Agricultural Chemicals Bill

EXPLANATORY MEMORANDUM

The purpose of this Bill is to introduce stricter controls over the use of pesticides. The opportunity has also been taken to introduce a number of other changes, such as improving the registration procedures and changing the title of the Pesticides Act to the Agricultural Chemicals Act. Although this latter amendment is only a change in terminology, it has the appearance in the Bill of being a major amendment because the word "pesticides" occurs in almost every section of the Pesticides Act.

The main provisions in the Bill will make it possible to—

- Prohibit all uses of any unregistered agricultural chemical (except for experimental purposes).
- Prohibit the use of any agricultural chemical for any particular purpose when so specified by Proclamation of the Governor in Council.

Notes on Clauses

Clause 1 contains the usual citation and provides for the Bill to come into operation on various dates in order to give adequate notice of the new provisions to industry and users of agricultural chemicals.

Clause 2 substitutes the term "agricultural chemicals" for the word "pesticides" throughout the existing legislation and provides for consequential interpretations in other Acts and legal documents.

Clause 3 continues the concept of substituting the term "agricultural chemicals" for the word "pesticides" by detailing all the instances in the existing Pesticides Act where the word "pesticide" is used and makes appropriate changes in accordance with the context.

Clause 4 inserts a number of new interpretations—

"Advice document" is defined as any document, apart from a label, which contains information or advice on the use of an agricultural chemical. Such documents are necessary because it is frequently impossible to print all the required information on the limited space available on the label of a small container.

"Agricultural chemical" is defined in terms which are similar to the interpretation that was previously used for "pesticide". The interpretation of pesticide is repealed later in this clause.

"Dairy cleanser". The interpretation of dairy cleanser is amended by a provision which, taken in conjunction with the Principal Act, will allow any class of products to be declared by Proclamation to be a dairy cleanser. The provision which permits products to be proclaimed as dairy cleansers has been in the legislation for some

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years, but at the present time, it is only possible to proclaim a particular product, which means that each one has to be proclaimed individually.

"Formulator". It is necessary to distinguish between the person who makes the agricultural chemical which is sold in the market place, as distinct from the person who manufactures the active constituents which are used to formulate that product. This is dealt with in more detail in the notes on clause 6.

"Fungicide" and Herbicide". The above notes relating to "dairy cleanser" also apply to "fungicide" and "herbicide".

"Insecticide". Insecticides are included in the definition of agricultural chemicals, but at the present time, any household insecticide within the meaning of the Health Act is exempted from the provisions of this legislation when sold in accordance with the provisions of the Health Act. Paragraph (*g*) of clause 4 repeals those provisions and brings household insecticides within the ambit of this legislation. This means that household insecticides will need to be registered under the Agricultural Chemicals Act, but may be exempted by proclamation from the provision relating to the labelling requirements imposed by this legislation. This matter is dealt with further in clause 5 of the Bill. A consequential amendment to the Health Act in clause 20 of this Bill supplements this provision. Household insecticides will continue to remain subject to restrictions imposed by the Health Act, and the two pieces of legislation will complement one another.

"Inspector". The interpretation of inspector is amended to specifically include the Chief Chemist of the Department of Agriculture to allow him to exercise the powers of an inspector and to appear in court when necessary.

"Molluscicide" and "Nematocide". Comments on these two interpretations are similar to the notes on "dairy cleansers".

"Officer" is defined as an officer of the Department of Agriculture and includes an inspector and an analyst other than a referee analyst.

"Package". The existing definition of "package" is amended to cover the practice by which inner linings are placed in packages to prevent the chemicals from coming in contact with the package itself and to better preserve the product.

"Plant regulators". Comments relating to this interpretation are similar to the notes on "dairy cleanser".

"Sell". The interpretation of "sell" is extended by including the practice of giving away free samples for the purpose of advertising or in the course of trade or business.

"Stock pesticide" and "Vermin destroyer". Comments relating to these two interpretations are similar to the notes relating to "dairy cleanser".

