

Agriculture Legislation Amendment Bill 2022 – Fact sheet

The Victorian Government has developed the Agriculture Legislation Amendment Bill 2022 for consideration by the Victorian Parliament. This Bill aims to help safeguard food security, food safety and access to export markets which are vital for Victoria's economy.

THIS FACT SHEET ADDRESSES MISINFORMATION RAISED IN SOCIAL MEDIA ABOUT ASPECTS OF THIS BILL

A range of issues has been raised in social media. Responses to these issues are provided here and should clarify any concerns and address any misinformation.

Claim: *The State Government is passing a bill now which means you won't be allowed to grow your own food, they can forcibly come in and rip it all out.*

Facts:

- The amendments will help safeguard food security, food safety and access to export markets. For example, by preventing contamination of food from pesticides.
- The amendments will not result in the destruction of crops, nor will they prevent people growing their own food.
- Information circulating online misinterprets and misrepresents amendments in the Agriculture Legislation Amendment Bill.

Claim: *Landholder consent will no longer be required for Authorised Officers to take samples, stock (animals) or documents.*

Facts:

- Landholder consent is not required to take samples, specimens or remove documents under the existing Act.
- This is unchanged by the Agriculture Legislation Amendment Bill 2022.

Claim: *There will be increased enforcement powers to search property and persons without a warrant.*

Facts:

- Clause 10 of the Bill contains amendments to section 54 of the Agricultural and Veterinary Chemicals (Control of Use) Act 1992 which introduce new inspection and enforcement powers - subject to constraints.

These amendments address outdated requirements of the existing powers available under that Act.

- Amendments in the Bill will not allow searching of residences without a warrant.
- There are no powers provided to search a person.
- The amendments include a requirement for an Authorised Officer to present identification and to take reasonable steps to notify the occupier before an inspection.

Claim: *Authorised Officers will no longer be required to present identification, under new section 53(4) of the Agricultural and Veterinary Chemicals (Control of Use) Act 1992.*

Facts:

There are only limited circumstances where an Authorised Officer would not need to present identification.

- For example, when an authorised officer needs to access paddocks or bushland in remote areas to assess compliance and the property owner is away or can't be located.
- An authorised officer will be required to leave a notice of entry if no persons are present.

The notice must include: the time and purpose of the entry, a description of all things done while at the place (or in the vehicle or vessel or aircraft), the time of departure as well as the authorised officer's name and contact details.

The proposed requirements to leave a notice without the occupier being present is consistent with other existing legislation administered by Agriculture Victoria (e.g. section 82(4)(c) of the Catchment and Land Protection Act 1994).

- A rare circumstance when notification may not be provided by an authorised officer would be if there was a risk of evidence being destroyed. For example, if an authorised officer was in a paddock or bushland and collected a sample of a suspected illegal bait, notifying the occupier could allow them to remove or destroy the evidence before the authorised officer could get a sample analysed and return with a search warrant.
- The new entry and inspection powers require the Authorised Officer to justify that their actions were reasonable and within the constraints of the powers.

Standard operating procedures will be prepared for Authorised Officers on exercising their powers for entry. These will emphasise a conservative and cautious approach to ensure that any evidence gathered can be used in any enforcement action.

This approach is consistent with other existing legislation such as the Environment Protection Act 2017.

- Section 53(3) maintains the existing requirement that, if requested to do so, an authorised officer must produce their identity card before or at any time when exercising a power under this Act.
- New section 53 subsection (4) makes it clear that this doesn't apply if the request is unreasonable under the circumstances, or to powers exercised by post or electronic communication.

Circumstances that would be unreasonable would include situations where the production of their identity card would require the authorised officer to undertake excessive travel, or where it would delay the collection of time sensitive evidence.

Claim: *There will be heavy penalties for obstructing entry to property, under new sections 54J and 54K of the Agricultural and Veterinary Chemicals (Control of Use) Act 1992.*

Facts:

54J relates to failure to comply with a requirement of an authorised officer.

