



New South Wales

# Pesticides Amendment Regulation 2021

under the

Pesticides Act 1999

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Pesticides Act 1999*.

MATT KEAN, MP  
Minister for Energy and Environment

## Explanatory note

The objects of this Regulation are as follows—

- (a) to create exemptions to certain provisions of the *Pesticides Act 1999* and the *Pesticides Regulation 2017*,
- (b) to provide that a licence to carry out prescribed pesticide work may have a term of duration of 1 year or 5 years and to prescribe fees to apply for or renew the licence,
- (c) to prescribe—
  - (i) timber pest management technician work as a kind of prescribed pesticide work, and
  - (ii) timber pest management technician licences as a kind of licence, and
  - (iii) qualifications to hold a timber pest management technician licence,
- (d) to provide for savings and formal matters.

This Regulation is made under the *Pesticides Act 1999*, including sections 5A, 46, 47(2)(b), 49(2)(b), 50(1)(a), 51(1) and (6), 117 and 119, the general regulation-making power.

## **Pesticides Amendment Regulation 2021**

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Pesticides Act 1999

### **1 Name of Regulation**

This Regulation is the *Pesticides Amendment Regulation 2021*.

### **2 Commencement**

- (1) This Regulation commences on the day on which it is published on the NSW legislation website, except as provided by subsection (2).
- (2) Schedule 2 commences on 17 December 2021.

## Schedule 1 Amendment of Pesticides Regulation 2017—miscellaneous

### [1] Clause 6 Kinds of prescribed pesticide work

Insert at the end of the clause 6(1)—

**Note—** The Act, section 45 sets out the requirement for a licence to carry out prescribed pesticide work.

### [2] Clause 12A

Insert after clause 12—

#### 12A Exemption—waterproofing products containing pesticides—the Act, s 117

- (1) This clause applies to a person who is—
  - (a) the holder of a contractor licence, endorsed contractor licence, owner-builder permit or supervisor certificate under the *Home Building Act 1989* that authorises the holder to carry out waterproofing, or
  - (b) under the supervision, and subject to the direction, of the holder of an endorsed contractor licence or supervisor certificate under the *Home Building Act 1989* that authorises the holder to supervise waterproofing.
- (2) Despite any provision of the Act or this Regulation that requires the person to hold a licence authorising the person to carry out pest management technician work, the person may carry out pest management technician work for either of the following purposes without a licence—
  - (a) to install, replace, repair, alter or maintain a waterproofing barrier that contains pesticides,
  - (b) to use a waterproofing adhesive, foam or sealant that contains pesticides.

### [3] Clause 19 Prescribed qualifications for licences

Insert at the end of clause 19(5)—

**Note—** Clause 19A sets out an exemption from this qualification requirement.

### [4] Clause 19(7)(a)

Omit “that work”. Insert instead “the work”.

### [5] Clause 19(7)(b)

Omit “any other”. Insert instead “another”.

### [6] Clause 19(7)(b)

Omit “that Standard”. Insert instead “the standard specified in paragraph (a)”.

### [7] Clause 19A

Insert after clause 19—

#### 19A Exemption—Qualification for RPA applicator pilot licence

Despite clause 19, a person who does not hold a remote pilot licence under the *Civil Aviation Act 1988* of the Commonwealth is qualified to hold an RPA applicator pilot licence if the Environment Protection Authority is satisfied that the person will only—

- (a) use an unmanned aircraft that is an excluded RPA, within the meaning of the *Civil Aviation Safety Regulations 1998* of the Commonwealth, regulation 101.237, and
- (b) use the aircraft to apply pesticides to land owned or occupied by the person.

**[8] Clause 23A**

Insert after clause 23—

**23A Special condition—certain RPA applicator pilot licences**

- (1) This clause applies to an RPA applicator pilot licence held by person who does not hold a remote pilot licence under the *Civil Aviation Act 1988* of the Commonwealth.
- (2) It is a condition of the licence that the holder of the licence is only authorised to carry out RPA applicator pilot work—
  - (a) using an unmanned aircraft that is an excluded RPA, within the meaning of the *Civil Aviation Safety Regulations 1998* of the Commonwealth, regulation 101.237, and
  - (b) on land owned or occupied by the holder of the licence.

**[9] Clause 46 Prior notice of use of pesticide in residential complex**

Insert after clause 46(2)—

- (2A) Also, notice is not required to be given under this clause if—
  - (a) the work to be carried out is pest management technician work, and
  - (b) the work will be carried out by a person specified in clause 12A(1), and
  - (c) the work will be carried out for a purpose specified in clause 12A(2)(a) or (b).

**[10] Clause 47 Notice during use of pesticide in residential complex**

Insert after clause 47(1)—

- (1A) However, notice is not required to be given under this clause if—
  - (a) the work being carried out is pest management technician work, and
  - (b) the work is carried out by a person specified in clause 12A(1), and
  - (c) the work is carried out for a purpose specified in clause 12A(2)(a) or (b).

**[11] Clause 48 Prior notice of use of pesticide near sensitive place**

Omit “pest management technician” from clause 48(4)(b).

Insert instead “person who carries out the work”.

