 Veterinarian to dispose of injectable anabolic steroids properly**

- (1) A veterinarian must dispose of an injectable anabolic steroid by:
- (a) returning it to the supplier; or
  - (b) disposing of it in a manner approved in writing by the Chemicals Coordinator.

Maximum penalty: 100 penalty units.

- (2) An offence against subsection (1) is a regulatory offence.

**46 Veterinarian to report loss of injectable anabolic steroids**

If, during any 28-day period, a veterinarian loses (whether as a result of theft, misplacement or otherwise) a quantity of injectable anabolic steroid exceeding 50 millilitres or quantities of injectable anabolic steroid in total exceeding 50 millilitres, the veterinarian must report the loss to the Chemicals Coordinator within 48 hours after becoming aware of it.

Maximum penalty: If the offender is a natural person –  
100 penalty units.

If the offender is a body corporate –  
500 penalty units.

**47 Veterinarian to keep records relating to injectable anabolic steroids**

- (1) A veterinarian who has possession of a batch of injectable anabolic steroid must keep, for 2 years after the last of the batch is used to treat an animal or is disposed of, a record of the following for the batch:
- (a) the name of the steroid;
  - (b) the manufacturer's batch number;
  - (c) the date on which the veterinarian obtained the batch;
  - (d) the name of the supplier from whom the batch was obtained;
  - (e) the total volume of steroid in the batch;
  - (f) details about the use and disposal of the batch sufficient to account for the total volume of the batch, including the details specified in subsection (2).

Maximum penalty: If the offender is a natural person –  
100 penalty units.

If the offender is a body corporate –  
500 penalty units.

- (2) For subsection (1)(f), the details about the use and disposal of a batch must include the following:
- (a) each date on which part of the batch was used, supplied, or disposed of by the veterinarian;
  - (b) if part of the batch was used or supplied by the veterinarian to treat one or more animals:
    - (i) the name and address of the person who owned, or was responsible for the care of, the animals at the time of treatment;
    - (ii) the volume of steroid used or supplied to treat the animals;
    - (iii) the number of animals treated; and
    - (iv) information sufficient to enable the veterinarian to identify the animals treated;

- (c) if part of the batch was disposed of:
  - (i) the method of disposal; and
  - (ii) where it was disposed of by giving it to another person – the name and address of that person;
- (d) the volume of steroid remaining in the batch after each time part of the batch was used or disposed of.

## **Division 6      Miscellaneous**

### **48      Possession or use of restricted chemical products**

- (1) A person must not have possession of a restricted chemical product unless the person:
  - (a) belongs to a class of persons that the instructions on the approved label specify is authorised to use the product; or
  - (b) is authorised under a permit to use the product.

Maximum penalty:      If the offender is a natural person –  
   200 penalty units.

   If the offender is a body corporate –  
   1 000 penalty units.

- (2) Subsection (1) does not apply to a person who is authorised under a law in force in the Territory to sell or supply the product.
- (3) A person must not use a restricted chemical product in a way that is contrary to the instructions on the approved label unless the use is authorised under a permit.

Maximum penalty:      If the offender is a natural person –  
   200 penalty units.

   If the offender is a body corporate –  
   1 000 penalty units.

- (4) A person who has possession of or uses a restricted chemical product does not contravene subsection (1) or (3) because having possession of or using the product in the Territory is not specified in the instructions on the approved label but does contravene subsection (1) or (3) if having possession of or using the product in the Territory is prohibited by those instructions.





(2) A person must not use a chemical product unless it is registered.

Maximum penalty:        If the offender is a natural person –  
200 penalty units.

                                  If the offender is a body corporate –  
1 000 penalty units.

(3) Subsection (1) or (2) does not apply if:

(a) the possession or use of the product by the person is authorised under a permit;

(b) the product is declared by the Regulations to be an exempt chemical product for this section;

(c) the product is an agricultural chemical product:

(i) in the possession of a veterinarian; or

(ii) used for an authorised veterinary purpose within the meaning of subsection (5); or

(d) the product is a veterinary chemical product:

(i) in the possession of or used by a veterinarian or pharmacist; or

(ii) prescribed or supplied by a veterinarian to treat an animal under the person's control.

(4) It is a defence to a prosecution for an offence against subsection (2) if the defendant proves that:

(a) the product was registered at some time during the 2-year period immediately before its use by the defendant;

(b) the registration of the product ended by virtue of section 47(2) or (3) of the Agvet Code;

(c) the defendant's use of the product was in accordance with the instructions on the label that was the approved label immediately before registration of the product ended; and

(d) the approved label was on the container from which the defendant used the product when the defendant used the product.

- (5) For subsection (3)(c)(ii), an agricultural chemical product is used for an authorised veterinary purpose if it is used in the course a veterinarian's practice by the veterinarian or a person in accordance with directions given by the veterinarian.

## 51            **Claims about registered chemical products**

- (1) A person must not make a claim about a registered chemical product, or a chemical product that contains a registered chemical product, that is inconsistent with the instructions on the approved label.

Maximum penalty:        20 penalty units.

- (2) A prescribed person does not contravene subsection (1) if the claim is:
- (a) consistent with a permit; or
  - (b) is made honestly and without negligence.
- (3) In subsection (2):

***prescribed person*** means any of the following:

- (a) the Chemicals Coordinator in the course of performing a function or exercising a power under this Act;
- (b) an employee, within the meaning of the *Public Sector Employment and Management Act*, in the course of his or her employment;
- (c) a person prescribed by the Regulations, or by the Minister by notice in the *Gazette*, in the circumstances prescribed by the Regulations or notice.

## 52            **Claims about unregistered chemical products**

- (1) A person must not make a claim about the use of a chemical product that is not registered.

Maximum penalty:        20 penalty units.

- (2) A person does not contravene subsection (1) if the person makes a claim about the use of a chemical product where:
- (a) the use is authorised under a permit; or
  - (b) the use is for an authorised veterinary purpose within the meaning of subsection (5).

- (3) A person does not contravene subsection (1) by making or reporting a statement about a chemical product if the statement is made or reported:
- (a) in a scientific paper or other scientific literature;
  - (b) in a scientific report or presentation; or
  - (c) at a conference or seminar, or in an address, meeting or discussion, about chemical products,
- and is based on data:
- (d) published in a reputable scientific refereed journal; or
  - (e) of a standard publishable in a reputable scientific refereed journal.
- (4) A person does not contravene subsection (1) by making or reporting a statement about a chemical product if the statement is made or reported on radio or television, or in a newspaper, journal or newsletter, as fair comment on material:
- (a) published for a conference or seminar; and
  - (b) is based on data of a type referred to in subsection (1)(d) or (e).
- (5) For subsection(2)(b), a chemical product is used for an authorised veterinary purpose if it is used:
- (a) in the course a veterinarian's practice by the veterinarian or a person under directions given by the veterinarian; and
  - (b) in a way that complies with the conditions prescribed by the Regulations for the use of the chemical product in a veterinarian's practice.

**Part 4                    General protective measures****53                    Prohibition and regulation of manufacture, possession, sale or use**

- (1) The Minister may, by notice in the *Gazette*, prohibit or impose conditions on the manufacture, possession, sale or use of a chemical product, fertiliser or stockfood:
- (a) if satisfied that it is necessary to protect:
    - (i) the health of the general public or the users of the chemical product, fertiliser or stockfood;
    - (ii) the environment; or
    - (iii) domestic or export trade in agricultural produce; and
  - (b) despite that the chemical product, fertiliser or stockfood complies with the relevant standards prescribed by the Regulations for that chemical product, fertiliser or stockfood.
- (2) Before taking action under subsection (1), the Minister must:
- (a) if the action is proposed to be taken because of subsection (1)(a)(i) – consult with the minister primarily responsible for health;
  - (b) if the action is proposed to be taken because of subsection (1)(a)(ii) – consult with the minister primarily responsible for the environment; and
  - (c) consider any advice provided by the Chemicals Coordinator.
- (3) The Minister must take reasonable steps to publicise action taken under subsection (1) throughout the agricultural industry and the general public.
- (4) A person who manufactures, is in possession of, sells or uses a chemical product, fertiliser or stockfood in contravention of a prohibition or condition imposed under subsection (1) commits an offence.