- A person must not, without reasonable excuse, fail or refuse to comply with a requirement of an authorised officer under this Act.

The new section includes protections to provide an exemption where there is a reasonable excuse to not comply.

An example is a situation where an authorised officer requires a person to produce a document, but they are unable to do so as they are stored within a safe that the person cannot access.

- 54K creates an offence of obstructing an authorised officer, or a person assisting an authorised officer.

A person commits the offence if they obstruct, threaten or intimidate an authorised officer, who is performing a function or exercising a power, or a person who is assisting an authorised officer.

Offences for the obstruction, threatening or intimidation of authorised officers are common to other Victorian legislation. For example, the Livestock Disease Control Act 1994 and the Summary Offences Act 1966.

This offence is required to allow authorised officers to conduct lawful investigations unhindered.

The maximum penalty for this offence is 100 penalty units, which is appropriate to deter offending.

Claim: *Fines will increase from \$1,800 to \$10,000 for providing false and misleading information, under new section 54L of the Agricultural and Veterinary Chemicals (Control of Use) Act 1992.*

Facts:

- Penalty units for the new section 54L are consistent with existing offences – there is no increase.
- The existing Act includes offences under section 59 for false or misleading statements that relate to chemical use

For example, advising a person to use an illegal chemical or stating that there are no spray drift sensitive crops next to the target area) or applications made under the Act for licences or permits.

- The intention of the new section 54L is to dissuade a person from providing false or misleading information to an Authorised Officer. This could include falsified records of chemical use or vexatious complaints against a neighbour.

The amendment intends to allow Authorised Officers to allocate time more effectively otherwise wasted on these vexatious complaints and issues.

- The Bill does include a separate amendment to section 137A of the Livestock Disease Control Act 1994, which increases the maximum penalty for making false or misleading statements from 10 penalty units (\$1,817) to 60 penalty units (\$10,904).

This increase is proposed to deter behaviour that puts Victoria's livestock industry at significant risk.

False and misleading statements relating to the Livestock Disease Control Act 1994 have the potential to severely impact on the integrity of our traceability systems and consequently damage trade relationships.

Examples of false and misleading statements include fraudulent use of vendor declarations, livestock identification tags, or other documentation relating to livestock traceability.

- The Penalties described in legislation are maximum Penalties.

The actual penalties handed down are determined by the Courts.

The Courts may impose penalties at the higher end of the scale for offending resulting in high levels or risk of harm, or repeat offending.

Claim: *The Government is putting in place laws which would allow them to charge Victorians the money it cost them to destroy their own food supply, under clause 20 of the Bill which amends section 58 of the Agricultural and Veterinary Chemicals (Control of Use) Act 1992.*

Facts:

- Destruction orders are an existing provision
- Destruction notices are an appropriate tool to manage high-risk incidents, such as contaminated crops or unlawful use of chemicals.
- Destruction notices can only be issued when the sale or use of a chemical product, fertiliser or stock food is prohibited; or the agricultural produce is, or likely to be, contaminated by chemicals, such as pesticides.
- No changes are proposed to the existing, limited circumstances, when destruction notices can be issued.
- Amendments to section 58 will broaden the scope of destruction notices issued under the Act to allow discretion for alternatives to destruction, such as recycling.

The current Act limits the scope of a destruction notice and is not consistent with Victoria's policies for waste reuse and recovery.

The terminology "or otherwise dealt with" proposed in the amendments to section 58 will provide a broad scope of options including reuse, recycling, or treatment.

For example – an authorised officer finds a person not trained and authorised to use an agricultural chemical product. The best outcome may be to issue a notice requiring them to return the agricultural chemical to the manufacturer for potential reuse, rather than destroying the product.

- The Act currently allows for cost recovery from an owner who has been issued with a destruction order (if they do not comply with that order).

The amendment clarifies that cost recovery may be achieved via a Court and is consistent with other existing Acts such as the Environment Protection Act 2017.

ACCESSIBILITY

This document is also available in HTML format on www.agriculture.vic.gov.au
