

## **EXPLANATORY STATEMENT**

Issued by Authority of the Minister for Agriculture and Water Resources

*Agricultural and Veterinary Chemicals Code Act 1994*

*Agricultural and Veterinary Chemicals Code Amendment (Fuel and Oil Biocides) Regulations 2018*

The *Agricultural and Veterinary Chemicals Code Act 1994* (the Act) provides for the evaluation, registration and control of the supply of agricultural and veterinary chemical products through the Agricultural and Veterinary Chemicals Code (the Code) in Schedule 1 to the Act.

Section 6 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Code to be prescribed by regulations within the meaning of the Code; or necessary or convenient to be prescribed by such regulations for carrying out or giving effect to the Code.

Section 4 of the Code defines an ‘agricultural chemical product’. Paragraph 4(4)(b) of the Code provides that an agricultural product does not include a substance or mixture of substances declared by the *Agricultural and Veterinary Chemicals Code Regulations 1995* (the Principal Regulations) not to be an agricultural product.

The purpose of the *Agricultural and Veterinary Chemicals Code Amendment (Fuel and Oil Biocides) Regulations 2018* (the Regulations) is to declare that biocides used in fuel and oil (fuel and oil biocides) are not agricultural chemical products.

Fuel and oil biocides are chemical products mainly used to control organisms in fuel and oil to prevent engine and machinery malfunction. By declaring fuel and oil biocides not to be agricultural chemical products, the Regulations will exclude these products from the operation of the Code and, therefore, from registration by the Australian Pesticides and Veterinary Medicines Authority (APVMA). The terms ‘fuel’ and ‘oil’ are not defined in the Regulations and are intended to have their ordinary meaning.

Agricultural and veterinary (agvet) chemicals are regulated through a cooperative National Registration Scheme, which is a partnership between the Commonwealth and the states and territories with an agreed division of responsibilities. Assessment and registration of agvet chemicals, as well as control of supply activities, is undertaken by the APVMA. The control of use of agvet chemicals after supply is the responsibility of individual states and territories.

Currently, fuel and oil biocides are regulated under various legislation administered by various agencies within different portfolios. Despite being primarily used in industrial settings, and regulated by the National Industrial Chemicals Notification and Assessment Scheme (NICNAS), a statutory scheme within the Department of Health, fuel and oil biocides currently also meet the legal definition of an agricultural chemical product set out in paragraph 4(2)(a) of the Code. Therefore, it is an offence under the Code to possess for the purposes of supply or supply these products without prior registration by the APVMA.

It is expected that the Regulations will have a minimal impact on businesses, organisations or individuals, as they avoid duplication of regulation and provide certainty to stakeholders about the regulatory arrangements for fuel and oil biocides. These products would remain sufficiently regulated under existing industrial chemical, health and environmental frameworks. Furthermore, fuel and oil biocides may also be managed under other existing chemical regulatory frameworks covering work health and safety, the transport of dangerous goods and consumer product safety.

The Office of Best Practice Regulation (OBPR) was consulted in the preparation of the Regulation (OBPR ID 23740), and advised that a Regulation Impact Statement was not required.

The following stakeholders were consulted about the Regulations:

- The APVMA, which is responsible for regulating agricultural and veterinary chemicals.
- The Department of Health - NICNAS, a statutory scheme which assesses the risks to occupational health and safety, to public health and to the environment that could be associated with the introduction and use of industrial chemicals.
- The Department of Health - Office of Health Protection which is responsible for industrial chemical regulatory policy.
- The Department of the Environment and Energy, which conducts environmental risk assessment for agricultural and industrial chemicals, and develops policy to improve the environmental risk management of chemicals in Australia.

State and territory governments were notified of the Regulations, as required by paragraph 12 of the Intergovernmental Agreement to the Council of Australian Governments on agricultural and veterinary chemicals.

Details of the Regulations are set out in the [Attachment A](#).

The Regulations are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in [Attachment B](#).

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

**Details of the *Agricultural and Veterinary Chemicals Code Amendment (Fuel and Oil Biocides) Regulations 2018***

Section 1 – Name

This section provides that the name of the Regulations is the *Agricultural and Veterinary Chemicals Code Amendment (Fuel and Oil Biocides) Regulations 2018*.

Section 2 – Commencement

This section provides for the Regulations to commence on the day after the instrument is registered.

Section 3 – Authority

This section provides that the Regulations are made under the *Agricultural and Veterinary Chemicals Code Act 1994*.

Section 4 – Schedules

This section provides that the Regulations are amended as set out in the Schedule.

Schedule 1 – Amendments

**Item 1** inserts an additional item, item 23A, in Part 3 of Schedule 3 to the *Agricultural and Veterinary Chemicals Code Regulations 1995* (the Principal Regulations). The new item adds a class of substances to the list of substances or mixtures declared not to be agricultural chemical products. This class of substances is biocides used to control organisms in fuel, including aviation fuel, fuel oil and marine diesel.

**Item 2** inserts an additional item, item 23B, in Part 3 of Schedule 3 to the principal Regulations. The new item adds a class of substances to the list of substances or mixtures declared not to be agricultural chemical products. This class of substances is biocides used to control organisms in oil, including lubricating oil and hydraulic oil.

## **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 (Fuel and Oil Biocides) Regulations 2018*

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 Legislative Instrument**

This Legislative Instrument amends the *Agricultural and Veterinary Chemicals Code Regulations 1995* (the Principal Regulations) to declare that biocides used in fuel and oil (fuel and oil biocides) are not agricultural chemical products.

The amendment to the Principal Regulations adds biocides used to control organisms in fuel, including aviation fuel, fuel oil and marine diesel and biocides used to control organisms in oil, including lubricating oil and hydraulic oil to Schedule 3. In doing so, the amendment excludes these classes of substances from the operations of the Agricultural and Veterinary Chemicals Code scheduled to the *Agricultural and Veterinary Chemicals Code Act 1994*.

These fuel and oil biocides will remain sufficiently regulated under existing industrial chemical, health and environmental frameworks.

#### **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. David Littleproud MP**  
**Minister for Agriculture and Water Resources**