



Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994

No. 41 of 1994

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Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994

No. 41 of 1994

**An Act to provide for the collection of a levy on agricultural
and veterinary chemical products, and for related purposes**

[Assented to 15 March 1994]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994*.

Commencement

2. This Act commences on the same day as the *Agricultural and Veterinary Chemicals Act 1994*.

Interpretation

3.(1) In this Act, unless the contrary intention appears:

“agricultural chemical product” has the same meaning as in the Agricultural and Veterinary Chemicals Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*;

“assessment” means an assessment under section 16;

“Australia” includes any external Territories that are participating Territories;

“Australian product” means a chemical product that has been manufactured in Australia, but does not include an imported product;

“chemical product” means an agricultural chemical product or a veterinary chemical product but does not include such a product that, under the regulations, is exempt from levy;

“document” includes a book or other record;

“give information” includes make a statement;

“imported product” means a chemical product that has been imported into Australia (whether or not the product was manufactured in Australia);

“inspector” means:

- (a) a person appointed as an inspector for the purposes of this Act under subsection 69F(1) of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*; or
- (b) an officer of the Public Service of a State or Territory to whom an arrangement referred to in subsection 69F(2) of that Act applies for the purposes of this Act;

“interested person”, in relation to a registered chemical product, means:

- (a) subject to paragraphs (b), (c) and (d), the person (the **“original applicant”**) who applied for the registration or, in the case of a chemical product whose registration has been renewed, applied for the renewal, or the last renewal, as the case may be, of the registration; or
- (b) subject to paragraphs (c) and (d), if the original applicant has entered into a contract with another person in relation to the product under which, or as a result of which, the other person will or may apply to the NRA to have the other person’s name entered in the relevant particulars in relation to the product, or to have a label approved in relation to containers for the product, and the other person’s name is entered in those relevant particulars, or such a label is approved, on the application of the other person—the other person; or

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- (c) if the person who, apart from this paragraph, would be the interested person because of paragraph (a) or (b), was an individual who has died or is an individual whose affairs are being lawfully administered by another person—the legal personal representative of the individual or the person administering his or her affairs, as the case may be; or
- (d) if the person who, apart from this paragraph, would be the interested person because of paragraph (a) or (b), was a body corporate—a successor in law of that body corporate;

“jurisdiction” means:

- (a) a State; or
- (b) the participating Territories;

“late payment penalty” means late payment penalty payable under section 14;

“leviable disposal”, in relation to a chemical product, means:

- (a) if the product is an Australian product:
 - (i) if the product is disposed of in Australia by the manufacturer—that disposal of the product; or
 - (ii) if the product is applied by the manufacturer to the manufacturer’s own use—that application of the product; or
- (b) if the product is an imported product:
 - (i) if the product is disposed of in Australia by the importer—that disposal of the product; or
 - (ii) if the product is applied by the importer to the importer’s own use—that application of the product;

“leviable value”, in relation to a leviable disposal of a chemical product, means:

- (a) if the leviable disposal was a sale by wholesale of the product by the manufacturer or importer and the parties to the sale were dealing at arm’s length—the amount received by the manufacturer or importer in respect of the sale; or
- (b) otherwise—the notional wholesale value of the product at the time of the disposal;

“levy” means levy, imposed by any Act, that is payable under this Act;

“manufacture” includes formulate;

“notional wholesale value”, in relation to a chemical product at a particular time, means the amount that the NRA determines would have been received:

- (a) if the product is an Australian product— by the manufacturer; or
- (b) if the product is an imported product— by the importer;

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in respect of the product if, at that time, the product had been sold by the manufacturer or importer, as the case may be, by wholesale to a person with whom the manufacturer or importer was dealing at arm's length;

“NRA” means the National Registration Authority for Agricultural and Veterinary Chemicals established by the *Agricultural and Veterinary Chemicals (Administration) Act 1992*;

“occupier”, in relation to any premises or a part of any premises, means the person in occupation, charge or control of the premises or of that part of the premises, as the case may be;

“offence against this Act” includes an offence against:

- (a) section 6, 7 or 7A of the *Crimes Act 1914*; or
- (b) subsection 86(1) of that Act because of paragraph (a) of that subsection;

that relates to an offence against this Act;

“participating Territory” has the same meaning as in the *Agricultural and Veterinary Chemicals Act 1994*;

