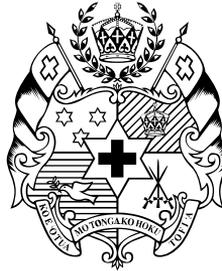


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Tonga

PESTICIDES ACT 2002

No 7 of 2002



PESTICIDES ACT 2002

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PESTICIDES ACT 2002

No 7 of 2002

AN ACT TO REGULATE THE REGISTRATION, MANUFACTURE, IMPORT, SALE, STORAGE, DISTRIBUTION, USE AND DISPOSAL OF PESTICIDES IN TONGA

I assent,
HRH PRINCESS PILOLEVU TUITA,
29th October, 2002

[16th of July 2002]

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows: —

1 Short Title

This Act may be cited as the Pesticides Act 2002.

2 Interpretation

In this Act unless the context otherwise requires —

“**active ingredient**” means the biologically active part of the pesticide present in a formulation;

“**banned pesticide**” means a pesticide which has been prohibited or denied registration under this Act;

“**brand name**” means the trade name applied to each kind of pesticide by the manufacturer, distributor, importer or vendor;

“**Committee**” means the Pesticides Registration Committee established under this Act;

“**concentration**” means the ratio or percentage of active ingredient as compared to the other ingredients in the formulation;

“**container**” includes anything in which or by which pesticides may be encased, covered, enclosed, contained or packed;

“**Director**” means the Director of Agriculture and Forestry;

“**formulation**” means the combination of ingredients designed to render the product useful and effective for the purpose claimed;

“**import**” means to bring or cause to bring into the Kingdom and includes transit;

“**ingredient**” means a material used in making a pesticide;

“**Inspector**” means the Director, any person designated as an Inspector under this Act or any person appointed as an Inspector under the Plant Quarantine Act (Cap 127);

“**label**” means the written, printed or graphic matter on, or attached to, the pesticide or the immediate container thereof and the outside container or wrapper of the retail package of the pesticide;

“**manufacturer**” means the person or persons or company which made the pesticide;

“**maximum residue limit**” means the maximum concentration of a residue that is legally permitted or recognised as acceptable in a formulation or food substance or liquid, agricultural commodity or animal feedstuff;

“**Minister**” means the Minister of Agriculture and Forestry;

“**Register**” means the Register of Pesticides established under this Act;

“**Registrar**” means the Registrar of Pesticides designated under this Act;

“**restricted use pesticide**” means a pesticide granted registration by the Registrar on condition that it be used only by the holder of a restricted use permit;

“**sell**” includes offer or expose for sale or have in possession for sale, and “**sale**” shall have the same meaning;

“**supply**” includes offer to supply.

3 Meaning of Pesticide

For the purposes of this Act “pesticide” means any formulation used for preventing, destroying or controlling any pest, including vectors of human or animal disease, unwanted species of plants or animals, causing harm during or otherwise interfering with the production, processing, storage, transport or marketing of food, agricultural commodities, wood and wood product, or animal feedstuff, or which may be administered to animals for the control of insects, arachnids or other pests in or on their bodies. The term includes substances intended for use as a plant-growth regulator, defoliant, desiccant, or agent for thinning fruit or preventing the premature fall of fruit, and substances applied to crops either before or after harvest to protect the commodity from deterioration during storage and transport; and includes paints used to prevent, the fouling of the hulls of vessels or structure below the waterline or applied to set, floats or other apparatus used in the cultivation of fish.

The term does not include a pesticide which is —

- (a) formulated as an aerosol and intended for domestic use for the purposes of pest control;
- (b) intended for domestic use for control of ectoparasites or endoparasites other than on ruminants, equines, swine, or poultry;
- (c) used in adhesive pastes, decorative paper or textiles;
- (d) used in paints;
- (e) used as part of a manufacturing process, other than for the purpose of preserving timber or timber products or in the production of food;
- (f) used in preparations intended for topical application to human beings for the purpose of repelling insects;
- (g) used in water supply systems or in swimming pools;
- (h) organisms other than bacteria, protozoa, fungi, viruses and mycoplasmas, used for destroying or controlling pests;
- (i) a substance prepared or used for the purpose of disinfecting, bleaching or sterilising any substances (including water), other than soils, composts or other growing medium.

4 Act binds the Crown

This Act shall bind the Crown.

5 Registrar of Pesticides

There shall be a Registrar of Pesticides who shall be the Director.

6 Powers of Registrar

- (1)
 - (a) Subject to section 9(2) the Registrar shall register pesticides and keep a Register of Pesticides in which shall be entered the trade name of all registered pesticides, their chemical names and concentration of active ingredients, the name and place of business of the manufacturer, and in the case of an imported pesticide, the name and place of the business of the importer.
 - (b) An original copy of the label from every pesticide registered by the Registrar shall be retained by the Registrar, as evidence of the registered product.
- (2) The Registrar shall issue pesticide licences under this Act for the manufacture, import, distribution or sale of any pesticide.
- (3) The Registrar shall issue permits under this Act for buying, obtaining or using any pesticide.

