



Agricultural and Veterinary Chemicals (Administration) Act 1992

Act No. 262 of 1992 as amended

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taking into account amendments up to Act No. 46 of 2011

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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An Act to establish an authority for the registration of agricultural and veterinary chemicals, and for related purposes

Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

2 Commencement [see Note 1]

- (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.
- (2) If this Act does not commence under subsection (1) within the period of 6 months beginning on the day on which it receives the Royal Assent, it commences on the first day after the end of that period.

3 Object

The object of this Act is to establish a national registration authority to administer such laws of the Commonwealth or of the States and Territories relating to agricultural and veterinary chemical products as confer functions and powers on the Authority.

4 Interpretation

In this Act, unless the contrary intention appears:

Advisory Board means the Advisory Board of the APVMA established by section 14.

APVMA means the Australian Pesticides and Veterinary Medicines Authority continued in existence by section 6.

Board member means a member of the Advisory Board appointed in accordance with section 17 (including the Chair).

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Chair means the Chair of the Advisory Board.

chemical product has the same meaning as in the Agvet Code of the participating Territories.

Chief Executive Officer means the Chief Executive Officer appointed in accordance with section 33.

committee means a committee established under section 28.

Finance Minister means the Minister who administers the *Financial Management and Accountability Act 1997*.

Gene Technology Regulator has the same meaning as in the *Gene Technology Act 2000*.

GM product has the same meaning as in the *Gene Technology Act 2000*.

industry means the agricultural and veterinary chemicals industry.

inspector means:

- (a) a person appointed as an inspector for the purposes of this Act under subsection 69F(1); or
- (b) a person to whom an authorisation referred to in subsection 69F(2) applies for the purposes of this Act.

member of the staff, in relation to the APVMA, means:

- (a) a person referred to in subsection 45(1); or
- (b) a person whose services are made available to the APVMA under paragraph 46(1)(a) or under arrangements made under subsection 46(2).

participating Territory has the same meaning as in the *Agricultural and Veterinary Chemicals Act 1994*.

State includes the Northern Territory.

Territory does not include the Northern Territory.

5 Extension to external Territories

This Act extends to every external Territory that is a participating Territory.

5A Application of the *Criminal Code*

Chapter 2 (other than Part 2.5) of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Part 2—Establishment, functions and powers of APVMA

6 Australian Pesticides and Veterinary Medicines Authority

The body known immediately before the commencement of this section as the National Registration Authority for Agricultural and Veterinary Chemicals is continued in existence with the new name, Australian Pesticides and Veterinary Medicines Authority.

7 Functions and powers

- (1) The APVMA has any functions and powers that are conferred on it by or under this Act or the Agvet Code, or the Agvet Regulations, of the participating Territories.
- (1A) The functions of the APVMA include the following:
 - (a) to assess the suitability for sale in Australia of active constituents for proposed or existing chemical products, chemical products and labels for containers for chemical products;
 - (b) to provide information to the Governments and authorities of the Commonwealth, the States and the participating Territories about approved active constituents for proposed or existing chemical products, registered chemical products, registered listed chemical products, reserved chemical products and approved labels for containers for chemical products and to co-operate with those Governments and authorities on matters relating to the management and control of chemical products;
 - (c) to keep records and statistics of approvals and registrations granted, and permits and licences issued, by it under the Agvet Codes;
 - (d) to evaluate the effects of the use of chemical products in the States and participating Territories;
 - (e) to co-operate with Governments and authorities of the Commonwealth, the States and the participating Territories for the purpose of facilitating a consistent approach to the assessment and control of chemicals;

