



ACT
Government

REGULATORY IMPACT STATEMENT

Environment Protection Amendment Regulation 2021 (No 1)

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Executive Summary

This Regulatory Impact Statement (RIS) was prepared in accordance with Part 5.2 of the *Legislation Act 2001* and provides an analysis of the regulatory impact of amendments to the *Environment Protection Regulation 2005* (the Regulation), proposed through the *Environment Protection Amendment Regulation 2021 (No 1)* (the Amendment Regulation).

The objective of the Amendment Regulation is to implement agreed national harmonisation reforms for the use of agricultural and veterinary (agvet) chemical products.

This RIS outlines the relevant policy issue, considers the need for and objectives of government action and alternative options for addressing the policy problem, and the costs and benefits of the preferred option.

Environment Protection Amendment Regulation 2021 (No 1)

The Amendment Regulation seeks to support the operation of the *Environment Protection Act 1997* (the Act) by promoting the Act's objects of protecting and enhancing the quality of the environment and preventing environmental degradation and risk of harm to human health.

Agvet chemical products are dealt with under Part 6 of the Regulation, which regulates the storage and use of agvet chemical products after the point of sale in the ACT.

The Amendment Regulation seeks to update Part 6 of the Regulation by implementing agreed national harmonisation reforms for agvet chemicals, including in relation to instructions for the use, storage and disposal of registered agvet chemical products in accordance with approved labels, and recordkeeping and training requirements.

In addition, the Amendment Regulation introduces new strict liability offences in relation to: storage, use, and disposal of a registered agricultural chemical product if it is not done in accordance with the instructions on the approved label for the product; and use certain agvet chemical products without the relevant training or qualification. It is noted that amendments to Schedule 1, Part 1.2 of the *Magistrates Court (Environment Protection Infringement Notices) Regulation 2005* are also being proposed separately, in order to include the new offences in the infringement notice scheme for the Regulation.

Policy objectives

Regulating the use of agvet chemical products after the point of sale is the responsibility of states and territories. The Amendment Regulation aims to ensure the correct use of agvet chemical products in a way that minimises the risks to human health and the environment. The ACT Government is committed to the implementation of reforms to nationally harmonise recordkeeping and training requirements for the use, storage and disposal of agvet chemical products.

Consideration of Alternative Measures

Three options have been considered for achieving the policy objectives:

Option 1: No regulation

This does not meet the ACT Government's commitment to the implementation of a nationally consistent regulatory framework on the control of agvet chemical use.

Option 2: Guidelines

This is not considered to be feasible due to the need for enforceability of agreed national harmonisation reforms for the use, storage and disposal of agvet chemicals and for consistency with approaches nationally.

Option 3: Amend the Regulation

The Amendment Regulation aligns with a nationally consistent framework and represents the most positive outcome for the community due to benefits associated with trade, food safety, productivity and risk-management. Option 3 minimises the risk to human health and the environment and provides clarity and consistency for businesses operating across state and territory borders. It is the only option that supports all government commitments and the objectives of government action.

The Authorising Law

Section 166 of the Act provides that a regulation can be made in relation to the use of a specified pollutant, article or other thing. Agvet chemicals are specified pollutants in the Regulation.

Policy Problem

The Australian Pesticides and Veterinary Medicines Authority (APVMA) is a Commonwealth Government agency that assesses agricultural and veterinary chemical products and decides on their subsequent registration. The APVMA regulates agvet chemicals up to the point of retail sale. The use of agvet chemical products after the point of sale is regulated by states and territories under their respective legislation.

The primary purpose of regulating agvet chemicals is to ensure that these chemicals are used properly, in a way that does not cause harm to human health or the environment. At the same time, chemical use is a legitimate strategy for protecting food and fibre production, the environment, amenity, and the community from adverse impacts of pests and diseases. A primary outcome of the regulatory process should be chemical use in an economically, socially, and environmentally sustainable way.

The Regulation contains general use and offence provisions for agvet chemicals and provides for when agvet chemical products are taken to cause environmental harm for the

purposes of section 5(b) of the Act. It also provides that it is an offence to store or use agvet chemical products in a way not authorised by APVMA. However, the Regulation does not provide clear provisions for the use and storage of agvet chemicals, enforceable provisions in relation to the disposal of agvet chemicals, or requirements in relation to recordkeeping and training for the use, storage and disposal of agvet chemical products.