Maximum penalty:            If the offender is a natural person –  
200 penalty units.

  If the offender is a body corporate –  
1 000 penalty units.

- (5) A reference in this section to a chemical product, fertiliser or stockfood includes a reference to a class of chemical products, fertilisers or stockfoods.

#### **54 Direction to recall product**

- (1) The Minister may direct in writing a manufacturer or wholesale distributor:
- (a) to withdraw a chemical product, fertiliser or stockfood from sale, either immediately or within the time specified in the direction;
  - (b) to take the action specified in the direction to recover all supplies of the chemical product, fertiliser or stockfood from persons to whom it was supplied by the manufacturer or wholesale distributor;
  - (c) to deal with the supplies recovered and any other supplies of the chemical product, fertiliser or stockfood in the manufacturer's or distributor's possession in the manner specified in the notice; and
  - (d) to report in writing to the Chemicals Coordinator about action taken under paragraph (b) and dealings under paragraph (c).
- (2) A manufacturer or wholesale distributor who contravenes a direction given under subsection (1) commits an offence.

Maximum penalty: If the offender is a natural person –  
200 penalty units.

If the offender is a body corporate –  
1 000 penalty units.

- (3) The Minister may only give a direction under subsection (1)(a), (b) or (c) if satisfied that it is necessary to protect:
- (a) the health of the general public or the users of the chemical product, fertiliser or stockfood;
  - (b) the environment; or
  - (c) domestic or export trade in agricultural produce.
- (4) A reference in this section to a chemical product, fertiliser or stockfood includes a reference to a class of chemical products, fertilisers or stockfoods.

**55 Direction to deal with prohibited or contaminated chemical product, fertiliser, stockfood or agricultural produce**

- (1) If, after receiving advice about the matter from the Chemicals Coordinator, the Minister is satisfied that:
- (a) the manufacture, possession, sale or use of a chemical product, fertiliser or stockfood is prohibited under section 53; or
  - (b) a fertiliser, stockfood or agricultural produce contains or is likely to contain a substance at a concentration:
    - (i) greater than the concentration prescribed by the Regulations for the fertiliser, stockfood or agricultural produce; or
    - (ii) that poses or is likely to pose a threat to human health or to trade in the agricultural industry,

the Minister may direct in writing a person to deal with the chemical product, fertiliser, stockfood or agricultural produce in the manner (including by way of destruction), and within the time, specified in the direction.

- (2) Before giving a direction under subsection (1) because of the threat posed or likely to be posed to human health, the Minister must consult with the minister primarily responsible for health.
- (3) The reasonable costs and expenses of sampling and analysis incurred by the Chemicals Coordinator in order to advise the Minister about the concentration or likely concentration of a substance referred to in subsection (1)(b) are recoverable as a debt due and payable to the Territory from the manufacturer of the fertiliser, the seller of the stockfood or the grower of the agricultural produce.
- (4) However, those costs and expenses are not recoverable if:
- (a) the use of the substance was authorised by this Act or another law in force in the Territory; or
  - (b) the concentration or likely concentration of the substance was the result of the act or omission of a person other than the manufacturer, seller or grower and the manufacturer, seller or grower did not know, and could not reasonably have been expected to know, about the act or omission.





- (2) It is a defence to a prosecution for an offence against subsection (1)(a) that the plants or stock have no commercial value.

**57                      Ground spraying businesses must be licensed**

A person must not:

- (a) conduct a ground spraying business; or
- (b) represent that he or she provides a ground spraying service for fee or reward,

unless the person:

- (c) is authorised under a ground spraying business licence; and
- (d) complies with the conditions of the licence.

Maximum penalty:        If the offender is a natural person –  
200 penalty units.

  If the offender is a body corporate –  
1 000 penalty units.

**58                      Ground spray applicators must be licensed**

- (1) A professional ground spraying applicator must not operate a machine or other equipment to carry out a class of ground spraying unless:

- (a) the person is authorised under:
  - (i) a ground spraying business licence; or
  - (ii) a class of ground spray applicator's licence prescribed by the Regulations for that class of spraying; and
- (b) the person complies with the conditions of the licence.

Maximum penalty:        200 penalty units.

- (2) In subsection (1):

***professional ground spraying applicator*** means:

- (a) a ground spraying business licensee;
- (b) an employee of a ground spraying business licensee;
- (c) a person who carries out pest control operations on behalf of a public authority; or

- (d) a person who uses an agricultural chemical product to treat turf on a sporting ground or other recreational area, other than a person who uses the product in a container of a type and size normally purchased from retail outlets by members of the public.

## **59 Aerial spraying businesses must be licensed**

A person must not:

- (a) conduct an aerial spraying business; or
- (b) represent that he or she provides an aerial spraying service for fee or reward,

unless the person:

- (c) is authorised under an aerial spraying business licence; and
- (d) complies with the conditions of the licence.

Maximum penalty: If the offender is a natural person –  
200 penalty units.

If the offender is a body corporate –  
1 000 penalty units.

## **60 Pilots carrying out aerial spraying must be licensed**

A person must not pilot an aircraft to carry out aerial spraying unless the person:

- (a) is authorised under a pilot (chemical rating) licence; and
- (b) complies with the conditions of the licence.

Maximum penalty: 200 penalty units.

## **61 Spraying operations under other legislation are exempt**

This Division does not apply in relation to agricultural chemical spraying authorised under a licence under the *Poisons and Dangerous Drugs Act* or the *Dangerous Goods Regulations*.

## **Division 2       Licences**

### **62       Definition**

In this Division:

***licence*** means any of the following licences:

- (a) a ground spraying business licence referred to in section 57;
- (b) a ground spray applicator's licence referred to in section 58;
- (c) an aerial spraying business licence referred to in section 59;
- (d) a pilot (chemical rating) licence referred to in section 60.

### **63       Grant or refusal of licence**

- (1) An application for the grant of a licence must be:
  - (a) in the approved form;
  - (b) accompanied by the documents and information prescribed by the Regulations and the other documents and information required by the Chemicals Coordinator; and
  - (c) accompanied by the determined fee.
- (2) On receipt of the application, the Chemicals Coordinator may:
  - (a) grant the licence subject to the conditions specified in the licence; or
  - (b) refuse to grant the licence.
- (3) If the Chemicals Coordinator has prescribed by notice in the *Gazette* qualifications for a ground spraying business licence or a class of ground spraying applicator's licence, the Chemicals Coordinator must not grant a licence of that kind unless the applicant holds those qualifications.
- (4) The Chemicals Coordinator must not grant a class of aerial spraying business licence unless:
  - (a) the applicant holds an aerial work licence under the *Civil Aviation Act 1988* of the Commonwealth that is endorsed to conduct agricultural operations; and
  - (b) if the Regulations prescribe additional qualifications for that class of licence – the applicant has those qualifications.

- (5) The Chemicals Coordinator must not grant a pilot (chemical rating) licence unless:
- (a) the applicant holds a commercial or senior commercial pilot's licence under the *Civil Aviation Act 1988* of the Commonwealth that is endorsed with an agricultural rating; and
  - (b) if the Regulations prescribe additional qualifications for a pilot (chemical rating) licence – the applicant has those qualifications.
- (6) The Chemicals Coordinator must not grant a ground spray applicator's licence or a pilot (chemical rating) licence if:
- (a) the applicant refuses to undergo a medical examination as required by the Chemical Coordinator under section 70; or
  - (b) the advice of the medical practitioner who conducted the medical examination is that the proposed use of agricultural chemical products under the licence would constitute a threat to the applicant's health.
- (7) In considering the application, the Chemicals Coordinator may require the applicant to provide further specified documents or information within a specified period.