**[12] Clause 48(5A)**

Insert after clause 48(5)—

- (5A) Notice is not required to be given under this clause if—
  - (a) the work to be carried out is pest management technician work, and
  - (b) the work will be carried out by a person specified in clause 12A(1), and
  - (c) the work will be carried out for a purpose specified in clause 12A(2)(a) or (b).

**[13] Clauses 56A and 56B**

Insert after clause 56—

**56A Exemption—possession of unregistered pesticide—the Act, s 117**

- (1) This clause applies to a person who possesses a pesticide the registration of which has ended or been suspended or cancelled.
- (2) This clause does not apply if the person is authorised by a permit to possess the unregistered pesticide.
- (3) In relation to the pesticide, the person is exempt from the requirement under the Act, section 12(1) not to possess an unregistered pesticide if—
  - (a) the person does not use the pesticide, and
  - (b) the person stores the pesticide in a way that does not endanger human health or the environment, and
  - (c) within a reasonable time after the registration of the pesticide ended or was suspended or cancelled, the person makes, or has made, arrangements to lawfully dispose of the pesticide.
- (4) The exemption in subclause (3) ceases to apply if the unregistered pesticide is not lawfully disposed of within a reasonable time after the registration of the pesticide ended or was suspended or cancelled.

**56B Exemption—storage of unregistered pesticide—the Act, s 117**

- (1) This clause applies to a person who is storing a pesticide the registration of which has ended or been suspended or cancelled.
- (2) This clause does not apply if the person is authorised by a permit to store the unregistered pesticide.
- (3) In relation to the pesticide, the person is exempt from the requirement under the Act, section 13(1) not to use an unregistered pesticide if—
  - (a) the person does not use the pesticide, and
  - (b) the person stores the pesticide in a way that does not endanger human health or the environment, and
  - (c) within a reasonable time after the registration ends or is suspended or cancelled, the person makes, or has made, arrangements to lawfully dispose of the pesticide.
- (4) The exemption in subclause (3) ceases to apply if the unregistered pesticide is not lawfully disposed of within a reasonable time after the registration of the pesticide ended or was suspended or cancelled.

**[14] Clause 57**

Omit the clause. Insert instead—

**57 Exemption—using pesticide contrary to approved label—the Act, s 117**

A person is exempt from the requirement under the Act, section 15(1) not to use a registered pesticide in contravention of an instruction on an approved label for the pesticide if the pesticide—

- (a) is used to control a weed or pest other than a weed or pest of a kind specified by the label, and
- (b) is not used to control a pest that is a vertebrate animal, and
- (c) is used in compliance with all other instructions on the label.

## **Schedule 2      Amendment of Pesticides Regulation 2017— licences and timber pest management technician work**

**[1]    Clause 3 Definitions**

Insert in alphabetical order in clause 3(1)—

*timber pest management technician work*—see clause 6.

**[2]    Clause 5 Definitions**

Omit “or pest management technician work” wherever occurring.

Insert instead “, pest management technician work or timber pest management technician work”.

**[3]    Clause 6 Kinds of prescribed pesticide work**

Insert at the end of clause 6(1)(g)(iv)—

, or

(v) timber pest management technician work,

**[4]    Clause 6(1)(h)**

Insert after clause 6(1)(g), as amended by item [3]—

(h) *timber pest management technician work*—being the use by an individual of pesticides, other than restricted pesticides used to control vertebrates or fumigants, for the prevention, control or eradication of pests that attack, infest or destroy timber or timber products for fee or reward or for a public authority, whether or not for fee or reward, but it does not include—

(i) aerial applicator work, or

(ii) RPA applicator pilot work, or

(iii) fumigation work, or

(iv) ground applicator work, or

(v) pest management technician work.

**[5]    Clause 7 Kinds of licences**

Insert after clause 7(g)—

(h) timber pest management technician licence—pest management technician work and timber pest management technician work.

**[6]    Clause 9 Exemption—newly qualified persons**

Insert “, timber pest management technician licence” after “technician licence”.

**[7]    Clause 10 Exemption—persons selling, testing, maintaining or disposing of plant**

Omit “or pest management technician work”.

Insert instead “, pest management technician work or timber pest management technician work”.

**[8] Clause 12A Exemption—waterproofing products containing pesticides—the Act, s 117**

Insert “or timber pest management technician work” after “person to carry out pest management technician work” in clause 12A(2), as inserted by Schedule 1[2].

**[9] Clause 12A(2)**

Insert “and timber pest management technician work” after “person may carry out pest management technician work”, as inserted by Schedule 1[2].

**[10] Clauses 13–16**

Omit “or pest management technician work” wherever occurring.

Insert instead “, pest management technician work or timber pest management technician work”.

**[11] Clause 13 Exemption—trainees**

Insert after clause 13(1)—

- (1A) A person who holds a pest management technician licence may carry out timber pest management technician work without a timber pest management technician licence if the person meets the conditions specified in subclause (1)(b)–(d).