“premises” includes any place (whether enclosed or built on or not), including a place situated under ground or under water, and, in particular, includes:

- (a) a building, aircraft, vehicle or vessel; and
- (b) any structure, whether a fixed structure, or a moveable structure such as a tent, and whether on land or the bed of any waters or floating on any waters; and
- (c) a part of premises (including premises of a kind referred to in paragraph (a) or (b));

“prescribed date for payment”, in relation to any levy that is payable, means:

- (a) except if the levy is payable because of an assessment:
 - (i) if the levy is payable under subsection 7(1)—the day immediately following the end of 2 months after the commencement of this Act or, if the NRA determines a later day for the purposes of this subparagraph, that later day; or
 - (ii) if the levy is payable under subsection 8(1)—1 June next following the end of the relevant calendar year; or
 - (iii) if the levy is payable under subsection 9(1)—the date in the relevant calendar year that is prescribed by the regulations for the purposes of this paragraph or, if no date is so prescribed, 1 September in that year; or
- (b) if the levy is payable because of an assessment—the date stated in the notice of assessment to be the date by which the levy is to be paid;

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“rate of levy” has the meaning given by section 10, 11 or 12, as the case requires;

“registered” means registered under Part 2 of the Agvet Code of a State or of the participating Territories and:

(a) to avoid doubt, includes taken to be registered under Part 2 of such a Code because of the operation of Part 11 of the Code; and

(b) also has an extended meaning as mentioned in subsection (2);

“relevant calendar year” means:

(a) in relation to levy payable under subsection 8(1)—the calendar year in which the leviable disposals in respect of which the levy is payable took place; or

(b) in relation to levy payable under subsection 9(1)—the calendar year in the first 6 months of which the leviable disposals in respect of which the levy is payable took place;

“State” includes the Northern Territory;

“thing” includes a document;

“total leviable value”, in relation to a chemical product for a particular period, means the sum of the leviable values in respect of the leviable disposals of the product that took place anywhere in Australia during that period;

“veterinary chemical product” has the same meaning as in the Agricultural and Veterinary Chemicals Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*.

(2) If, at any time or during any period, a permit is in force in respect of a chemical product under Part 7 of the Agvet Code of a State or of the participating Territories (including, to avoid doubt, a permit that is taken to be in force under Part 7 of such a Code because of the operation of Part 11 of the Code), this Act has effect as if:

(a) the product were registered under Part 2 of the Code at that time or during that period; and

(b) a reference to the person who applied for the registration of the product were a reference to the person who applied for the permit.

(3) If a change occurs in the legal or equitable ownership of a chemical product, the product is taken to be disposed of at the time of the change by the person who was the legal owner of the product immediately before the change.

(4) If a chemical product is applied by a person to the person’s own use, the product is taken to be disposed of by the person when it is so applied.

Extension to certain external Territories

4. This Act extends to the external Territories that are participating Territories.

Act to bind Crown

5.(1) This Act binds the Crown in all its capacities.

(2) Nothing in this Act renders the Crown in any capacity liable to be prosecuted for an offence.

Power of NRA to make certain determinations

6. The NRA may:

- (a) by notice in writing to the manufacturer or importer of a chemical product, determine the amount that would have been received by the manufacturer or importer in respect of the product at a particular time as mentioned in the definition of “notional wholesale value” in subsection 3(1); or
- (b) by notice published in the *Gazette*, determine a later day for the purposes of subparagraph (a)(i) of the definition of “prescribed date for payment” in subsection 3(1).

PART 2—LIABILITY FOR LEVY

Liability for levy in respect of disposals during 1993

7.(1) If a chemical product was registered in any jurisdiction at the commencement of this Act, then, subject to subsection (2), levy is payable in respect of leviable disposals of the product that took place anywhere in Australia at any time during the year beginning on 1 January 1993.

(2) Levy is not payable under subsection (1) in respect of leviable disposals of a particular chemical product during the year referred to in that subsection if the total leviable value in respect of the product for that year is less than \$100,000.

(3) Subject to subsection (4), the interested person in relation to the chemical product is liable to pay the levy.

(4) If the chemical product was registered as mentioned in subsection (1) in more than one jurisdiction and different persons are the interested persons in relation to the product in different jurisdictions, those persons are jointly and severally liable to pay the levy.