#### **64            Term of licence**

- (1) A licence remains in force, unless sooner surrendered, cancelled or suspended under this Act, for:
- (a) 3 years; or
  - (b) if a period of 1, 2, 4 or 5 years is specified in the licence – that period.
- (2) The term of a licence commences on:
- (a) if granted under section 63 – 1 July immediately following the date on which the licence was granted; or
  - (b) if renewed under section 65 – 1 July immediately following 30 June on which the licence would, but for the renewal, have expired.

## **65            Renewal of licence**

- (1) An application for the renewal of a licence must be:
  - (a) in the approved form;
  - (b) accompanied by the documents and information required by the Chemicals Coordinator;
  - (c) accompanied by the determined fee; and
  - (d) received by the Chemicals Coordinator no later than 31 May immediately before 30 June on which the licence is due to expire.
- (2) On receipt of the application, the Chemicals Coordinator may:
  - (a) renew the licence subject to the conditions specified in the renewal, which conditions may or may not be the same as the conditions imposed when the licence was granted or last renewed; or
  - (b) refuse to renew the licence.
- (3) In considering the application, the Chemicals Coordinator may require the applicant to provide further specified documents or information within a specified period.
- (4) The Chemicals Coordinator must not renew a licence if, had the application been for the grant of the licence instead of the renewal of the licence, the Chemicals Coordinator would have refused to grant the licence.
- (5) If the application was received by the Chemicals Coordinator on or before the date specified in subsection (1)(d), the licence continues in force until the Chemicals Coordinator renews or refuses to renew the licence.

## **66            Variation of conditions of licence**

- (1) An application for the variation of the conditions to which a licence is subject may be made by the licensee and must be:
  - (a) in the approved form;
  - (b) accompanied by the documents and information required by the Chemicals Coordinator; and
  - (c) accompanied by the determined fee.

- (2) On receipt of an application or on his or her own initiative, the Chemicals Coordinator may:
  - (a) vary the conditions to which the licence is subject, other than a condition as to the term of the licence imposed by section 64(2); or
  - (b) refuse to vary those conditions.
- (3) A reference in subsection (2) to the variation of the conditions to which a licence is subject includes a reference to the omission or substitution of some or all of those conditions and the addition of further conditions.

**67            Fee to be returned if application refused**

If the Chemicals Coordinator refuses to grant or renew a licence, any fee that accompanied the application must be returned to the applicant and, if it is not returned, is recoverable as a debt due to the applicant from the Territory.

**68            Surrender of licence**

A licensee may surrender his or her licence by returning it to the Chemicals Coordinator.

**69            Cancellation or suspension of licence**

- (1) The Chemicals Coordinator may cancel or suspend a licence if:
  - (a) the licensee has not complied with a condition of the licence;
  - (b) the licensee has been found guilty of an offence against this Act or an offence relating to the misuse of chemicals against another law in force in the Territory or another Australian jurisdiction; or
  - (c) the Chemicals Coordinator becomes aware of information that, if it had been known by the Chemicals Coordinator when the licence was granted or renewed, would have prevented the Chemicals Coordinator from granting or renewing the licence.
- (2) The Chemicals Coordinator must cancel an aerial spraying business licence if the licensee ceases (whether by surrender, cancellation, suspension or otherwise) to hold an aerial work licence under the *Civil Aviation Act 1988* of the Commonwealth that is endorsed to conduct agricultural operations.

- (3) The Chemicals Coordinator must cancel a pilot (chemical rating) licence if the licensee ceases (whether by surrender, cancellation, suspension or otherwise) to hold a commercial or senior commercial pilot's licence under the *Civil Aviation Act 1988* of the Commonwealth that is endorsed with an agricultural rating.
- (4) The Chemicals Coordinator may suspend a licence for a period not exceeding 3 months while an investigation of the licensee or another person is being conducted under section 99.
- (5) A suspension under subsection (4) may be extended once for a further period not exceeding 3 months with the written approval of the Minister.
- (6) The Chemicals Coordinator may cancel or suspend a ground spray applicator's licence or a pilot (chemical rating) licence if:
  - (a) the licensee refuses to undergo a medical examination as required by the Chemicals Coordinator under section 70; or
  - (b) the advice of the medical practitioner who conducted the medical examination is that the continued use of agricultural chemical products under the licence constitutes a threat to the applicant's health.
- (7) A suspension under subsection (6) may be for a specified period or until specified requirements relating to the licensee's health are met.
- (8) The suspension of a licence has, during the period of suspension, the same effect as the cancellation of the licence.

## **70 Medical examination may be required**

- (1) The Chemicals Coordinator may require any of the following persons to undergo a medical examination:
  - (a) an applicant for a ground spray applicator's licence or a pilot (chemical rating) licence;
  - (b) the holder of such a licence.
- (2) The medical practitioner who conducts the examination must provide the Chemicals Coordinator and the person examined with a written report of the examination results.

## **Division 3 Miscellaneous**

### **71 False claims about being licensed**

A person must not falsely represent himself or herself to be authorised under a licence under this Part.

Maximum penalty: If the offender is a natural person –  
100 penalty units or imprisonment for  
6 months.

If the offender is a body corporate –  
500 penalty units.

### **72 Record of spraying activities to be kept**

- (1) A ground spraying business licensee or aerial spraying business licensee must keep in the approved form a record of the information prescribed by the Regulations for each occasion on which agricultural chemical spraying is carried out under the licence for a period of 2 years after the date on which the spraying was carried out.

Maximum penalty: If the offender is a natural person –  
20 penalty units.

If the offender is a body corporate –  
100 penalty units.

- (2) A ground spraying business licensee or aerial spraying business licensee must comply with a request by a chemical adviser to produce the records required to be kept under subsection (1) or to provide copies of them.

Maximum penalty: If the offender is a natural person –  
20 penalty units.

If the offender is a body corporate –  
100 penalty units.

### **73 Defective machine, equipment or aircraft not to be used for spraying**

- (1) If the Chemicals Coordinator believes on reasonable grounds that a machine or other equipment or an aircraft being used to carry out agricultural chemical spraying is defective, the Chemicals Coordinator may give the person apparently in charge of the machine, equipment or aircraft a written direction not to operate the machine, equipment or aircraft until:



- (a) specified repairs have been made to the machine, equipment or aircraft; and
  - (b) the Chemicals Coordinator has given approval to operate the machine, equipment or aircraft again.
- (2) A person who contravenes a direction given under subsection (1) commits an offence.

Maximum penalty:      If the offender is a natural person –  
  200 penalty units.

  If the offender is a body corporate –  
  1 000 penalty units.

## **Part 6                    Chemical control areas**

### **74            Declaration of chemical control area**

- (1) The Minister may make, by publishing it in the *Gazette*, a declaration:
- (a) declaring an area to be a chemical control area; and
  - (b) prohibiting or imposing conditions on the use of chemical products in that area.
- (2) The Minister may make the declaration if satisfied that it is necessary:
- (a) to protect human health or safety, the environment or specified plants or animals; or
  - (b) to facilitate trade in agricultural produce.
- (3) The declaration takes effect on the date specified in the declaration.

### **75            Publication of proposal**

- (1) Before declaring an area to be a chemical control area, the Minister must:
- (a) publish in a newspaper circulating in the area notice of the proposal to make a declaration; and
  - (b) give a copy of the notice to the owners and occupiers of any land that will form part of, or will be adjacent to, the area.

