

Western Australia

**Agricultural Produce (Chemical Residues) Act
1983**

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Agricultural Produce (Chemical Residues) Act 1983

An Act to provide for the regulation or prevention of certain chemical residues in agricultural produce, for the control of the use or disposal of or dealing with agricultural produce in which such chemical residues are present in excess of certain limits, and for connected purposes.

1. Short title

This Act may be cited as the *Agricultural Produce (Chemical Residues) Act 1983*¹.

2. Commencement

This Act shall come into operation on a day to be fixed by proclamation¹.

3. Construction

Where any provision of this Act is in conflict with the *Health Act 1911*, or where the exercise of any power conferred by or under this Act would be inconsistent with the exercise of a power conferred by or under the *Health Act 1911* or regulations made thereunder, the provision of this Act shall be deemed not to apply in so far as it so conflicts and any such power conferred by or under this Act shall not be exercised so as to limit or restrict the exercise of the power conferred by or under the *Health Act 1911* or those regulations.

4. Interpretation

- (1) In this Act, unless the contrary intention appears —

“agricultural chemical” means any substance prescribed to be an agricultural chemical;

“agricultural produce” means —

- (a) any plant, whether severed from the land or not; or
- (b) any carcass or other commodity obtained from any animal or plant,

which plant, carcass, or other commodity is ordinarily used as food for human or animal consumption or for manufacture into a commodity ordinarily so used, but does not include any plant, carcass, or other commodity that is, or is of a class that is, excluded from this definition under subsection (2);

“analyst” means a person appointed under section 6 to be an analyst for the purposes of this Act;

“authorised person” means a person appointed under section 6 to be an authorised person for the purposes of this Act;

“food” includes drink;

“maximum residue limit”, in relation to an agricultural chemical residue present in agricultural produce, means the maximum residue limit prescribed in respect of that agricultural chemical in relation to that agricultural produce;

“officer” means an officer employed under Part 3 of the *Public Sector Management Act 1994* in the Department of the Public Service of the State through which the Minister administers this Act;

“residue” in relation to any agricultural chemical includes, in addition to any of that agricultural chemical that is present, any derivative or metabolite of the agricultural chemical present;

“section” means a section of this Act;

“subsection” means a subsection of the section in which the term is used.

- (2) The Minister may, by notice published in the *Government Gazette*, exclude from the definition of “agricultural produce” in subsection (1) any plant, carcass, or other commodity, or any class thereof, if he is satisfied that it will not be used as, or for manufacture into, food for human consumption and that any agricultural chemical residue that might be contained therein would be unlikely directly or indirectly to cause or contribute to the presence of an agricultural chemical residue in any other plant, carcass, or other commodity that is agricultural produce within the meaning of that definition.

[Section 4 amended by No. 32 of 1994 s. 3(2).]

5. Objects

The objects of this Act are to ensure that —

- (a) the production of agricultural produce in which any agricultural chemical residue is present in excess of the maximum residue limit is as far as possible avoided; and
- (b) agricultural produce in which any agricultural chemical residue is present in excess of the maximum residue limit is not used —
 - (i) as, or for manufacture into, food for human consumption;
 - (ii) as, or for manufacture into, food for consumption by any animal if there is any reasonable likelihood that such consumption may directly or indirectly cause or contribute to the presence of an agricultural chemical residue in any agricultural produce in excess of the maximum residue limit;
 - (iii) in any other manner likely directly or indirectly to cause or contribute to the presence of an agricultural chemical residue in any agricultural produce in excess of the maximum residue limit.

