

South Australia

Controlled Substances (Pesticides) Regulations 2017

under the *Controlled Substances Act 1984*

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Legislative history

Part 1—Preliminary

1—Short title

These regulations may be cited as the *Controlled Substances (Pesticides) Regulations 2017*.

2—Commencement

These regulations will come into operation on 1 September 2017.

3—Interpretation

- (1) In these regulations, unless the contrary intention appears—

Act means the *Controlled Substances Act 1984*;

Agvet Code means the *Agvet Code of South Australia* (see section 5 of the *Agricultural and Veterinary Chemicals (South Australia) Act 1994*);

approved label has the meaning given by the *Agvet Code*;

director, in relation to a body corporate, has the same meaning as in the *Corporations Act 2001* of the Commonwealth;

disposal, in relation to pesticide, means—

- (a) disposal of unused pesticide; or
- (b) disposal of a container that has been used to hold pesticide;

employ includes engage under a contract for services;

licensing authority means the person or body designated from time to time by the Minister by instrument in writing as the licensing authority for the purposes of these regulations;

Part 7 permit means a permit under Part 7 of the *Agvet Code*;

pest has the meaning given by the *Agvet Code*;

pest control business means a business in which pest control work is performed for another for fee or reward;

pest controller means a person who carries on a pest control business;

pest control work means using a pesticide to—

- (a) kill, stupefy or repel a pest; or
- (b) inhibit the feeding of a pest; or

- (c) modify the physiology of a pest to alter its natural development or reproductive capacity,

and includes measuring, mixing, weighing or otherwise preparing a pesticide for such use;

pesticide means a substance or preparation that—

- (a) contains any proportion of an S5 poison, S6 poison or S7 poison; and
- (b) is authorised under the Agvet Code for use for pest control work;

pest management technician means a person who personally performs pest control work in the course of a pest control business;

pest management technician's licence means a full pest management technician's licence or a limited pest management technician's licence.

- (2) In these regulations, **S5 poison**, **S6 poison** and **S7 poison** have the same respective meanings as in the *Controlled Substances (Poisons) Regulations 2011*.

4—Meaning of supervision

- (1) For the purposes of these regulations, pest control work is performed by a person under the supervision of another (the **supervisor**) if and only if—
 - (a) the pest control work is of a kind that the supervisor is licensed to perform; and
 - (b) the pesticides used in the pest control work are of a kind that the supervisor is licensed to use; and
 - (c) subject to subregulation (2), the supervisor is present within sight and sound of the person while the person is performing the work and is available—
 - (i) to advise or assist the person in the performance of the work; or
 - (ii) to intervene in the performance of the work,as may be necessary in the circumstances of the case.
- (2) If, on application made by a pest controller who employs a person to perform pest control work under the supervision of another, the licensing authority determines that the competence of the person to perform pest control work is such that the level of supervision required by subregulation (1)(c) is unnecessary, that subregulation does not apply but instead the supervisor must be contactable in a manner approved by the licensing authority to provide advice or instruction to the person performing the pest control work, if necessary, while the person is performing the work.

5—Non-application of regulations to certain pest control work

These regulations do not apply in relation to pest control work consisting only of—

- (a) the application of glyphosate by means of—
 - (i) hand-held equipment with a tank having a maximum capacity of 15 litres or less; or
 - (ii) a brush or similar implement; or
- (b) measuring, mixing, weighing or otherwise preparing glyphosate for application by such means.

Part 2—Licences

6—Requirement for licence

- (1) A person must not carry on a pest control business except as authorised by—
- (a) a pest controller's licence under these regulations; or
 - (b) a commercial operator licence issued under the *Agricultural and Veterinary Chemicals (Control of Use) Act 1995* of Tasmania as amended from time to time, or under an Act substituted for that Act; or
 - (c) a commercial operator licence under the *Agricultural and Veterinary Chemicals (Control of Use) Act 1992* of Victoria as amended from time to time, or under an Act substituted for that Act; or
 - (d) registration as a commercial pesticide firm under the *Health Act 1911* of Western Australia as amended from time to time, or under an Act substituted for that Act.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) 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 under these regulations.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (3) A person who carries on a pest control business must ensure that no person performs pest control work in the course of that business except as authorised by a pest management technician's licence under these regulations.

Maximum penalty: \$5 000.

Expiation fee: \$315.