- (f) in co-operation with Governments and authorities of the Commonwealth, the States and the participating Territories, to develop codes of practice, standards and guidelines for, and to recommend precautions to be taken in connection with, the manufacture, export, import, sale, handling, possession, storage, disposal and use of chemical products in the States and participating Territories;
 - (g) to collect, interpret, disseminate and publish information relating to chemical products and their use;
 - (h) to encourage and facilitate the application and use of results of evaluation and testing of chemical products;
 - (i) to exchange information relating to chemical products and their use with overseas and international bodies having functions similar to the APVMA's functions;
 - (j) when requested by the Minister, or on its own initiative, to report to or advise the Minister on any matter relating to chemical products or arising in the course of the performance of its functions;
 - (k) to encourage and facilitate the introduction of uniform national procedures for control of the use of chemical products;
 - (l) to fund, and co-operate in, a program designed to ensure that active constituents for proposed or existing chemical products, chemical products, and labels for containers for chemical products, comply with the Agvet Codes and the Agvet Regulations.
- (1B) Expressions used in subsection (1A) have the same meanings as in the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*.
- (1C) The APVMA has any functions and powers that are conferred on it by Division 2A of Part 3 of the *Food Standards Australia New Zealand Act 1991*.
- (2) The APVMA has any functions and powers that are expressed to be conferred on it by a law of a State.
 - (3) The APVMA has power to do all things necessary or convenient to be done in connection with the performance of its functions and, in particular, may:
 - (a) enter into contracts; and

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- (b) acquire, hold and dispose of real and personal property; and
- (c) occupy, use and control any land or building owned or held under lease by the Commonwealth, a State or a Territory and made available for the purposes of the APVMA; and
- (d) appoint agents and attorneys, and act as agent for other persons; and
- (da) make available to the public, either without charge or upon payment of a fee to the APVMA, manuals, reports, lists of requirements and other documents; and
- (e) do anything incidental to any of its powers.

Note: Paragraph (a)—the Chief Executive Officer may also enter into contracts on behalf of the Commonwealth. See section 44 of the *Financial Management and Accountability Act 1997*.

- (4) In the performance of its functions and the exercise of its powers, the APVMA is to have regard to the Commonwealth Government's policy in relation to the principle of ecologically sustainable development and, in particular, to the need to use, conserve and enhance the community's resources so that ecological processes, on which life depends, are maintained, and the total quality of life, now and in the future, can be increased.

7AA APVMA's assets are Commonwealth assets

- (1) Any real or personal property held by the APVMA is held for and on behalf of the Commonwealth.
- (2) Any money received by the APVMA is received for and on behalf of the Commonwealth.
- (3) The APVMA cannot hold real or personal property on trust.

Note: The Commonwealth may hold real or personal property or money on trust.

- (4) To avoid doubt, paragraph 7(3)(b) is subject to subsection (3) of this section.
- (5) To avoid doubt, a right to sue is taken not to be personal property for the purposes of subsection (1).

7AB APVMA's liabilities are Commonwealth liabilities

- (1) Any financial liabilities of the APVMA are taken to be liabilities of the Commonwealth.
- (2) In this section:
financial liability means a liability to pay a person an amount if the amount, or the method for working out the amount, has been determined.

7A Annual publication of standards for certain residues of chemical products

- (1) The APVMA must publish, in an appropriate manner, in each calendar year approved standards for residues of chemical products in protected commodities.
- (2) In this section:
protected commodity has the same meaning as in the Agvet Code.

8 Consultation

- (1) The APVMA, for the purpose of considering any matter, or obtaining information or advice, relating to the performance of its functions, may consult with persons, bodies or Governments, including:
 - (a) persons or bodies involved in the industry; and
 - (b) the Commonwealth Government or State Governments or Commonwealth or State authorities having functions relating to agricultural or veterinary chemicals; and
 - (c) persons (including members of the scientific community) having a particular interest in matters associated with the industry; and
 - (d) persons or bodies having a particular interest in the protection of the interests of consumers or in the protection of the environment.
- (1A) If the matter that is being considered by the APVMA, or in respect of which the APVMA is seeking information or advice, relates to an active constituent for a proposed or existing chemical product, a chemical product, or a label for containers for a chemical product,

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the APVMA may make available to the person, body or Government concerned:

- (a) information obtained by it with respect to the constituent, product or label; and
 - (b) samples of the constituent, of any of the active constituents of the product, or of the product, or samples or copies of the label, as the case may be.
- (2) The APVMA may:
- (a) pay travel expenses reasonably incurred by a person in connection with consultations by the APVMA; and
 - (b) subject to written guidelines given to the APVMA by the Minister, pay expenses (other than travel expenses) reasonably incurred by a body or person in connection with consultations by the APVMA.
- (3) To avoid doubt, the APVMA does not consult the Advisory Board for the purposes of this section when the Chief Executive Officer requests advice from the Board.

