
Pesticide Use in Queensland

This factsheet is for general information purposes and is not legal advice. Important legal details have been omitted to provide a brief overview of this area of the law. If you require legal advice relating to your particular circumstances you should contact the EDO or your solicitor.

Summary

Pesticides (including insecticides, herbicides and fungicides) are chemicals used to control pests. They are used widely in Australian agriculture to protect crops and livestock from insects and weeds and are often used by public authorities on public land and in private homes and gardens. Pesticides have the potential to cause adverse environmental and human health effects, particularly when pesticide residues move offsite from where they are applied by spray drift or in runoff.

This factsheet outlines the laws intended to ensure pesticides are safe for people and the environment.¹ Responsibility for pesticides is split between the national pesticide regulator – the Australian Pesticides and Veterinary Medicines Authority (APVMA) – and state and territory governments. The APVMA assesses and registers pesticides and develops label conditions for their use, while the Queensland Government is responsible for “control of use” activities such as enforcing conditions of use, monitoring residues, licensing pesticide applicators and developing and enforcing record-keeping and training requirements.

There are a number of different avenues for reporting adverse effects and unlawful pesticide use (see **Figure 1** and the **Frequently asked questions** at the end of this factsheet). But because the law governing pesticide use is weak and label conditions can be complex, it may be wise to first contact the person applying the pesticide (e.g. your neighbour or local council) to ask if there are ways they can better manage the risks.

It is an offence to use an agricultural chemical product other than in accordance with its label conditions but there are a number of very broad exceptions to this including applying the product to a different pest than specified on the label or mixing with another chemical, provided the label does not expressly prohibit it. You can report suspected non-compliance with the conditions of use on a pesticide product label (or a permit) to **DEEDI (phone 13 25 23)** and should keep records of any relevant information.

The *Environmental Protection Act 1994* (Qld) may be relevant where the use of a pesticide causes environmental harm, environmental nuisance or contamination of a waterway. It is an offence to deposit a contaminant in waters or where it could reasonably be expected to wash or move into waters. There are also offences for causing serious or material environmental harm or environmental nuisance. You can report suspected contamination of waters or environmental harm or nuisance to the **DERM Pollution Hotline (phone 1300 130**

¹ This factsheet does not cover other chemicals used in manufacturing and industrial processes, pharmaceuticals and food as these are regulated separately.

372) and should keep records of any relevant information. You may be referred to your local government in the case of environmental nuisance.

If you have suffered personal injury (or damage to your property) as a result of the spraying, you may also have a civil action for damages. To pursue a civil action you should promptly seek legal advice from a private lawyer, who can also advise on important limitation periods during which court proceedings must be commenced.

FULL TEXT

1. The law governing pesticide use

Responsibility for pesticides in Australia is split between the Commonwealth and state and territory governments. Australia's national pesticide regulator – the Australian Pesticides and Veterinary Medicines Authority (APVMA) – assesses and registers pesticides and develops conditions for their use, while the Queensland Government is responsible for “control of use” activities such as enforcing conditions of use, monitoring residues, licensing pesticide applicators and developing and enforcing record-keeping and training requirements.

(a) Assessment and registration

Pesticides sold in Australia are required to be registered by the APVMA, which operates under the *Agricultural and Veterinary Chemicals Code Act 1994* (Cth). The APVMA assesses the safety of agricultural and veterinary (agvet) chemicals and products and decides whether they are safe to be registered for specific uses. The criteria for registration are that they would not:

- be an undue hazard to the safety of people exposed to it during its handling or people using anything containing its residues;
- be likely to have an effect that is harmful to human beings;
- be likely to have an unintended effect that is harmful to animals, plants or things or to the environment; or
- unduly prejudice trade or commerce between Australia and other countries.²

(b) Conditions of use

The APVMA also determines the conditions of use for agvet chemical products, which are shown on product labels. It is usual for labels to specify:

- the specific pests to which the product can be applied;
- the specific crops or use situations in which the product can be applied (e.g. tomatoes, pastures, commercial and industrial areas, home gardens);
- the type of application method (e.g. ground spraying or aerial spraying); and
- the concentration, rate and frequency at which the product should be applied.