- (2) The notice must:
  - (a) describe the area;
  - (b) contain a summary of the prohibitions and conditions proposed to be imposed;
  - (c) specify the place where copies of the proposal may be obtained; and
  - (d) invite comments on the proposal to be lodged at the specified place in the specified manner on or before the specified date, being a date not less than 21 days after the last day on which the notice is published under subsection (3).
- (3) The notice must be published on at least 2 days, the last day it is published being not less than 14 days after the first day it is published.
- (4) After considering the comments received in accordance with the invitation in the notice, the Minister may:
  - (a) make a declaration in the same terms as the original proposal;  
or
  - (b) revise the proposal and publish notice of the revised proposal in the same way in which notice of the original proposal was required to be published.
- (5) After considering the comments received in accordance with the invitation in the notice published under subsection (4)(b), the Minister may:
  - (a) make a declaration in the same terms as the revised proposal;  
or
  - (b) revise the proposal a second time and make a declaration in the terms of the proposal as revised the second time.

## **76      Contravention of declaration**

A person who contravenes a declaration made under section 74 commits an offence.

Maximum penalty:      If the offender is a natural person –  
200 penalty units.

   If the offender is a body corporate –  
1 000 penalty units.

**77 Notation of declaration under *Land Title Act***

As soon as practicable after declaring an area to be a chemical control area, the Minister must lodge a memorandum in accordance with section 35 of the *Land Title Act* notifying the Registrar-General of the statutory restrictions imposed by the declaration.

**Part 7 Agricultural pursuits on contaminated land****78 Identifying contaminated agricultural produce**

- (1) The Chemicals Coordinator must advise the Minister if the Chemicals Coordinator believes on reasonable grounds that agricultural produce growing on contaminated land contains or is likely to contain a substance at a concentration that:
  - (a) exceeds the maximum residue limit;
  - (b) exceeds the standard prescribed by the Regulations for the concentration of the substance in the agricultural produce; or
  - (c) poses or is likely to pose a threat to human health or to trade in the agricultural industry.
- (2) The reasonable costs and expenses of sampling and analysis incurred by the Chemicals Coordinator in order to advise the Minister about the concentration or likely concentration of a substance referred to in subsection (1) are recoverable as a debt due and payable to the Territory from the grower.
- (3) However, those costs and expenses are not recoverable if:
  - (a) the use of the substance was authorised by this Act or another law in force in the Territory; or
  - (b) the concentration or likely concentration of the substance was the result of the act or omission of a person other than the grower and the grower did not know, and could not reasonably have been expected to know, about the act or omission.

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**79 Direction in relation to agricultural pursuits on contaminated land**

- (1) On receiving advice under section 78 about agricultural produce growing on contaminated land, the Minister may give the grower a written direction:
  - (a) to take the measures specified in the direction to reduce the concentration of a substance in the produce, which may include measures to destroy the produce or to restrict access to or use of the land; or
  - (b) if the Minister is satisfied that the threat posed or likely to be posed by the concentration of a substance in the produce is sufficiently serious – to implement a remedial plan in relation to the produce, which may include measures to rehabilitate the land.
- (2) Before giving a direction under subsection (1) because of the threat posed or likely to be posed to human health, the Minister must consult with the minister primarily responsible for health.
- (3) A person who contravenes a direction given under subsection (1) commits an offence.

Maximum penalty: If the offender is a natural person –  
200 penalty units.

If the offender is a body corporate –  
1 000 penalty units.

- (4) An offence against subsection (3) is a regulatory offence.
- (5) If a person contravenes a direction given under subsection (1):
  - (a) the Chemicals Coordinator may take those measures; and
  - (b) the reasonable costs and expenses incurred by the Chemicals Coordinator in doing so are recoverable as a debt due to the Territory from the person.

**80 Preparation and approval of remedial plan**

- (1) For section 79(1)(b), the Minister may appoint a person or group of persons:
  - (a) to prepare, in consultation with the grower, a draft remedial plan relating to the produce, which may include measures to rehabilitate the contaminated land; and

(b) to submit the draft plan to the Minister for approval.

- (2) The Minister may approve a draft remedial plan submitted under subsection (1)(b), subject to the amendments required by the Minister being made.

### **81 Amendment and revocation of remedial plan**

- (1) If the Minister is satisfied that it is necessary to amend a remedial plan, the Minister may amend the remedial plan.
- (2) If the Minister is satisfied that the reason for implementing a remedial plan no longer exists or that it is otherwise appropriate, the Minister must revoke the remedial plan.

### **82 Notation of remedial plan on land titles register**

- (1) As soon as practicable after a remedial plan is approved under section 80 or an amendment of a remedial plan is made under section 81, the Minister must lodge a memorandum in accordance with section 35 of the *Land Title Act* notifying the Registrar-General of the statutory restrictions imposed by the remedial plan or the amendment.
- (2) As soon as practicable after a remedial plan is revoked under section 81, the Minister must give a direction to the Registrar-General under section 36 of the *Land Title Act* to remove the memorandum made under section 35 of that Act for the plan.

## **Part 8 Agricultural emergencies**

### **83 Declaration of emergency**

- (1) If the Minister is satisfied that:
- (a) an emergency in connection with the agricultural industry exists; and
  - (b) extraordinary measures are necessary or advisable for the protection of the industry,

the Minister may declare by notice in the *Gazette* that an agricultural emergency exists for so much of the Territory as, in his or her opinion, is likely to be affected by the emergency.

- (2) A declaration:
- (a) takes effect on the date it is published in the *Gazette*; and

- (b) continues in force until the Minister revokes it by notice in the *Gazette*.

#### **84 Authorisation of counter-measures**

To counter an emergency for which a declaration is in force under section 83:

- (a) the Minister may authorise in writing an act or omission that would otherwise constitute an offence or an element of an offence against this Act; and
- (b) an authorisation has effect according to its tenor.

### **Part 9 Administration**

#### **Division 1 Chemicals Coordinator and chemical advisers**

##### **85 Appointment of Chemicals Coordinator**

The Minister must appoint in writing a Chemicals Coordinator.

##### **86 Functions and powers of Chemicals Coordinator**

- (1) In addition to the other functions conferred on the Chemicals Coordinator by this Act, the Chemicals Coordinator has the following functions:
  - (a) to administer this Act;
  - (b) to perform the functions of a coordinator under the Agvet Code;
  - (c) to liaise with the about the administration and enforcement of the Agvet Code;
  - (d) the other functions conferred on the Chemicals Coordinator by another law of the Territory.
- (2) In addition to the specific powers provided by this Act, the Chemicals Coordinator has the powers that are necessary or convenient for the performance of his or her functions.
- (3) The Chemicals Coordinator is a chemical adviser for this Act.
- (4) The Chemicals Coordinator is taken to have been nominated by the Minister to perform the functions of a coordinator under the Agvet Code.



**90 Appointment of chemical advisers**

- (1) The Chemicals Coordinator may appoint in writing one or more persons to be chemical advisers for this Act.
- (2) If a person appointed under subsection (1) is an employee within the meaning of the *Public Sector Employment and Management Act*, the appointment ceases when the person ceases to be such an employee.

**91 Assistants**

A chemical adviser may be assisted in the performance of his or her duties by:

- (a) an officer or member of the Police Force;
- (b) a person who has expertise relevant to the performance of those duties and is authorised by notice in the Gazette to provide assistance under this section; or
- (c) another person who has expertise relevant to, or is otherwise able to assist the chemical adviser in, the performance of those duties.

**92 Identity cards**

- (1) The Minister must issue to the Chemicals Coordinator an identity card that specifies the name and appointment of the Chemicals Coordinator and on which there is a recent photograph and the signature of the Chemicals Coordinator.
- (2) The Chemicals Coordinator must issue to a chemical adviser an identity card that specifies the name and appointment of the chemical adviser and on which there is a recent photograph and the signature (verified by the Chemicals Coordinator) of the chemical adviser.
- (3) A person who held an appointment as the Chemicals Coordinator or a chemical adviser must return his or her identity card to the person who issued the card as soon as practicable after ceasing to hold that appointment unless the person has a reasonable excuse.