7—Authority conferred by licence

Subject to these regulations—

- (a) a pest controller's licence authorises the holder of the licence to carry on a pest control business in which pest control work of a kind specified in the licence using pesticides of a kind specified in the licence may be performed by the holder of a pest management technician's licence authorising pest control work of that kind by the use of pesticides of that kind;
- (b) a full pest management technicians's licence authorises the holder of the licence to perform pest control work of a kind specified in the licence using pesticides of a kind specified in the licence;
- (c) a limited pest management technician's licence authorises the holder of the licence to perform pest control work of a kind specified in the licence using pesticides of a kind specified in the licence under the supervision of the holder of a full pest management technician's licence.

8—Pest controller's licence

- (1) The licensing authority may grant an application for a pest controller's licence if satisfied—
 - (a) that the applicant—
 - (i) holds a full pest management technician's licence; or
 - (ii) employs a person who holds such a licence,
authorising the holder to perform pest control work of the kind, by the use of pesticides of the kind, for which the pest controller's licence is sought; and
 - (b) that the applicant, or a person employed by the applicant, has an adequate knowledge of the requirements of these regulations and of the practices that should be followed in the conduct of a pest control business; and
 - (c) that the applicant has appropriate equipment to perform pest control work of the kind for which the pest controller's licence is sought; and
 - (d) that—
 - (i) in the case of an application by a natural person—the applicant is otherwise a fit and proper person to hold a pest controller's licence; or
 - (ii) in the case of an application by a body corporate—each director of the body corporate is a fit and proper person to be the director of a body corporate that holds a pest controller's licence.
- (2) A pest controller's licence is subject to the following conditions:
 - (a) a condition that the holder of the licence will maintain any premises and equipment used for the purposes of the holder's pest control business in a clean, efficient and safe working condition;
 - (b) a condition that the holder of the licence will ensure that any pesticide, while handled or used in the course of the holder's pest control business, is under the direct control of the holder of a pest management technician's licence;
 - (c) a condition that the holder of the licence will ensure that any unused pesticide or any container used to hold a pesticide in the course of the pest controller's business is disposed of in a manner not likely to endanger the health of any person.

9—Pest management technician's licence

- (1) The licensing authority may grant an application for a full pest management technician's licence if satisfied that the applicant—
 - (a) has qualifications that the licensing authority considers appropriate having regard to the kind of pest control work for which the licence is sought; and
 - (b) is medically fit to perform pest control work of the kind for which the licence is sought; and
 - (c) is otherwise a fit and proper person to hold a pest management technician's licence.

- (2) A person who does not have the qualifications required for the grant of a full pest management technician's licence may apply to the licensing authority for a limited pest management technician's licence.
- (3) The licensing authority may grant an application for a limited pest management technician's licence if—
 - (a) the applicant gives to the licensing authority an undertaking that the applicant will, as soon as practicable after the grant of the licence, commence an appropriate course of instruction or training approved by the licensing authority to obtain the qualifications required for the grant of a full pest management technician's licence; and
 - (b) the licensing authority is satisfied that the applicant—
 - (i) is employed by a pest controller to perform pest control work under the supervision of the holder of a full pest management technician's licence; and
 - (ii) is medically fit to perform pest control work of the kind for which the licence is sought; and
 - (iii) is otherwise a fit and proper person to be licensed as a pest management technician.
- (4) A full pest management technician's licence or limited pest management technician's licence is subject to the following conditions:
 - (a) a condition that the holder of the licence will, while using pesticides, wear protective clothing sufficient to prevent contamination of the holder;
 - (b) a condition that the holder of the licence will keep suitable first aid materials available where pesticides are being used by the holder;
 - (c) a condition that the holder of the licence will not handle or use pesticides in a manner dangerous to the health of any person;
 - (d) a condition that the holder of the licence will dispose of any unused pesticide or any container used to hold a pesticide in a manner not likely to endanger the health of any person;
 - (e) a condition that the holder of the licence will, if a spillage of pesticides occurs, clean and decontaminate the area in which the spillage occurred in a manner approved by the licensing authority;
 - (f) a condition that the holder of the licence will submit to such medical examinations as the licensing authority considers necessary to monitor exposure of the holder to pesticides;
 - (g) a condition that the holder of the licence will submit to such assessments as the licensing authority considers necessary to ensure that the holder maintains an adequate knowledge of pest control work and pesticides of the kind authorised by the licence.
- (5) A limited pest management technician's licence is subject to a condition that the holder of the licence will not make recommendations or give advice to any person concerning the use of pesticides.

- (6) An application for a pest management technician's licence cannot be made except by, or on behalf of, a natural person.

10—Conditions of licence

- (1) A licence under these regulations is subject to—
- (a) such conditions as are imposed by these regulations; and
 - (b) such other conditions as the licensing authority thinks fit to impose and specifies in the licence or by notice in writing given personally or by post to the holder of the licence.
- (2) The holder of a licence under these regulations must not contravene or fail to comply with a condition of the licence.

