

Proposed Amendments to the Agricultural And Veterinary Chemicals (Control Of Use) Infringement Notice Regulations 2013

Chemical use legislation and regulation in Victoria

A range of controls under Victorian legislation define how agricultural and veterinary (AgVet) chemicals may be supplied and used. Agriculture Victoria regulates chemical use through education, surveillance, monitoring, enforcement and risk management. These controls are designed to protect Victoria's trade in livestock and agricultural products, and protect the health and welfare of animals, chemical users, the general public and the environment.

The primary piece of legislation for Victorian AgVet chemical users is the *Agricultural and Veterinary Chemicals (Control of Use) Act 1992* (the Act). It imposes controls in relation to the use, application and sale of AgVet chemicals, fertilisers and stock foods.

Remaking of Agricultural and Veterinary Chemicals (Control of Use) (Infringement Notices) Regulations 2013

The objective of the Infringement Notices Regulations is to prescribe offences for which infringement notices and penalties can be served. Infringeable offences provide a deterrent to offending, particularly reoffending. Infringeable offences also provide Authorised Officers an option other than high level enforcement outcomes such as prosecution and Official Warning letters and can allow more proportionate and time effective responses to non-compliance.

The *Subordinate Legislation Act 1994* requires statutory rules be revoked on the tenth anniversary of the making of the statutory rule. Agriculture Victoria has reviewed the current infringement regulations and will be recommending they be remade to continue the current infringement penalties with amendments to include additional penalties.

The primary purpose of the new infringement penalties is to

- To provide greater ability for a proportionate response to enforce non-compliance, particularly for mid-low level offending.
- To reflect the contemporary requirements and needs of Agriculture Victoria as a regulator including achieving greater administrative efficiency.

Infringement notices are used within a spectrum of enforcement tools such as counselling/advice letters, official warning letters and prosecutions. The Department has centralised and standardised processes to support the use of infringements.

Proposed infringement notice offences under the *Agricultural and Veterinary Chemicals (Control of Use) Act 1992*

1. Penalties relating to labelling and off-label use regarding withholding periods

| Section of the Act | Offence Details | Rationale for change and proposed penalty |
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| Section 18 Section 20(1) | Section 18 and 20(1) of the Act relates to labelling requirements when selling veterinary chemical products, fertilisers, stock foods and meal with animal origins. | <p>Incorrect labelling of veterinary chemical products, fertilisers and stock foods can have a significant impact on market access, public health, the environment and animal welfare. In the case of incorrect labelling of stockfeed that contains meal with animal origin, significant risks apply to the spread of emergency animal diseases such as foot and mouth disease.</p> <p>Although offences relating to incorrect labelling can carry significant risk, offending often occurs in the mid to low range and does not usually warrant a heavy enforcement response such as prosecution.</p> <p>A new infringement penalty is proposed with a maximum of 5 penalty units to provide Authorised Officers more proportionate enforcement responses for offending. Issuing infringement penalties for mid to low range offenders is likely to act as a strong deterrent for reoffending.</p> |
| Section 19(6) | Section 19(6) of the Act requires a person to notify a buyer that a relevant withholding period has not been observed if selling agricultural produce or stock. | <p>Risks to market access and public health are likely if chemical product label withholding periods are not observed. Authorised Officers are currently limited to enforcement outcomes such as prosecutions, Official Warnings and advice letters.</p> <p>A maximum infringement penalty of 5 penalty units for a corporation and 3 penalty units for any other has been proposed to allow Authorised Officers more flexibility when detecting mid to low range offending while also providing a strong deterrent for reoffending. This will also provide administrative efficiency and reduce burden on investigating officers.</p> |