8A Consultation with Gene Technology Regulator

- (1) This section applies to the following:
- (a) an active constituent for a proposed or existing chemical product, being an active constituent that is or contains a GM product;
 - (b) a proposed or existing chemical product that is or contains a GM product.
- (2) The APVMA must consult the Gene Technology Regulator in accordance with this section for the purposes of the following:
- (a) deciding whether to grant an application under the Code in relation to any of the following:
 - (i) approval of the active constituent;
 - (ii) registration or listed registration of the chemical product;
 - (iii) approval of a label for containers for the chemical product;
 - (b) deciding whether to grant an application under the Code in relation to a variation of any of the following:
 - (i) the approval of the active constituent;

- (ii) the registration or listed registration of the chemical product;
 - (iii) the approval of a label for containers for the chemical product;if the variation may affect the GM product;
 - (c) reconsidering any of the following:
 - (i) the approval of the active constituent;
 - (ii) the registration or listed registration of the chemical product;
 - (iii) the approval of a label for containers for the chemical product;
 - (d) deciding whether to issue a permit in respect of:
 - (i) the active constituent; or
 - (ii) the chemical product.
- (3) If the APVMA is required to consult the Gene Technology Regulator under subsection (2), the APVMA must give written notice to the Gene Technology Regulator:
- (a) stating that the application has been made, the reconsideration is to be undertaken, or the issue of the permit is being considered; and
 - (b) requesting the Gene Technology Regulator to give advice about the application, reconsideration, or issue.
- (4) If the APVMA gives the Gene Technology Regulator a notice under subsection (3), the Gene Technology Regulator may give written advice to the APVMA about the application, reconsideration, or issue.
- (5) The advice is to be given within the period specified in the notice.
- (6) If the APVMA receives advice from the Gene Technology Regulator in response to a notice under this section within the period specified in the notice, the APVMA must:
- (a) ensure that the advice is taken into account in making a decision on the application, reconsideration, or issue to which the notice relates; and
 - (b) inform the Gene Technology Regulator of the decision.

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- (7) Unless the contrary intention appears, expressions used in this section have the same meanings as in the *Agricultural and Veterinary Chemicals Code Act 1994*.

9 Agreements and arrangements

- (1) The Minister, or a person authorised in writing by the Minister, may enter into an agreement or arrangement with a Minister of a State for the performance of functions or the exercise of powers by the APVMA as an agent of the State.
- (2) The APVMA has such functions and powers as are referred to in such an agreement or arrangement.

9A APVMA to comply with policies of Governments of Commonwealth, States and participating Territories

If there is an agreement in force between the Government of the Commonwealth and the Governments of all or any of the States and participating Territories for the purposes of this Act and the Agvet Codes, the APVMA must, in the performance of its functions and the exercise of its powers, comply with any policies of those Governments determined under the agreement.

10 Minister may give directions

- (1) Subject to subsection (2), the Minister may give written directions to the APVMA concerning the performance of its functions or the exercise of its powers, and the APVMA must comply with any such direction.
- (2) The Minister must not give a direction to the APVMA unless:
- (a) the Minister is satisfied that it is necessary to give the direction to the APVMA in order to ensure that, in performing its functions, or exercising its powers, the APVMA complies with policies referred to in section 9A; and
 - (b) the Minister has given to the APVMA a written notice stating that the Minister is considering giving the direction; and
 - (c) the Minister has given to the Chief Executive Officer an adequate opportunity to discuss with the Minister the need for the proposed direction.

- (3) Subject to subsection (4), if the Minister gives a direction to the APVMA, the Minister must:
 - (a) cause a notice setting out particulars of the direction to be published in the *Gazette* as soon as practicable after giving the direction; and
 - (b) cause a copy of that notice to be laid before each House of the Parliament within 15 sitting days of that House after the publication of the notice in the *Gazette*.
- (4) Subsection (3) does not apply in relation to a particular direction if the Minister determines, in writing, that compliance with the subsection is undesirable because it would, or would be likely to, be prejudicial to the national interest of Australia.
- (5) A direction under subsection (1) is not a legislative instrument.