Inconsistent state and territory regulation of agvet chemicals risks inadequate user access to these chemicals, significant losses to producers, and unfair business competition due to differences in operating environments between jurisdictions. In addition, inconsistent regulation may mean fee-for-service businesses and agvet chemical users are more likely to face additional costs if they wish to operate across state boundaries. It is important that national harmonisation be achieved to ensure a consistent approach to risk mitigation not only to businesses operating across state or territory borders, but for domestic agriculture overall.

Overview of the Amendment Regulation

Objectives

The Commonwealth, states and territories have acknowledged that agricultural chemicals and veterinary medicines (agvet chemical) regulation requires reform and agreed that a nationally consistent regulation is important for controlling the use of agvet chemicals (particularly for trade, food safety, productivity and risk-management purposes).

The Commonwealth has developed the [National Policy Framework for the Assessment, Registration and Control of Use of Agricultural and Veterinary Chemicals](#) (the national regulatory framework) to improve the effectiveness of the regulation of agvet chemicals. The national regulatory framework sets out the broad policy principles and desired outcomes for a nationally consistent regulatory model.

The Amendment Regulation implements elements of the national regulatory framework in the ACT, consistent with the agreement by Commonwealth, state and territory Agricultural Ministers to harmonise at a minimum level:

- record-keeping requirements for users of agricultural chemicals; and
- training requirements for all users of agvet chemicals.

Summary

The amendments update Part 6 of the Regulation ('Agvet chemical products'). The below table summarises the key changes made by the Amendment Regulation.

Table 1 — Summary of amendments

Division/Clause	Content
New Division 6.1: Interpretation	New definitions and provisions that determine when a registered agvet chemical product is taken to be used in accordance with the instructions on the approved label for the product.
New Division 6.2: Agvet chemical products causing environmental harm	Details when an agvet chemical product is taken to cause environmental harm
New Division 6.3: Using agvet chemical products	Details the offence provisions related to the use, storage and disposal of a registered agricultural chemical that is not in accordance with the instructions on the approved label for the product, as well as exceptions for these offences. Details what required information must be recorded by agricultural chemical users and offence provisions related to record keeping requirements, as well as exceptions for these offences.
New Division 6.4: Training requirements for use of certain agvet chemical products	Details training requirements and definitions associated with relevant clauses. Details the offence provisions related to training requirements for use of certain agvet chemical products. Provides that the Environment Protection Authority (EPA) may, by notifiable instrument, declare a restricted agvet chemical product and approve a VET course unit of competency for provisions of the Regulation.
Clause 5: Section 67 (2) (a)	Omits the <i>Agricultural and Veterinary Chemicals (Administration) Act 1992</i> (Cwlth), under section 67 (2) of the Regulation because reference to this legislation is no longer relevant.
Clause 6: New section 67 (2) (fa) and (fb)	Inserts the <i>National Vocational Education and Training Regulation Act 2011</i> (Cwlth); and the Poisons Standard under section 67 (2) of the Regulation, meaning that the Legislation Act will not apply to these laws as far as these laws are applied under the Regulation.
Clauses 7, 8 and 9: Dictionary	Contains the dictionary for the terms used in the Regulation.

Consistency of the Amendment Regulation with the Act

The Amendment Regulation builds on the current framework for the regulation of agvet chemical use in Part 6 of the Regulation and supports the Act's objects of protecting and enhancing the quality of the environment and preventing environmental degradation and risk of harm to human health (as per section 3 of the Act).

Alternative Options

The primary purpose of regulating agvet chemicals is to ensure that they are used properly and do not harm human health or the environment.

The following options were considered for achieving the relevant policy objectives:

1. No regulation
2. Guidelines
3. Amendment Regulation

Costs and benefits are also assessed in relation to each option.

Option1: No regulation

Under this option, specific and nationally consistent requirements associated with the use, storage and disposal of agvet chemical products which are not covered by the Regulation or the Act, such as recordkeeping and training requirements, would not be regulated. As such, there would be limited and inconsistent measures to mitigate risks to human health and the environment.

There would be no offences related to the disposal of agvet chemical products and no clarity around the offences related to their use and storage.

Option 1 is not supported because it would not be effective in reducing the risk of harm arising from use, storage and disposal of agvet chemicals. Minimising risks to health and the environment from incorrect use of agvet chemicals is considered a higher priority than access to chemicals and reducing regulatory burden.

This option does not meet the ACT Government commitment to the implementation of a consistent national regulatory framework on the control of agvet chemical use and fails to discharge any of the objectives of government action.

Option 2: Guidelines

This option involves non-statutory guidance for the use of agvet chemicals in the ACT.