Maximum penalty for an offence against subsection (3):  
10 penalty units.



## Division 2 Powers of chemical advisers

### 93 Interpretation

- (1) In this Division, unless the contrary intention appears:

**enter** includes to board.

**premises** includes vacant land and vehicles.

**residential premises** means premises used exclusively or primarily for residential purposes and includes a private room in a motel, hotel or guesthouse while the room is occupied but does not include a private room in a motel, hotel or guesthouse if the room is unoccupied or another part of a motel, hotel or guesthouse.

**substance or thing** includes a vehicle.

**vehicle** includes an aircraft or vessel.

- (2) For this Division, a substance or thing is connected with an offence if:
- (a) the offence has been committed with respect to the substance or thing;
  - (b) the substance or thing will afford evidence of the commission of the offence; or
  - (c) the substance or thing was used, is being used or is intended to be used to commit the offence.

### 94 Entry of premises

- (1) For the administration or enforcement of this Act, a chemical adviser may enter:
- (a) premises (other than residential premises) at any reasonable time; or
  - (b) any premises with the consent of the occupier or a person apparently in charge of the premises.
- (2) A chemical adviser may enter premises under subsection (1) with the assistance that is necessary and reasonable.
- (3) A chemical adviser who enters premises under subsection (1) is not authorised to remain on the premises if, when asked by the occupier or a person apparently in charge of the premises, the chemical adviser does not produce his or her identity card.

- (4) To enter a vehicle under subsection (1), a chemical adviser may require a person:
- (a) to stop, move or not to move the vehicle; or
  - (b) to bring the vehicle to a specified place and remain in control of the vehicle until the chemical adviser permits the vehicle to depart.

## **95 Inspection of premises**

- (1) A chemical adviser who enters premises under section 94 may do any of the following:
- (a) inspect or examine the premises or a substance or thing found in or on the premises;
  - (b) break open and search fixtures and fittings, furniture and furnishings or boxes, packages and other containers found in or on the premises;
  - (c) take measurements of, or conduct tests relating to, the premises or a substance or thing found in or on the premises;
  - (d) take photographs, films or audio, video or other recordings of the premises or a substance or thing found in or on the premises;
  - (e) take and remove from the premises samples for analysis of a substance or thing found in or on the premises;
  - (f) if the premises are a vehicle – subject to section 96, seize the vehicle;
  - (g) subject to section 96, seize a substance or thing found in or on the premises;
  - (h) take copies of or extracts from documents found in or on the premises;
  - (i) require a person in or on the premises:
    - (i) to answer questions or provide information;
    - (ii) to make available documents kept on the premises; or
    - (iii) to provide reasonable assistance to the chemical adviser relating to the exercise of his or her powers under this section;

- (j) direct in writing a person apparently in charge of a machine or other equipment found in or on the premises not to operate the machine or other equipment until:
    - (i) specified repairs have been made; or
    - (ii) the machine or other equipment meets specified requirements;
  - (k) direct in writing the occupier or a person apparently in charge of the premises:
    - (i) to stop using a substance or thing found in or on the premises and to store it in a specified manner; or
    - (ii) to use a substance or thing found in or on the premises in a specified way and in no other way,until the period specified in the direction or the extension in writing of that period (neither period exceeding 14 days) has expired;
  - (l) direct in writing the occupier or a person apparently in charge of the premises not to remove a specified substance or thing found in or on the premises for the period (not exceeding 14 days) specified in the direction;
  - (m) destroy or render harmless, or direct the occupier or a person apparently in charge of the premises to destroy or render harmless, a substance or thing found in or on the premises that poses, or is likely to pose, a threat to human health or safety.
- (2) After taking a sample under subsection (1)(e) or seizing a substance or thing under subsection (1)(f) or (g), a chemical adviser must give a receipt for the sample, substance or thing to:
- (a) the occupier or a person apparently in charge of the premises; or
  - (b) the person who the chemical adviser reasonably believes had possession of the sample, substance or thing immediately before it was taken or seized.

## 96 Seizure of substances and things

- (1) A chemical adviser may seize a substance or thing under section 95(1)(f) or (g) if he or she has reasonable grounds for believing that:
  - (a) the substance or thing is connected with an offence against this Act and the seizure is necessary to prevent the substance or thing from being:
    - (i) concealed, lost, damaged or destroyed; or
    - (ii) used to commit the offence;
  - (b) the substance or thing is connected with an offence against this Act and the seizure is necessary to conduct tests to adduce evidence in a prosecution for the offence; or
  - (c) the substance or thing poses a threat to human health or safety.
- (2) After seizing a substance or thing under section 95(1)(f) or (g), a chemical adviser may:
  - (a) take, or direct another person to take, the substance or thing to the place specified by the chemical adviser; or
  - (b) give the directions about the handling and storage of the substance or thing that the chemical adviser considers appropriate.
- (3) A person must not, without the written consent of the Chemicals Coordinator:
  - (a) interfere with or dispose of a substance or thing seized under section 95(1)(f) or (g); or
  - (b) remove a substance or thing seized under section 95(1)(f) or (g) from the premises in or on which it was seized or to which it was taken by or under the direction of the chemical adviser.

Maximum penalty: If the offender is a natural person –  
100 penalty units.

If the offender is a body corporate –  
500 penalty units.

## **97 Retention of substances and things seized**

(1) The following provisions apply in relation to a substance or thing seized under section 95(1)(f) or (g) because the substance or thing is connected with an offence against this Act:

- (a) the substance or thing must be held by the chemical adviser for adducing evidence in a prosecution for an offence against this Act unless the Chemicals Coordinator authorises the release of the substance or thing to its owner or the person who had possession of the substance or thing immediately before it was seized;
- (b) if a prosecution for an offence against this Act is instituted within 12 months after the seizure and the defendant is found guilty, the court may order that:
  - (i) the substance or thing be forfeited to the Territory; or
  - (ii) the defendant pay to the Territory an amount equal to the market value of the substance or thing when seized, being the value determined by the court;
- (c) if:
  - (i) a prosecution for an offence against this Act is not instituted within 12 months after the seizure; or
  - (ii) on such a prosecution being instituted within that period, the defendant is not found guilty or the court does not make an order under paragraph (b),

the chemical adviser must release the substance or thing to its owner or the person who had possession of the substance or thing immediately before it was seized.

(2) The following provisions apply in relation to a substance or thing seized under section 95(1)(g) because it poses a threat to human health or safety:

- (a) the chemical adviser must take steps to destroy, bury or otherwise render harmless the substance or thing;
- (b) once the substance or thing has been rendered harmless, unless it has been destroyed or buried, the chemical adviser must release the substance or thing to its owner or the person who had possession of the substance or thing immediately before it was seized.

**98 Powers in relation to food-producing species**

For the administration or enforcement of this Act in relation to an animal of a food-producing species, in addition to the other powers under this Act, a chemical adviser has the powers of an inspector under the *Livestock Act*.

**99 Investigation of complaints**

- (1) A person may lodge with the Chemicals Coordinator a complaint in the approved form about the use by another person of a chemical product, fertiliser or stockfood.
- (2) As soon as practicable after the Chemicals Coordinator receives a complaint:
  - (a) the Chemicals Coordinator must acknowledge in writing receipt of the complaint and advise the complainant of the steps being taken to investigate the complaint and when the investigation is likely to be completed; and
  - (b) a chemical adviser must investigate the complaint and provide a written report of the results of the investigation to the Chemicals Coordinator.
- (3) As soon as practicable after receiving a report of the results of an investigation, the Chemicals Coordinator must advise the complainant of the outcome of the investigation but, in doing so, must not reveal commercially sensitive information about the person complained of.
- (4) This section does not affect the power of a chemical adviser to investigate a matter on his or her own initiative.