Liability for levy in respect of disposals during 1994 and later years

8.(1) If a chemical product was registered in any jurisdiction during the whole or any part of the last 6 months of the year beginning on 1 January 1994 or of the last 6 months of a later calendar year (whether or not the product

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was also registered in that jurisdiction or any other jurisdiction during the whole or any part of the first 6 months of the year concerned), then, subject to subsection (2), levy is payable in respect of leviable disposals of the product that took place anywhere in Australia at any time during that year.

(2) Levy is not payable under subsection (1) in respect of leviable disposals of a particular chemical product during a calendar year if the total leviable value in respect of the product for that calendar year is less than \$100,000.

(3) Subject to subsection (4), the interested person in relation to the chemical product is liable to pay the levy.

(4) If the chemical product was registered as mentioned in subsection (1) in more than one jurisdiction and different persons are the interested persons in relation to the product in different jurisdictions, those persons are jointly and severally liable to pay the levy.

Liability for levy in respect of disposals during first 6 months of 1995 or of a later year

9.(1) If a chemical product:

(a) was registered in any jurisdiction during the whole or any part of the first 6 months of the year beginning on 1 January 1995 or of a later calendar year; and

(b) was not registered in any jurisdiction on 1 July in the year concerned; then, subject to subsection (2), levy is payable in respect of leviable disposals of the product that took place anywhere in Australia at any time during those 6 months.

(2) Levy is not payable under subsection (1) in respect of leviable disposals of a particular chemical product during the first 6 months of a calendar year if the total leviable value in respect of the product for those 6 months is less than \$50,000.

(3) Subject to subsection (4), the interested person in relation to the chemical product is liable to pay the levy.

(4) If the chemical product was registered as mentioned in subsection (1) in more than one jurisdiction and different persons are the interested persons in relation to the product in different jurisdictions, those persons are jointly and severally liable to pay the levy.

Amount of levy imposed in respect of disposals during 1993

10.(1) Subject to subsection (2), the amount of the levy that is payable under section 7 in respect of leviable disposals of a particular chemical product during the year beginning on 1 January 1993 is the amount worked out using the formula:

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total leviable value in respect of the product for that year \times **rate of levy**
where:

“rate of levy” means the percentage prescribed by the regulations for the purposes of this section in respect of that year.

(2) The total of the amounts of the levy that are payable under section 7 in respect of leviable disposals of a particular chemical product during the year beginning on 1 January 1993 is not to exceed:

- (a) subject to paragraph (b)—\$15,750; or
- (b) if another amount is prescribed by the regulations for the purposes of this paragraph in respect of that year—that other amount.

Amount of levy imposed in respect of disposals during 1994 or a later year

11.(1) Subject to subsection (2), the amount of the levy that is payable under section 8 in respect of leviable disposals of a particular chemical product during a particular calendar year is the amount worked out using the formula:

total leviable value in respect of the product for that year \times **rate of levy**
where:

“rate of levy” means the percentage prescribed by the regulations for the purposes of this section in respect of that year.

(2) The total of the amounts of the levy that are payable under section 8 in respect of leviable disposals of a particular chemical product during a particular calendar year is not to exceed:

- (a) subject to paragraph (b)—\$19,000; or
- (b) if another amount is prescribed by the regulations for the purposes of this paragraph in respect of that year—that other amount.

Amount of levy imposed in respect of disposals during the first 6 months of 1995 or of a later year

12.(1) Subject to subsection (2), the amount of the levy that is payable under section 9 in respect of leviable disposals of a particular chemical product during the first 6 months of a particular calendar year is the amount worked out using the formula:

**total leviable value in respect of
the product for those 6 months** \times **rate of levy**

where:

“rate of levy” means the percentage prescribed by the regulations for the purposes of this section in respect of those 6 months.

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(2) The total of the amounts of the levy that are payable under section 9 in respect of leviable disposals of a particular chemical product during the first 6 months of a particular calendar year is not to exceed:

- (a) subject to paragraph (b)—\$9,500; or
- (b) if another amount is prescribed by the regulations for the purposes of this paragraph in respect of those 6 months—that other amount.

Payment of levy

13. A person who is liable to pay levy in respect of a chemical product must pay the levy on or before the prescribed date for payment of that levy.