Maximum penalty: \$5 000.

Expiation fee: \$315.

11—Term and renewal of licence

- (1) The term of a pest controller's licence or full pest management technician's licence is 1 year or 3 years at the option of the applicant, and such a licence may, on application made to the licensing authority before the expiry of the licence, be renewed for successive terms of 1 year or 3 years, at the option of the applicant.
- (2) A limited pest management technician's licence expires—
- (a) on the first anniversary of the date of its grant; or
 - (b) in the case of a licence that has been renewed—
 - (i) on the first anniversary of the date of its renewal; or
 - (ii) if the licensing authority has extended the term of the licence—at the end of the period of extension.
- (3) The licensing authority may, on application made by the holder of a limited pest management technician's licence before the expiry of the licence, extend the term of the licence for a period not exceeding 6 months if, in the opinion of the licensing authority, it is fair in the circumstances of the particular case to allow the holder of the licence further time to do whatever is necessary for the holder to qualify for the grant of a full pest management technician's licence.
- (4) A limited pest management technician's licence may be renewed once by the licensing authority on application made before the expiry of the licence.

12—Exemptions

- (1) The licensing authority may exempt a person from the obligation to hold a licence under these regulations on such conditions as the licensing authority thinks fit.
- (2) The licensing authority may, by notice in writing given personally or by post to a person granted an exemption under this regulation, vary or revoke the exemption.
- (3) The licensing authority must not grant or vary an exemption unless satisfied that pest control work performed in compliance with the conditions of the exemption as granted or varied will not entail any significant risk to public health or the environment.

- (4) A person who contravenes, or fails to comply with, a condition of an exemption under this regulation is guilty of an offence.

Maximum penalty: \$5 000.

Expiation fee: \$315.

13—Variation of licence

- (1) The licensing authority may, by notice in writing given personally or by post to the holder of a licence under these regulations—
- (a) vary the licence to extend or limit the kind of pest control work authorised by, or the kind of pesticides that may be used under, the licence; or
 - (b) vary or revoke a condition of the licence imposed by the licensing authority, or impose a further condition on the licence.
- (2) The powers conferred by subregulation (1) may be exercised—
- (a) on the application of the holder of the licence; or
 - (b) if the licensing authority is of the opinion that there are proper reasons for doing so.

14—Suspension or cancellation of licence

The licensing authority may, by notice in writing given personally or by post to the holder of a licence under these regulations, suspend or cancel the licence if satisfied—

- (a) that the holder made a false statement or furnished false information in applying for the grant, renewal or variation of the licence; or
- (b) that the holder has been found guilty of an offence against the Act or these regulations or any other law relating to pesticides (including a law of another State or a Territory); or
- (c) that—
 - (i) in the case of a licence held by a natural person—
 - (A) the holder's health will be seriously endangered if he or she continues to perform pest control work of the kind authorised by the licence; or
 - (B) the holder is no longer competent to perform pest control work of the kind authorised by the licence; or
 - (C) the holder is for any other reason no longer a fit and proper person to hold the licence; or
 - (ii) in the case of a pest controller's licence held by a body corporate—a director of the body corporate is no longer a fit and proper person to be the director of a body corporate that holds a pest controller's licence.

15—Right of appeal

- (1) The following appeals may be made to the Administrative and Disciplinary Division of the District Court:
 - (a) an applicant for a licence under these regulations may appeal against a decision of the licensing authority—
 - (i) to refuse to grant the licence; or
 - (ii) to impose particular conditions on the licence;
 - (b) a person who holds or formerly held a licence under these regulations may appeal against a decision of the licensing authority—
 - (i) to suspend or cancel the licence; or
 - (ii) to vary the licence; or
 - (iii) to impose or vary particular conditions on the licence.
- (2) Subject to this regulation, an appeal must be instituted within 1 month of the making of the decision appealed against.
- (3) The licensing authority must, on application by a person seeking to appeal a decision of the licensing authority, state in writing the reasons for the decision.
- (4) If the reasons of the licensing authority are not given in writing at the time of making a decision and the person affected by the decision, within 1 month of the making of the decision, requires the licensing authority to state the reasons in writing, the time for instituting an appeal runs from the time when the person receives the written statement of those reasons.

Part 3—Duties of pest controllers and pest management technicians

16—Storage of pesticides

- (1) A pest controller must ensure that a pesticide stored in the course of the pest controller's business is kept in a prescribed container that—
 - (a) is kept securely closed; and
 - (b) is housed in a structure that—
 - (i) is roofed; and
 - (ii) has a floor impervious to water; and
 - (iii) is adequately ventilated; and
 - (iv) is locked when unattended; and
 - (v) has an adequate supply of water available to wash any spillage of pesticide that may occur; and
 - (vi) is so situated or constructed that a spillage of pesticide cannot drain into a water supply or watercourse or soak into the soil.