**[12] Clause 17 Licence application fees**

Omit clause 17(1)(a)–(f). Insert instead—

<b>Period during which application made</b>	<b>Application for 1 year licence</b>	<b>Application for 5 year licence</b>
Period 1	Not applicable	\$196
Period 2	Not applicable	\$295
Period 3	Not applicable	\$395
Period 4	Not applicable	\$405
Period 5	\$104	\$415
Period 6	\$107	\$425

**[13] Clause 19 Prescribed qualifications for licences**

Insert after clause 19(7)—

**(7A) Timber pest management technician licences**

A person is qualified to hold a timber pest management technician licence if—

- (a) the person’s competency to do the work authorised by the licence is of a standard equal to or better than—
- (i) the standard of competency set out in relation to the work in the National Standard for Licensing Pest Management Technicians, or
- (ii) another standard of competency that the Environment Protection Authority considers equivalent to the standard specified in subparagraph (i), and
- (b) the person—

- (i) has successfully completed the units of competency entitled CPPUPM3008 Inspect for and report on timber pests and CPPUPM3010 Control timber pests, or
- (ii) holds a qualification that the Environment Protection Authority considers equivalent to the qualification specified in subparagraph (i).

**[14] Clause 24 Renewal of licences**

Omit clause 24(5)(a)–(f). Insert instead—

Period during which application made	Application for 1 year licence renewal	Application for 5 year licence renewal
Period 1	Not applicable	\$196
Period 2	Not applicable	\$295
Period 3	Not applicable	\$395
Period 4	Not applicable	\$405
Period 5	\$104	\$415
Period 6	\$107	\$425

**[15] Clause 28**

Omit the clause. Insert instead—

**28 Duration of licence—the Act, ss 51 and 119(2)(iii) and (vii)**

- (1) An application for a licence or for renewal of a licence must nominate 1 of the following terms of duration for the licence (the *nominated term*)—
  - (a) 1 year,
  - (b) 5 years.
- (2) The Environment Protection Authority may grant or renew a licence for—
  - (a) the nominated term, or
  - (b) if satisfied that it is in the public interest—a shorter term than the nominated term.
- (3) If the Environment Protection Authority grants or renews a licence for a shorter term than the nominated term, the Environment Protection Authority must refund the applicant a proportionate amount of the application fee.
- (4) If an application for renewal of a licence has been made but the application is not determined by the Environment Protection Authority before the expiry of the licence, the licence continues in force until the Environment Protection Authority determines the application unless—
  - (a) the application is withdrawn, or
  - (b) the licence is sooner suspended or revoked.
- (5) For the purposes of subclause (4), the Environment Protection Authority is taken to have determined the application by refusing to renew the licence if the Environment Protection Authority does not renew the licence within 90 days after the application is made.
- (6) This clause does not affect the term of a licence granted under the Act and in force immediately before the substitution of this clause by the *Pesticides Amendment Regulation 2021*.

- [16] Clause 35 Pesticides used for commercial, agricultural or occupational purposes**  
Omit “or pest management technician work” from clause 35(1)(c).  
Insert instead “, pest management technician work or timber pest management technician work”.
- [17] Clause 35(2)(b)**  
Insert “or timber pest management technician work” after “technician work”.
- [18] Clause 36 Information to be contained in record**  
Insert “or timber pest management technician work” after “work” in clause 36(2)(c).
- [19] Clause 46 Prior notice of use of pesticide in residential complex**  
Omit “or pest management technician work” from clause 46(1).  
Insert instead “, pest management technician work or timber pest management technician work”.
- [20] Clause 46(2A)(a)**  
Insert “or timber pest management technician work” after “technician work”, as inserted by Schedule 1[9].
- [21] Clause 46(3)**  
Omit “*or pest management technician work*”.  
Insert instead “, *pest management technician work or timber pest management technician work*”.
- [22] Clause 47 Notice during use of pesticide in residential complex**  
Omit “or pest management technician work” from clause 47(1).  
Insert instead “, pest management technician work or timber pest management technician work”.
- [23] Clause 47(1A)(a)**  
Insert “or timber pest management technician work” after “technician work”, as inserted by Schedule 1[10].
- [24] Clause 48 Prior notice of use of pesticide near sensitive place**  
Omit “or pest management technician work” wherever occurring.  
Insert instead “, pest management technician work or timber pest management technician work”.
- [25] Clause 48(5A)(a)**  
Insert “or timber pest management technician work” after “technician work”, as inserted by Schedule 1[12].
- [26] Clause 50 Provision of safety data sheet**  
Omit “or pest management technician work” from clause 50(1).  
Insert instead “, pest management technician work or timber pest management technician work”.

**[27] Schedule 4 Savings and transitional provisions**

Insert at the end of the Schedule, with appropriate clause numbering—

**Timber pest management technician work**

- (1) This clause applies to a person who holds a pest management technician licence that is in force.
- (2) Until the relevant day, the person—
  - (a) may carry out timber pest management technician work without a timber pest management technician licence, and
  - (b) is not required to comply with clause 13(1A).
- (3) In this clause—

*relevant day* means—

  - (a) if the person held a pest management technician licence immediately before 17 December 2021—the later of the following—
    - (i) 17 December 2023,
    - (ii) the date on which the person’s licence expires, or
  - (b) otherwise—17 December 2023.