The last amendment contained in paragraph (*r*) of clause 4 is significant. The *Pesticides Act* 1958 was intended to control the sale of pesticides, but it was found that this control does not extend to a pest control operator who sells his services as a pest control operator rather than selling a product. A further area which is not covered by the Act is when an agricultural chemical is given away, either in association with a pest control service, or in association with the sale of another product. This means that pesticides have been used in Victoria without being subject to registration and labelling controls. The provisions contained in this amendment are based on the Agriculture Act of Great Britain and similar provisions have already been incorporated in the Victorian *Fertilizers Act* 1974.

Clause 5 gives the Governor in Council power to exempt any agricultural chemical from any of the provisions of the legislation regarding labelling, registration or permits. This will enable a somewhat different treatment to be adopted to products which are used in commercial pest control work and also for materials such as industrial slimicides which would not be expected to reach the hands of the public. This amendment will also enable the Governor in Council to exempt the labelling of household insecticides from the operation of this legislation. These insecticides will therefore remain subject to regulations made under the Health Act without additionally being required to conform with labelling regulations under the Agricultural Chemicals Act.

Any agricultural chemical exempted under these provisions will still be subject to compliance with standards, inspection, analysis and any general prohibitions or restrictions under the legislation.

Provisions of this kind already exist in section 4 of the *Fertilizers Act* 1974.

Clause 6 amends section 7 of the Principal Act in four respects. The first amendment relates to lodging applications during the month of May for the renewal of registration of agricultural chemicals. The renewal procedure is dealt with in considerable detail later in the Bill, and this particular provision, which will become redundant, is therefore repealed.

The second amendment relates to the name and address of the formulator. "Formulator" is the term used to describe the person who mixes the various ingredients used in preparing the agricultural chemical for marketing. The name of the formulator and the place of formulation are essential items in the application for registration.

The third amendment (dealt with in paragraph (*b*) of clause 6) relates to the name of the manufacturer. Agricultural chemicals are prepared from various ingredients, and it is important to make a distinction between the person who formulates or mixes the product for sale and the person who manufactures the individual constituents. In some cases, the individual constituents are imported and different overseas companies manufacture constituents which contain varying levels of impurities. It is known that chemicals have been introduced on the international market manufactured by persons who have not submitted their product to the rigorous testing for safety and efficacy which is required for the registration of a new chemical. Some of these manufacturers may not have the skill or the facilities to maintain the necessary standards of quality; other companies, by using a different manufacturing process, may produce a product with impurities which are different from those present in the products which have been used in the toxicological tests and other experiments for which data was

supplied by the original applicants for registration. It is therefore important to know the name and address of the manufacturer as well as the name and address of the formulator.

The fourth amendment (which is also referred to in paragraph (*b*) of clause 6) relates to statutory declarations. At the present time a statutory declaration is required to accompany all applications for registration and all lists of ingredients. It is proposed that this be replaced by a simple declaration, with a penalty for making false declarations. There are already three States which have adopted this practice and they have had no problems. The change would make a move towards uniformity.

Paragraph (*c*) of clause 6 contains two consequential amendments which arise from the points discussed above relating to the formulator, the manufacturer and statutory declarations.

Paragraph (*d*) of clause 6 inserts a penalty for a person who makes a false statement in his application.

Clause 7 inserts a procedural provision in section 8A of the Act. The effect of the amendment is that where a routine renewal of registration is in order, the submission of the simple application and the fee will ensure continuation of registration.

Clause 8 inserts two new sections in the Principal Act—section 8B and section 8C—

Section 8B. This section applies to all agricultural chemicals where the renewal procedure is a matter of straightforward routine. In such cases, it is proposed that the renewal procedures should be very much abbreviated. The amount of information required will be limited to the wholesale dealer's name and address and the distinguishing name of the agricultural chemical. In fact, the mechanism by which renewal will be effected is that the Chief Chemist will supply the wholesale dealer with a list of the agricultural chemicals which are currently registered in his name and for which renewal is acceptable. This list will constitute the formal application for renewal. The Chief Chemist will supply the wholesale dealer with a separate list of those products which will not be registered unless a full application for re-registration is made. This latter provision is necessary to cover cases where doubts may have arisen regarding the efficacy or the safety of the product or its quality or its effect on the environment and where detailed consideration will be necessary before re-registration is approved by the Director-General of Agriculture. The proposed amendment arises out of a decision by the Technical Committee on Agricultural Chemicals which is seeking uniformity on the registration policy between the States. Two States are already using this practice, and other States intend to introduce it. The procedure will reduce the administrative cost of registration to both the Government and industry without reducing the effectiveness of the system.

