

## 5. Summary of pesticide regulation in South Australia

Understanding and complying with the laws that govern pesticides is an important first step towards achieving environmentally safe use. The regulation of pesticides is complex because five government bodies administer many pieces of legislation. The seven major areas of pesticide regulation in South Australia are summarised in table 1.

In a cooperative agreement with the states and territories, the Commonwealth regulates the pesticides available for use in Australia up to the point of retail sale. This is done through the National Registration Scheme (NRS) for agricultural and veterinary chemicals. The states and territories are then responsible for regulating all aspects of pesticide use after the point of retail sale.

Table 1 Organisations responsible for legislation and regulation of pesticides in South Australia

Issue: Commonwealth regulation, review and registration of all pesticides used in Australia

Organisation: APVMA

Legislation: *Agricultural and Veterinary Chemicals Code Act 1994* (and six other Acts, see section 12.3 for details)

Contact: (02) 6272 5852 [www.apvma.gov.au](http://www.apvma.gov.au)  
[contact@apvma.gov.au](mailto:contact@apvma.gov.au)

Issue: State environment protection and waste management

Organisation: EPA

Legislation: *Environment Protection Act 1993* and relevant Environment Protection Policies

Contact: SA metro area (08) 8204 2000 SA country freecall 1800 623 445 [www.epa.sa.gov.au](http://www.epa.sa.gov.au) [epainfo@state.sa.gov.au](mailto:epainfo@state.sa.gov.au)

Issue: State control of use of agricultural and veterinary chemicals, including pesticides

Organisation: PIRSA Rural Chemicals Program

Legislation: *Agricultural and Veterinary Products (Control of Use) Act 2002* and *Agricultural and Veterinary Products (Control of Use) Regulations 2004*

Contact: (08) 8226 0549 [www.pir.sa.gov.au](http://www.pir.sa.gov.au)  
[pirsa.ruralchemicals@saugov.sa.gov.au](mailto:pirsa.ruralchemicals@saugov.sa.gov.au)

Issue: Regulation of dangerous substances including transport and storage

Organisation: DAIS Workplace Services

Legislation: *Dangerous Substances Act 1979* and *Dangerous Substances Regulations 2002*

Contact: 1300 365 255 [www.eric.sa.gov.au](http://www.eric.sa.gov.au)  
[wisinfo@eric.sa.gov.au](mailto:wisinfo@eric.sa.gov.au)

Issue: Workplace health and safety

Organisation: DAIS Workplace Services

Legislation: *Occupational Health, Safety and Welfare Act 1986* and  
*Occupational Health, Safety and Welfare Regulations 1995*

Contact: 1300 365 255 [www.eric.sa.gov.au](http://www.eric.sa.gov.au)  
[wisinfo@eric.sa.gov.au](mailto:wisinfo@eric.sa.gov.au)

Issue: Public and environmental health issues

Organisation: DH Environmental Health Service and local government

Legislation: *Public and Environmental Health Act 1987*

Contact: (08) 8226 7100 [www.dh.sa.gov.au](http://www.dh.sa.gov.au)  
[public.health@health.sa.gov.au](mailto:public.health@health.sa.gov.au) or your local council

Issue: Licensing and regulation of commercial pesticide operators including aerial sprayers

Organisation: DH Environmental Health Service

Legislation: *Controlled Substances Act 1984* and *Controlled Substances (Pesticides) Regulations 2003*

Contact: (08) 8226 7100 [www.dh.sa.gov.au](http://www.dh.sa.gov.au)  
[public.health@health.sa.gov.au](mailto:public.health@health.sa.gov.au)

The aims and key requirements of each area of pesticide regulation are described here. Complying with the legal provisions of pesticide use will tend to reduce the risk of environmental harm, as well as promote safer use. Further information on this legislation can be obtained from the relevant government bodies (see table 1 for details). For information on the availability of the following legislation see chapter 12.

## **5.1 Commonwealth registration of pesticides**

The APVMA regulates the import, manufacture, registration, packaging, labelling, distribution and retail sale of pesticides in Australia. This is done according to the *Agricultural and Veterinary Chemicals Code Act 1994* (AGVET code) and the *Agricultural & Veterinary Chemicals Administration Act 1994*. All pesticides, including those for home garden use (e.g. weed killer) and domestic use (e.g. fly spray) fall under the scope of this Act.