Note: If any levy payable in respect of a chemical product is not paid, the Agvet Codes provide that the NRA may refuse to renew the registration of the product.

Late payment penalty

14.(1) If any levy payable by a person under section 7, 8 or 9 in respect of leviable disposals of a chemical product is not wholly paid on or before the prescribed date for payment of the levy, the person immediately becomes liable to pay a late payment penalty of:

- (a) subject to paragraph (b)—\$200; or
- (b) if another amount is prescribed by the regulations for the purposes of this section and is applicable in respect of that prescribed date for payment—that other amount.

(2) The NRA may waive the whole or a part of the liability to pay an amount of late payment penalty.

Note: If any late payment penalty payable in respect of a chemical product is not paid, the Agvet Codes provide that the NRA may refuse to renew the registration of the product.

PART 3—CALCULATION OR ASSESSMENT OF LEVY

Calculation of levy by person liable

15.(1) If it appears to the NRA that a person may be liable to pay levy in respect of leviable disposals of a chemical product that took place during a particular period, the NRA may, not earlier than the end of that period, by written notice given to the person:

- (a) tell the person the rate of levy payable in respect of chemical products for that period; and
- (b) require the person:
 - (i) to calculate the total leviable value (if any) in respect of the product for that period and the amount of the levy (if any) that is payable; and
 - (ii) within a period of not less than one month that is stated in the notice, to notify the NRA in writing of the results of the calculations and the basis on which the calculations were made.

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(2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made under subsection (1).

Penalty: 30 penalty units.

(3) Subject to subsection (6), a person who has given to the NRA, under subparagraph (1)(b)(ii) or this subsection, a notification in writing in respect of the total leviable value (if any) in respect of a chemical product for a period and the amount of the levy (if any) that is payable may make a further calculation of that value and amount in substitution for the value and amount last so calculated and notify the NRA of the results of the further calculations and the basis on which the further calculations were made.

(4) Subject to subsection (6), an amount notified by a person to the NRA in accordance with this section as being the amount calculated by the person to be the levy payable in respect of a chemical product for a period or, if more than one amount has been so notified for that period, the amount last notified, is taken to be the amount of levy so payable.

(5) Subject to subsection (6), if a notification by a person to the NRA in accordance with this section or, if more than one notification has been made, the last such notification, states that the calculations made by the person show that no levy is payable in respect of a particular chemical product for a period, no levy is payable by the person in respect of that product for that period.

(6) Subsections (3), (4) and (5) do not apply in relation to a chemical product in respect of a period if the NRA has made or makes an assessment as to whether any levy is payable in respect of that product for that period.

Assessment of levy by NRA

16.(1) The NRA may make an assessment as to whether any levy is payable in respect of leviable disposals of a particular chemical product during a particular period.

(2) An assessment may be made before, on or after the date that, apart from the assessment, would be the prescribed date for payment of the levy and whether or not any payment has been made on account of the levy.

(3) An assessment is to state the total leviable value (if any) in respect of the product for the period concerned and the amount of the levy (if any) payable.

(4) An assessment may be based on any information in the possession of the NRA, whether obtained as a result of the making of a requirement under this Act or otherwise.

(5) The NRA must give written notice of an assessment:

(a) if any levy is assessed to be payable—to the person who it considers is liable to pay the levy; or

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- (b) if no levy is assessed to be payable—to the person who, if levy had been payable, it considers would have been liable to pay the levy.
- (6) A notice of assessment must contain particulars of any determination made by the NRA under paragraph 6(a).
- (7) If any levy is payable, the notice must state the date by which the levy is to be paid.
- (8) The date to be so stated must not be earlier than whichever is the later of the following dates:
- (a) the date that, apart from the assessment, would be the prescribed date for payment of the levy;
 - (b) the 21st day after the day on which the notice is given.
- (9) A notice of an assessment must include a statement to the effect of section 18.
- (10) A failure to comply with subsection (9) does not affect the validity of the assessment.
- (11) An assessment is taken to be a decision for the purposes of the *Administrative Appeals Tribunal Act 1975*.
- (12) The production of a notice of assessment, or of a document purporting to be a copy of a notice of assessment, signed on behalf of the NRA by the Chief Executive Officer of the NRA or a delegate of the Chief Executive Officer is conclusive evidence of the due making of the assessment and, except in proceedings under section 18 on a review or appeal relating to the assessment, that the amount and all the particulars of the assessment are correct.