A product label may also include other restrictions such as:

- prohibitions on applying the chemical in certain weather conditions, such as in high wind speeds or if rain is forecast; and

² See s 14(3)(e) of the Agvet Code, which is contained in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* (Cth).



- “no spray zones” for ground and aerial application, i.e. buffer zones between the application area and an area to be protected (e.g. a water body).

All registered agvet products and their labels are searchable on the [APVMA’s online PUBCRIS database](#).

(c) Enforcement of conditions

It is the Queensland Government’s responsibility to ensure agvet products are used in accordance with their label conditions. Queensland’s control of use legislation, the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* (Qld) (the Chemical Usage Act), is administered by the Department of Employment, Economic Development and Innovation (DEEDI).

It is an offence to use a registered agvet chemical product other than in accordance with its label conditions,³ but there are a number of very broad exceptions to this including:

- using a lower concentration, rate or frequency than specified on the label;
- applying the chemical to a different pest than specified;
- using a different application method than specified;
- mixing a chemical with another chemical or fertiliser, provided the label does not expressly prohibit it.⁴

These exceptions are referred to as “permitted off-label uses”.

(d) Permits

The APVMA can also issue a permit for using a registered agvet product for a specific use that is not allowed on the label or under legislation. For example, the APVMA could issue a permit for use of a product in industrial areas where the label restricts its use to agricultural areas. There are three types of permits issued by the APVMA: minor use permits, emergency use permits and research permits. The APVMA has a Permits database on its website.

(e) Use of unregistered products

It is an offence to use an unregistered agvet chemical product unless authorised by a permit.⁵ However a defence may be available if the product was registered at some time in the 2 years immediately before its use by the defendant, the registration simply lapsed and the defendant’s use of the product did not contravene a label condition that applied immediately before the product’s registration ended.⁶

(f) Disposal

It is an offence to dispose of or discard a chemical or package in a way that causes or is likely to cause harm to property, any human or animal life, the environment or the State’s trade, or contrary to a way prescribed on a label.⁷

(g) Licensing and training of pesticide applicators

The *Agricultural Chemicals Distribution Control Act 1966* (Qld) controls the aerial distribution (spraying, spreading or dispersing) of agricultural chemicals from aircraft, as well as the ground distribution of pesticides from ground equipment.

³ *Chemical Usage (Agricultural and Veterinary) Control Act 1988* (Qld), s 13.

⁴ *Chemical Usage (Agricultural and Veterinary) Control Act 1988* (Qld), s 13B.

⁵ *Chemical Usage (Agricultural and Veterinary) Control Act 1988* (Qld), s 13A(1), (2).

⁶ *Chemical Usage (Agricultural and Veterinary) Control Act 1988* (Qld), s 13A(1), (2).

⁷ *Chemical Usage (Agricultural and Veterinary) Control Act 1988* (Qld), s 10.



For the aerial distribution of pesticides in Queensland, it is a requirement for both the pilot and the businesses and contractors who carry on the business of aerial distribution (aerial distribution contractors), to be licensed.⁸ Certain qualifications are required to obtain these licenses.

Likewise for the ground distribution of pesticides, a license is required by persons operating the equipment (or their supervisor) and the businesses and contractors who carry on the business of ground distribution (ground distribution contractors).⁹ However, no license is required where a person using ground equipment is using it on:

- his or her own land;
- a relative's land;
- an employer's land who is primarily engaged in pastoral or agricultural pursuits and to whom the person is bound by a contract of service that is primarily for other work (i.e. not for the ground distribution of pesticides); or
- any unallocated State land, reserve or road under the *Land Act 1994* that adjoins land owned by the person with the permission of the entity that holds or controls the unallocated State land, reserve or road.¹⁰

The application of a class of "restricted chemical products" is more tightly regulated. They are listed in the *Agricultural and Veterinary Chemicals Code Regulations 1995* (Cth).¹¹ Users must be authorised by either the product label, a permit, license or approval (depending on the product) and particular qualifications may be required.¹² An example is pre-construction termiticide products containing the chemical chlorpyrifos, which can only be used by persons authorised by a label or permit or licensed under the *Pest Management Act 2001* (Qld).¹³

(h) Record keeping and notification

There is no general obligation to keep records in relation to the application of pesticides unless required by the product label or a permit.¹⁴ But there are however special record keeping requirements for licensed aerial and ground distribution contractors,¹⁵ and persons carrying out an agricultural environmentally relevant activity (ERA)¹⁶ (see Great Barrier Reef protection measures below).