The APVMA assesses new and modified products to ensure that when used as directed they are safe and effective, and to reduce the risk of adverse effects on people, the environment and trade. Once a pesticide has been assessed and the label instructions determined, it may be registered for use in Australia.

**It is illegal to supply an unregistered pesticide or a pesticide without an approved label (s78 and s80 of the AGVET code).**

Under limited circumstances the APVMA may provide a permit for the use of an unregistered pesticide or the use of a registered pesticide in a way that contravenes the label instructions. For more information on permits see section 8.5.1. Further information is available from the APVMA (for contact details see table 1).

## **5.2 Protection of the environment**

In South Australia the EPA administers the Act and various Environment Protection Policies (EPPs). This legislation regulates the pollution of the environment, including pesticide misuse, and the management of wastes, including pesticide wastes. The Act gives the EPA the power to order individuals to stop activities that actually harm, or may potentially harm, the environment (s93) and to place Clean-up Orders (s99) on polluters.

### *5.2.1 General environmental duty under the Environment Protection Act*

Your duty of care for the environment is embodied in the general environmental duty under s25 of the Act.

**A person must not undertake an activity that pollutes, or might pollute, the environment unless the person takes all reasonable and practicable measures to prevent or minimise any resulting environmental harm or nuisance.**

For example, directly applying pesticides to waters or onto other people's property, or allowing pesticides to enter surface waters or groundwaters or escape from your property, may cause harm to the environment, or to other people and their property. Harm may arise whether the escape is due to direct application or spray drift, or is by movement through soils or in waters, both during or at any time after application.

The EPA considers that any such release is a breach of your general environmental duty(1) unless you have taken all reasonable steps to prevent such escape. Failure to comply with this duty is not an offence but compliance may be enforced with an Environment Protection order (EPO). Failure to comply with an EPO is an offence.

#### *5.2.2 Environmental harm*

Causing environmental harm is an offence(2).

**A person who by polluting the environment causes serious or material environmental harm is guilty of an offence. Also, a person who causes an environmental nuisance by polluting the environment intentionally or recklessly and with the knowledge that an environmental nuisance will or might result is guilty of an offence (s79, s80 and s82 of the Act).**

The different levels of harm—serious, material and environmental nuisance—are defined in section 10.2. If your actions lead to a situation where serious or material harm occurs, or threatens to occur, you are required by law to report it to the EPA. See section 9.2 for further information on the requirements for reporting offences. Examples of activities that may cause environmental harm due to pesticides include allowing or causing:

- pesticides to enter stormwater systems, inland waters, groundwaters, estuarine or marine waters
- pesticides to pollute soils outside your own property

- impacts on non-target organisms, including plants or animals, and damaging ecosystem function
- harm to neighbours' gardens or crops due to spray drift
- excessive noise during pesticide application or subjecting neighbours to spray drift that causes discomfort, illness or nuisance due to odour, irritation or toxicity.

-----

(1) You are allowed to use a pesticide that is registered by the APVMA for use in or around waters to treat pests in the vicinity of the waters. You must not exceed the application concentration or rate specified on the label. Note that pesticides applied around waters may have significant impacts on non-target organisms, even if the pesticide is approved for use in these areas. Only undertake application of pesticides in such areas with the utmost care. Careless application of pesticides in and around waters may breach your general environmental duty even if that pesticide is registered for use in such situations. For further information see the EPA's Guideline for the control of weeds around watercourses.

(2) s84 of the Act states that it is a defence against a charge of environmental harm if an act of pollution only causes harm on your own property or someone else's property with their permission. This effectively means that polluting your own land is allowed. This defence does not extend to waters—pollution leading to environmental harm in surface waters or groundwaters under your own property is an offence. It may also be an offence to harm native vegetation on your own property under the *Native Vegetation Act 1991*. In any case you should consider the consequences of contaminating your own land (see section 6.4 for further information).

### *5.2.3 General obligation under the Water Quality Policy*

The EPA also administers the Water Quality Policy. Under s11 of this policy you have a general obligation to avoid discharge into waters.

**A person who is undertaking an activity, or is an occupier of land, must take all reasonable and practicable measures to avoid the discharge or deposit of**

**waste from that activity or land:**

- **into any waters**
- **onto land in a place from which it is reasonably likely to enter any waters including by processes such as seepage or infiltration or carriage by wind, rain, sea spray or stormwater, or by the rising of the watertable.**

'Waste' includes any substance that is left over, surplus or an unwanted by-product from any business or domestic activity, whether the substance is of value or not. Therefore, any pesticide that is unwanted, left over after application, spilt, or escapes from the target area during or after application, or is contained in washings, is a waste. Pesticide breakdown products are also wastes.

