

Pest Control Technical Note No. 5, November 2003

The Law & You

This technical note is the first in a series designed to bring to your attention the Victorian legislation relevant to the pest control industry.

If you would like to obtain copies of current public health legislation follow links at the Public Health website:

<http://www.dhs.vic.gov.au/phd/legislation>

You can search for other legislation on:

<http://www.dms.dpc.vic.gov.au/l2d/index.html>.



What is Legislation?

Legislation states or alters the law in some respect. Legislation includes Acts (made by the Parliament) which set up the legislative scheme and Regulations (made under the authority of an Act) which provide details of the legislative scheme.

Failing to comply with legislation may result in enforcement action by the body responsible for administering the legislation. Legislation is generally administered by government departments. Authorities established under legislation independent of government may also administer legislation.

Where failing to comply is an offence under legislation, the person in breach is liable for prosecution.

Compliance with Australian Standards and Codes of Practice is not enforceable, unless they are referred to in an Act or set out in Regulations. However, they have an important role to play as a minimum benchmark for the conduct of activities.



Licensing by the Department of Human Services

Who is a Pest Control Operator?

A pest control operator is defined in the *Health Act 1958* as a person who carries on or holds himself out in any way as carrying on the business of controlling, destroying or repelling pests.

The *Health Act 1958* requires that anyone who uses **pesticides**, or permits another person to use pesticides, in the course of the business of a **pest control operator** in Victoria must hold a licence, unless the pesticide is being used for the purpose of:

- (a) horticulture¹; or
- (b) agriculture²; or
- (c) water treatment; or
- (d) weed control; or
- (e) controlling a pest animal to protect an area or place which is not -
 - (i) a building used for commercial purposes; or
 - (ii) domestic premises.

A person who carries on a business or offers a service for fee or reward that involves the use of pesticides for any activity identified in categories (a) – (e) above may require a Commercial Operator Licence (see Licensing by the Department of Primary Industries).

¹ Pesticides used for the purpose of horticulture are pesticides used in the treatment of the following commodities:

- Fruit and Vegetables
- Dried fruit and nuts
- Tobacco
- Seeds
- Flowers
- Ornamental plants
- Soil and potting mixtures

² Pesticides used for the purpose of agriculture are pesticides used in the treatment of the following commodities:

- Grain
- Pulses
- Hay
- Logs
- Stock animals



What is a Pesticide?

The *Health Act 1958* defines a pesticide as:

- (a) any agricultural chemical product within the meaning of the *Agricultural and Veterinary Chemicals (Control of Use) Act 1992*; and
- (b) any household insecticide; and
- (c) any substance prescribed as a pesticide.

The *Agricultural and Veterinary Chemicals (Control of Use) Act 1992* defines "agricultural chemical product" by reference to the definition in the Agvet Code of the Commonwealth which applies in Victoria.

The Agricultural and Veterinary Chemical legislation in Victoria defines "agricultural chemical product" as a substance or mixture of substances that is represented, imported, manufactured, supplied or used as a means of directly or indirectly:

- (a) destroying, stupefying, repelling, inhibiting the feeding of, or preventing infestation by or attacks of, any pest in relation to a plant, a place or a thing; or
- (b) destroying a plant; or
- (c) modifying the physiology of a plant or pest so as to alter its natural development, productivity, quality or reproductive capacity; or
- (d) modifying an effect of another agricultural chemical product; or
- (e) attracting a pest for the purpose of destroying it.

The *Health Act 1958* defines "household insecticide" as a substance or compound which-

- (a) is sold for use for destroying or repelling insects or other similar pests which affect or are likely to affect any person or domestic animal or any article or material found in any private dwelling-house or in any premises registered under this Act or in licensed premises within the meaning of the *Liquor Control Reform Act 1998*; or
- (b) is declared by proclamation to be a household insecticide-

but does not include any substance or compound which is sold for use for primary production purposes.

There are currently no substances prescribed under the *Health (Pest Control) Regulations 2002*.



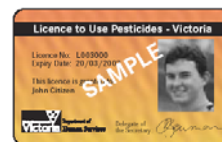
Who is eligible to hold a Licence to Use Pesticides?

Persons who have attained (or, in the case of a trainee, are in the process of attaining) an appropriate qualification may be granted a licence under the *Health Act 1958*.

Full licences expire 3 years after the date on which the licence is granted.

Trainee licences expire 12 months after the date on which the licence is granted.

A Trainee licence cannot be granted to a person more than three times.



Qualifications

To be granted a full licence the applicant must have passed the qualifications listed in Schedule 2 to the *Health (Pest Control) Regulations 2002*, including qualifications to use:

- Pesticides (excluding fumigants) formulated for the control of any pest, to control any pest except a pest animal (Part 1).
- Pesticides formulated for the control of any Pest Animal, and to protect an area or place in a building used for commercial purposes or domestic purposes (Part 2).
- Pesticides in the form of Fumigants (Part 3).

To be granted a trainee licence the applicant must be undergoing training in the units of competency specified in the "*National Standards for Licensing Pest Management Technicians*" (National Environmental Health Forum, 1999) or enrolled in one of the courses listed in Schedule 3 to the *Health (Pest Control) Regulations 2002*.

The licence authorises the person to use only the pesticide that they are qualified to use.