6. Authorised persons and analysts

- (1) The Minister may appoint persons to be analysts and persons who are officers to be authorised persons for the purposes of this Act, and an analyst who is not employed in the Public Service of the State may be paid for his services such remuneration as the Minister approves.
- (2) Every person appointed under subsection (1) shall be furnished with a certificate of his appointment, signed by either the Minister or an officer authorised by the Minister to sign the certificate on his behalf, and an authorised person shall, if requested to do so, produce that certificate to any person in relation to whom he is about to exercise any of his powers under this Act.
- (3) A certificate purporting to have been furnished under subsection (2) is, without proof of the signature of the person purporting to have signed the certificate or of his authority to sign the certificate, evidence in any court of the appointment to which the certificate purports to relate.
- (4) Where the appointment of a person under subsection (1) expires or is otherwise terminated, that person shall forthwith surrender the certificate furnished to him under subsection (2) to the Minister or, if the Minister specifies in writing that the certificate is to be surrendered to another person, to that other person.

7. Quarantine notice

- (1) Subject to subsection (3), an authorised person may, in pursuance of the objects of this Act, by notice in writing, direct that —
 - (a) any agricultural produce in which he has reasonable grounds for suspecting an agricultural chemical residue to be present in excess of the maximum residue limit;
 - (b) any animal or plant from which agricultural produce may be derived in which the authorised person has

reasonable grounds for suspecting an agricultural chemical residue to be present to such an extent that an agricultural chemical residue in excess of the maximum residue limit is likely to be present in agricultural produce derived therefrom; or

- (c) any manufactured food or other substance not for human consumption containing an agricultural chemical to such an extent that its ordinary use is likely to result directly or indirectly in the presence of an agricultural chemical residue in excess of the maximum residue limit in any agricultural produce,

shall not, or shall not before the expiry of a time specified in the notice, be used, disposed of, or otherwise dealt with, except in accordance with regulations made under this Act, as otherwise permitted in the notice, or pursuant to approval in writing under section 11.

- (2) Subject to subsection (3), an authorised person may, if he believes that —
 - (a) the grazing of animals on particular land; or
 - (b) the growing on particular land of plants,

would be likely to result directly or indirectly in the presence of agricultural chemical residue in excess of the maximum residue limit in any agricultural produce, by notice in writing direct that the grazing on the land of any, or of specified classes of, animals or the growing on the land of any, or of specified classes of, plants, as the case may be, shall not, or shall not before the expiry of a time specified in the notice, be permitted except in accordance with the regulations, as otherwise specified in the notice, or pursuant to approval in writing under section 11.

- (3) Except where he has received a report of an analysis made by an analyst which relates to the agricultural produce, animal, plant, food, or other substance that is the subject of the direction, an authorised person shall not include in a notice under

subsection (1) or (2) any direction without specifying a time after which the direction ceased to have effect, but nothing in this subsection prevents successive notices from being given under either of those subsections.

- (4) A notice under subsection (1) may be given to the person having possession of the agricultural produce, animal, plant, food or other substance to which the notice relates or where the agricultural produce, animal, plant, food or other substance is in transit, to the person into whose possession it is to be delivered.
- (5) A notice under subsection (2) may be given to the owner or occupier of land, or each of them.

8. Destruction or disposal

- (1) An authorised person who receives a report of an analysis made by an analyst stating that —
 - (a) an agricultural chemical residue is present in excess of the maximum residue limit in a sample of any agricultural produce;
 - (b) an agricultural chemical residue is present in any animal or plant from which agricultural produce may be derived to an extent that the authorised person considers is likely to result in the presence of an agricultural chemical residue in excess of the maximum residue limit in agricultural produce derived from such animal or plant;
or
 - (c) a sample of any manufactured food or other substance not for human consumption contains an agricultural chemical to an extent that the authorised person considers is likely, if the food or other substance is put to its ordinary use, to result directly or indirectly in the presence of an agricultural chemical residue in excess of the maximum residue limit in agricultural produce,

may, in pursuance of the objects of this Act, by notice in writing direct any person in possession of the agricultural produce,

animal, plant, food or other substance to cause it to be destroyed or otherwise disposed of in a manner specified in the notice and direct that until it is so destroyed or disposed of it shall not be used, disposed of, or otherwise dealt with except in accordance with regulations made under this Act, as specified in the notice, or pursuant to approval in writing under section 11.