Fresh assessments

17.(1) Subject to subsection (2), if the NRA is satisfied that an assessment was incorrect, the NRA may make a fresh assessment under section 16 in substitution for the original assessment, even though levy may have been paid in respect of the original assessment.

- (2) A fresh assessment may:
- (a) if the original assessment was based on false or misleading information given to the NRA or to an inspector—be made at any time; or
 - (b) otherwise—be made only within 4 years from the date on which levy became payable under the original assessment.

Reconsideration and review of assessments

18.(1) A person who is affected by an assessment made by the NRA may, if dissatisfied with the assessment, by written notice given to the NRA within 21 days after the day on which the person first received notice of the assessment, or within any further period that the NRA allows, request the NRA to reconsider the assessment.

(2) The person must set out in the request reasons for making the request.

(3) Upon receipt of the request, the NRA must reconsider the assessment and, subject to subsection (4), may confirm or revoke the assessment or vary the assessment in any manner that it thinks fit.

(4) If the NRA does not confirm, revoke or vary an assessment before the end of 21 days after the day on which it received the request under subsection (1) to reconsider the assessment, it is taken, at the end of that period, to have confirmed the assessment under subsection (3).

(5) If the NRA confirms, revokes or varies an assessment before the end of the period referred to in subsection (4), it must, by written notice given to the person making the request, tell the person the result of the reconsideration of the assessment and the reasons for confirming, varying or revoking the assessment, as the case may be.

(6) A failure to comply with subsection (5) does not affect the validity of the confirmation, revocation or variation.

(7) Applications may be made to the Administrative Appeals Tribunal for review of assessments of the NRA that have been confirmed or varied under subsection (3).

(8) If, as a result of an application made under paragraph 33(b), the Administrative Appeals Tribunal has reviewed a determination made by the NRA under paragraph 6(a) in relation to a chemical product as at a particular time, the Tribunal is not entitled to alter the determination as so reviewed by it when it is reviewing an assessment to which the determination is relevant.

(9) If an assessment is taken, because of subsection (4), to be confirmed, section 29 of the *Administrative Appeals Tribunal Act 1975* applies as if the prescribed time for making application for review of the assessment were the period beginning on the day on which the assessment is taken to be confirmed and ending on the 28th day after that day.

(10) If a request is made under subsection (1) in respect of an assessment, section 41 of the *Administrative Appeals Tribunal Act 1975* applies as if the making of the request were the making of an application to the Administrative Appeals Tribunal for a review of the assessment.

PART 4—ENFORCEMENT

Levy and late payment penalty recoverable as debts

19.(1) Any levy that has not been paid on or before the prescribed date for payment of the levy, or any late payment penalty that is payable, is a debt due to the Commonwealth and payable to the NRA and may be sued for and recovered by the NRA.

(2) The NRA must pay into the Consolidated Revenue Fund any amounts of levy or late payment penalty received by it.

NRA may require information about disposals of chemical products

20.(1) If it appears to the NRA that levy under section 7 or 8 may be payable in respect of a chemical product for a calendar year, the NRA may, not earlier than the end of the calendar year, give written notice to any one or more of the following:

- (a) the person, or any of the persons, by whom any such levy would be payable;
- (b) if the product is an imported product and the person referred to in paragraph (a) is not, or none of the persons referred to in that paragraph is, the importer—the importer;
- (c) if the product is an Australian product and the person referred to in paragraph (a) is not, or none of the persons referred to in that paragraph is, the manufacturer—the manufacturer;

requiring the person to whom the notice is given to give to the NRA, within a period stated in the notice that is not less than one month after the notice is given, any information relating to the importation, manufacture or disposal of the product during the calendar year that is necessary to work out the total leviable value in respect of the product for the calendar year.

(2) If it appears to the NRA that levy under section 9 may be payable in respect of a chemical product for the first 6 months of a calendar year, the NRA may, not earlier than 1 July in the calendar year, give written notice to any one or more of the following:

- (a) the person, or any of the persons, by whom any such levy would be payable;
- (b) if the product is an imported product and the person referred to in paragraph (a) is not, or none of the persons referred to in that paragraph is, the importer—the importer;
- (c) if the product is an Australian product and the person referred to in paragraph (a) is not, or none of the persons referred to in that paragraph is, the manufacturer—the manufacturer;

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requiring the person to whom the notice is given to give to the NRA, within a period stated in the notice that is not less than one month after the notice is given, any information relating to the importation, manufacture or disposal of the product during those 6 months that is necessary to work out the total leviable value in respect of the product for those 6 months.