10A Chief Executive Officer not subject to direction on certain matters

To avoid doubt, section 10 does not empower the Minister to direct the Chief Executive Officer in relation to the Chief Executive Officer's performance of functions, or exercise of powers, under the *Financial Management and Accountability Act 1997* or as an Agency Head under the *Public Service Act 1999*.

11 Delegation by APVMA

- (1) The APVMA may, by writing under its common seal, delegate to:
 - (b) a committee; or
 - (c) a member of the staff of the APVMA; or
 - (d) an authority of the Commonwealth; or
 - (e) a person appointed or engaged under the *Public Service Act 1999*;all or any of the APVMA's powers and functions.
- (2) A delegate of the APVMA is, in the exercise of the delegate's delegated powers and functions, subject to the APVMA's directions.

Part 3—Constitution of APVMA and Advisory Board

Division 1—Constitution of APVMA

12 APVMA is body corporate etc.

- (1) The APVMA:
 - (a) is a body corporate with perpetual succession; and
 - (b) is to have a common seal; and
 - (c) may sue and be sued in its corporate name.
- (2) The common seal of the APVMA must be kept in such custody as the APVMA directs and must not be used except as authorised by the APVMA.
- (3) All courts, judges and persons acting judicially must take judicial notice of the imprint of the common seal of the APVMA appearing on a document and must presume that it was duly affixed.

13 Constitution of APVMA

- (1) The APVMA consists of the Chief Executive Officer.
- (2) The performance of a function or the exercise of a power of the APVMA is not affected by a vacancy in the office of the Chief Executive Officer.

Division 2—The Advisory Board

14 Establishment

The Advisory Board of the APVMA is established by this section.

15 Membership

The Advisory Board consists of up to 9 Board members.

16 Function of Advisory Board

- (1) The Advisory Board's function is, either on its own initiative or at the request of the Chief Executive Officer, to provide advice and make recommendations to the Chief Executive Officer in relation to the performance of a function or the exercise of a power of the APVMA.
- (2) The Advisory Board has power to do all things necessary or convenient to be done for or in connection with the performance of its function.
- (3) To avoid doubt, the Advisory Board cannot give any directions to the Chief Executive Officer.

Division 3—Appointment etc. of members of Advisory Board

17 Appointment

- (1) A Board member is to be appointed by the Minister by written instrument, on a part-time basis.
- (2) When appointing Board members, the Minister must ensure that:
 - (a) two Board members have experience in the regulation, under State or Territory law, of chemical products; and
 - (b) one Board member has experience in the agricultural chemical industry; and
 - (c) one Board member has experience in the veterinary chemical industry; and
 - (d) one Board member has experience in primary production; and
 - (e) one Board member has experience in environmental toxicology, including knowledge of the effect of chemicals in ecosystems; and
 - (f) one Board member has experience in protecting consumer interests; and
 - (g) one Board member has experience in public health and occupational health and safety; and
 - (h) if the Minister considers it necessary—one Board member has experience in a field relevant to the APVMA's functions.
- (3) The Minister must appoint one of the Board members to be the Chair.
- (4) The Minister must consult the Chief Executive Officer before appointing a person as a Board member or as the Chair.
- (5) A person's appointment as a Board member is not invalid because of a defect or irregularity in connection with the person's appointment.

18 Term of appointment

A Board member holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.

Note: A Board member is eligible for reappointment: see section 33AA of the *Acts Interpretation Act 1901*.

19 Remuneration and allowances

- (1) A Board member is to be paid such remuneration as is determined by the Remuneration Tribunal. If no determination of that remuneration is in operation, the Board member is to be paid such remuneration as is prescribed.
- (2) A Board member is to be paid the allowances that are prescribed.
- (3) If a person who is a Board member:
 - (a) is a member of the Parliament of a State; or
 - (b) is a candidate for election to the Parliament of a State and, under the law of the State, would not be eligible to be elected as a member of that Parliament if the person were entitled to remuneration or allowances under this Act; or
 - (c) is in service or employment of a State, or of an authority of a State, on a full-time basis; or
 - (d) holds or performs the duties of an office or position established by or under a law of a State on a full-time basis; the person must not be paid remuneration or allowances under this Act, but is to be reimbursed the expenses that the person reasonably incurs in performing duties under this Act.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.
- (5) In this section:

Parliament of a State:

- (a) in relation to the Australian Capital Territory—means the Legislative Assembly for the Australian Capital Territory; or
- (b) in relation to the Northern Territory—means the Legislative Assembly of the Northern Territory.