- (2) A direction in a notice under subsection (1) requiring anything to be destroyed or disposed of shall specify a time within which the direction is to be complied with being not before the expiry of the time within which an application for a review of the direction may be made in accordance with section 20, and where an application is so made, the time for compliance is extended until the determination of the application.

[Section 8 amended by No. 55 of 2004 s. 18.]

9. Contravention of notice

- (1) Where a person is given a notice under section 7 or 8, that person —
- (a) shall not use, dispose of, or otherwise deal with any agricultural produce, animal, plant, food or other substance contrary to the notice, or cause or permit any of those things to be done;
 - (b) shall not cause or permit animals to be grazed or plants to be grown on land contrary to the notice;
 - (c) shall comply with every direction contained in the notice requiring anything to be destroyed or disposed of in accordance with, and, subject to section 8(2), within the time specified for that purpose in, the notice.

Penalty: \$3 000.

- (2) Where a person is convicted of an offence of using, disposing of, or otherwise dealing with anything contrary to a notice under section 7(1) or 8 or of causing or permitting any of those things to be done and anything that —
- (a) was so used, disposed of, or otherwise dealt with; or

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- (b) was derived from an animal or plant involved in the commission of the offence and but for the conduct constituting the offence would not have been so derived,

is no longer in the possession of the person convicted but has not been forfeited pursuant to section 23, the court may impose, in addition to any penalty that may be imposed under subsection (1), a further penalty not exceeding twice the value of anything used, disposed of, or otherwise dealt with as referred to in paragraph (a) or derived as referred to in paragraph (b).

- (3) The certificate of the Minister, or an officer authorised by the Minister to give such a certificate, as to —
 - (a) the fact that anything was derived from an animal or plant alleged to be involved in the commission of an offence and but for the conduct constituting the alleged offence would not have been so derived;
 - (b) the fact that anything is no longer in the possession of the alleged offender and has not been forfeited under section 23;
 - (c) the value of anything required to be ascertained for the purpose of determining the maximum further penalty that may be imposed under subsection (2),

is, without proof of the signature or the official capacity or authorisation of the person purporting to have signed the certificate, sufficient evidence of the matters certified.

[Section 9 amended by No. 20 of 1989 s. 3.]

10. Identification

- (1) A notice under section 7(1) or 8 may include a direction that, within a time specified in the notice, any agricultural produce, animal, plant, food, or other substance to which the notice relates be labelled, marked, branded, or otherwise identified in a manner specified in the direction.

- (2) A person to whom a notice containing a direction referred to in subsection (1) is given shall ensure that the direction is complied with.

Penalty: \$2 000.

[Section 10 amended by No. 20 of 1989 s. 3.]

11. Approval

- (1) Where a person wishes to —
- (a) use, dispose of, or otherwise deal with any agricultural produce, animal, plant, food, or other substance; or
 - (b) graze animals or grow plants on land,

within a time or in a manner that would otherwise be contrary to a notice under section 7 or 8, that person may apply in writing to an authorised person for approval to use, dispose of, or otherwise deal with, the agricultural produce, animal, plant, food, or other substance or to graze animals or grow plants on the land, as the case may be, as specified in the application.

- (2) An authorised person may, whether or not an application has been made under subsection (1), give approval in writing to —
- (a) the use of, disposal of, or other dealing with, any agricultural produce, animal, plant, food, or other substance; or
 - (b) the grazing of animals or growing of plants on land,

that would otherwise be contrary to a notice under section 7 or 8, in terms of the application or otherwise, if he is satisfied that such use, disposal, or other dealing, or such grazing or growing, as the case may be would not be, and would not be likely to result in, a contravention of any law, and would not be consistent with the objects of this Act.

12. Authorised person may carry out direction

Where a direction referred to in section 8 or 10 is not complied with and the time for compliance with the direction has expired,

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an authorised person may carry out or cause to be carried out anything required by the direction to be done and, without affecting the liability of any person to be proceeded against for an offence against this Act or the recovery of a penalty in any such proceedings, the authorised person may recover as a debt due from the person to whom the direction was given the amount of the expenses thereby incurred.

