

A BILL FOR

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PESTICIDES ACT

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

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

1. This Act may be cited as the Pesticides Act 2001.
2. 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 for which all uses have been prohibited under this Act or for which all requests for registration under this Act have been denied, unless an experimental permit has been issued for the purposes for which it is to be used;

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

“Committee” means the Pesticides Registration Committee established by 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 a pesticide into the Kingdom of Tonga from any place outside of the Kingdom of Tonga and includes transit;

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

“Inspector” means the Director, any person appointed as an Inspector under this Act, any person appointed as an Inspector under the Plant Quarantine Act 1981, or any person authorized by or acting under the orders of an Inspector for the purposes of this Act;

“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 and includes any additional written information required by the Committee;

“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 or on a food, agricultural commodity or animal feedstuff.

“Minister” means the Minister in charge of the Ministry of Agriculture and Forestry or his authorised representative;

“nature” means the kind of pesticide;

“pesticide” means any substance or mixture of substances 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 feedstuffs, 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;

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

“Registrar” means the Registrar of Pesticides appointed 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. (1) The Minister shall appoint a Registrar of Pesticides who shall be an officer of the Ministry of Agriculture and Forestry.
 - (2) The Registrar shall 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.
 - (3) An original copy of the label from every pesticide registered by the Registrar shall be retained by the Registrar. Such label shall be evidence of the registered product.
4. (1) There shall be constituted for the purposes of this Act a Pesticides Registration Committee.
 - (2) The Committee shall consist of -
 - (a) the Director, who shall be the Chairman;
 - (b) a Medical Officer from the Ministry of Health to be nominated by the Director of Health;
 - (c) an officer from the Environment Division of the Ministry of Lands, Survey and Natural Resources to be nominated by the Secretary of the Ministry of Lands,

Survey and Natural Resources;

- (d) a representative of the retailers and importers of pesticides to be appointed by the Minister;
 - (e) a representative of the growers' community, to be appointed by the Minister;
 - (f) the Head of the Quarantine and Quality Management Division of the Ministry of Agriculture and Forestry; and
 - (g) the Registrar, who shall be the Secretary of the Committee.
- (3) Subject to subsections (4) and (5), appointed members of the Committee shall serve for a term of three years, and shall be eligible for re-appointment.
- (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.
- (6) Any vacancy on the Committee shall be filled within three months of the vacancy occurring or by the time of the next Committee meeting, whichever is the earlier.
- (7) The Committee shall meet whenever required by the Minister or Director, but in any case not less than twice a year.
- (8) Subject to the other provisions of this Act, the Committee shall regulate its own procedure as it thinks fit, and may request such technical advisers as may be necessary to attend and take part, without vote, in the deliberations of the Committee.
- (9) A quorum shall consist of the Chairman, Registrar and not less than three other members.
5. (1) The Committee shall advise the Minister generally on matters relating to pesticides and in particular shall -
- (a) assess and evaluate every application for registration of a pesticide and advise the Registrar of its findings;
 - (b) advise the Registrar on the issuance, renewal, suspension or revocation of any registration, licence or permit granted under this Act;
 - (c) determine the conditions of use of any pesticide and recommend such

conditions to the Registrar;

- (d) issue guidelines for the storage, distribution, use and disposal of pesticides in the Kingdom of Tonga;
 - (e) consider and advise on proposals for regulations under this Act;
 - (f) promote the efficient, safe use, storage and disposal of pesticides; and
 - (g) have such other functions and duties as may be prescribed.
- (2) The Committee may delegate in writing such powers to the Registrar as it thinks fit to ensure the effective and efficient performance of pesticide registration.
6. Except with the prior written approval of the Registrar, no pesticide may be manufactured or imported or used, offered for sale, sold or distributed in the Kingdom unless such pesticide has been registered with the Registrar in accordance with this Act.
7. (1) Nothing in this Act shall apply to 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 or swine;
 - (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) substances prepared or used for the purpose of disinfecting, bleaching or sterilising any substances (including water), other than soils, composts or other growing medium.

- (2) Notwithstanding sub-paragraph (1)(d) and (e) above, the provisions of this Act shall apply to paints used to prevent the fouling of the hulls of vessels or structure below the waterline, or applied to nets, floats or other apparatus used in the cultivation of fish.
8. (1) Every application for registration of a pesticide shall be made in the prescribed form to the Registrar and shall contain such information as may be prescribed and such additional information as may be required by the Registrar.
- (2) Subject to 5. (2), on receipt of an application for registration of a pesticide, the Registrar, after consultation with and acting in accordance with the advice of the Committee, may -
- (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 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 to do so.
- (4) Where a pesticide manufacturer alters the formulation of a registered pesticide, the Registrar shall withdraw such registration and the pesticide shall be considered to be unregistered until a new application for registration has been submitted to and approved by the Registrar.
- (5) 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.
- (6) 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.
- (7) Where the registration of a pesticide has been cancelled, the Registrar shall cause notice of the cancellation to be published in the Gazette not less than three calendar months prior to the proposed date of cancellation unless, in the opinion of the Registrar, special circumstances exist to require earlier cancellation.
- (8) Where the registration of pesticide has been cancelled, the Registrar, acting in accordance with the advice of the Committee, may give such directions as to the disposal

of existing stocks of the pesticide as he shall consider appropriate.