(3) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made under subsection (1) or (2).

Penalty: 30 penalty units.

Searches to monitor compliance with Act

21.(1) Subject to this section, to the extent that it is reasonably necessary to do so for the purpose of finding out whether levy is payable under this Act, an inspector, with any necessary help, may enter, at any time during ordinary working hours on any day, any premises that the inspector has reasonable cause to believe are premises at which any thing relating to the importation, manufacture or disposal of chemical products is kept and may do any one or more of the following:

- (a) search the premises and any thing found at the premises;
- (b) inspect any document kept at the premises;
- (c) seize any such document and remove it from the premises.

(2) An inspector may not, under subsection (1), enter premises that are a residence unless the occupier of the premises has consented to the entry.

(3) An inspector may not exercise any powers under subsection (1) in relation to premises if:

- (a) the occupier of the premises has required the inspector to produce his or her identity card for inspection by the occupier; and
- (b) the inspector fails to comply with the requirement.

Offence-related searches and seizures

22.(1) If an inspector has reasonable grounds for suspecting that there may be at any premises a particular thing that may be evidence of the commission of an offence against this Act, the inspector may:

- (a) with the consent of the occupier of the premises; or
- (b) under a warrant issued under section 24;

enter the premises and:

- (c) search the premises for the thing; and
- (d) if the thing is found—seize the thing.

(2) If, in the course of searching, under a warrant issued under section 24, for a particular thing in relation to a particular offence, an inspector finds another thing that the inspector believes, on reasonable grounds, to be:

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- (a) a thing that may be evidence of the commission of the offence, although not the thing stated in the warrant; or
- (b) a thing that may be evidence of the commission of another offence against this Act;

and the inspector believes, on reasonable grounds, that it is necessary to seize the other thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or the other offence, the warrant is taken to authorise the inspector to seize the other thing.

Power of inspector to require information or documents

23.(1) Subject to subsection (2), an inspector who has entered premises under this Act may, to the extent that it is reasonably necessary for the purpose of finding out whether levy is payable under this Act, require a person to give information to the inspector and to produce any documents requested by the inspector.

(2) An inspector is not entitled to make a requirement of a person under subsection (1) unless the inspector produces his or her identity card for inspection by the person.

(3) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made under subsection (1).

Penalty: 30 penalty units.

Offence-related warrants

24.(1) An inspector may apply to a magistrate for a warrant under this section in relation to particular premises.

(2) Subject to subsection (3), a magistrate may issue the warrant in accordance with the prescribed form if he or she is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or may be within the next 72 hours, at the premises a particular thing that may be evidence of the commission of an offence against this Act.

(3) A magistrate must not issue a warrant under subsection (2) unless the informant or some other person has given to the magistrate, either orally or by affidavit, any further information that the magistrate requires about the grounds on which the issue of the warrant is being sought.

- (4)** The warrant must:
 - (a) state the nature of the offence; and
 - (b) state the purpose for which the warrant is issued; and
 - (c) authorise an inspector named in the warrant, with any help, and using any force, that is necessary and reasonable, to enter the premises and exercise the powers referred to in paragraphs 22(1)(c) and (d) in respect of the thing; and

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- (d) state whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
- (e) state a day, not later than 7 days after the day of issue of the warrant, upon which the warrant ceases to have effect.

Announcement before entry

25.(1) Subject to subsection (2), an inspector who is authorised to enter premises under a warrant issued under section 24 or a person helping such an inspector must, before any person enters the premises under the warrant:

- (a) announce that he or she is authorised by the warrant to enter the premises; and
- (b) give any person at the premises an opportunity to allow entry to the premises.

(2) The inspector or a person helping the inspector is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure:

- (a) the safety of a person (including the inspector and any person helping the inspector); or
- (b) that the effective execution of the warrant is not frustrated.

Details of warrant to be given to occupier

26.(1) If a warrant under section 24 in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the inspector or a person helping the inspector must make a copy of the warrant available to the occupier or other person.