7 Pesticides Registration Committee

- (1) There shall be constituted for the purposes of this Act a Pesticides Registration Committee.
- (2) The Committee shall consist of —
 - (a) the Registrar, who shall be the Chairman;
 - (b) the Head of Research Extension Division of the Ministry of Agriculture and Forestry, who shall be the Secretary;
 - (c) the Head of the Quarantine and Quality Management Division of the Ministry of Agriculture and Forestry;
 - (d) one medical officer from the Ministry of Health;
 - (e) one officer from the Department of Environment; and
 - (f) one representative of the retailers and importers and one representative of the growers' community to be appointed by the Minister.
- (3) Appointed members of the Committee shall serve for a term of three years, and shall be eligible for re-appointment subject to subsections (4) and (5).
- (4) An appointed member of the Committee may resign at any time by notice in writing addressed to the Minister.
- (5) The Minister may remove an appointed member of the Committee for disability or neglect of duty as member of the Committee and the vacancy shall be filled within 3 months.

- (6) Subject to the other provisions of this Act, the Committee shall regulate its own procedure as it thinks fit.
- (7) A quorum shall consist of the Chairman, Secretary and two other members.

8 Functions of the Committee

The Committee shall —

- (a) advise the Minister on matters relating to pesticides;
- (b) assess and evaluate every application for registration of a pesticide and advise the Registrar of its findings;
- (c) advise the Registrar on the issue, cancellation, renewal, suspension or revocation of any registration, licence or permit granted under this Act;
- (d) determine the conditions of use of any pesticide and recommend such conditions to the Registrar;
- (e) issue guidelines for the storage, distribution, use and disposal of pesticides in the Kingdom;
- (f) consider and advise on proposals for regulations under this Act; and
- (g) promote the efficient, safe use, storage and disposal of pesticides.

9 Application for Registration

- (1) Every application for registration of a pesticide shall be made in the prescribed form to the Registrar.
- (2) On receipt of an application for registration of a pesticide, the Registrar may, with the advice of the Committee —
 - (a) register the pesticide;
 - (b) register the pesticide as a restricted use pesticide; or
 - (c) refuse registration of the pesticide and shall, if requested, state the reasons for refusal.
- (3) The Registrar may, with the advice of the Committee, attach such conditions to registration regarding the manufacture, sale, supply or importation of the pesticide as he may see fit and may, at any time, alter the existing conditions or impose additional conditions to the registration if he considers it necessary.
- (4) Where a pesticide manufacturer alters the formulation of a registered pesticide, the Registrar shall cancel such registration.

10 Publication in Gazette

- (1) The Registrar shall cause the brand name, identity of the active ingredients, the name and address of the manufacturer and the name and address of the importer of any pesticide registered under this Act to be published in the Gazette as soon as practicable after registration.
- (2) Where the registration of a pesticide has been cancelled, the Registrar shall cause notice of the cancellation to be published in the Gazette.

11 Cancellation of registration

- (1) Every registration made under this Act shall remain in force until such time as the Registrar, acting in accordance with the advice of the Committee, shall direct that it be cancelled.
- (2) Where the registration of a pesticide has been cancelled, the Registrar shall direct the disposal of existing stocks of the pesticide.

12 Banned Pesticides

- (1) The Registrar may, with the advice of the Committee, list any pesticide as a banned pesticide.
- (2) Where a pesticide has been banned, the Registrar, shall cause notice thereof to be published in the Gazette as soon as practicable.
- (3) No person shall import, sell, distribute, use or possess any banned pesticide except with the permission in writing of the Registrar for the purposes of scientific research or evaluation subject to such conditions as the Registrar, acting in accordance with the advice of the Committee, shall consider appropriate.

13 Pesticide Licence

- (1) No person shall manufacture, import, distribute or sell pesticides in Tonga unless he is the holder of a pesticide licence issued by the Registrar under this Act.
- (2) Any person who manufactures, imports, distributes or sells any pesticide except under the authority of a pesticide licence granted under this Act and in accordance with the terms and conditions of the licence commits an offence.

14 Application for pesticide licence

- (1) Every application for a pesticide licence shall be made in the prescribed form.
- (2) A separate application shall be made in respect of any premises into or from which it is proposed to import, store, sell, manufacture or distribute pesticides and each application form for a pesticides licence shall be accompanied by the prescribed fee.
- (3) The Registrar may, with the advice of the Committee, issue a pesticide licence.
- (4) Every pesticide licence issued under this Act shall continue in force for a period of two years, or such other fixed period.
- (5) No pesticide licence shall be transferable.
- (6) The holder of a pesticide licence shall keep such records relating to the importation, sale and distribution of pesticides as may be prescribed or as the Registrar may from time to time require.
- (7) A pesticide licence may be renewed from time to time by the Registrar for a period of two years.

15 Restricted use permit

- (1) The Registrar may, with the advice of the Committee, issue a restricted use permit for a fixed period and subject to specified conditions.
- (2) Every application for a restricted use permit shall be made in the prescribed form.
- (3) No person shall buy, obtain or use any restricted use pesticide unless he is the holder of a restricted use permit issued by the Registrar under this Act.