Under this option, nationally supported requirements associated with the use and storage of agvet chemical products which are not covered by the Regulation or the Act, and important recordkeeping and training requirements, would be voluntary with no punitive mechanism available to regulate non-compliance. In addition, requirements associated with the disposal of a registered agricultural chemical product, in accordance with the instructions on the label approved by the APVMA for the product, would not be easily enforceable.

There would not be any regulatory mechanism other than education to enforce requirements that are not specified by the APVMA in approved labels or permits.

Use of non-statutory guidelines is inconsistent with the regulatory approach agreed to by the Commonwealth, states and territories, and would undermine the purpose of the national regulatory framework on the control of agvet chemical use. In particular, inconsistencies would impact the ability for businesses to efficiently operate across state and territory borders, which is one of the key issues the national regulatory framework aims to address.

Option 2 would not reduce the risks associated with the use, storage and disposal of agvet chemicals, and does not meet the ACT Government commitment to the implementation of a consistent national regulatory framework on the control of agvet chemical use.

Option 3: Amendment Regulation

The Commonwealth, state and territory Agricultural Ministers agreed that nationally consistent regulation is important for controlling the use of agvet chemicals. It was agreed that agvet reforms would be particularly beneficial for trade, food safety, productivity and risk-management purposes.

Amendment to the Regulation enables implementation of nationally consistent recordkeeping and training requirements for all users of agvet chemicals in the ACT and enables risk management within a consistent regulatory framework.

The use of subordinate legislation also allows clarification of existing offences for the use and storage of agvet chemicals, and the introduction of new offences to support compliance with critical aspects of the regulatory scheme regarding disposal of, and record keeping and training for use of, agvet chemical products.

No appreciable costs are anticipated as a result of amendments. It is expected that amendments will reduce unnecessary regulatory burden due to a focus on implementing a nationally consistent approach to agvet chemical regulation. Key stakeholders that may be impacted by the amendments include farm businesses, urban and non-urban land managers, and fee-for-service providers.

Aligned with the national regulatory framework, the Amendment Regulation will:

- improve consistency for access to, and use of, agvet chemicals;
- reduce compliance costs for businesses that operate across state and territory boundaries; and
- benefit agricultural exports by providing a consistent platform for chemical use, residue management and increased traceability.

Cost and Benefits of Implementing the Amendment Regulation

The following provides further analysis of the costs and benefits of implementing the Amendment Regulation.

Clarification for storage, use and disposal of agvet chemical products, and meaning of environmental harm

The Regulation currently provides that it is an offence to use and store an agvet chemical product other than in a way authorised by the APVMA. The amendments clarify and build on these existing provisions by specifying that an agvet chemical product must be used in accordance with the instructions on the approved label for the registered product, or in accordance with an agvet permit issued by the APVMA.

The reforms relate to requirements under the Agvet Code (a schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* (Cwlth)) which provide that all supplied agvet products must have a label attached to the container, which must comply with all conditions of label approval.

There are no costs associated with these amendments. The amendments aim to minimise risks to human health and the environment by clarifying the meaning of provisions to assist compliance.

Offences for use, storage, and disposal of agvet chemical products

Amendments to existing offence provisions and for the creation of new offences aim to establish a more robust compliance framework for the use, storage, and disposal of agvet chemical products, which will help to minimise risks to human health and the environment. The amendments are consistent with the national regulatory framework being adopted by all jurisdictions.

New requirements and offences for record keeping for agricultural chemical products

The new provisions regulate what is considered good recordkeeping business practice among many farm businesses, land managers and fee-for-service providers. Compliance with recordkeeping requirements is critical for risk management and for supporting investigations into incidents involving the use of agricultural chemical products.

There are no appreciable costs associated with the recordkeeping requirements for users of agvet chemical products, as most of these requirements are already included in the conditions for environmental authorisations (licenses) issued to commercial pest operators by the EPA.¹

¹ A [Decision Regulation Impact Statement on a national scheme for assessment, registration and control-of-use of agricultural and veterinary chemicals](#) (the Decision RIS) that informed considerations of the reforms estimated that the additional annual recordkeeping costs to chemical users in the ACT would most likely be around \$18,910.

Potential recordkeeping costs would be offset by the benefits associated with the consistency of recordkeeping requirements at the national level, which provides greater traceability and opportunities for users to better manage the risks associated with agricultural chemical use.

The new requirements and offence provisions regarding recordkeeping for the use of agricultural chemical products reduce the potential for confusion for users who operate in multiple jurisdictions and pesticide suppliers advising customers, therefore promoting greater compliance. These requirements are consistent with the requirements adopted nationally.