There is no general obligation in Queensland to notify neighbours of the intention to apply pesticides.

(i) Material Safety Data Sheets

Under Workplace Health and Safety laws, there are requirements for manufacturers, importers and suppliers of a hazardous substance to provide a MSDS, as well as for MSDSs to be recorded and displayed at a workplace. MSDSs are required in order to provide information to users of chemicals and so that employers have sufficient information to manage the risks posed by hazardous substances. Some MSDSs also contain ecological information, for example, the toxicity of the chemical to birds, fish or aquatic species and instructions not to

⁸ *Agricultural Chemicals Distribution Control Act 1966* (Qld), s 39(1).

⁹ *Agricultural Chemicals Distribution Control Act 1966* (Qld), s 39(2).

¹⁰ *Agricultural Chemicals Distribution Control Act 1966* (Qld), s 39(3).

¹¹ *Agricultural and Veterinary Chemicals Code Act 1994* (Cth), Schedule s 93, *Agricultural and Veterinary Chemicals Code Regulations 1995* (Cth), Schedule 4.

¹² See *Chemical Usage (Agricultural and Veterinary) Control Regulation 1999* (Qld), ss 9-12.

¹³ *Chemical Usage (Agricultural and Veterinary) Control Regulation 1999* (Qld), s 10.

¹⁴ *Chemical Usage (Agricultural and Veterinary) Control Regulation 1999* (Qld), 13.

¹⁵ *Agricultural Chemicals Distribution Control Act 1966* (Qld), s 26.

¹⁶ *Chemical Usage (Agricultural and Veterinary) Control Regulation 1999* (Qld), 12X.



contaminate waterways. But the statements on a MSDS are not legally enforceable in the same way as a product label or permit.

(j) Great Barrier Reef protection measures

In 2010 the Queensland Government introduced restrictions on using certain pesticides in Great Barrier Reef catchment areas in order to address pollution of the Reef. The restrictions apply to using, preparing, storing or possessing a prescribed product for carrying out an agricultural ERA.¹⁷

An “agricultural ERA” is defined as commercial sugar cane growing, or cattle grazing on more than 2000ha, in the Wet Tropics, the Mackay-Whitsunday and the Burdekin dry tropics catchment areas.¹⁸

Comprehensive factsheets about the new rules and a list of the affected pesticide products are available on the [Queensland Government’s Reef Wise Farming website](#).

2. Relevant offences under the Environmental Protection Act

If pesticide use has caused an adverse environmental effect it may constitute an offence under the *Environmental Protection Act 1994* (Qld) (EP Act), such as serious or material environmental harm, environmental nuisance or water contamination. The EP Act is mainly administered by the Department of Environment and Resource Management (DERM) with some responsibilities (such as environmental nuisance) devolved to local governments.

(a) Serious or material environmental harm

An act or omission that causes serious or material environmental harm is unlawful under the EP Act.¹⁹ These terms are defined.²⁰ For example, material environmental harm is defined to mean environmental harm that:

- is not trivial or negligible in nature, extent or context; or
- that causes actual or potential loss or damage to property of more than \$5000 but less than \$50,000; or
- that results in costs of more than \$5000 but less than \$50,000 being incurred in taking action to prevent or minimise the harm and rehabilitate or restore the environment to its previous condition.²¹

(b) Environmental nuisance

It is an offence to unlawfully cause an environmental nuisance,²² which is an unreasonable interference or likely interference with an environmental value caused by:

- aerosols, fumes, light, noise, odour, particles or smoke; or
- an unhealthy, offensive or unsightly condition because of contamination.²³

An environmental value is a quality or physical characteristic of the environment that is conducive to ecological health or public amenity or safety or another quality of the environment identified and declared to be an environmental value under an environmental

¹⁷ See *Chemical Usage (Agricultural and Veterinary) Control Regulation 1999* (Qld), Pt 4 Div 3.

¹⁸ *Chemical Usage (Agricultural and Veterinary) Control Act 1988* (Qld), s 12W and *Environmental Protection Act 1994* (Qld), s 75.

¹⁹ *Environmental Protection Act 1994* (Qld), ss 437, 438.