State includes the Australian Capital Territory and the Northern Territory.

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21 Leave of absence

- (1) The Minister may grant leave of absence to the Chair on the terms and conditions that the Minister determines.
- (2) The Chair may grant leave of absence to another Board member on the terms and conditions that the Chair determines.

22 Resignation

- (1) A Board member may resign by giving to the Minister a signed notice of resignation.
- (2) The Chair may resign his or her appointment as the Chair without resigning his or her appointment as a Board member.

23 Standing obligation to disclose interests

- (1) A Board member must give written notice to the Minister of any direct or indirect financial interest that the member has if that interest could conflict with the proper performance of the Advisory Board's function. Notice is required whether or not there is any particular matter under consideration that gives rise to an actual conflict of interest.
- (2) For the purposes of subsection (1), it does not matter whether the interest is acquired before or after the Board member's appointment.
- (3) The notice must be given to the Minister as soon as practicable after the Board member becomes aware of the potential for conflict of interest.

24 Termination of appointment

The Minister may terminate the appointment of a Board member.

25 Terms and conditions of appointment not provided for by Act

A Board member holds office on such terms and conditions (if any) in relation to matters not provided for by this Act as are determined, in writing, by the Minister.

Division 4—Advisory Board procedures

26 Meetings between the Chief Executive Officer and the Advisory Board

Holding meetings

- (1) The Chief Executive Officer must hold such meetings with the Advisory Board as are necessary for the efficient performance of the APVMA's functions.
- (2) Meetings are to be held at the times and places that the Chief Executive Officer determines.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone, etc.

Presiding at meetings

- (3) The Chief Executive Officer, or a person directed by the Chief Executive Officer, is to preside at meetings.

Procedure of meetings

- (4) The Chief Executive Officer may determine the procedure to be followed at or in relation to meetings, including matters with respect to:
 - (a) holding meetings; and
 - (b) the quorum for meetings (including requirements that particular Board members be present); and
 - (c) regulating the way in which meetings are conducted.
- (5) The Chief Executive Officer must ensure that minutes of meetings are kept.

Attendance by the Secretary

- (6) The Secretary, or a person authorised by the Secretary, may attend meetings.

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Attendance by non-Board members

- (7) The Chief Executive Officer may invite a person, other than a Board member or the Secretary, to attend a meeting for the purpose of advising or informing it on any matter and may pay expenses incurred by the person in attending the meeting.

Disclosure of interest by a Board member

- (8) If a Board member has a direct or indirect financial interest in a matter being considered, or about to be considered, at the meeting, being an interest that could conflict with the proper performance of the Advisory Board's function, then the Board member must disclose that interest to the Chief Executive Officer as soon as practicable.

Disclosure to be recorded in the minutes of the meeting

- (9) Any disclosure under subsection (8), and any decision made by the Chief Executive Officer in relation to the disclosure, must be recorded in the minutes of the meeting.

Hearings held by the APVMA

- (10) Subsections (1) to (4) apply to a hearing held by the APVMA as if it were a meeting held by the Chief Executive Officer with the Advisory Board.

27 Meetings of the Advisory Board

Holding meetings

- (1) The Chair of the Advisory Board may hold such meetings of the Advisory Board as are necessary for the efficient performance of the Advisory Board's function.

Procedure of meetings

- (2) Subject to subsection (4), the Chief Executive Officer may, by writing, determine matters relating to the operation of the Advisory Board.

(3) Subject to subsection (4), if no determination is in force for the purposes of subsection (2), the Advisory Board may operate in the way it determines.

(4) The Chair must ensure that minutes of meetings are kept.