Maximum penalty: \$2 500.

Expiation fee: \$210.

(2) In this regulation—

prescribed container means—

- (a) a container that bears an approved label; or
- (b) a container of a kind approved by the licensing authority for the purposes of this regulation.

17—Transport of pesticides

- (1) A pest controller must ensure that the following provisions are complied with in relation to the transport of a pesticide in the course of the pest controller's business:
 - (a) the pesticide must be transported in a securely closed container that—
 - (i) in the case of a pesticide registered under the Agvet Code—bears the approved label for containers of that pesticide; or
 - (ii) in the case of a pesticide that is not registered under the Agvet Code but is the subject of a Part 7 permit—bears a label that contains adequate instructions relating to the matters referred to in section 14(3)(g) of the Agvet Code;
 - (b) the pesticide must not be left in an unattended vehicle unless the vehicle has an enclosed storage facility that forms part of or is securely fixed to the structure of the vehicle and the pesticide is kept securely locked in that storage facility;
 - (c) the driving compartment of the vehicle used to transport the pesticide must be separated from the pesticide storage area by a gas-tight barrier.

Maximum penalty: \$2 500.

Expiation fee: \$210.

- (2) Subregulation (1)(a) does not apply if pesticide is transported in a securely closed spray tank that—
 - (a) forms part of or is securely fixed to the structure of the vehicle being used to transport the pesticide; and
 - (b) is prominently marked with—
 - (i) the word "CAUTION" or "POISON" or any other warning approved by the licensing authority; and
 - (ii) the name of the pesticide.

18—Compliance with prescribed standards and codes of practice

- (1) A pest controller must ensure that the requirements of the prescribed standards and codes of practice are complied with in relation to pest control work carried out in the course of the pest controller's business.

Maximum penalty: \$5 000.

Expiation fee: \$315.

- (2) A pest management technician must perform pest control work in accordance with the prescribed standards and codes of practice.
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (3) For the purposes of this regulation, the prescribed standards and codes of practice are—
- (a) AS 3660.1:2014 *Termite management Part 1: New building work* published by Standards Australia as in force from time to time; and
 - (b) AS 3660.2—2000 *Termite management Part 2: In and around existing buildings and structures—Guidelines* published by Standards Australia as in force from time to time; and
 - (c) *South Australian Health Commission Code of Practice for Diluting Pesticides from a Water Supply* published by the South Australian Health Commission on 19 May 1988 (*Gazette 30.6.2004 p1280*) as in force from time to time; and
 - (d) *South Australian Health Commission Termiticides (Safe Use) Code of Practice* published by the South Australian Health Commission on 19 May 1988 (*Gazette 19.5.1988 p1285*) as in force from time to time.

19—Compliance with Agvet Code

- (1) A pest controller must, in relation to a pesticide registered under the Agvet Code, ensure that any instructions on the approved label for the container for the pesticide are complied with in relation to the handling or use of the pesticide in the course of the pest controller's business unless the pesticide is the subject of a Part 7 permit.
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (2) A pest controller must, in relation to a pesticide that is the subject of a Part 7 permit, ensure that—
- (a) the conditions of the permit are complied with in relation to the handling or use of the pesticide in the course of the pest controller's business; and
 - (b) the pesticide is not used in the course of the pest controller's business for a purpose not authorised by the permit.
- Maximum penalty: \$5 000.
Expiation fee: \$315.
- (3) A pest management technician must perform pest control work using a pesticide that is registered under the Agvet Code in accordance with any instructions on the approved label for the container for the pesticide unless the pesticide is the subject of a Part 7 permit.
Maximum penalty: \$5 000.
Expiation fee: \$315.
- (4) A pest management technician—
- (a) must perform pest control work using a pesticide that is the subject of a Part 7 permit in accordance with the conditions of the permit; and

(b) must not use the pesticide for a purpose not authorised by the permit.

Maximum penalty: \$5 000.

Expiation fee: \$315.

20—Reporting of certain spillages of pesticide

If a person who holds a licence under these regulations observes a spillage of pesticide that, because of its magnitude or location, or because of the toxicity of the pesticide involved—

(a) requires assistance to be managed; or

(b) is such that it may have an immediate impact on the environment or the health or safety of members of the public,

the person must immediately report the spillage to the licensing authority or a police officer.

Maximum penalty: \$5 000.