**100 Power to require name and address**

- (1) A chemical adviser may require a person to state the person's name and address if the chemical adviser:
  - (a) finds the person committing an offence against this Act; or
  - (b) finds the person in circumstances that lead, or has information that leads, the chemical adviser to suspect on reasonable grounds that the person has recently committed an offence against this Act.
- (2) When requiring a person to state the person's name and address, the chemical adviser must warn the person that it is an offence to fail to state the person's name and address unless the person has a reasonable excuse.

- (3) The chemical adviser may require the person to give evidence of the correctness of the person's name or address if the chemical adviser suspects, on reasonable grounds, that the name or address given is false.
- (4) A person must comply with a chemical adviser's requirement under subsection (1) unless the person has a reasonable excuse.

Maximum penalty for an offence against subsection (4):

If the offender is a natural person –  
100 penalty units.

If the offender is a body corporate –  
500 penalty units.

### **101 Obstruction etc. of chemical advisers**

A person must not:

- (a) obstruct or hinder a chemical adviser in the exercise of his or her powers under this Act; or
- (b) contravene a requirement or direction of a chemical adviser under this Act,

unless the person has a reasonable excuse.

Maximum penalty: If the offender is a natural person –  
100 penalty units.

If the offender is a body corporate –  
500 penalty units.

### **102 False or misleading statements**

A person must not, in purported compliance with a requirement under this Act or for another reason, provide to a chemical adviser:

- (a) information that is, to the person's knowledge, false or misleading in a material particular; or
- (b) a document containing information that is, to the person's knowledge, false or misleading in a material particular.

Maximum penalty: If the offender is a natural person –  
200 penalty units.

If the offender is a body corporate –  
1 000 penalty units.

## **Division 3 Advisory Committees**

### **103 Establishment**

The Minister may establish one or more Advisory Committees to inquire into and report back to the Minister about any matter the Minister refers to the Committee relating to any of the following:

- (a) the use of chemical products;
- (b) the manufacture, sale and use of fertilisers or stockfoods;
- (c) the management of land or agricultural produce contaminated by chemicals;
- (d) the administration of this Act generally.

### **104 Membership**

- (1) An Advisory Committee must consist of:
  - (a) the Chemicals Coordinator;
  - (b) the Chief Executive Officer of the Agency primarily responsible for health or an employee of that Agency authorised by that Chief Executive Officer;
  - (c) the Chief Executive Officer of the Agency primarily responsible for the environment or an employee of that Agency authorised by that Chief Executive Officer;
  - (d) the Chief Executive Officer of the Agency primarily responsible for trade or an employee of that Agency authorised by that Chief Executive Officer; and
  - (e) any other persons the Minister considers appropriate to be members of the Committee and appoints in writing.
- (2) A member of an Advisory Committee appointed under subsection (1)(e) holds office on the terms and conditions the Minister determines.
- (3) The Minister must appoint in writing a member of an Advisory Committee to be the Chairperson of the Committee.

### **105 Invitation to public to make submissions**

If the Minister establishes an Advisory Committee, the Minister may publish in a newspaper circulating throughout the Territory a notice:

- (a) setting out the Committee's terms of reference; and



- (b) inviting members of the public to make submissions to the Committee.

**106 Procedure**

- (1) Subject to this section, an Advisory Committee must determine its own procedure.
- (2) The Chairperson of an Advisory Committee must preside at all meetings of the Committee at which he or she is present.
- (3) An Advisory Committee must keep minutes of its meetings.

**107 Reports to be tabled in Legislative Assembly**

The Minister must lay a copy of a report received from an Advisory Committee before the Legislative Assembly within 6 sitting days after receiving it.

**Division 4 Miscellaneous**

**108 Protection from liability**

- (1) This section applies to a person who is or has been:
  - (a) the Chemicals Coordinator;
  - (b) a chemical adviser;
  - (c) a person assisting a chemical adviser under section 91; or
  - (d) a member of an Advisory Committee.
- (2) The person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, under this Act.
- (3) Subsection (2) does not affect any liability the Territory would, apart from that subsection, have for the act or omission.

**109 Evidentiary certificates**

A certificate purporting to be signed by the Chemicals Coordinator stating a matter under this Act is evidence of the matter.

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## **Part 10                    Criminal liability and proceedings generally**

### **110            Conduct of directors, employees and agents**

- (1) If in a prosecution for an offence against this Act it is necessary to establish the state of mind of a body corporate or a natural person in relation to particular conduct, it is sufficient to show that:
  - (a) the conduct was engaged in by a director, employee or agent of the body corporate, or an employee or agent of the natural person, within the scope of his or her actual or apparent authority; and
  - (b) the director, employee or agent had that state of mind.
- (2) For a prosecution for an offence against this Act, conduct engaged in on behalf of a body corporate or a natural person by a director, employee or agent of the body corporate, or an employee or agent of the natural person, within the scope of his or her actual or apparent authority is taken to have been engaged in also by the body corporate or the natural person.
- (3) A natural person is not liable to be punished by imprisonment for an offence against this Act if the person would not have been found guilty of the offence if subsection (1) or (2) had not been enacted.
- (4) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.
- (5) A reference in this section to the director of a body corporate includes a reference to a member of a body corporate incorporated for a public purpose by a law of the Territory or another Australian jurisdiction.

### **111            Liability of officers of body corporate**

- (1) If a body corporate commits an offence against this Act, the following persons are taken to have committed the same offence:
  - (a) the directors of the body corporate;
  - (b) the officers of the body corporate involved in the management of the body corporate.
- (2) It is a defence to a prosecution for an offence committed by virtue of subsection (1) that:
  - (a) the body corporate would not have been found guilty of the offence because it would have been able to establish a defence;

- (b) the defendant did not know, and could not reasonably have been expected to know, that the offence was to be or was being committed; or
  - (c) the defendant exercised due diligence to prevent the commission of the offence.
- (3) A person may be prosecuted and found guilty of an offence by virtue of subsection (1) whether or not the body corporate has been prosecuted for or found guilty of the offence.
- (4) A person is not liable to be punished by imprisonment for an offence against this Act if the person would not have been found guilty of the offence if subsection (1) had not been enacted.
- (5) A reference in this section to the director of a body corporate includes a reference to a member of a body corporate incorporated for a public purpose by a law of the Territory or another Australian jurisdiction.

#### **112 Limitation on making complaint**

Despite section 52 of the *Justices Act*, a complaint for an offence against this Act may be made within 12 months after the Agency administering this Act became aware of the commission of the offence.

#### **113 Notice of defence to be served on prosecutor**

A person charged with an offence against this Act who intends to rely on a defence available under this Act must give written notice of the intention to the prosecutor at least 14 days before the charge is heard.

#### **114 Additional court orders**

If a court finds a person guilty of an offence against this Act that resulted in harm to the environment or injury, loss or damage to another person or to another person's property, in addition to the penalty that may otherwise be imposed for the offence, the court may order the person:

- (a) to pay to the Territory the amount determined by the court to be the reasonable costs and expenses incurred by the Territory in taking action to remedy or mitigate the harm to the environment or to prevent further harm to the environment; or

- (b) to pay to another person the amount determined by the court as compensation for the injury, loss or damage to the other person or the other person's property or for costs reasonably incurred by the person in taking action to mitigate or prevent the injury, loss or damage,

and may make the other orders the court considers necessary or convenient for the enforcement of the order made under paragraph (a) or (b).

## **Part 11                    Review of decisions**

### **115                    Reviewable decisions and affected persons**

- (1) Each of the decisions specified in the Schedule is a reviewable decision.
- (2) Each of the persons specified in the Schedule opposite a reviewable decision is an affected person for the decision.