Disclosure of interest by a Board member

(5) If a Board member has a direct or indirect financial interest in a matter being considered, or about to be considered, at a meeting, being an interest that could conflict with the proper performance of the Advisory Board's function, then the Board member must disclose that interest to the other Board members as soon as practicable.

Disclosure to be recorded in the minutes of the meeting

(6) Any disclosure under subsection (5), and any decision made by the Board in relation to the disclosure, must be recorded in the minutes of the meeting.

Attendance by Chief Executive Officer

(7) The Chair of the Advisory Board may invite the Chief Executive Officer to attend all or part of an Advisory Board meeting.

Determination not a legislative instrument

(8) A determination made under subsection (2) is not a legislative instrument.

Division 5—Committees

28 Establishment of committees

- (1) The APVMA may establish committees to assist it in the performance of its functions and the exercise of its powers, and may abolish any such committee.
- (2) A committee is to consist of such persons (whether Board members or not) as the APVMA determines.

29 Meetings of committees

- (1) The APVMA may determine:
 - (a) the manner in which a committee is to perform its functions; and
 - (b) the procedure to be followed at or in relation to the meetings of a committee, including matters with respect to:
 - (i) the convening of meetings; and
 - (ii) the number of members of the committee who are to form a quorum; and
 - (iii) the selection of a member of the committee to be the Chairperson of the committee; and
 - (iv) the manner in which questions arising at a meeting are to be decided.
- (2) If a member of a committee has a direct or indirect financial interest in a matter being considered, or about to be considered, by the committee, the member must, as soon as practicable after the member becomes aware of the relevant facts, disclose the nature of the interest at a meeting of the committee.
- (3) A disclosure under subsection (2) must be recorded in the minutes of the meeting and the member must not, unless the APVMA otherwise determines:
 - (a) be present during any deliberation of the committee with respect to that matter; or
 - (b) take part in any decision of the committee with respect to that matter.

29A Remuneration and allowances of committee members

- (1) A member of a committee (other than a Board member) is to be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination is in operation, the member is to be paid such remuneration as is prescribed.
- (2) A member of a committee (other than a Board member) is to be paid such allowances as are prescribed.
- (3) If a person who is a member of a committee:
 - (a) is a member of the Parliament of a State; or
 - (b) is a candidate for election to the Parliament of a State and, under the law of the State, would not be eligible to be elected as a member of that Parliament if the person were entitled to remuneration or allowances under this Act; or
 - (c) is in service or employment of a State, or of an authority of a State, on a full-time basis; or
 - (d) holds or performs the duties of an office or position established by or under a law of a State on a full-time basis;the person must not be paid remuneration or allowances under this Act, but is to be reimbursed the expenses that the person reasonably incurs in performing duties under this Act.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.
- (5) In this section:

Parliament of a State:

 - (a) in relation to the Australian Capital Territory—means the Legislative Assembly for the Australian Capital Territory; or
 - (b) in relation to the Northern Territory—means the Legislative Assembly of the Northern Territory.

State includes the Australian Capital Territory and the Northern Territory.

30 Arrangements relating to staff etc.

The Chairperson of a committee is to arrange with the Chief Executive Officer for the services of employees of, and consultants

Part 3 Constitution of APVMA and Advisory Board

Division 5 Committees

Section 30

to, the APVMA, and for facilities of the APVMA, to be made available to the committee.

Part 4—Chief Executive Officer

31 Chief Executive Officer

There is to be a Chief Executive Officer of the APVMA.

32 Duties

- (1) The Chief Executive Officer is to manage the affairs of the APVMA and in doing so, may exercise any of the powers and perform any of the functions of the APVMA.
- (3) All acts and things done in the name of, or on behalf of, the APVMA by the Chief Executive Officer are taken to have been done by the APVMA.

32A Working with the Advisory Board

- (1) In managing the affairs of the APVMA, the Chief Executive Officer must have regard to the advice and recommendations given to him or her by the Advisory Board (whether or not the advice and recommendations were given in response to a request).
- (2) The Chief Executive Officer must:
 - (a) keep the Advisory Board informed of the performance of the APVMA's functions; and
 - (b) give the Advisory Board such reports, documents and information in relation to the APVMA's functions as the Chair of the Advisory Board requires for the performance of the Advisory Board's function.
- (3) The Chief Executive Officer may attend Advisory Board meetings if invited by the Chair of the Advisory Board to do so.