Sub-section (1) has the effect of providing that the wholesale dealer is to make a full application for re-registration in those cases where there is to be a change in the name or the formula, or where the Chief Chemist considers that it is not appropriate for renewal to be effected through the abbreviated procedures outlined above.

Sub-section (2) requires the wholesale dealer to apply for renewal of registration, setting out his name and address and the distinguishing name of the agricultural chemical.

Sub-section (3) requires the appropriate fee to be lodged, and sub-section (4) provides that the registration will lapse if application for renewal is not made by 30 June.

Sub-section (5) provides that if application is made within the required time and accompained by the appropriate fee the registration will be renewed.

Sub-section (6) authorizes the Chief Chemist to make a determination to the effect that the full application procedures will be required in those cases where he considers this to be appropriate.

Section 8C. This section makes provision for applications for re-registration by submitting complete details of the application in accordance with the requirements of section 7 of the Principal Act.

Clause 9 inserts three new sections in the Principal Act.

Section 9A. This section deals with cancellation of registration at the request of the wholesale dealer. At the present time the only circumstance in which registration can be cancelled is when the Director-General of Agriculture does this in the public interest. The new section 9A provides for cancellation at the request of the wholesale dealer, which can arise when, for example, a product has lost its effectiveness due to increased resistance of pests, or when a dealer is going out of business in respect of a particular product.

Section 9B. This section places a responsibility on the wholesale dealer to notify all the retailers who are known to him of the fact that the agricultural chemical in question is no longer registered. He is also required to advise the Chief Chemist of the Department of Agriculture that the retail dealers have been notified.

Section 9C. This section deals with changes in the formulation of agricultural chemicals. At the present time it is not an offence for a person to sell an agricultural chemical which is not formulated according to the list of ingredients shown in the application. Wholesale dealers may buy active constituents from a different manufacturer without notifying the Chief Chemist. Such constituents may contain impurities which are hazardous to health, or to crops and may not necessarily be the same in composition as constituents for which adequate evidence of safety and efficacy have been previously supplied. Section 9C requires the wholesale dealer to apply for approval in those cases where he proposes to formulate the agricultural chemical using a different ingredient or using an active constituent which is manufactured by some person other than the manufacturer named in the original application. The Director-General of Agriculture is authorised to grant or refuse approval of to grant approval subject to such conditions as he thinks fit.

Clause 10 amends section 10 of the Principal Act in three respects. The first amendment, set out in paragraph (*a*) of this clause, is a slight change in the phraseology of the Act to make the wording clearer. The effect of the amendment is that a person who sells an agricultural chemical is required to attach an approved label bearing certain particulars.

The second amendment, set out in paragraph (*b*) of this clause, provides for additional statements that may be required in labels to be prescribed by Regulations.

The third amendment, set out in paragraph (*c*), takes account of the fact that it is not always possible, because of the small size of some of the containers, to get all the necessary information regarding usage and the safety directions on a label attached to the package. Warning leaflets and other printed material that may accompany the sale of agricultural chemicals are referred to as "advice documents". It is proposed that Regulations will be made prescribing the classes of persons who may approve advice documents, and if necessary, the manner in which the document is supplied to the purchaser with the chemical.

Clause 11 of the Bill inserts six new sections after section 10 of the Principal Act. Broadly, these sections deal with prohibited constituents, the use of unregistered agricultural chemicals for experimental purposes, and authority for inspectors to seek information and to go on to land where agricultural chemicals are suspected of having been used in contravention of the Act. Notes on each new section are as follows:

Section 10A. *Sub-section* (1) authorizes the Governor in Council to proclaim any substance as a prohibited constituent in relation to agricultural chemicals when used for prescribed purposes.

Sub-section (2) makes it an offence to sell, purchase, or use an agricultural chemical for a prescribed purpose when containing a prohibited constituent.