13. Compensation

Where any agricultural produce, animal, plant, food or other substance that is the subject of a notice under section 8 is destroyed or otherwise disposed of in a manner required or permitted by this Act and it appears to the Minister that —

- (a) a person (in this section referred to as “**the affected person**”) has suffered financial detriment by reason of the notice;
- (b) the affected person was not responsible for, and took such measures, if any, as he could reasonably be expected to have taken to avoid, the circumstances by reason of which the notice was given; and
- (c) there is no reasonable prospect of the affected person recovering in civil proceedings against any other person an amount, or any further amount, in respect of the financial detriment suffered,

the Minister may direct that an ex gratia payment be made and charged to the Consolidated Fund to the affected person of such amount of money by way of compensation as the Minister thinks fit.

[Section 13 amended by No. 6 of 1993 s. 11; No. 49 of 1996 s. 64.]

14. Power of entry

- (1) In this section a reference to a power of entry on to land includes a reference to any other power sought to be exercised under this Act while upon the land.
- (2) Where notice in accordance with subsection (3) has been given to the owner or occupier of that land within such time before the entry as is in the circumstances reasonably practicable an authorised person may for the purposes of this Act lawfully enter on to any land notwithstanding that the consent of the owner or occupier has not been obtained.
- (3) A notice required by subsection (2) in relation to an entry on to land shall be in writing specifying with particularity the purpose for which entry is required and shall continue to have effect for so long as that requirement subsists, and successive entries for that purpose shall be taken to be entries to which the notice relates.
- (4) Where it is shown to the satisfaction of a justice that entry on to any land is reasonably required for a purpose contemplated by this Act but that entry has been refused or is opposed or prevented, or in any case where such land is apparently unoccupied and the obtaining of consent or the giving of a notice required by subsection (2) would occasion undue delay or difficulty, the justice may, by warrant in the prescribed form, authorise an authorised person, together with any other persons named in the warrant, to enter upon the land, using such force as may be necessary, for the purpose specified in the warrant, and any such warrant shall continue to have effect until the purpose for which it was granted has been satisfied.
- (5) Where an authorised person has reason to suspect that an offence against this Act is being, or is about to be, committed on any land and the circumstances are such that immediate intervention is appropriate and compliance with the normal requirements of this section is impractical or unreasonable, the authorised person may, without notice or warrant and by force

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of this subsection, lawfully effect immediate entry onto or into any land to intervene in the commission of the offence and endeavour to ensure compliance with the provisions of this Act.

- (6) A person exercising in respect of land a power of entry under this section shall conform as far as is practicable to such reasonable requirements of the owner or occupier of the land as are necessary to prevent the lawful use of the land being obstructed.

15. Vehicles or other conveyances

An authorised person may search any vehicle other or other conveyance on which he has reasonable grounds for believing there to be any agricultural produce, animal, plant, manufactured food, or other substance and take samples thereof or specimens therefrom and, without paying for it, remove any sample or specimen taken, and for the purpose of exercising the powers conferred by this section may stop and detain any such vehicle or conveyance.

16. Testing, sampling, and taking specimens

- (1) An authorised person may conduct tests on, or take samples of, or specimens from any, agricultural produce, animal, plant, manufactured food or other substance in order to estimate or ascertain the level of agricultural chemical or agricultural chemical residue therein and may, without paying for it, remove any sample or specimen so taken.
- (2) Where regulations make provision as to the manner in which tests are to be conducted or samples or specimens are to be taken under this section, the conduct of such tests or the taking of such samples or specimens shall be in accordance with the regulations.