16 Experimental use permit

The Registrar may, with the advice of the Committee, issue an experimental use permit, to allow for the importation of pesticides for the purposes of scientific research or to enable testing and development to be carried out and such approval shall be granted for a stipulated period and shall specify the conditions as to, quantity, storage, supply, use and disposal of the pesticide.

17 Pesticide Containers

- (1) All containers containing pesticides shall be clearly and durably marked as prescribed.

- (2) Any containers previously used for the purpose of holding pesticides, shall not be imported into the Kingdom.

18 Pesticide residues

- (1) No person shall harvest any plant, or crop, or slaughter any animal which has more than the prescribed maximum residue limit.
- (2) No person shall import, export, or offer for sale any food or product made therefrom which contains more than the prescribed maximum residue limit.

19 Disposal or destruction of pesticides

- (1) No person shall dispose of a pesticide or pesticide container except in accordance with the instructions on the registered label or in such manner as may be prescribed or as directed by the Registrar.
- (2) Where a pesticide has been forfeited to the Crown, the Registrar, acting on the advice of the Committee, shall determine an appropriate means of disposal or destruction.
- (3) Any costs incurred in the disposal or destruction of a pesticide or pesticide containers shall be borne by the owner of the pesticide or pesticide container, or in a case of a pesticide or pesticide container which has been forfeited to the Crown, the person from whom it was forfeited.

20 Pesticide Inspectors

The Minister shall designate from the staff of the Ministry of Agriculture and Forestry such Inspectors as may be necessary for the purposes of this Act.

21 Powers of Inspectors

- (1) An Inspector may, for the purpose of ensuring compliance with this Act —
 - (a) require any person to produce for inspection any licence or permit issued under this Act;
 - (b) without a warrant, enter any premises or land, other than premises used exclusively as a dwelling house, in which he has reasonable grounds to believe that an offence has been or is being committed or that pesticides possessed in contravention of any provision of this Act or regulations are being stored;

- (c) at any reasonable time enter and inspect any premises where pesticides are stored or offered for sale or distribution;
 - (d) enter any conveyance and examine any log, manifest, cargo stowage plan or other necessary document;
 - (e) examine or search cargo, mail, baggage, conveyances, containers or any place where pesticides may be stored;
 - (f) inspect, examine and take samples of any pesticide, substance or label;
 - (g) seize —
 - (i) any pesticide which he has reasonable grounds to believe has been used or is possessed or controlled in contravention of this Act;
 - (ii) any records, returns or other documents required to be maintained by this Act and he has reasonable grounds to believe that an offence has been committed;
 - (iii) any thing which he has reasonable grounds to believe might be used as evidence in any proceedings under this Act.
- (2) Every person who directly or indirectly obstructs, hinders, interrupts, threatens or assaults an Inspector or any person assisting an Inspector in the performance of his duty under this Act, commits an offence and is liable on conviction to a fine not exceeding \$1,000.

22 Duties of employers

Every employer shall —

- (a) ensure that all employees using pesticides shall comply with the requirements of this Act or any conditions imposed on a registration or permit;
- (b) provide employees who handle pesticides with all necessary protective clothing and such clothing as may be prescribed;
- (c) ensure that any employee who is required to handle pesticides is adequately instructed to achieve the standard of safety prescribed.

23 Protection against claims

Neither the Government nor any Inspector, shall be liable for any loss or damage resulting from the exercise of any powers conferred by this Act.

24 Offences and penalties

Any person who —

- (a) contravenes any provision of this Act or who fails to comply with any order or direction made or given or imposed by the Registrar or an Inspector pursuant to powers conferred by the Act commits an offence and is liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 2 years or both;
- (b) contravenes any provision of a regulation made under this Act or who fails to comply with any order or direction made or given or imposed by the Registrar or an Inspector pursuant to powers conferred by a regulation made under this Act commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 12 months or both.

25 Forfeiture and disqualification

Where a person —

- (a) is convicted of an offence against this Act or any regulations made thereunder, the Court may, in addition to any other penalty, order that any licence or permit issued to that person be cancelled and that such person be disqualified from holding a licence or permit for a period not exceeding three years;
- (b) is convicted of an offence against this Act or any regulations made thereunder, the Court, in addition to any other penalty, shall order that any pesticide used, possessed or controlled in the commission of that offence be forfeited to the Crown.

26 Regulations

The Minister may, with the consent of Cabinet, make regulations for the purposes of this Act and in particular to regulate —

- (a) the registration of pesticides;
- (b) the importation, handling, storage, distribution, use, sale and disposal of pesticides;
- (c) the issue and renewal of licences in respect of the importation, storage, distribution and sale of pesticides;
- (d) the issue of permits for the import and use of restricted pesticides and for pesticides intended for experimental use;
- (e) the handling and use of pesticides by pesticide users;
- (f) labelling;

- (g) fees to be charged under this Act; and
- (h) any other matter which is required or authorised to be prescribed.

27 Repeal

The Pesticides Act (Cap. 129) is repealed.

28 Transitional

A pesticide which is not a banned pesticide shall be considered to be registered for the purposes of this Act if it was registered under the provisions of the Pesticide Act (Cap. 129).

Passed by the Legislative Assembly this 16th day of July, 2002.