2. Penalties relating to the application of chemical products to agricultural produce and prohibiting misuse of registered chemical products

| Section of the Act | Details of Offence | Rationale for change and proposed penalty |
|--------------------------------|---|--|
| Section 21 | <p>Section 21 puts controls on a person applying agricultural chemicals to produce during transport if the person transporting the produce does not own the produce. Only with written permission from the owner of the produce can the person transporting the produce apply chemicals.</p> | <p>Non-compliance with section 21 can have significant impacts on public health and market access. For example people handling produce could potentially be exposed to chemicals while unacceptable residues in produce may impact trade.</p> <p>The Act is currently limited to pursuing prosecution and Official Warning letter enforcement outcomes if high level offending is detected. Hence a 5 unit penalty infringement has been proposed to provide Authorised Officers more enforcement options when mid to low range offending is detected. This will also provide administrative efficiency and reduce burden on investigating officers.</p> |
| Section 32(1) Section 32(2) | <p>Section 32(1) prohibits a person from administering or applying a registered agricultural chemical product to an animal without an appropriate authorisation.</p> <p>Section 32(2) is similar to 32(1) however applies to the application or use of a registered veterinary chemical product to a plant, place or thing.</p> | <p>There are significant potential implications to animal welfare if agricultural chemicals are administered or applied to animals without appropriate risks being mitigated. There are also potential food safety risks and exposure to chemicals by people handling livestock. Exemptions apply to veterinarians and a person acting on written advice from a veterinarian if use of the chemical is not prohibited by other legislation under the Act.</p> <p>Similar issues and concerns are applicable to Section 32(2) however the risks relate to a plant, place or thing. There is permit process that provides exemptions to this section if appropriate safeguards are in place.</p> <p>Frequency of offending is low for these offences however the proposed maximum 5 unit penalty infringement for these sections will provide Authorised Officers a new enforcement options when mid to low range offending is detected. This will also provide administrative efficiency and reduce burden on investigating officers.</p> |

3. Penalties relating to the licensing and authorities

| Section of the Act | Details of Offence | Rationale for change and proposed penalty |
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| Section 30(1) Section 42(1) Section 42(2) Section 42(3) | These sections of the Act prescribe licensing requirements for commercial operators and pilots carrying out aerial spraying. | <p>Section 30 of the Act details the licensing requirements for a person carrying out agricultural ground spraying as part of a business. Authorised Officers frequently detect unlicensed commercial chemical ground sprayers. Often offenders are unaware of the licensing requirements by Agriculture Victoria and in most cases the offender will be provided information via an advice letter on how to obtain a licence.</p> <p>Section 42 of the Act details licensing requirements for pilots carrying out commercial aerial spraying. It is uncommon for an offence to be detected under section 42 however the principals relating to enforcement action are similar to those for ground sprayers.</p> <p>In circumstances where a person fails to obtain an appropriate licence and is repeatedly detected offending, prosecution is currently the only avenue of enforcement if a fine or penalty is deemed appropriate.</p> <p>A 5 unit penalty infringement for each of these offences has been proposed to provide Authorised Officers with an enforcement tool to deter reoffending without the administrative burden of prosecution.</p> <p>There is a high expectation from Agriculture Victoria that commercial spray operators perform at a high level and are appropriately licensed. Having an efficient enforcement tool such as an infringement penalty for these offences should deter reoffending and underpin that expectation.</p> |
| Section 67B(1) | This section relates to a person who fails to return a cancelled or suspended authority. | <p>The Act requires a person to return a cancelled or suspended authority, usually within a given time frame that is stipulated via a notice to the person. This offence carries low risk however the only options currently available under the Act for enforcement are prosecution, Official Warning letters and advice letters.</p> <p>A 1 unit infringement penalty has been proposed which will provide Authorised Officers a proportionate response to enforce non-compliance and an opportunity to deter reoffending with less administrative burden.</p> |

