

Western Australia

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

As at 26 Nov 2001

No. 21 of 2001

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Agricultural and Veterinary Chemicals (Western Australia) Amendment Act 2001

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Western Australia

Agricultural and Veterinary Chemicals (Western Australia) Amendment Act 2001

No. 21 of 2001

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

[Assented to 26 November 2001]

The Parliament of Western Australia enacts as follows:

1. Short title

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

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2. Commencement

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

3. The Act amended

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

[* *Act No. 3 of 1995.*

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

4. Section 3 amended

Section 3 is amended as follows:

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

“

“**confer**” includes impose;

“**function**” includes a duty;

”.

5. Part 5 replaced

Part 5 is repealed and the following Part is inserted instead —

“

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

15. Object

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

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

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

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

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

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

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

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

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

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

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

”.

6. Part 6 repealed

Part 6 is repealed.

7. Sections 28A and 28B inserted

After section 28 the following sections are inserted —

“

28A. Inspectors and analysts

(1) In this section —

“**officer**” means —

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

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

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

28B. Validation of actions of inspectors and analysts

(1) In this section —

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

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

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

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

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

”.

8. Section 33A inserted

After section 33 the following section is inserted —

“

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

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

”.

9. Part 9A inserted

After section 35 the following Part is inserted —

“

Part 9A — Conferral of functions on

Commonwealth Director of Public Prosecutions

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

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

- (a) institute prosecutions on indictment for indictable offences against the Agvet Code, or the Agvet Regulations, of this jurisdiction;

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

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