Expiation fee: \$315.

21—Records to be kept by pest controllers

(1) A pest controller must, in relation to each pest management technician employed in the pest controller's business, keep a record of—

(a) the technician's name and address; and

(b) the technician's date of birth; and

(c) the date on which the technician commenced employment with the pest controller; and

(d) the date on which the technician ceased employment with the pest controller; and

(e) the pesticides handled or used by the technician in the course of that employment.

Maximum penalty: \$2 500.

Expiation fee: \$210.

(2) A pest controller must, within 28 days after a pest management technician ceases to be employed in the pest controller's business, forward a copy of the records kept under subregulation (1) to the licensing authority.

Maximum penalty: \$2 500.

Expiation fee: \$210.

(3) A pest controller must retain a record kept under subregulation (1) for 7 years after the date of the last entry made in it.

Maximum penalty: \$2 500.

Expiation fee: \$210.

(4) A pest controller must, in relation to each application of pesticide in the course of the pest controller's business, keep a record of—

(a) the date, time and location of the application; and

- (b) the name and quantity of the pesticide applied; and
- (c) the name of the pest management technician who applied the pesticide; and
- (d) the proximity of other people to the area where the pesticide was applied; and
- (e) in the case of a pesticide applied outdoors—the prevailing weather conditions in the area where the pesticide was applied; and
- (f) in the case of a termiticide applied to a site before or during the construction of a building—
 - (i) the total surface area of the land or building treated with the termiticide; and
 - (ii) the name and principal place of business of the supplier of the termiticide.

Maximum penalty: \$2 500.

Expiation fee: \$210.

- (5) A pest controller must retain a record kept under subregulation (4) for 7 years after the date it was made.

Maximum penalty: \$2 500.

Expiation fee: \$210.

- (6) A pest controller must, on request by the licensing authority in writing, provide the licensing authority with specified information contained in a record kept under this regulation within the time specified in the request.

Maximum penalty: \$2 500.

Expiation fee: \$210.

22—Duty of holder of pest controller's licence to notify change of business name or address

The holder of a pest controller's licence must, within 14 days of any change in—

- (a) any business name under which the holder carries on the pest control business; or
- (b) the holder's business or registered address,

give the licensing authority written notice of the change.

Maximum penalty: \$250.

Expiation fee: \$80.

23—Duty of holder of limited pest management technician's licence to notify change or cessation of employment

The holder of a limited pest management technician's licence must, within 14 days of—

- (a) changing employment from one pest controller to another; or
- (b) ceasing to be employed as a pest management technician,

give the licensing authority written notice of the change or cessation of employment.

Maximum penalty: \$250.

Expiation fee: \$80.

Part 4—Miscellaneous

24—Applications

- (1) An application under these regulations must—
 - (a) be made in a manner and form approved by the licensing authority; and
 - (b) be accompanied by the prescribed fee.
- (2) A person who makes an application under these regulations must, if the licensing authority so requires—
 - (a) provide the licensing authority with specified information to enable the licensing authority to determine the application; and
 - (b) verify, by statutory declaration, information furnished for the purposes of the application.

25—False or misleading statement

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information provided under these regulations.

Maximum penalty: \$5 000.

Schedule 1—Revocation and transitional provisions

Part 1—Revocation of *Controlled Substances (Pesticides) Regulations 2003*

1—Revocation of regulations

The *Controlled Substances (Pesticides) Regulations 2003* are revoked.

Part 2—Transitional provisions

2—Interpretation

In this Part—

revoked regulations means the regulations revoked by clause 1.

3—Continuation of licences

- (1) A pest controller's licence under the revoked regulations in force immediately before the commencement of these regulations continues in force under these regulations, subject to its terms and conditions, as a pest controller's licence under these regulations for the balance of the term for which it was granted or last renewed.

- (2) A limited pest management technician's licence under the revoked regulations in force immediately before the commencement of these regulations continues in force under these regulations, subject to its terms and conditions, as a limited pest management technician's licence under these regulations for the balance of the term for which it was granted or last renewed.
- (3) A full pest management technician's licence under the revoked regulations in force immediately before the commencement of these regulations continues in force under these regulations, subject to its terms and conditions, as a full pest management technician's licence under these regulations for the balance of the term for which it was granted or last renewed.

4—Continuation of exemptions

An exemption under the revoked regulations in force immediately before the commencement of these regulations continues in force under these regulations, subject to its terms and conditions, as an exemption under these regulations.

Legislative history

Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal regulations

Year	No	Reference	Commencement
2017	251	<i>Gazette 15.8.2017 p3589</i>	1.9.2017: r 2