4. Penalties relating to not complying with an Authorised Officer and notices

| Section of the Act | Details of Offence | Rationale for change and proposed penalty |
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| Section 54AJ | Section 54AJ prescribes an offence when a person does not comply with a requirement of an authorised officer to produce a document. | <p>This offence is a new offence amended to the Act through the Agricultural Legislation Amendment Bill 2022 (ALA Bill). The new offence provides additional powers to Authorised Officers when requesting documentation such as chemical use records. Prior to the ALA Bill amendments the Act lacked clarity regarding penalties relating to non-compliance with a request from an Authorised Officer.</p> <p>A 5 unit penalty for a corporation and 3 unit penalty for any other has been proposed which will provide Authorised Officers an enforcement tool to fine offenders and decrease the risk of reoffending. The new penalties will also provide greater ability for a proportionate response to enforce non-compliance.</p> |
| Section 62(2) | Section 62(2) offence regards non-compliance with a request of an Authorised Officer to provide information about sales of a chemical product, fertiliser or stock food. | <p>Sales information is often strong evidence when gathering points of proof to prove an offence. Authorised Officers regularly request sales information from chemical resellers for example when conducting investigations regarding misuse of chemicals.</p> <p>Non-compliance with this section of the Act does not carry significant risks to trade and public health etc. however can impact the burden of proof when conducting investigations. The Act currently only has a maximum penalty for this section limiting enforcement options for mid to low levels of offending.</p> <p>A 5 unit penalty for a corporation and 3 unit penalty for any other has been proposed which will provide Authorised Officers greater ability for a proportionate response to enforce non-compliance while also decreasing the risk of reoffending.</p> |

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| Section 55(3) Section 56(3) Section 58(4) | <p>These sections of the Act relates to non-compliance with notices. Section 55(3) and 56(3) prescribe an offence for failing to comply with a notice requiring fertiliser or stock food to be tested, while section 58(4) prescribes failing to comply with notice to destroy or otherwise deal with any chemical product, fertiliser, stock food, agricultural produce, plants or stock.</p> | <p>The offences under section 55 and 56 are required to manage risks associated with non-compliance of standards such as maximum residue limits and the composition of fertilisers. Not complying with standards can have significant impacts to trade, public safety, the environment and animal welfare.</p> <p>Section 58 offences ensure that chemical products, fertiliser, stock foods, agricultural produce, plants or stocks are appropriately destroyed i.e. if deemed 'contaminated' or pose a high risk for example.</p> <p>There are currently limited enforcement actions available to Authorised Officers i.e. prosecution and Official Warning letters. Offences under these sections are not frequent however can vary significantly in terms of the risk they present.</p> <p>A 5 unit infringement penalty has been proposed for all three offences which will provide officers greater ability for a proportionate response to enforce non-compliance and deter reoffending.</p> |
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Proposed infringement notice offences under the *Agricultural and Veterinary Chemicals (Control of Use) (Ruminant Feed) Regulations 2015*

1. Penalties relating to the labelling and restricted animal material in stock food intended for ruminant use

| Section of the Regulations | Details of Offence | Rationale for change and proposed penalty |
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| Regulation 9 | Regulation 9 provides an offence when a person defaces, damages, removes or destroys a label containing a prescribed statement without reasonable excuse. | <p>Correct labelling of stock feeds with meal of animal origin is highly significant to minimise the risk of the meal being fed to ruminants. Although meal of animal origin has a low risk of carrying diseases such as foot and mouth disease, ruminants can contract the disease through ingestion of contaminated meal. The impact to the Australian Agriculture sector would be devastating should a foot and mouth emergency animal disease outbreak occur.</p> <p>Offences under regulation 9 has a relatively high variance in terms of the level of offending. Authorised Officers currently do not have a low to mid-range enforcement tool that can incur a fine to act as a deterrent for offending and reoffending.</p> <p>A 2 unit infringement penalty has been proposed which will provide Authorised Officers an enforcement tool to provide greater ability for a proportionate response to enforce non-compliance.</p> |
| Regulation 10(1) Regulation 10(2) Regulation 10(3) | Offences under regulation 10 relate to the mixing of stock feed, in particularly mixing restricted animal material with stock food intended for ruminant use. | <p>Restricted animal material includes material such as tissue or blood taken from an animal and meal obtained from rendering tissues. Although unlikely, restricted animal material can carry diseases such as foot and mouth disease, a disease that if an outbreak occurs would significantly cripple the Australian agriculture industry.</p> <p>The offences under regulation 10 aim to minimise the risks associated with restricted animal material ending up in stock feed to be fed to ruminants, since ruminants are at a risk of contracting foot and mouth disease through ingesting restricted animal material.</p> <p>A proposed maximum 5 unit penalty infringement has been suggested for each of these offences which will provide Authorised Officers a new enforcement tool when mid to low range offending is detected. Also providing administrative efficiency and reduced burden on investigating officers and a reduction in the likelihood of reoffending.</p> |