'Waters' under this policy means all surface and underground waters including irrigation drainage channels, public stormwater systems and watercourses that are dry.

The movement of pesticide wastes into waters breaches this obligation even if those waters are on your own property. Failure to comply with this obligation does not constitute an offence but compliance may be enforced with an EPO. Failure to comply with an EPO is an offence.

*5.2.4 Contamination of waters*

The Water Quality Policy also makes it an offence to contaminate waters with pesticides.

**A person must not, by discharging or depositing pesticides into waters that have potable (drinking) or aquatic ecosystem values, cause the concentration of pesticides in those waters to exceed zero (s13 of the Water Quality policy).**

Practically, this means it is an offence to cause the concentrations of pesticides in any waters<sup>(3)</sup> in the state to reach a concentration where they can be detected by a test approved by the EPA.

The Water Quality Policy also places an obligation upon people not to discharge or deposit listed pollutants into waters or onto

land where it is likely to enter waters. Agricultural chemicals, including pesticides, are a listed waste under the policy.

**A person must not discharge or deposit a listed pollutant, such as pesticides:**

- **into any waters**
- **onto land in a place from which it is reasonably likely to enter any waters including by processes such as seepage or infiltration or carriage by wind, rain, sea spray or stormwater, or by the rising of the watertable (s17 of the Water Quality Policy).**

This provision does not apply to the lawful use of a pesticide which is manufactured for use in relation to waters and used at a concentration not exceeding the maximum concentration specified by the manufacturer or by law.

-----

(3) Currently, by default, all waters in South Australia have aquatic ecosystem values and all inland surface waters and groundwaters have potable values (see table 1 of Schedule 1 of the Water Quality Policy). The environmental values of particular bodies of water may be changed following the procedure in s32 of the Act. Any future changes will be detailed in table 2 of Schedule 1 of the Water Quality Policy.

#### *5.2.5 Pesticide wastes*

The Act also addresses the production, transport, reception, storage, treatment and disposal of waste, including pesticide waste. Surplus or discarded pesticide, including left-over product and pesticide washings, becomes a listed waste. Producers of listed wastes may require an EPA licence; however, people who produce pesticide wastes as a consequence of a domestic activity, agriculture or horticulture are exempt from licensing requirements. See sections 7.9 (home garden and domestic pest control products) and 8.8 (agricultural and commercial products) for advice on the legal requirements of dealing with pesticide wastes.

Further information on the above is available from the EPA (for contact details see table 1).

### 5.3 Control of pesticide use

In South Australia the main legislation controlling the use of agricultural and commercial pesticides is the *Agricultural and Veterinary Products (Control of Use) Act 2002* (AGVET Control of Use Act) and the *Agricultural and Veterinary Products (Control of Use) Regulations 2004* (AGVET Control of Use Regulations). This legislation is administered and enforced by PIRSA.

Compliance Orders can be issued under s30 of the AGVET Control of Use Act to ensure compliance with the provisions of the Act.

**It is an offence to possess or use an unregistered pesticide unless you have a permit (s6 of the AGVET Control of Use Act).**

The easiest way to determine if a product is registered is to search the APVMA online database at [www.apvma.gov.au/pubcris/subpage\\_pubcris.shtml](http://www.apvma.gov.au/pubcris/subpage_pubcris.shtml). If a product does not appear on this database it is not currently registered. This database also provides the label instructions and other information for registered products. You can also call the APVMA on (02) 6272 5852 or e-mail [EnquiryLine@apvma.gov.au](mailto:EnquiryLine@apvma.gov.au) for advice on the registration status of products.

**If the registration of a pesticide in your possession lapses or is withdrawn, you have a maximum of four years to use or dispose of it. However, if the product presents a risk to the environment, trade or health, PIRSA may shorten the period you have to get rid of remaining stocks (s6 of the AGVET Control of Use Act).**

If this happens there will be notification in the state Government Gazette [www.governmentgazette.sa.gov.au](http://www.governmentgazette.sa.gov.au) and PIRSA generally conducts public information campaigns to alert users. The PIRSA inFINDER chemical database is another useful resource that shows the registration status of chemicals. It also provides agricultural and veterinary product label images, material safety data sheets (MSDS) and a dangerous goods management tool. Copies can be purchased from PIRSA: telephone (08) 8226 0405 or e-mail [pirsa.infinder@saugov.sa.gov.au](mailto:pirsa.infinder@saugov.sa.gov.au).

