

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2012 No. 72**

Issued by Authority of the Minister for Agriculture, Fisheries and Forestry

*Agricultural and Veterinary Chemicals Code Act 1994*

*Agricultural and Veterinary Chemicals Code Amendment Regulation 2012 (No. 1)*

Subsection 6(1) of the *Agricultural and Veterinary Chemicals Code Act 1994* (the Act) provides, in part, that the Governor-General may make regulations prescribing matters required or permitted by the Agricultural and Veterinary Chemicals Code (the Code) to be prescribed by Regulations within the meaning of the Code.

Subsection 5(1) of the Act provides that the Code set out in the Schedule to the Act may be referred to as the Agvet Code of the participating states and the Northern Territory.

Section 93 of the Code provides that a chemical product may not be declared by the Regulations to be a restricted chemical product, unless the Australian Pesticides and Veterinary Medicines Authority (APVMA) has certified in writing it is in the public interest for the product to be so declared.

Under section 94 of the Code, a person must not supply a restricted chemical product, or cause or permit a restricted chemical product to be supplied, to a person who is not authorised to use the product under another law of this jurisdiction. For example, the authorised person would need to be trained to operate timber treatment facilities to meet appropriate technical, environmental and safety standards. The jurisdictions are the states and territories.

On 31 January 2006, the delegate of the APVMA certified, pursuant to the Code, that it is in the public interest for all chemical products with formulations containing, as active constituents, all three of copper, chromium and arsenic in various chemical forms to be declared by the *Agricultural and Veterinary Chemicals Code Regulations 1995* (the Principal Regulations) to be restricted chemical products (RCPs).

The purpose of the Regulation is to add all chemical products with formulations containing, as active constituents, all three of copper, chromium and arsenic in various chemical forms to the list of RCPs, as set out in Schedule 4 to the Principal Regulations.

Products containing copper, chromium and arsenic (CCA) are used for the control and prevention of damage to timber and timber structures by insects, wood rot, wood fungus and general timber decay. CCA can be used on wood intended for outdoor uses, such as telegraph poles, fencing and in landscaping.

The APVMA reconsidered whether the registration of CCA timber treatment products should continue because of new information suggesting that the potential for humans to be exposed to arsenic from treated timber may be greater than was previously thought. The information also raised concerns about environmental contamination at timber treatment sites, from the use of treated timber and from its disposal.

The reconsideration found that unintended harmful environmental effects can arise from contamination during the treatment process and also leaching of arsenic from in-service timber into soils or water. Inappropriate management of the treatment process can influence the extent of environmental contamination during treatment as well as leaching of arsenic from treated timber while in-service. From an environmental perspective, the critical issue is that of the competence of persons treating the timber with CCA products and the nature of the facilities in which timber treatment occurs.

Restricting CCA products by declaring them RCPs enables state and territory authorities to limit access to CCA products to authorised persons who are appropriately trained and use treatment facilities that meet appropriate technical, environmental and safety standards. This helps to ensure that the timber is treated correctly with the chemical product. This reduces environmental contamination during the treatment process, prevents excessive leaching of the product from in-service timber and prevents premature failure of in-service timber due to chemical that has not penetrated the timber as well as it should.

The APVMA affirmed CCA products to be RCPs in January 2006 after finalising an extensive review of arsenic timber treatments. The review involved consultation with all stakeholders including state and territory jurisdictions, the timber industry and registrants of CCA products. Appropriate courses that would provide the necessary knowledge and training were identified along with the technical, environmental and safety standards that timber treatment plants would be required to meet.

Following the completion of the review, jurisdictions claimed that there were practical issues in enforcing the technical, environmental and safety standards for timber treatment facilities. Consequently, the process for declaring CCA products as RCPs was put on hold. Resolving the issues required the assistance of the then Department of the Environment, Water, Heritage and the Arts (DEWHA) to re-examine the special equipment (timber treatment facility) requirements. After further advice from DEWHA, and in consultation with the states and territories, the APVMA advised all jurisdictions of updated training and plant management guidelines and, with no objections raised, resumed the process for declaring CCA products as RCPs.

Declaring a chemical product to be an RCP has the effect that the product cannot be supplied to any person who is not authorised to use the product under state/territory law (see section 94 of the Agvet Code). The Agvet Code (section 95) also provides that an RCP must not be supplied unless the product label has on it the statement “RESTRICTED CHEMICAL PRODUCT – ONLY TO BE SUPPLIED OR USED BY AN AUTHORISED PERSON”.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commenced on 1 July 2012.

## **Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Agricultural and Veterinary Chemicals Code Amendment Regulation 2012 (No. 1)***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Bill/Legislative Instrument**

The regulation adds all chemical products with formulations containing, as active constituents, all three of copper, chromium and arsenic in various chemical forms to the list of restricted chemical products, as set out in Schedule 4 to the *Agricultural and Veterinary Chemicals Code Regulations 1995*.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon. Joseph William Ludwig MP, Minister for Agriculture, Fisheries and Forestry**