



Farmnote



Legislation controlling the use of agricultural chemicals in Western Australia

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Introduction

Agricultural chemicals give great benefits to agriculture by controlling weeds, pests and diseases but if misused, they also have the potential to cause harm to the user, the general public, the natural environment and to trade. For these reasons, effective controls over all aspects of the production, supply and use of these chemicals are essential. Both Commonwealth and State legislation impose these controls.

The manufacture, formulation, packaging, labelling, transport, storage, supply and use of agricultural chemicals can be described as the 'pesticide pathway'.

Legislative controls over the early part of the pesticide pathway that cover the manufacture or importation, formulation, packaging, labelling and retail sale, are the responsibility of the Commonwealth through the *Agricultural and Veterinary Chemicals Code Act 1994*.

The part of the pesticide pathway from retail sale, through the time the chemical is in the hands of the user, to the disposal of the container and unwanted chemical, is the legislative responsibility of individual State or Territory governments. Although there is some variation between State and Territory legislation, the principles covered are reasonably uniform. The Western Australian legislation is discussed below.

There is some overlap between Commonwealth and State legislation over the retail sale of chemicals, because the poisons acts in the States have controls over the supply of chemicals that are scheduled poisons.

Commonwealth legislation

As mentioned earlier, the Commonwealth controls agricultural chemicals through the *Agricultural and Veterinary Chemicals Code Act 1994* (The Agvet Code Act) and other associated acts and regulations. The Canberra-based independent Commonwealth government agency, the National Registration Authority for Agricultural and Veterinary Chemicals (NRA), administers these acts. The acts do the following things:

- Establish the NRA.
- Set out the processes for the evaluation and registration of agricultural chemicals.
- Provide for the issuing of permits under certain circumstances.

- Set out a process for the review of older chemicals.
- Enable the NRA to seek compliance with the acts by the agricultural chemical industry.
- Set out appropriate fees and charges.
- Describe offences under the acts.
- Provide for the prescription of regulations to support the acts.

Most of the Agvet Code is only relevant to the agricultural chemical industry, as it describes the process by which applications for registration of agricultural chemical products will be considered. In particular, it describes the information required, the timetable for its evaluation, and the format of the label.

However, there are two functions of the Agvet Code Act that are relevant to agricultural industries.

1. The Act provides for applications for a permit to be submitted by any person. A permit will allow the use of an agricultural chemical product in a way that would otherwise be in breach of a State or Territory control of use law, otherwise known as an 'off-label' use. (See the section on Permits for more information.)
2. The Act creates an offence for making a claim of a registered agricultural chemical product that is inconsistent with the instructions on the label. This means that it is illegal to claim, either in private or in public, verbally or in writing, that, for example, 'Product A controls pest B on crop C' when either (or all) 'A' or 'B' or 'C' are unregistered. However, if the claim is made in a scientific forum, or printed in a research paper, and was not made in circumstances that could lead to a grower to use a chemical illegally, then no offence has occurred.

It is a difficult area of law, and there is room for varying interpretations of the wording.

State legislation

Western Australian legislation controls the use of agricultural chemicals once they are in the hands of the end user. The main control of use legislation for agricultural chemicals is the *Health (Pesticides) Regulations 1956* (the Regulations), which is administered by the Department of Health of Western Australia.

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The Regulations prohibit the use of:

- an unregistered pesticide;
- a registered pesticide for an unregistered use or on an unregistered pest;
- a registered pesticide at a rate, or frequency, of application higher than that allowed on the label; and
- a registered pesticide in any way that is not in accordance with any direction or precaution on the label.

The Regulations allow the use of a registered chemical for an off-label use, if it is the subject of a permit issued by the National Registration Authority for Agricultural and Veterinary Chemicals, in Canberra.

The Regulations also control: pesticide containers being used to contain substances or foodstuffs for human or animal consumption; the disposal of waste chemicals and containers; and the licensing and operations of pest control operators, including crop spraying contractors.

In addition, other legislation controls:

- the aerial application of agricultural chemicals (*the Aerial Spraying Control Act 1966*);
- the prevention of chemical residue affected produce from entering the food chain (*the Agricultural Produce (Chemical Residues) Act 1983*);
- the supply and use of 1080 and strychnine animal pest poisons (*the Poisons Act 1964*);
- the control of use of veterinary chemicals (*the Veterinary Preparations and Animal Feeding Stuffs Act 1976*); and
- spray drift on to susceptible crops (*the Agriculture and Related Resources [Spraying Restriction] Regulations 1979*).

It is outside the scope of this Farmnote to discuss these controls in detail.

Permits

There are three categories of permits issued by the NRA: Minor Use; Emergency; and Trial.

Emergency and Trial Permits are self-explanatory, and will only be issued in the case of genuine agricultural pest emergencies, and for the conduct of properly constructed trials with unregistered chemicals, respectively.

Minor Use Permits (MUPs) will only be issued by the NRA to allow an off-label use that would otherwise be illegal under State or Territory law. In addition, the NRA must be satisfied that the proposed use is truly a minor use, such as a pest on a minor crop (major crops are defined), or a minor pest on any crop. The third test is that it is uneconomic for a manufacturer or applicant to register the proposed use. In other words, the potential size of the market for the proposed use would not be sufficient to offset the costs of registering the use and printing labels and so on.

Off-label uses that are not minor should be the subject of an application to amend the registration of the label, rather than an MUP.

One of the biggest hurdles to overcome in the issuing of an MUP is the absence of a Maximum Residue Limit (MRL) for the proposed use. Where an MRL does not exist, or cannot be derived from another use, then the applicant for the Permit will need to supply residue data to support the derivation of an MRL before the Permit can be issued. This is a particular problem with minor crops in horticulture. A private company has been formed to survey growers to determine the priority off-label uses in horticulture, and to conduct residue trials to support an MUP application for that use.

Anybody can apply for an MUP. The Permit can be issued to an individual grower, a district or an entire industry. Permit applications can take from a few days to several weeks to approve. No fees are charged for applications from growers or agricultural industry bodies.

Implications for Quality Assurance Certification

The purpose of Quality Assurance (QA) certification along the supply chain is to assure customers that there are sufficient operational controls in place on-farm, and subsequently through the chain, to eliminate, or reduce to acceptable levels, any real or potential food safety hazards during the process of food production and distribution. Chemical contamination and residues are some of the most significant food safety hazards that can occur on-farm that must be addressed to meet QA system requirements.

Chemical residues can be controlled through a variety of methods including calibration of equipment; adherence to label instructions; the effective use of spray diaries and chemical inventories and following documented procedures. In order to become Quality Assured, a business must be able to show that staff working with chemicals at critical points in the food production process are adequately trained to do so and understand the potential food safety risks of improper use of chemicals.

Growers who are seeking QA certification must also show compliance with all relevant legislation. Failure to do so may result in certification being withheld, or issued with a corrective action request to remedy any non-conformances. For example, where a crop has been harvested within the withholding period for a particular chemical, the QA auditor may request an analysis of the produce to ensure that it is residue free.

What do I have to do?

To avoid being in breach of the law, agricultural chemical users should make sure that they comply with the following actions:

- Read the label, and
- Do not use chemicals 'off label' unless you know it is supported by a Permit issued by the NRA.
- Do not exceed the maximum rate or frequency of application for the use, as stated on the label.
- Observe all precautions/ constraints and warnings on the label, especially the Withholding Period.
- Do not allow foodstuffs to be contaminated by agricultural chemicals.