### **116                    Notice of reviewable decisions**

- (1) The decision maker for a reviewable decision must, within 28 days after making the decision, give the affected person written notice of the decision.
- (2) The notice must:
- (a) set out the reasons for the decision;
  - (b) state that the affected person may apply to the Local Court for a review of the merits of the decision; and
  - (c) specify the period allowed for applying for the review.
- (3) The validity of a reviewable decision is not affected by a contravention of subsection (1) or (2).

### **117                    Application for review**

- (1) An affected person for a reviewable decision may apply to the Local Court for a review of the merits of the decision.
- (2) The application must be made:
- (a) within 28 days after:
    - (i) the day the person received notice of the decision in accordance with section 116; or

- (ii) if subparagraph (i) does not apply – the day the person became aware of the decision; or
- (b) within such further time as the Court allows.

**118 Decision on review**

- (1) After reviewing the merits of a reviewable decision, the Local Court may:
  - (a) confirm the decision;
  - (b) vary the decision; or
  - (c) set the decision aside and substitute its own decision.
- (2) The Court may make the orders it considers appropriate to give effect to its decision.
- (3) The review must be by way of hearing de novo.
- (4) A decision under subsection (1)(b) or (c) is taken to be the decision maker's decision.

**119 Operation and implementation of reviewable decision**

- (1) The making of an application under section 117 for a review of a reviewable decision does not affect the operation or implementation of the decision.
- (2) However, the Local Court may make an order staying or otherwise affecting the operation or implementation of so much of the decision as the Court considers appropriate to effectively hear and decide the application.
- (3) The order:
  - (a) is subject to the conditions specified in the order; and
  - (b) has effect:
    - (i) for the period specified in the order; or
    - (ii) if no period is specified – until the Local Court has decided the application.

## Part 12                  Miscellaneous

### 120                  Form of records

A person who is required by this Act to keep a record must keep the record in a form (which may be an electronic form) that allows the record to be inspected on demand by a chemical adviser.

Maximum penalty:        If the offender is a natural person –  
 100 penalty units

If the offender is a body corporate –  
 500 penalty units.

### 121                  Altering or falsifying records

A person must not, with intent to deceive:

- (a) alter a record required to be kept by this Act; or
- (b) make a false or misleading entry in a record required to be kept by this Act.

Maximum penalty:        50 penalty units.

### 122                  Confidentiality

(1) This section applies to the following persons:

- (a) a person who is or has been the Chemicals Coordinator or who is or has been a chemical adviser;
- (b) a person who is or has been the Chief Executive Officer of the Agency administering this Act or who is or has been an employee, within the meaning of the *Public Sector Employment and Management Act*, of that Agency;
- (c) a person who is or has been a member of an Advisory Committee;
- (d) a person who holds or has held an appointment under section 80 to prepare a remedial plan;
- (e) a person who is assisting or has assisted a chemical adviser under section 91;
- (f) a person who is or has been otherwise involved in the administration this Act.

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- (2) A person must not directly or indirectly:
- (a) make a record of, or communicate to another person, information acquired by him or her because of involvement in the administration of this Act; or
  - (b) produce to a person, or permit a person to have access to, a document furnished to him or her under this Act,

unless it is:

- (c) necessary for this Act; or
- (d) authorised or required by this Act or another law in force in the Territory.

Maximum penalty:        If the offender is a natural person –  
100 penalty units or imprisonment for  
6 months.

   If the offender is a body corporate –  
500 penalty units.

### **123        Compensation may be payable in certain circumstances**

- (1) This section applies in relation to a person required to comply with a direction given under section 55 or 79.
- (2) The person may apply to the Chemicals Coordinator for compensation because of the direction.
- (3) The application must be made within 6 months after the direction was issued or within such further time as the Chemicals Coordinator allows.
- (4) Within 28 days after receiving the application, the Chemical Coordinator must:
  - (a) determine the amount of compensation he or she considers just in all the circumstances; and
  - (b) notify the person in writing of the determination and the reasons for it.
- (5) If the person is not notified in accordance with subsection (4)(b), the Chemicals Coordinator is taken to have determined that no compensation is payable.

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- (6) If the person is dissatisfied with the determination of the Chemicals Coordinator (including a determination because of subsection (5)), the person may apply to the Local Court for compensation because of the direction.
- (7) The application must be made:
- (a) within 28 days after:
    - (i) the day the person receives notice of the determination in accordance with subsection (4)(b); or
    - (ii) if subparagraph (i) does not apply – the day the Chemicals Coordinator is taken under subsection (5) to have determined that no compensation is payable; or
  - (b) within such further time as the Court allows.
- (8) The Court may:
- (a) determine the amount of compensation it considers just in all the circumstances; and
  - (b) make the orders it considers appropriate to give effect to the determination, including an order setting aside the determination of the Chemicals Coordinator.
- (9) An amount of compensation determined under this section is payable by the Territory.

#### **124 Acquisition on just terms**

If, but for this section, property is acquired under this Act otherwise than on just terms:

- (a) the person from whom the property is acquired is entitled to the compensation necessary to ensure the acquisition is on just terms; and
- (b) a court of competent jurisdiction may determine the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

#### **125 No liability for damage caused by compliance with Act**

- (1) This section applies to the following persons:
- (a) the Territory;
  - (b) a person who is or has been the Chemicals Coordinator or who is or has been a chemical adviser;



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- (c) a person who is or has been the Chief Executive Officer of the Agency administering this Act or who is or has been an employee, within the meaning of the *Public Sector Employment and Management Act*, of that Agency;
  - (d) a person who is or has been involved in the administration this Act.
- (2) The person is not liable for injury, loss or damage arising directly or indirectly because:
- (a) a chemical product was used in a way that was authorised or required by this Act; or
  - (b) a chemical product was not used, or was not used in a particular way, in compliance with a requirement imposed by this Act.

**126 Determined fees**

The Minister may, by notice in the *Gazette*, determine fees payable under this Act.

**127 Eligible laws**

Sections 22, 23, 25, 26, 27, 28, 29, 30, 31, 37, 48 and 50 of this Act are eligible laws for the definition of *permit* in section 109 of the *Agvet Code*.

**128 Codes of practice for use of chemical products**

- (1) The Minister may, by notice in the *Gazette*, approve an instrument as in force at a particular time or from time to time as a code of practice for this Act.
- (2) The matters a code of practice may deal with include any of the following:
  - (a) the use of a chemical product or class of chemical products generally or in a particular way;
  - (b) the use of a chemical product or class of chemical products by an agricultural industry or class of agricultural industries.
- (3) A notice published under subsection (1) must specify where copies of the approved code of practice may be inspected or purchased.
- (4) The Chemicals Coordinator must ensure that copies of the approved code of practice are available for inspection and purchase at the place specified in the notice.

- (5) A contravention of a code of practice does not of itself constitute an offence against this Act.
- (6) Before approving a code of practice, the Minister must:
  - (a) give notice of the proposal to do so to the persons and in the way the Minister considers appropriate;
  - (b) invite the persons to whom the notice is given to comment on the proposal within the time and in the way the Minister considers appropriate; and
  - (c) consider any comments received in accordance with the notice.