²⁰ *Environmental Protection Act 1994* (Qld), ss 14, 16, 17.

²¹ *Environmental Protection Act 1994* (Qld), s 16.

²² *Environmental Protection Act 1994* (Qld), s 440.

²³ *Environmental Protection Act 1994* (Qld), s 15.



protection policy or regulation.²⁴ For example, the *Environmental Protection (Air) Policy 2008* (Qld) includes “qualities of the air environment that are conducive to human health and wellbeing” as an environmental value.²⁵

(c) Water contamination

There is also a specific offence in the EP Act relating to water contamination. Section 440ZG provides that a person must not unlawfully deposit a prescribed water contaminant in waters or in a place such that the contaminant could reasonably be expected to wash or move into waters. A pesticide is a prescribed water contaminant for this provision.²⁶

(d) When environmental harm and related activities are unlawful

An act or omission that causes serious or material environmental harm or an environmental nuisance or a deposit of a prescribed water contaminant under section 440ZG will be unlawful unless it is authorised under one of following instruments:

- an environmental protection policy;
- a transitional environmental program;
- an environmental protection order;
- an environmental authority;
- development condition of a development approval;
- a standard environmental condition of a code of environmental compliance for a chapter 4 activity; or
- an emergency direction.²⁷

(e) The defence of compliance with the general environmental duty

It is a defence to a charge of one of the above EP Act offences for the defendant to prove the harm happened while an activity that is lawful apart from the EP Act was being carried out and that the defendant complied with the general environmental duty.²⁸ The general environmental duty is imposed on all persons and ensures that an activity must not be carried out if it causes or is likely to cause environmental harm, unless all reasonable and practicable measures are taken to prevent or minimise the harm.²⁹

A person will also be taken to have complied with the general environmental duty if he or she can prove compliance with an approved (and applicable) code of practice and that no accredited environmental risk management plan applied.³⁰ There is an Environmental Code of Practice for Agriculture that gives some guidance on the use of pesticides in agricultural situations. The Environmental Code of Practice for Agriculture is available from the [Queensland Farmers Federation](#) and provides generally that all reasonable and practical measures should be adopted within the constraints of a sustainable agricultural system to prevent or minimise environmental harm. It contains some clear guiding statements, such as “it is essential to notify neighbours of intention to apply chemical, particularly if it is to be aurally applied.” It also states that “consideration should be given to providing buffer zones along creeks to prevent overspray into waterways” and to “using prevailing winds to clear or direct possible contaminants away from sensitive places” such as residences and neighbouring enterprises.

²⁴ *Environmental Protection Act 1994* (Qld), s 9.

²⁵ *Environmental Protection (Air) Policy 2008* (Qld), s 7(b).

²⁶ *Environmental Protection Act 1994* (Qld), s 440ZF and *Environmental Protection Regulation 2008* (Qld), s 77 and Schedule 9.

²⁷ *Environmental Protection Act 1994* (Qld), s 493A(1), (2).

²⁸ *Environmental Protection Act 1994* (Qld), s 493A(3).

²⁹ *Environmental Protection Act 1994* (Qld), s 319.

³⁰ *Environmental Protection Act 1994* (Qld), s 493A(5).



3. What you can do about adverse effects caused by pesticides

Pesticides can sometimes cause adverse human health and environmental effects, particularly when pesticide residues move offsite from where they are applied by spray drift or in runoff. There are a number of different avenues for reporting adverse effects and unlawful pesticide use (see Figure 1 below). But because the law governing pesticide use is weak and label conditions can be complex, it may be wise to first contact the person applying the pesticide (e.g. your neighbour or local council) to ask if there are ways they can better manage the risks.

It will be helpful to keep records of relevant information such as:

- the trade name of the product applied and its active constituent/s (if known);
- the name of the person who applied the product and its purpose (if known);
- the equipment and methods used to apply the product (if known);
- the weather conditions before, during and after use of the product (such as rain, wind speed and wind direction);
- a description of the specific health effects experienced or environmental effects noticed and the date and location;
- if an emission of the chemical is experienced (such as an odour), the duration and time of the emission and whether it is continuous or fluctuating.