Home and garden pesticides are subject to the registration requirements above. However, they are exempt from the mandatory instructions (s7) and storage container (s8) provisions of the AGVET Control of Use Act, although the general duty provision (s5) does apply (see section 5.3.1). These exemptions do not apply if home garden products are used to treat produce that is to be traded.

### *5.3.1 General duty under the Agricultural and Veterinary Products (Control of Use) Act*

The general duty under s5 of the AGVET Control of Use Act covers a number of areas but concerning pesticides and the environment, it states that:

**A person must, in using or disposing of an agricultural chemical product\*, fertiliser or prescribed veterinary product, take all reasonable and practicable measures to prevent or minimise:**

- **actual or potential contamination of land outside the target area**
- **actual or potential contamination of animals or plants on land outside the target area**
- **actual or potential harm to the health or safety of human beings whether within or outside the target area**
- **other unintended actual or potential environmental harm whether within or outside the target area.**

**\*\* Most of the substances defined as pesticides in this code are ‘agricultural chemical products’ under the AGVET Control of Use Act. A few pesticides are ‘prescribed veterinary products’, such as externally applied dips or sprays for the control of external parasites on animals. This code does not apply to the majority of veterinary products and it does not apply to fertilisers.**

Failure to comply with this duty is not an offence, but compliance may be enforced with a Compliance Order. Failure to comply with an order is an offence.

### *5.3.2 Label instructions and storage*

The AGVET Control of Use Act defines standards for the types of containers and labelling required for storage of pesticides (s8). It also makes following mandatory label instructions on the use and

disposal of a pesticide a legal requirement (s7). The AGVET Control of Use Regulations (s3) define what types of label instructions are mandatory. See the relevant parts of chapter 8 (Agricultural and commercial pesticides) for details.

PIRSA's Rural Chemicals Program can provide further guidance on various aspects of pesticide use (for contact details see table 1).

#### **5.4 Public and environmental health**

In South Australia the DH Environmental Health Service and local government administer the *Public and Environmental Health Act 1987*. Offences under this Act include creating a risk to human health, emitting offensive material or odours, discharging pesticide wastes in a public place, and polluting a water supply with pesticides. Further information is available from the DH Environmental Health Service (for contact details see table 1).

#### **5.5 Licensing of pest controllers and commercial sprayers**

The DH Environmental Health Service administers the *Controlled Substances Act 1984* (Controlled Substances Act) and *Controlled Substances (Pesticides) Regulations 2003* (Controlled Substances Pesticide Regulations). South Australian pest control companies, pest control technicians and aerial spray operators are licensed under this legislation.

**A person must not carry on a pest control business without an appropriate licence, and a person must not perform pest control work in the course of a pest control business except as authorised by a pest management technician's licence (s6 of the Controlled Substances Pesticide Regulations).**

If you apply pesticides for profit or reward, including in the course of other businesses such as landscape gardening, you may also require a licence. See section 8.9.2 for further information on licensing requirements. The regulations also place conditions on pest controllers and technicians in the following areas:

- following label instructions, codes and standards (section 8.5.2)

- transport and storage (section 8.4.5)
- record keeping (section 8.9.6)
- notification of spills (section 9.2.3).

Further information is available from the DH Environmental Health Service (for contact details see table 1).

## **5.6 Occupational health and safety**

Workplace Services, a state government agency that is part of DAIS, administers the *Occupational Health, Safety and Welfare Act 1986* (OHSW Act) and the *Occupational Health, Safety and Welfare Regulations 1995 (OHSW Regulations) in South Australia*. The Act aims to secure the health, safety and welfare of people at work by eliminating workplace risks at their source. It also protects the public against risks to health or safety arising from the activities of people at work. Misuse of pesticides in a workplace may compromise the health and safety of individuals in a workplace or in the vicinity of a workplace.

### *5.6.1 General provisions under the Occupational Health, Safety and Welfare Act*

The OHSW Act places general obligations upon employers, self-employed people, workers and all other people present in a workplace.