Section 10B. *Sub-section* (1) provides for the issue of permits for the use of unregistered agricultural chemicals for scientific experimental work.

Sub-section (2) provides that permits will be subject to such conditions as are prescribed and may be subject to such other conditions as the Director-General of Agriculture imposes.

Sub-section (3) gives the Director-General of Agriculture power to cancel a permit if the holder has failed to comply with any of the conditions and to direct that no further permits be issued to that person.

Sub-section (4) makes it an offence to purchase or use an unregistered agricultural chemical without a valid permit.

Section 10C. This section provides for a penalty of not more than $500 in the case of the first offence and not more that $1000 in the case of the second or subsequent offence in relation to the use of agricultural chemicals contrary to the conditions of a permit or contrary to a Proclamation prohibiting the use for a particular purpose.

Section 10D. *Sub-section* (1) empowers an authorized person to seek information concerning permits from any person who has used or is suspected of using an agricultural chemical in contravention of section 10B.

Sub-section (2) makes it an offence to give false or misleading information to or to withhold information from an authorized person and prescribes a maximum penalty of $1000 or imprisonment for six months or both.

Section 10E. *Subsection* (1) empowers an authorized person to go on to any land where he believes an agricultural chemical has been used in contravention of section 10A or 10B and remove any samples that are required for examination and analysis.

Sub-section (2) makes it an offence to hinder or prevent an authorized person from entering the land and taking such samples as are required, and fixes a maximum penalty of $400.

Section 10F. This section provides that sections 10A to 10E will be binding on the Crown.

Clause 12 makes a series of amendments to section 11 of the Principal Act.

Paragraph (*a*) of this clause makes it an offence to sell an agricultural chemical without an approved label bearing the particulars required by section 10.

Paragraph (*b*)

Sub-paragraph (i) makes it an offence to sell an agricultural chemical which is not in accordance with the particulars printed on the label.

- Sub-paragraph (ii) is simply a change in the verbiage.

Sub-paragraph (iii) makes it an offence, when taken in conjunction with the Principal Act, to sell an agricultural chemical which includes an ingredient not listed in the approved formula, or which omits an ingredient that should have been included. This sub-paragraph also makes it an offence, when taken in conjunction with the Principal Act, to sell an agricultural chemical which has been formulated using a constituent manufactured by some person other than the person named as the manufacturer in the application.

Sub-paragraph (iv) is a consequential amendment arising from the insertion of sub-sections (2A) and (2B).

Paragraph (*c*) of clause 12 inserts three new sub-sections in section 11 of the Principal Act as follows:

Sub-section (2A) provides that a person who sells an agricultural chemical for experimental purposes will not be guilty of an offence if the purchaser holds a valid permit.

Sub-section (2B) provides for a period of grace of twelve months after the cancellation or expiration of the registration of an agricultural chemical in order to protect retailers while they dispose of agricultural chemicals that were held in stock prior to the cancellation or expiration of registration. It is envisaged that this provision would apply in cases where a wholesale dealer ceases to market a particular agricultural chemical.

Sub-section (2C) ensures that the period of grace will not be available to wholesale dealers and that it will not apply if registration is cancelled in the public interest or the particular agricultural chemical contains a prohibited constituent.

Clause 13 inserts a new section after section 12 of the Principal Act. The new section authorizes the Director-General of Agriculture to publish a list of agricultural chemicals showing the purposes for which they may be used, and if

appropriate, directions as to the manner of use. The purpose of the list is to provide a guide to manufacturers, users and advisory staff regarding accepted uses for agricultural chemicals.

Provision is included to ensure that publication of a notice does not necessarily limit the use of agricultural chemicals to the purposes specified in the notice. Notices may be revoked or amended and do not represent a warranty by the Director-General of Agriculture as to the accuracy of the notice.

Clause 14 relates to evidence of the appointment of an analyst or inspector. The amendment provides that a notice published in the *Government Gazette* will be sufficient evidence of the appointment.

Clause 15 inserts two new sections after section 17 of the Principal Act.