33 Appointment

- (1) The Chief Executive Officer is to be appointed by the Minister by written instrument, on a full-time basis.
- (2) A Board member is not eligible for appointment as the Chief Executive Officer.

Section 34

- (3) The appointment of a person as Chief Executive Officer is not invalid because of a defect or irregularity in connection with the person's appointment.

34 Term of appointment

The Chief Executive Officer holds office for such period not exceeding 5 years as is agreed in writing between the Minister and the Chief Executive Officer, but is eligible for re-appointment.

35 Remuneration and allowances

- (1) The Chief Executive Officer is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Chief Executive Officer is to be paid the remuneration that is determined by the Minister in writing.
- (2) The Chief Executive Officer is to be paid the allowances that are determined by the Minister in writing.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

37 Terms and conditions of appointment

The Chief Executive Officer holds office on such terms and conditions in relation to matters not provided for by this Act as are determined by the Minister in writing.

38 Chief Executive Officer not to engage in other paid employment

The Chief Executive Officer must not engage in paid employment outside the duties of his or her office except with the approval of the Minister.

39 Leave of absence for recreation

The Chief Executive Officer has such recreation leave entitlements as are determined by the Remuneration Tribunal.

40 Leave of absence for other purposes

The Minister may grant to the Chief Executive Officer leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines in writing.

41 Resignation

The Chief Executive Officer may resign by giving to the Minister a signed notice of resignation.

41A Termination of appointment

The Minister may terminate the appointment of the Chief Executive Officer:

- (a) for misbehaviour or physical or mental incapacity; or
- (b) if the Chief Executive Officer:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (c) if the Chief Executive Officer is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
- (d) if the Chief Executive Officer engages, except with the Minister's approval, in paid employment outside the duties of his or her office; or
- (e) if the Chief Executive Officer fails, without reasonable excuse, to comply with section 42; or
- (f) if the Minister is satisfied that the Chief Executive Officer's performance has been unsatisfactory.

42 Disclosure of interests

The Chief Executive Officer must give written notice to the Minister of all direct or indirect financial interests that the Chief Executive Officer has or acquires in any business or in any body corporate carrying on any business.

43 Acting Chief Executive Officer

- (1) The Minister may appoint a person to act as Chief Executive Officer:
 - (a) during a vacancy in the office of Chief Executive Officer, whether or not an appointment has previously been made to that office; or
 - (b) during any period, or during all periods, when the Chief Executive Officer is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office of Chief Executive Officer.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (4) Unless the contrary intention appears, a reference in this Act other than this section, to the Chief Executive Officer is taken, if a person is acting as Chief Executive Officer, to be a reference to the person so acting.

44 Delegation by the Chief Executive Officer

The Chief Executive Officer may, by signed writing, delegate to a member of the staff of the APVMA all or any of the powers and functions of the Chief Executive Officer under this Act including, to avoid doubt, any powers and functions of the Chief Executive Officer under subsection 32(1).

Part 5—Staff and consultants

45 Staff

- (1) The staff of the APVMA are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Chief Executive Officer and the staff of the APVMA together constitute a Statutory Agency; and
 - (b) the Chief Executive Officer is the Head of that Statutory Agency.

46 Staff to be made available to the APVMA

- (1) The APVMA is to be assisted by:
 - (a) officers and employees of Agencies (within the meaning of the *Public Service Act 1999*), and of authorities of the Commonwealth, whose services are made available to the APVMA in connection with the performance or exercise of any of its functions or powers; and
 - (b) persons whose services are so made available under arrangements made under subsection (2).
- (2) The APVMA may make an arrangement with:
 - (a) the appropriate authority or officer of:
 - (i) the Government of a State or Territory or of a foreign country; or
 - (ii) an authority of such a Government; or
 - (iii) an organisation; or
 - (b) another person;
under which the Government, authority, organisation or person may make officers or employees available to the APVMA to perform services in connection with the performance or exercise of any of its functions or powers.
- (3) In the performance of services for the APVMA under this section, a person is subject to the directions of the Chief Executive Officer.