17. Other powers of authorised persons

An authorised person may, for the purpose of this Act —

- (a) muster, round up, yard, draft, or otherwise move or handle any animals, and may require any person apparently in charge of the animals to render such assistance as the authorised person may specify;
- (b) inspect and examine any agricultural produce, animal, plant, food, or other substance;
- (c) take water and soil samples from any land that the authorised person believes has been or would be likely to be used in the production of any agricultural produce;
- (d) require a person having possession of any agricultural produce, animal, plant, food, or other substance in respect of which a direction has been or could be made under section 7 —
 - (i) to state his name and address;
 - (ii) to provide the name of any person from whom that agricultural produce, animal, plant, food, or other substance was obtained and of any person to whom any other agricultural produce, animal, plant, food, or other substance of a like nature has to his knowledge been supplied;
 - (iii) to provide such other information as the authorised person may demand for the purposes of assisting him in the performance of his functions and duties under this Act;
- (e) do anything required or permitted by regulations to be done in connection with, or for the purposes of, the exercise of any power conferred by this Act.

18. Tampering with samples

A person shall not —

- (a) tamper with any agricultural produce, food, or other substance so as to procure that any sample taken under this Act does not correctly represent the material sampled;

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- (b) tamper with any sample or specimen taken under this Act.

Penalty: \$2 000.

[Section 18 amended by No. 20 of 1989 s. 3.]

19. General offences

A person shall not —

- (a) refuse or fail to comply with a requirement made by an authorised person pursuant to section 17 or in response to any such requirement provide information that is false or misleading in any material particular;
- (b) in any way obstruct or interfere with an authorised person in the discharge of any of his duties or the exercise of any of his powers under this Act;
- (c) except in accordance with the written authority of an authorised person, alter, erase, remove, or otherwise render ineffective any identification required by a direction referred to in section 10;
- (d) retake anything seized or taken under this Act or, except in accordance with the written authority of an authorised person, move or otherwise deal with anything seized under section 23.

Penalty: \$2 000.

[Section 19 amended by No. 20 of 1989 s. 3.]

20. Appeal

- (1) A person aggrieved by —
 - (a) a direction contained in a notice under section 7 or 8;
 - (b) a refusal to give approval under section 11 pursuant to and in terms of an application made under that section;
or
 - (c) the seizure of anything under section 23,

may apply to the State Administrative Tribunal for a review of the decision to give the direction, to refuse to give approval, or to seize the thing, as the case requires.

- (2) In dealing with an application under subsection (1) for the review of a decision to seize anything, the State Administrative Tribunal may determine whether anything so seized is to be forfeited to the Crown or restored to the person from whom it was seized.
- (3) Subsection (2) does not limit the powers that the *State Administrative Tribunal Act 2004* gives the State Administrative Tribunal.

[Section 20 amended by No. 55 of 2004 s. 19.]

21. Prosecutions

A prosecution for an offence against this Act may be instituted by any person authorised in that behalf by the Minister.

22. Evidence

In proceedings under this Act —

- (a) a copy of a notice under section 7 or 8 purporting to be signed by an authorised person is, without proof of the signature of the person purporting to have signed the notice or of the fact that he was an authorised person, sufficient evidence that the notice was signed by that person and that he was an authorised person; and
- (b) a copy of a report purporting to be signed by an analyst and purporting to contain the results of an analysis of a sample or specimen taken under this Act is, without proof of the signature of the person purporting to have signed the report or of the fact that he was an analyst, sufficient evidence of the report and of the facts set out therein.

23. Seizure

- (1) An authorised person who has reasonable grounds for believing that —
- (a) any agricultural produce, animal, plant, food, or other substance is being or has been used, disposed of, or otherwise dealt with contrary to a notice under section 7(1) or 8; or
 - (b) any animal is being or has been grazed or plant is being or has been grown on land contrary to a notice under section 7(2),

may seize that agricultural produce, animal, plant, food or other substance and, where any agricultural produce has been derived from any animal or plant involved in such a contravention, may seize any agricultural produce so derived and may remove anything so seized or require it to be kept at the place of seizure until it is destroyed, disposed of, or otherwise dealt with, or is restored, by or on behalf of an authorised person under subsection (2).