Section 17A relates to samples for analysis. There is often a need to conduct a survey of products of a particular type where there may be problems associated with that product. On other occasions it is desirable to have samples of a number of standard formulations in order to make a comparison between products for the purpose of proving safety or efficacy. The *Fertilizers Act* 1974 requires samples to be supplied for this purpose at the request of the Director-General of Agriculture and similar provisions have been included in this Bill. Wholesale dealers and vendors of agricultural chemicals are required to forward samples for analysis to the Chief Chemist when requested to do so by the Director-General of Agriculture.

Section 17B. This section relates to the appointment of a referee analyst. At the present time there is no provision in the Act for the appointment of a referee analyst to carry out an independent analysis. The procedure adopted in the *Fertilizers Act* 1974 is considered to be appropriate and sub-section (1) provides that in any case before the court, either the informant or the defendant may ask for a referee analyst to be appointed to make an analysis of the agricultural chemical in question. Provision is made for the Minister of Agriculture to nominate an analyst. The cost of the analysis is to be paid by the informant or the defendant according to directions given by the Court. Sub-section (2) provides that the analyst's certificate will be sufficient evidence of the facts stated therein, unless it is proved that the document is not the certificate of the referee analyst.

Clause 16 contains a consequential amendment, made necessary by the change from "manufacturer" to "formulator" which was dealt with in clause 6 of the Bill.

Clause 17 is a procedural amendment which tidies up the language of the Act and is related to the interpretation of "officer" in clause 3 of the Bill.

Clause 18 deals with the formal proceedings in prosecutions and substitutes a new section for section 22 of the Act. The new section provides that a prosecution for an offence may be instituted by any officer authorized in writing by the Minister of Agriculture It also provides that in any such prosecution, proof is not required of the authority to prosecute or of the appointment of the authorized officer. Further provisions are inserted relating to the burden of proof. Where it is alleged that anything on any retail or wholesale premises or in any warehouse, store or vehile is an agricultural

chemical, the burden of proving otherwise will be on the defendant. The burden of proof that any agricultural chemical on any retail or wholesale premises or in any warehouse, store or vehicle is not for sale is also on the defendant.

The provisions relating to the burden of proof are necessary because situations have arisen where an inspector enters upon a premises and finds substances that are patently insecticides or other agricultural chemicals but is informed that the products are not agricultural chemicals, or alternatively, that they are not for sale. Under these circumstances it is impossible to proceed further since the existing legislation only covers agricultural chemicals for sale.

Clause 19 makes a series of amendments to the regulation-making powers contained in section 24 of the Principal Act.

Paragraph (*a*) contains a consequential amendment made necessary by the change from "manufacturer" to "formulator" which has already been discussed.

Paragraph (*b*) inserts the following regulation-making powers in the Act:

- Power to prescribe persons or classes of persons who may approve labels for agricultural chemicals.
- Power to prescribe the manner in which approved documents are to be supplied to purchasers of any agricultural chemical.
- Power to prescribe the persons or classes of persons who may approve advice documents.
- Power to prescribe the manner in which advice documents are to be supplied to purchasers of any agricultural chemical.

Paragraph (*c*) inserts power to make Regulations prescribing the form of applications for renewal of registration of agricultural chemicals and power to prescribe the fees which are to accompany such applications.

Paragraph (*d*) inserts the following regulation-making powers in the Principal Act:

- Power to prescribe the persons or classes of persons who may issue permits in relation to agricultural chemicals contaniing prohibited constituents.
- Power to prescribe conditions to which such permits are to be subject.

Clause 20 amends the definition of "household insecticide" in section 3 of the Health Act. The existing definition in the Health Act excludes household insecticides which are registered under the Agricultural Chemicals Act if used for primary production purposes The effect of the amendment is to remove the exclusion relating to registration, since it is proposed that all household insecticides will be subject to registration.

Clause 21 amends section 3 of the *Stock Medicines Act* 1958 by altering the reference to "*Pesticides Act* 1958" to read "*Agricultural Chemicals Act* 1958".

Clause 22 amends the *Fertilizers Act* 1974 in three respects. These alterations are consequential amendments arising from the change in name from "pesticides" to "agricultural chemicals".

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