(2) The inspector must identify himself or herself to the person at the premises.

(3) The copy of the warrant referred to in subsection (1) need not include the signature of the magistrate who issued the warrant.

Use of equipment to examine or process things

27.(1) An inspector who enters premises under section 21 or 22 or a person helping the inspector may bring to the premises any equipment reasonably necessary for the examination or processing of things found at the premises in order to determine whether they are things that may be seized under that section.

(2) If:

- (a) it is not practicable to examine or process the things at the premises;
or

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(b) the occupier of the premises consents in writing;
the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized under section 21 or 22, as the case may be.

(3) If things containing electronically stored information are moved to another place for the purpose of examination or processing under subsection (2), the inspector must, if it is practicable to do so:

- (a) tell the occupier the address of the place and the time at which the examination or processing will be carried out; and
- (b) allow the occupier or a representative of the occupier to be present during the examination or processing.

(4) The inspector or a person helping the inspector may operate equipment already at the premises to carry out the examination or processing of a thing found at the premises in order to determine whether it is a thing that may be seized under section 21 or 22, as the case may be, if the inspector or person helping believes on reasonable grounds that:

- (a) the equipment is suitable for the examination or processing; and
- (b) the examination or processing can be carried out without damage to the equipment or the thing.

Use of electronic equipment at premises

28.(1) Subject to subsection (4), if a thing found at premises that an inspector has entered under section 21 or 22 is or includes records of information in a written or electronic form, the inspector or a person helping the inspector may operate, or the inspector may require the occupier or an employee of the occupier who is present to operate, equipment at the premises to see whether:

- (a) the equipment; or
- (b) a disk, tape or other storage device that:
 - (i) is at the premises; and
 - (ii) can be used with, or is associated with, the equipment;

contains records that are relevant to determining whether levy is payable under this Act or an offence against this Act has been committed, as the case requires.

(2) If the inspector or a person helping the inspector, after equipment at the premises is operated, finds that the equipment contains records of that kind or that a disk, tape or other storage device at the premises contains records of that kind, he or she may:

- (a) seize the equipment or the disk, tape or other storage device; or

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- (b) if the records can, by using facilities at the premises, be put in documentary form—operate the facilities to put the records in that form and seize the documents so produced; or
- (c) if the records can be transferred to a disk, tape or other storage device:
 - (i) that is brought to the premises; or
 - (ii) that is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises; operate the equipment or other facilities to copy the records to the storage device and remove the storage device from the premises.

(3) An inspector or person helping an inspector may seize equipment under paragraph (2)(a) only if:

- (a) it is not practicable to put the relevant records in documentary form as mentioned in paragraph (2)(b) or to copy the records as mentioned in paragraph (2)(c); or
- (b) possession by the occupier of the equipment could constitute an offence.

(4) An inspector or a person helping an inspector must not operate equipment for the purpose mentioned in subsection (1) unless the inspector or person helping believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

Compensation for damage to electronic equipment

29.(1) If:

- (a) equipment is damaged because of being operated as mentioned in section 27 or 28; and
- (b) the damage was caused as a result of:
 - (i) insufficient care being exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care being exercised by the person operating the equipment;

the NRA must pay compensation for the damage to the owner of the equipment.

(2) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and the employees and agents of the occupier, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

Copies of seized things to be provided

30.(1) Subject to subsection (2), if an inspector who has entered premises under section 21 or 22 seizes:

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- (a) a document, film, computer file or other thing that can be readily copied; or
 - (b) a storage device the information in which can be readily copied;
- the inspector must, if requested to do so by the occupier of the premises or another person who apparently represents the occupier and is present when the seizure takes place, give a copy of the thing or the information to the occupier or other person as soon as practicable after the seizure.
- (2) Subsection (1) does not apply if:
 - (a) the thing that has been seized was seized under paragraph 28(2)(b) or (c); or
 - (b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

Return of things that are seized

31.(1) If an inspector seizes a thing under section 21 or 22, the inspector must take reasonable steps to return it if the reason for its seizure no longer exists.