A list of the prescribed qualifications is included in the DHS "*Guidelines for Pest Control Licensing*". If you would like a copy of the Guidelines please contact DHS, or you can find them on

www.health.vic.gov.au/pestocontrol/guidelines



Fees

An applicant will not be granted a licence unless he or she has paid the fee prescribed in the *Health (Pest Control) Regulations 2002*.



The fee for a Technician licence for a qualified applicant is \$463, and the fee for a Trainee licence is \$154.

A person who usually resides in another State or Territory and who holds a valid licence in that State or Territory, may apply for a Victorian Licence to Use Pesticides, providing the pesticides they apply for authorisation to use are the same or similar in all respects to the pesticides that are authorised for use under their current licence. The fee for this is \$51.

Refusal to grant a Licence and Cancellation

An applicant may be refused a licence if he or she has breached any provision of Division 2A of the *Health Act 1958* or the *Health (Pest Control) Regulations 2002*.

A licence may be cancelled or suspended for a period if the licensed user of pesticides is convicted of an offence against the Division 2A of the *Health Act 1958* or the *Health (Pest Control) Regulations 2002*.

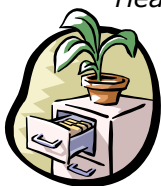


Records

Agricultural and Veterinary Chemicals (Control of Use) Regulations 1996 defines a commercial ground applicator as any person who is in the business of spraying, spreading or dispersing an agricultural chemical product from any machine or equipment (other than from an aircraft) for fee or reward. These Regulations prescribe records to be made and kept relating to the use of agricultural chemicals (pesticides).

Pest Control Operators are Commercial Ground Applicators, therefore

Every licensed pest control operator must make and keep written records as required by the *Health (Pest Control) Regulations 2002* and *Agricultural and Veterinary Chemicals (Control of Use) Regulations 1996*.



Further information on records can be found in "Technical Note number 3 – Record Keeping".

Licensing by the Department of Primary Industries

The *Agricultural and Veterinary Chemical (Control of Use) Act 1992* requires any person who carries on a business or offers a service involving the use of a prescribed class of agricultural chemical to have a Commercial Operator Licence (COL), unless the business ensures that all use of the chemical product (pesticide) is undertaken by a person who holds a licence to use that pesticide under the *Health Act 1958*.

What is a prescribed class of chemical product?

The *Agricultural and Veterinary Chemical (Control of Use) Regulations 1996* lists the following as prescribed classes of agricultural chemical products:

- herbicides;
- fungicides;
- insecticides;
- growth regulators;
- vermin destroyers;
- avicides.



Spray Drift

Under the *Health Act 1958* it is an offence to cause a nuisance. Nuisances are defined as a state, condition or activity which is, or is liable to be, dangerous to health or noxious, annoying or injurious to personal comfort.

The *Health Act 1958* requires municipal councils to remedy as far as is reasonably possible all nuisances in its municipality.

Council is required to investigate any notice of a nuisance and either to take action to abate nuisances or advise the notifier of any available methods for settling the matter privately.

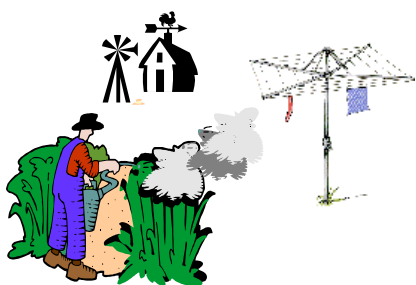
Under the *Agricultural and Veterinary Chemicals (Control of Use) Act 1992* a person must not carry out agricultural spraying which injuriously affects-

- any plants or stock outside the target area; or
- any land outside the target area so that growing plants or keeping stock on that land can be reasonably expected to result in the contamination of the stock or agricultural produce derived from the plants or stock or
- which contaminates any stock or agricultural produce outside the target area.

Off target application of chemical products which creates a hazard that is likely to adversely affect a persons health or the environment comes within the offence of pollution created by the *Environment Protection Act 1970*.

The Victorian WorkCover Authority may also become involved if the spray drift incident involves the activities of a workplace that effects the health and safety of *employees* at that workplace and of *others* (being persons other than the employer's employees).

DPI investigates reports of alleged misuse of chemical products, and co-operates with DHS and EPA when pursuing alleged incidents involving off-target application of agricultural chemical products.



More information about spray drift can be found in Technical Note number 3 – Record Keeping.

Future Law Technical Notes include:

- Worksafe Victoria's legislation (Occupational Health and Safety)
- Department of Sustainability and Environment (Native Flora and Fauna)
- Australian Pesticides and Veterinary Medicines Authority (Chemical labelling, MSDS, permits, and registration)

Past Technical Notes

- **ANTS (Technical Note 1)**

(Structure, Life Cycle, Control Methods, Major Pest Species)

- **COCKROACHES (Technical Note 2)**

(Structure, Life Cycle, Control Methods, Major Pest Species)

- **RECORD KEEPING (Technical Note 3)**

(Legal Requirements, Weather Conditions, Beaufort Wind Scale, Application Record Sheet Example)

- **MANAGING SPILLS & PESTICIDE DISPOSAL (Technical Note 4)**

(MSDS & Label, Spill Prevention & Management, Fire Brigade & EPA, Disposal of Unwanted Chemicals, Animal Carcasses & Other Animal Wastes, Waste Management, Questions answered by the EPA)

Copies of all of the above technical notes can be obtained from the pest control website www.health.vic.gov.au/pestcontrol or you can call us on (03) 9637 4156.

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