You should always report adverse health effects or environmental damage to the APVMA. This is very important because the APVMA is ultimately responsible for the safety of pesticide products and the effectiveness of label conditions. The APVMA has an [Adverse Experience Reporting Program](#) to consider reports relating to human health issues, animal health issues (including both domestic and native birds and animals) and damage to the environment, crops and plants. The APVMA also has a Chemical Review Program to reconsider the registration of agvet chemicals in the marketplace when new research or evidence has raised concerns about the use or safety of a particular chemical or product. You can check the [APVMA's review list on its website](#). If the chemical in question is under review or has been nominated for review, you can write to chemicalreview@apvma.gov.au about your concerns.

If you believe the relevant label or permit conditions have not been complied with you should report the incident to DEEDI (**phone 13 25 23**).

You can report a suspected breach of the EP Act (such as serious or material environmental harm, environmental nuisance or water contamination) by phoning the **DERM Pollution Hotline (phone 1300 130 372)**. Your call will be logged and investigated. It will assist them to investigate the matter if you also send them a letter with details and photographic or other evidence of the alleged breach. DERM has various legal powers for dealing with the matter and may:

- send an inquiry letter; or
- send a warning letter; or
- issue a direction notice;
- issue a clean up notice; or
- prosecute in court for an offence against the EP Act.

In addition, any person, including a member of the community or community group may go to the Planning and Environment Court for an order to remedy or restrain an offence (or a threatened or anticipated offence) under the EP Act. If you have no proprietary, material,



financial or special interest in the subject matter of the proceeding it will be necessary to seek the leave of the Court before commencing such proceedings. Because of the public interest jurisdiction of the Planning and Environment Court the general rule is that each side bears his or her own costs, irrespective of the outcome of the case.