New requirements and offences for training in the use of agvet chemical products

Appropriate training is essential for the correct use of agvet chemical products and to reduce risks to human health and the environment. Risks associated with the use of a particular chemical product is not only related to the product itself, but also its proposed use pattern and the environment in which the product is used. Therefore, different qualification requirements are required for different tasks and situations.

Training requirements vary significantly between jurisdictions, which reflects different risk management priorities and approaches. This means the relationship between risk and training requirements for the use of agvet chemicals are nationally inconsistent.

The amendments align with the national regulatory framework and aim to address this inconsistency. The new training requirements provide important risk management benefits by ensuring that users' qualifications and competency align with the risk associated with the use of certain agvet chemicals.

Additional costs associated with training requirements for agvet chemicals users are not significant and are likely to be offset by a reduction in health costs due to the correct use, storage, and disposal of these chemicals, as well as improvements in risk management with respect to both trade and the environment.²

In addition, the Amendment Regulation provides that the EPA may, by notifiable instrument approve a VET course unit of competency for provisions of the Regulation. This simplifies and accelerates the process of updating training requirements when necessary.

Consistent training requirements for the use of agvet chemical products will reduce the potential for confusion and compliance costs for users who operate in multiple jurisdictions. These requirements are consistent with the requirements adopted nationally.

² The [Decision RIS](#) identified the costs associated with training requirements for chemical users in the ACT who would need to undertake AQF Level 3 training in order to achieve the required qualifications under the national framework. The one-off 10-year cost for achieving qualifications to AQF Level 3 under harmonization occurring in the first year is estimated to be \$37,378 in 2011-12 dollars using a 7% discount rate. The Decision RIS estimated annual health cost savings of \$1,184 for the ACT.

Consultation

Consultation was conducted by the Commonwealth throughout the development and delivery of the national regulatory framework for agvet chemicals. This process involved consultations with stakeholders through a series of working groups, which informed the policy development process. A discussion paper was prepared and released in December 2009.

A second round of discussions with stakeholders was held in early December 2009 in response to a request for comment on the discussion paper. This process helped to set out the broad policy principles and desired outcomes for the regulatory model.

To further develop the details of the framework, a [consultation regulation impact statement \(RIS\) for A National Scheme for Assessment, Registration and Control of Use of Agricultural and Veterinary Chemicals](#) (the consultation RIS) was prepared. The consultation RIS was released in March 2011 and stakeholder meetings were held in Melbourne, Adelaide, Sydney, Hobart, Townsville, Brisbane, Perth and Canberra. These meetings were attended by representatives from relevant state and territory agencies, primary industry and producer groups, professional fee-for-service users, training interests, chemical manufacturers and environmental and community groups.

In September 2012, a workshop was held to provide stakeholders with an update on the reforms and the opportunity to discuss the proposed regulatory model for the national regulatory framework and alternative options.

Consultation comments were sought on all aspects of the consultation RIS and specific feedback was sought from stakeholders on how particular changes would impact their businesses. This process guided and informed the analysis of the [decision RIS](#), which provided a comprehensive cost benefit analysis of the options considered in developing the framework. The decision RIS informed the consideration of the reforms and was published in May 2013.

In May 2013, Commonwealth, state and territory ministers confirmed the reform package and signed an Intergovernmental Agreement (IGA) to implement a consistent national regulatory framework for agvet chemicals.

The majority of reforms proposed in the national regulatory framework have been implemented by states and jurisdictions or are expected to be completed by 2023. This Amendment Regulation implements most of these reforms in the ACT.

Consistency with scrutiny principles

The Amendment Regulation is consistent with principles of the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role), as the Amendment Regulation:

1. is in accord with the general objects of the Act;
2. does not unduly trespass on rights established by law; and
3. does not make rights, liberties and/or obligations unduly dependent upon non-reviewable decisions.

In relation to consideration of human rights, it is noted that the Amendment Regulation seeks to introduce new strict liability offences. A strict liability offence engages the presumption of innocence under section 22(1) of the *Human Rights Act 2004* because it allows for the offence to be proven without the need to prove fault.

The proposed use of strict liability offences is appropriate because the offences only apply to people who know or ought to know their legal obligations. The offences are intended to deter people from failing to comply with safe use and disposal practices, record keeping and training requirements in relation to agvet chemical products. These requirements are central in supporting the prevention of serious detriment to human health and the environment.

These matters are addressed further in the explanatory statement to the Amendment Regulation.