- (2) Where anything is seized under subsection (1), an authorised person may —
- (a) whether or not proceedings have been or are intended to be taken under this Act in respect of the contravention resulting in the seizure, but subject to subsection (3), declare anything so seized to be forfeited to the Crown whereupon an authorised person may destroy, dispose of, or otherwise deal with anything so seized or cause any of those things to be done; or
 - (b) subject to such direction, if any, as he thinks fit to make under section 7 or 8, restore anything so seized to the person from whom it was seized,

and without affecting the liability of any person to be proceeded against for an offence against this Act or the recovery of a penalty in any such proceedings the authorised person may recover the amount of the expenses thereby incurred as a debt

due from the person by reason of whose contravention the expenses were incurred.

- (3) A declaration of anything seized under subsection (1) to be forfeited shall not be made under subsection (2)(a) before the expiry of the time within which an application may be made in accordance with section 20 for a review of the decision to seize that thing or, where an application has been so made, before the determination of the application.

[Section 23 amended by No. 55 of 2004 s. 20.]

24. Regulations

- (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the objects and purposes of this Act.
- (2) Without limiting the generality of subsection (1), regulations made under this Act —
- (a) may provide that the maximum residue limit prescribed in respect of an agricultural chemical is nil, and, where regulations so provide, the presence of any at all of the agricultural chemical residue concerned shall be taken to be in excess of the maximum residue limit; and
 - (b) may prescribe in respect of an agricultural chemical different maximum residue limits applicable in different circumstances or according to different factors, as specified.
- (3) Regulations may be made under this Act —
- (a) so as to apply —
 - (i) generally or to any specified class or classes of case or subject-matter;
 - (ii) at all times or at any specified time or times;
 - (iii) throughout the State or in any specified part or parts of the State;

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- (b) so that different regulations apply to different areas, or different classes of persons or things, or in different circumstances, or so that regulations apply differently according to such factors as may be specified;
 - (c) so as to require a matter affected by them to be —
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) as approved by, or to the satisfaction of, a specified person or body, or a specified class of person or body;
 - (d) so as to confer on or delegate to a specified person or body, or a specified class of person or body, a discretionary authority;
 - (e) so as to provide that, in specified cases or a specified class of case or specified classes of cases, whether on specified conditions or unconditionally, persons or things or a class or classes of persons or things may be exempted from the provisions of the regulations, either wholly or to such extent as is specified.
- (4) In subsections (2) and (3) “**specified**” means specified in regulations.

25. Immunity

Any person who is or has been an analyst as authorised person, or any other officer, shall not be personally liable in civil proceedings and the Crown in right of the State is not liable, for any act done or omission made by such person for the purposes of this Act and in good faith in the course of the exercise or purported exercise of a power or duty which he had reasonable and probable cause to believe was conferred or imposed by this Act.

Notes

¹ This is a compilation of the *Agricultural Produce (Chemical Residues) Act 1983* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Agricultural Produce (Chemical Residues) Act 1983</i>	36 of 1983	1 Dec 1983	1 Sep 1985 (see s. 2 and <i>Gazette</i> 30 Aug 1985 p. 3065)
<i>Agricultural Legislation (Penalties) Amendment Act 1989 s. 3</i>	20 of 1989	1 Dec 1989	15 Dec 1989 (see s. 2 and <i>Gazette</i> 15 Dec 1989 p. 4513)
<i>Financial Administration Legislation Amendment Act 1993 s. 11</i>	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
<i>Acts Amendment (Public Sector Management) Act 1994 s. 3(2)</i>	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Financial Legislation Amendment Act 1996 s. 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
Reprint of the <i>Agricultural Produce (Chemical Residues) Act 1983</i> as at 6 Sep 2002 (includes amendments listed above)			
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 4²</i>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)

² The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 5*, the *State Administration Tribunal Act 2004 s. 167 and 169*, and the *State Administrative Tribunal Regulations 2004 r. 28 and 42* deal with certain transitional issues some of which may be relevant for this Act.