Licensing by the Department of Health & Human Services

This technical note is designed to inform you of the Victorian legislation relevant to the pest control industry.

If you would like to obtain copies of current public health legislation, follow the links on the Victorian Government Health Information website at: http://www.health.vic.gov.au/legislation/

Other Victorian legislation can be found at: http://www.legislation.vic.gov.au/

What is legislation?

Legislation is the act of making and enacting laws. Legislation includes Acts (made by the Parliament) which set up the legislative scheme and Regulations (made under the authority of an Act) which provide details of the legislative scheme.

Failing to comply with legislation may result in enforcement action by the body responsible for administering the legislation. Legislation is generally administered by government departments. Authorities established under legislation independent of government may also administer legislation.

Where failure to comply is an offence under legislation, the person in breach is liable for prosecution.

Compliance with Australian Standards and Codes of Practice is not enforceable, unless they are referred to in an Act or set out in Regulations. However, it is recommended that PCOs adhere to these guidelines as they provide a minimum benchmark for the conduct of activities.

Who is a pest control operator?

The Department of Health & Human Services (the department) licences and regulates Pest Control Operators (PCOs) in Victoria under the Public Health and Wellbeing Act 2008 (the PHW Act) and the Public health and Wellbeing Regulations 2009 (the PHW Regulations).

A pest control operator is defined in the PHW Act as a person who carries on or holds themselves out in any way as carrying on the business of controlling, destroying or repelling pests.

The PHW Act requires that anyone who uses pesticides, or permits another person to use pesticides in the course of a business of a pest control operator in Victoria, must hold a valid licence unless the pesticide is being used for the purpose of: horticulture¹; agriculture²; water treatment; weed control and controlling a pest animal to protect an area or place which is not - a building used for commercial purposes; a domestic premises or privately owned land adjacent to a domestic premises.

A person who carries on a business or offers a service for fee or reward that involves the use of pesticides for any activity identified in the categories above may require a Commercial Operator Licence.

¹ Pesticides used for the purpose of horticulture are pesticides used in the treatment of the following commodities:
- Fruit and Vegetables
- Dried fruit and nuts
- Tobacco
- Seeds
- Flowers
- Ornamental plants
- Soil and potting mixtures

² Pesticides used for the purpose of agriculture are pesticides used in the treatment of the following commodities:
- Grain
- Pulses
- Hay
- Logs
- Stock animals
What is a pesticide?
The PHW Act defines a ‘pesticide’ as:

(a) any agricultural chemical product within the meaning of the Agricultural and Veterinary Chemicals (Control of Use) Act 1992; and

(b) any substance prescribed as a pesticide for the purposes of this definition.

There are currently no substances prescribed as a pesticide under the PHW Regulations.

Full technician licences expire 3 years after the date on which the licence is granted.

Trainee licences expire 12 months after the date on which the licence is granted.

A Trainee licence may only be issued to a person on a maximum of three occasions unless exceptional circumstances apply.

Qualifications

To be granted a full licence the applicant must have obtained the appropriate qualification as listed in Schedule 2 of the PHW Regulations – Approved Courses and Qualifications. A licence may be granted with one or more of the following authorisations:

- pesticides (excluding fumigants) formulated for the control of arthropods, rodents, birds and fungi, which are used to control pests (other than pest animals).
- pesticides formulated for the control of pest animals.
- pesticides in the form of fumigants.

To be granted a trainee licence, the applicant must be enrolled in or undertaking training in a prescribed course or units of competency as listed in schedule 3 of the PHW Regulations – Courses of Training and Units of Competency. A trainee may only use the authorised pesticides under the supervision of an appropriately qualified pest control operator with a valid technician licence.

The licence authorises the person to use only the pesticide that they are qualified to use.

A list of the prescribed qualifications is included in the department’s Guidelines for pest control operators in Victoria.

Fees

An applicant will not be granted a licence unless they have paid the fee prescribed in the PHW Regulations.