**A workplace is any place (including any aircraft, ship or vehicle) where an employee or self-employed person works, and includes any place where such a person goes while at work (s4 of the OHSW Act).**

If you use pesticides in the workplace, you are required to consider your obligations under s19 to s25 of the OHSW Act, including the following:

- **An employer must ensure so far as is reasonably practicable that employees, while at work, are safe from injury and risks to health. In particular the employer must provide and maintain so far as is reasonably practicable a safe working environment, safe systems of work, adequate facilities and appropriate training and supervision.**
- **An employee must take reasonable care to protect their own health and safety at work and avoid adversely affecting the health and safety of others.**

- **An employer or a self-employed person must take reasonable care to protect his or her own health and safety at work.**

Furthermore, the OHSW Regulations place specific requirements upon persons using hazardous substances in a workplace and many pesticides are hazardous substances. To determine if a pesticide is a hazardous substance, see the product's Material Data Safety Sheet (MSDS). Section 8.3.3 provides further details on dealing with hazardous substances.

Breach of mandatory provisions of this legislation can result in significant fines and imprisonment. Further information is available from DAIS Workplace Services (for contact details see table 1).

## **5.7 Dangerous substances legislation**

Workplace Services also administer the *Dangerous Substances Act 1979* (Dangerous Substances Act) and the *Dangerous Substances Regulations 2002* (Dangerous Substances Regulations) in South Australia, which regulate the keeping, handling, transporting, use and disposal of dangerous substances.

Dangerous substances are those which are toxic, corrosive, flammable or otherwise dangerous. Many pesticides are Class 6 (toxic) or Class 3 (flammable) dangerous substances. If a pesticide is a dangerous substance the MSDS will specify the dangerous goods class and packing group that a pesticide belongs to (see section 8.4.4 for further information on dangerous substance classification including packing groups).

The 6th edition of *The Australian Dangerous Goods Code* (ADG code) provides information on the mandatory technical requirements and guidelines for the land transport of dangerous goods.

### *5.7.1 General duty under the Dangerous Substances Act*

The general duty under s11 of this Act states that:

**A person must, in keeping, handling, conveying, using or disposing of a**

**dangerous substance, or in transporting dangerous goods, take such precautions and exercise such care as is reasonable in the circumstances in order to:**

- **avoid endangering the health or safety of any person (including himself or herself), or the safety of property; and**
- **prevent the risk of environmental harm.**

Substantial penalties, including imprisonment, can be imposed under this provision. Further information is available from DAIS Workplace Services (for contact details see table 1).

### **5.8 Poison scheduling**

Poison scheduling is the system used to classify substances based on their potential health risks. The National Drugs and Poisons Schedule Committee assesses substances and lists those that are classified as poisons in the *Uniform Poisons Standard*. States then enforce this classification—the relevant legislation in South Australia is the *Controlled Substances (Poisons) Regulations 1996*.

The heading on a product indicates which poison schedule it belongs to—you can also obtain this information from the MSDS. There are four schedules applicable to pesticides:

**Unscheduled substances** are not considered poisons. However, they may be capable of causing minor adverse effects to human beings in normal use. They may have the heading 'KEEP OUT OF REACH OF CHILDREN' on the label.

**Schedule 5 (S5) poisons** have low toxicity or a low concentration and pose a low to moderate hazard. They are capable of causing only minor adverse effects to human beings in normal use and require caution in handling, storage or use. They have the heading 'CAUTION—KEEP OUT OF REACH OF CHILDREN' 'Read Safety Directions Before Opening Or Using' on the label.

**Schedule 6 (S6) poisons** have moderate to high toxicity which may cause death or severe injury if they are ingested, inhaled or come in contact with the skin or eyes. They have the heading 'POISON—KEEP OUT OF REACH OF CHILDREN' 'Read Safety

Directions Before Opening Or Using' on the label.

**Schedule 7 (S7) poisons** are substances with high to extremely high toxicity which can cause death or severe injury at low exposures. They require special precautions in their manufacture, handling or use and are too hazardous for domestic use or use by untrained persons. They have the heading 'DANGEROUS POISON—KEEP OUT OF REACH OF CHILDREN' 'Read Safety Directions Before Opening Or Using' 'Can Kill if Swallowed' on the label.

Home and garden pesticides cannot be S7 poisons. There are restrictions on the purchase and use of S7 pesticides (see section 8.9.3 for further information).

Always exercise care and follow label instructions when using pesticides regardless of scheduling. Using a product of any schedule contrary to label instructions may potentially lead to serious health and safety risks.