## **129 Regulations**

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The Regulations may deal with any of the following matters:
  - (a) the prohibition or regulation of conduct relating to the manufacture, possession, sale or use of a chemical product, fertiliser or stockfood;
  - (b) the records to be kept in relation to the manufacture, possession, sale or use of a chemical product, fertiliser or stockfood;
  - (c) the handling of chemical products;
  - (d) the testing of substances and things.
- (3) The Regulations may prescribe standards for any of the following:
  - (a) chemical products, fertilisers or stockfoods, including:
    - (i) the manufacture or sale of chemical products, fertilisers or stockfoods;
    - (ii) competency in the handling of chemical products; and
    - (iii) the application of agricultural chemical products or fertilisers through irrigation systems;

- (b) the concentration of substances in agricultural produce, fertilisers or stockfoods;
  - (c) the accreditation of laboratories, including standards about sampling, analysis and testing of substances and things by accredited laboratories;
  - (d) soil quality or water quality.
- (4) The Regulations may:
- (a) provide for the waiver (wholly or partly) of fees payable under this Act;
  - (b) provide for the refund (wholly or partly) of fees paid under this Act;
  - (c) apply, adopt or incorporate (with or without modification) a matter contained in another instrument as in force at a particular time or from time to time;
  - (d) prescribe for an offence against the Regulations a fine not exceeding:
    - (i) if the offender is a natural person – 100 penalty units; or
    - (ii) if the offender is a body corporate – 500 penalty units;
  - (e) provide for the enforcement of a code of practice, including by providing that a contravention of the code is an offence against the Regulations;
  - (f) provide for an offence against this Act to be a regulatory offence; or
  - (g) provide for the payment of a prescribed amount instead of a penalty that may otherwise be imposed for an offence against this Act, the service of a notice relating to payment of the amount on a person alleged to have committed the offence and the particulars to be included in the notice.
- (5) The Regulations may:
- (a) confer a discretion on the Chemicals Coordinator;
  - (b) make different provision in relation to:
    - (i) different persons or matters; or
    - (ii) different classes of persons or matters; or

- (c) apply differently by reference to stated exceptions or factors.

## Part 13 Transitional provisions

### 130 Definitions

In this Part:

**commencement day** means the day on which this Part commences.

**period of grace** means the 6 months immediately after the commencement day.

**pest control operator's licence** means a licence that was in force under Part XI of the *Poisons and Dangerous Drugs Act* immediately before the commencement day and authorises agricultural chemical spraying for a purpose other than domestic and commercial pest control.

**S7 authorization** means an authorization that was in force under section 53 of the *Poisons and Dangerous Drugs Act* immediately before the commencement day and authorises the possession and use of an S7 chemical product.

### 131 S7 authorizations

An S7 authorization is taken to be an authorisation issued under Part 4 of the Regulations.

### 132 Pest control operator's licences

- (1) A pest control operator's licence continues in force until:
- (a) if the holder of the pest control operator's licence applies during the period of grace for a licence under Part 5, Division 2 and the licence is granted – 1 July immediately following the date of grant;
  - (b) if the holder of the pest control operator's licence applies during the period of grace for a licence under Part 5, Division 2 and the grant of the licence is refused:
    - (i) the end of the day on which the holder is notified in accordance with section 116 of the refusal; or
    - (ii) the end of the period of grace,whichever occurs last; or

- (c) if paragraphs (a) and (b) do not apply – the end of the period of grace.
- (2) The *Poisons and Dangerous Drugs Act* as in force immediately before the commencement day applies in relation to the holder of a pest control operator's licence while the licence continues in force by virtue of subsection (1).

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**Schedule Reviewable decisions and affected person**

section 115

A decision under section 54:	The manufacturer or wholesale distributor
(a) to direct a manufacturer or wholesale distributor to withdraw a chemical product, fertiliser or stockfood from sale;	
(b) to take specified action to recover supplies of a chemical product, fertiliser or stockfood; or	
(c) to deal with supplies of a chemical product, fertiliser or stockfood in a specified manner	
A decision under section 55 to direct a person to deal with a chemical product, fertiliser, stockfood or agricultural produce in a specified manner or within a specified period	The person given the direction
A decision under section 63 to grant or refuse to grant a licence	The applicant for the licence
A decision under section 65 to renew or refuse to renew a licence	The licensee
A decision under section 66 to vary or refuse to vary the conditions to which a licence is subject	The licensee
A decision under section 69(1) to cancel a licence	The licensee
A decision under section 69(1) or (4) to suspend a licence	The licensee
A decision under 69(5) to extend the suspension of a licence	The licensee

A decision under section 79 to direct a grower:	The grower given the direction
(a) to take specified measures to reduce the concentration of a substance in agricultural produce; or	
(b) to implement a remedial plan in relation to agricultural produce	
A decision under section 80 to approve a draft remedial plan	The grower given the direction under section 79 to implement the remedial plan
A decision under section 87 to direct a person to take specified action or stop or not commence specified action	The person given the direction
A decision made under the Regulations that is declared by the Regulations to be a reviewable decision	The person declared by the Regulations to be the affected person for the decision

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**ENDNOTES**
**1****KEY**

Key to abbreviations

**amd = amended**  
**app = appendix**  
**bl = by-law**  
**ch = Chapter**  
**cl = clause**  
**div = Division**  
**exp = expires/expired**  
**f = forms**  
**Gaz = Gazette**  
**hdg = heading**  
**ins = inserted**  
**lt = long title**  
**nc = not commenced**

**od = order**  
**om = omitted**  
**pt = Part**  
**r = regulation/rule**  
**rem = remainder**  
**renum = renumbered**  
**rep = repealed**  
**s = section**  
**sch = Schedule**  
**sdiv = Subdivision**  
**SL = Subordinate Legislation**  
**sub = substituted**

**2****LIST OF LEGISLATION*****Agricultural and Veterinary Chemicals (Control of Use) Act 2004 (Act No. 35, 2004)***

Assent date           4 June 2004  
 Commenced           16 May 2005 (exc s 58(2)(c) and (d): nc)  
                               (Gaz S16, 16 May 2005)

***Livestock Act 2008 (Act No. 36, 2008)***

Assent date           8 December 2008  
 Commenced           1 September 2009 (Gaz G34, 26 August 2009, p 3)

***Statute Law Revision Act 2009 (Act No. 25, 2009)***

Assent date           1 September 2009  
 Commenced           16 September 2009 (Gaz G37, 16 September 2009, p 3)

***Health Practitioner (National Uniform Legislation) Implementation Act 2010 (Act No. 18, 2010)***

Assent date           20 May 2010  
 Commenced           1 July 2010 (s 2)

***Penalties Amendment (Children and Families, Health and Primary Industry, Fisheries and Resources) Act 2011 (Act No. 28, 2011)***

Assent date           31 August 2011  
 Commenced           21 September 2011 (Gaz G38, 21 September 2011, p 4)

**3****LIST OF AMENDMENTS**

s 4                   amd No. 25, 2009, s 3; No. 18, 2010, s 89  
 ss 13 – 14         amd No. 28, 2011, s 5  
 ss 17 – 19         amd No. 25, 2009, s 3; No. 28, 2011, s 5  
 s 20                amd No. 28, 2011, s 5  
 ss 21 – 23         amd No. 25, 2009, s 3; No. 28, 2011, s 5  
 s 24                amd No. 28, 2011, s 5  
 ss 25 – 28         amd No. 25, 2009, s 3; No. 28, 2011, s 5



## ENDNOTES

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ss 29 – 31	amd No. 28, 2011, s 5
s 32	amd No. 25, 2009, s 3
s 33	amd No. 25, 2009, s 3; No. 28, 2011, s 5
ss 34 – 35	amd No. 28, 2011, s 5
ss 36 – 37	amd No. 25, 2009, s 3; No. 28, 2011, s 5
s 38	amd No. 36, 2008, s 147; No. 28, 2011, s 5
s 39	amd No. 28, 2011, s 5
ss 40 – 41	amd No. 25, 2009, s 3; No. 28, 2011, s 5
ss 42 – 47	amd No. 28, 2011, s 5
ss 48 – 51	amd No. 25, 2009, s 3; No. 28, 2011, s 5
ss 52 – 60	amd No. 28, 2011, s 5
ss 71 – 73	amd No. 28, 2011, s 5
s 76	amd No. 28, 2011, s 5
s 79	amd No. 28, 2011, s 5
s 86	amd No. 25, 2009, s 3
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s 92	amd No. 28, 2011, s 5
s 96	amd No. 28, 2011, s 5
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