9. (1) The Registrar, acting in accordance with the advice of the Committee, may list any pesticide as a banned pesticide.

(2) Where a pesticide has been listed a banned pesticide, the Registrar, shall cause notice of the listing to be published in the Gazette as soon as practicable after listing.

(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.
10. (1) No person shall manufacture, import, distribute or sell pesticides in Tonga unless he is the holder of a pesticides 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 pesticides licence granted under this Act and in accordance with the terms and conditions of the licence commits an offence.
11. (1) Every application for a pesticides licence shall be made in the prescribed form to the Registrar and shall contain such information as may be prescribed and such additional information as may be required by the Registrar.

(2) A separate application shall be made in respect of each 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 fee as may be prescribed.

(3) The Registrar, after consultation with and acting in accordance with the advice of the Committee, may issue a pesticide licence following submission of an application in the prescribed form and upon payment of such fees as may be prescribed.

(4) Every pesticides licence granted under this section shall, unless previously cancelled under this Act, continue in force for a period of two years, or such other period as may be prescribed, from the date on which it is issued.

(5) Every pesticides licence granted under this section shall be personal to the holder, shall not be transferable unless approved by the Registrar and shall be subject to such conditions as may be prescribed and such additional conditions as the Registrar, acting in accordance with the advice of the Committee, shall think fit to endorse thereon.

(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.

12. (1) 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.

(2) Every application for restricted use permit shall be made in the prescribed form to the Registrar and shall contain such information as may be prescribed and such additional information as may be required by the Registrar acting in accordance with the advice of the Committee.

(3) The Registrar, acting in accordance with the advice of the Committee, may issue to any person a permit, in such form as may be prescribed, to use a restricted use pesticide for such period as the Registrar sees fit and subject to such conditions as the Registrar, acting in accordance with the advice of the Committee, shall think fit to endorse thereon.
13. (1) The Registrar may give approval, in the form of an experimental permit, to the importation of pesticides for the purposes of scientific research or to enable testing and development to be carried out.

(2) 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.
14. (1) All containers containing pesticide imported into, sold or distributed to consumers in the Kingdom of Tonga shall be clearly and durably marked in such manner as may be prescribed.

(2) Containers which have previously been used for the purpose of holding pesticides, shall be prohibited entry into the Kingdom of Tonga.
15. (1) No person shall harvest any plant, any crop, or slaughter any animal which is known to exceed the prescribed maximum level of pesticide residue except under the direction of the Registrar in accordance with the advice of the Committee.

(2) No person shall import, export, or offer for sale any food or products made therefrom which contain more than the prescribed maximum residue limits.
16. (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.

(3) Any costs incurred in the 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 seized by the Crown, the person from whom it was

seized.

17. (1) No employer shall compel an employee to use any pesticide contrary to any manner required under this Act or any conditions imposed on a registration or permit.
- (2) Every employer shall provide employees who handle pesticides with all necessary protective clothing and such clothing as may be prescribed.
- (3) It shall be the duty of every employer to ensure that any person in his employment who may be required to sell, supply or store pesticides during the course of that employment is provided with such instruction and guidance as is necessary to enable that person to achieve the standard of competence and safety prescribed or otherwise required by the Registrar and otherwise to comply with the requirements in and under this Act and any regulations made hereunder.
18. (1) The Minister shall appoint from time to time such Inspectors as may be necessary for the purposes of this Act.
- (2) Inspectors shall be provided with suitable identification.
19. (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 required to be held by such person under this Act;
- (b) at all reasonable times, 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 made thereunder are being stored;
- (c) at all reasonable times enter and inspect any premises where pesticides are stored or offered for sale or distribution whether under the authority of a pesticides licence or permit granted under this Act or otherwise;
- (d) enter any conveyance and examine any log, manifest, cargo stowage plan or other necessary document;
- (e) examine cargo, mail, baggage, conveyances, containers or any place where they may be stored, to search for pesticides;
- (f) inspect and examine any pesticide, substance, label or other thing in respect of which this Act applies and take samples of such pesticide, substance, label or other thing for the purposes required by the Act;

(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 or under the terms of any licence or which he has reasonable grounds to believe show or tend to show, with or without other evidence, the commission of an offence under this Act;

(iii) any thing which he has reasonable grounds to believe might be used as evidence in any proceedings under this Act;

(2) Every person commits an offence against this Act and is liable on conviction to a fine not exceeding \$1,000 who directly or indirectly obstructs, hinders, interrupts, threatens or assaults an Inspector or any assistant of an Inspector in the performance of his duty under this Act.

20. The Government and any Inspector, shall not be liable for any loss or damage resulting from the exercise of powers conferred by this Act unless the loss or damage is caused otherwise than in the reasonable exercise of those powers.

21. (1) Any person who 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 shall be guilty of an offence and liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 2 years or both.

(2) Any person who 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 shall be guilty of an offence and liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 12 months or both.

(3) When a person 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 under this Act to the person so convicted be forfeited and also any fees paid for such licence or permit and that such person be disqualified from the day of conviction from holding a licence or permit for a period not exceeding three years.

(4) Where any person is convicted of an offence against this Act or any regulations made thereunder, the Court, in addition to any other penalty, may and in the case of a banned pesticide, shall, order that any pesticide used, possessed or controlled in the commission of that offence be forfeited to the Crown whereupon it shall be disposed of in such manner as the Registrar acting in accordance with the advice of the Committee, and