The fees for a pest control licence increase each financial year in line with the Reserve Bank’s Consumer Price Index. As a result, new fees come into effect annually on 1 July. Current fee information is available on our website at: www.health.vic.gov.au/pestcontrol
A person who usually resides in another State or Territory and who holds a valid licence in that State or Territory may apply for a Victorian interstate operator pest control licence, providing the pesticides they apply for authorisation to use are the same or similar in all respects to the pesticides that are authorised for use under their current licence.

**Records**

It is a requirement for PCOs to make and keep certain records under section 108 of the PHW Act and regulation 69(1) of the PHW regulations. It is an offence to fail to keep the prescribed records for the prescribed period or create false records. The following details must be recorded by the PCO carrying out the pest control activity for every pesticide application:

- the trade name of the pesticide;
- the batch number of the pesticide;
- specific precautions to be observed, including the re-entry period;
- the date of the pesticide application;
- the start and finish times of the pesticide application;
- the location of the pesticide application (including street address, if applicable);
- a description of the treated areas;
- the pests treated;
- a description of the amount of pesticide applied;
- the name and licence number of the person applying the pesticide and, if applicable, the name and licence number of the person supervising the application;
- the name and address of the person for whom the work was carried out;
- if applied outdoors, the ambient temperature, wind direction and speed at the time of application;
- the method of application;
- the trading name, address and phone number of the business employing, engaging or owned by the person applying the pesticide;
- the signature of the person completing the record.

Records should be accurate, up to date, coherent, consistent and in English. They must be kept at the business address for a minimum of three years.

Further information on records can be found in Technical note number 3 – Record keeping.

**Conditions of licence**

All pest control licences are subject to certain conditions. It is an offence to breach a condition of licence.

Further information on conditions can be found in Technical note number 17 – Conditions

**Licensing by the Department of Economic Development, Jobs, Transport and Resources (DEDJTR)**

The Agricultural and Veterinary Chemical (Control of Use) Act 1992 requires any person who carries on a business or offers a service involving the use of a prescribed class of agricultural chemical to have a Commercial Operator Licence (COL), unless the business ensures that all use of the chemical product (pesticide) is undertaken by a person who holds a pest control licence under the PHW Act 2008.

**What is a prescribed class of chemical product?**

The Agricultural and Veterinary Chemical (Control of Use) Regulations 2017 lists the following as prescribed classes of agricultural chemical products:

- herbicides;
- fungicides;
- insecticides;
- growth regulators;
- vermin destroyers;
- avicides.

**Spray drift**

Under the PHW Act it is an offence to cause a nuisance. Nuisances are defined as a state, condition or activity which is, or is liable to be, dangerous to health or noxious, annoying or injurious to personal comfort.

The Act requires municipal councils to remedy as far as is reasonably possible all nuisances in its municipality.
Council is required to investigate any notice of a nuisance and either take action to abate nuisances or advise the notifier of any available methods for settling the matter privately.

Under the Agricultural and Veterinary Chemicals (Control of Use) Act 1992 a person must not carry out agricultural spraying which injuriously affects -

(a) any plants or stock outside the target area; or

(b) any land outside the target area so that growing plants or keeping stock on that land can be reasonably expected to result in the contamination of the stock or agricultural produce derived from the plants or stock; or

(c) which contaminates any stock or agricultural produce outside the target area.

Off target application of chemical products which creates a hazard that is likely to adversely affect a person’s health or the environment comes within the offence of pollution created by the Environment Protection Act 1970.

WorkSafe Victoria may also become involved if the spray drift incident involves the activities of a workplace that affects the health and safety of employees at that workplace and of others (being persons other than the employer’s employees).

DEDJTR investigates reports of alleged misuse of chemical products, and co-operates with the department and Environmental Protection Authority when pursuing alleged incidents involving off-target applications of agricultural chemical products.

Further information on spray drift can be found in Technical note number 3 – Record keeping.