(2) If the thing has not been returned before the end of 60 days after its seizure, the inspector must take reasonable steps to return it unless:

- (a) proceedings in which the thing may be used in evidence were begun before the end of the 60 days and the proceedings (including an appeal to a court in relation to the proceedings) have not been completed; or
- (b) the inspector may keep the thing because of an order under section 32; or
- (c) the inspector is authorised by this Act or by an order of a court to keep, destroy or dispose of the thing.

(3) If the thing is required to be returned, it must be returned to the person from whom it was seized or, if that person is not entitled to possess it, to the owner.

(4) If there is a dispute as to the ownership of the thing, the inspector may keep it until the dispute is resolved.

(5) This section has effect subject to section 32.

Court of summary jurisdiction may permit a thing to be kept

32.(1) If:

- (a) before the end of 60 days after an inspector seizes a thing under section 21 or 22; or
- (b) before the end of a period previously stated in an order of a court under this section in respect of a thing seized by an inspector as mentioned in paragraph (a);

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proceedings in which the thing may be used in evidence have not been brought, the inspector may apply to a court of summary jurisdiction for an order that he or she may keep the thing for a further period.

(2) If the court is satisfied that it is necessary for the inspector to continue to keep the thing:

- (a) for the purposes of an investigation as to whether an offence has been committed; or
- (b) to enable evidence of an offence to be secured for the purposes of a prosecution;

the court may order that the inspector may keep the thing for a period stated in the order.

(3) If the court thinks that notice of the application should be given to any person, it may require such a notice to be given before it hears the application.

PART 5—MISCELLANEOUS

Administrative Appeals Tribunal may review certain decisions by NRA

33. An application may be made to the Administrative Appeals Tribunal for review of:

- (a) a decision of the NRA determining, or refusing to determine, a later day for the purposes of subparagraph (a)(i) of the definition of “prescribed date for payment” in subsection 3(1); or
- (b) a decision of the NRA determining an amount under paragraph 6(a); or
- (c) a decision of the NRA under subsection 14(2) waiving, or refusing to waive, the whole or part of the liability to pay an amount of late payment penalty; or
- (d) a decision of the NRA allowing, or refusing to allow, a further period for the making of a request under subsection 18(1).

Self-incrimination to be a reasonable excuse for non-compliance with requirement

34. It is a reasonable excuse for a person to refuse or fail to give information, produce a document or do any other thing that the person is required to do by or under this Act that the information, the production of the document or the doing of that other thing would tend to incriminate the person.

Copying of documents

35. If an inspector seizes a document under section 21 or 22, or a person produces a document to an inspector in accordance with a requirement under subsection 23(1), the inspector may make copies of, or take extracts from, the document.

Applicant for registration of chemical product to keep records

36. A person who applies for registration, or the renewal of registration, of a chemical product, or imports a chemical product into, or manufactures a chemical product in, Australia must:

- (a) keep any records relating to the importation, manufacture or disposal of the product that may be necessary to work out the total leviable value in respect of the product for any period in respect of which levy may be payable in respect of leviable disposals of the product; and
- (b) retain those records for 6 years.

Penalty: 30 penalty units.

False or misleading information or document

37. A person must not, in compliance or purported compliance with a requirement made under this Act, do either or both of the following:

- (a) give information, whether orally or in writing, that the person knows to be false or misleading in a material particular;
- (b) produce a document that the person knows to be false or misleading in a material particular without:
 - (i) indicating to the person to whom the document is produced that it is false or misleading and the respect in which it is false or misleading; and
 - (ii) providing correct information to that person if the person producing the document is in possession of, or can reasonably acquire, the correct information.

Penalty: 30 penalty units.

Exemptions from liability for damages

38. No action, suit or other proceeding for damages lies against the Commonwealth, the NRA, or any other Commonwealth authority, or a person who is or has been an officer or employee of the Commonwealth, of the NRA or of any other Commonwealth authority, or is or has been a delegate of the NRA, a director of the NRA, a consultant to the NRA or an inspector, for or in relation to anything done or omitted to be done in good faith in the performance or purported performance of any function, or the exercise or purported exercise of any power, conferred by this Act.

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Regulations

39.(1) The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and, in particular, prescribing the way in which notices may be given by or to the NRA under this Act.

(2) The percentage that may be prescribed by the regulations for the purposes of section 10, 11 or 12 must not exceed 2%.

*[Minister's second reading speech made in—
House of Representatives on 16 December 1993
Senate on 8 February 1994]*