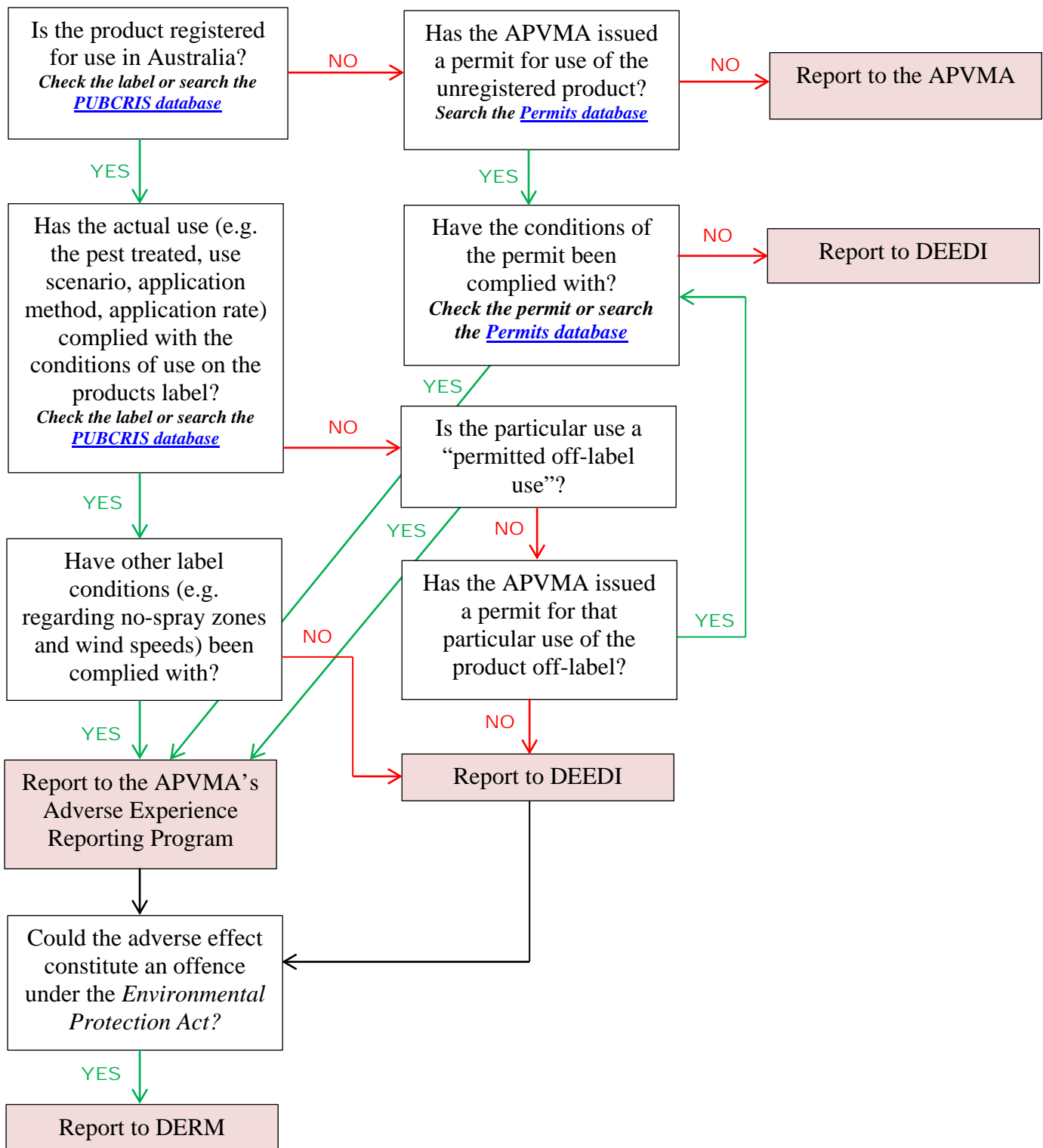


Figure 1: What you can do about adverse health or environmental effects caused by pesticides



4. Frequently asked questions

How do I know what conditions apply to the use of a particular chemical?

You can check the label of the product, or you can search for the label on the [APVMA's online PUBCRIS database](#). If the product is being used under a permit, you can search for that on the [APVMA's Permits database](#).

What is a Material Safety Data Sheet?

A Material Safety Data Sheet (MSDS) provides information about the risks posed by a hazardous substance so that users can properly manage those risks. Some MSDSs also contain information about risks to the environment. Under Workplace Health and Safety laws, there are requirements for manufacturers, importers and suppliers of a hazardous substance to provide a MSDS, as well as for MSDSs to be recorded and displayed at a workplace. The legally enforceable conditions of use for pesticides are those found on the product label (or permit, where relevant) rather than the MSDS.

What should I do if someone has sprayed pesticides and it has made me sick?

If you have suffered personal injury (or damage to your property) as a result of the spraying, you may have a civil action for damages. To pursue a civil action you should promptly seek legal advice from a private lawyer, who can also advise on important limitation periods during which court proceedings must be commenced (generally 6 years after damage to property and 3 years after personal injury).

You may also have a cause of action for environmental nuisance under the *Environmental Protection Act 1994* (Qld). You should report the incident to your local government or to DERM (ph. 1300 130 372). You should also report it to the [APVMA's Adverse Experience Reporting Program](#).

Do my neighbours have to notify me before spraying pesticides?

No, in Queensland there is no general requirement to notify neighbours of the intention to spray pesticides, although it may be a special requirement of a product label or permit. You should talk to your neighbour in the first instance to see whether you can reach an agreement about how and when they will conduct their spraying activities.

What should I do if I believe native animals or fish have been killed as a result of pesticide spraying?

Adverse environmental effects such as dead or poisoned animals or plants may constitute an offence under the *Environmental Protection Act 1994* (Qld). You should report the incident to DERM (ph. 1300 130 372), as well as the [APVMA's Adverse Experience Reporting Program](#).

What can I do if I'm unsatisfied with government's response to my complaint?

Any person, including a member of the community or community group may go to the Planning and Environment Court for an order to remedy or restrain an offence (or a threatened or anticipated offence) under the EP Act.



5. Useful contacts

Environmental Defenders Office (Qld) Inc

Phone: (07) 3211 4466

Website: www.edo.org.au/edoqld

Environmental Defenders Office (Nth Qld) Inc

Phone: (07) 4031 4766

Website: www.edo.org.au/edonq

Department of Environment and Resource Management (DERM)

Pollution Hotline: 1300 130 372

Website: www.derm.qld.gov.au

Department of Employment, Economic Development and Innovation (DEEDI)

Phone: 13 25 23

Website: http://www.dpi.qld.gov.au/4790_4887.htm

Australian Pesticides and Veterinary Medicines Authority (APVMA)

Phone: (02) 6210 4701

Website: www.apvma.gov.au