47 Consultants

- (1) The APVMA may engage persons having suitable qualifications and experience as consultants to the APVMA.
- (2) The terms and conditions of engagement are to be determined by the APVMA.

Part 6—Corporate and annual operational plans

50 Development of corporate plan

- (1) The APVMA must develop, and prepare in written form, a corporate plan, for the period specified in the plan, that:
 - (a) defines the principal objectives of the APVMA in performing its functions during that period; and
 - (b) gives a broad outline of the strategies to be pursued by the APVMA to achieve those objectives.
- (2) A corporate plan is to relate to a period beginning on the 1 July immediately following the end of the period to which the previous plan related.

51 Approval of corporate plan

- (1) The APVMA must give a copy of the corporate plan to the Minister for approval on or before:
 - (a) 1 June in each calendar year; or
 - (b) a later day in a particular calendar year, as allowed by the Minister.
- (2) However, the APVMA is not required to give a copy of the corporate plan to the Minister for approval in a calendar year if:
 - (a) the first year to which the plan would relate is a year to which a previous corporate plan is in force; and
 - (b) the Minister determines, at the request of the APVMA, that this subsection applies for the calendar year.
- (3) The plan comes into force on:
 - (a) the day on which it is approved by the Minister; or
 - (b) the first day of the period to which it relates;whichever is the later.

52 Variation of corporate plans

- (1) The APVMA may, at any time, review a corporate plan, whether or not it has come into force, and consider whether a variation to the plan is necessary.
- (2) The APVMA may, with the approval of the Minister, vary a corporate plan.
- (3) The Minister may, at any time, request the APVMA to vary a corporate plan, whether or not it has come into force.
- (4) If the Minister requests a variation of a corporate plan, the APVMA must, with the approval of the Minister, vary the plan accordingly.
- (5) If a variation of a corporate plan is approved by the Minister after the plan has come into force, the plan as so varied continues in force on and after the day on which the variation is so approved.
- (6) Despite subsection (2), the APVMA may vary a corporate plan without the approval of the Minister if the variation is of a minor nature. The variation takes effect on the day on which it is made.
- (7) If the APVMA makes a variation of a minor nature, the APVMA must inform the Minister of the variation as soon as practicable after making it.

55 Development of annual operational plan

- (1) The APVMA must, on or before 1 June (or such later day as the Minister in a particular calendar year allows) in each calendar year, give to the Minister an annual operational plan relating to the period of 12 months beginning on 1 July in that calendar year.
- (2) An annual operational plan must:
 - (a) set out particulars of the action that the APVMA intends to take in order to give effect to, or further, during the period to which the plan relates, the goals set out in the corporate plan applicable to the period; and
 - (b) include such performance indicators as the APVMA considers appropriate against which its performance can be assessed during the period to which the plan relates.

56 Approval of annual operational plan

- (1) The Minister may, by written notice given to the APVMA:
 - (a) approve an annual operational plan; or
 - (b) if the Minister thinks that the plan is inconsistent with the provisions of the relevant corporate plan—request the APVMA to revise the annual operational plan appropriately.
- (2) If the Minister makes a request under paragraph (1)(b), the Minister is to set out the reasons for the request in the notice.
- (3) The APVMA must consider a request under paragraph (1)(b) and the statement of reasons, make such revision of the annual operational plan as it considers appropriate and submit the revised plan to the Minister for approval.
- (4) An annual operational plan comes into force:
 - (a) at the beginning of the period to which the plan relates; or
 - (b) on the day on which the APVMA receives written notice of the Minister's approval;whichever is the later.

57 Variation of annual operational plan

- (1) Section 52 applies to annual operational plans in the same way as it applies to corporate plans.
- (2) When submitting to the Minister proposals for variation of a corporate plan, the APVMA must also submit to the Minister proposals for any consequential variations of a relevant annual operational plan.

Part 7—Finance and reporting requirements

Division 1—Australian Pesticides and Veterinary Medicines Special Account

58 Australian Pesticides and Veterinary Medicines Special Account

- (1) The Australian Pesticides and Veterinary Medicines Special Account is established by this section.
- (2) The Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

59 Credits to the Account

There must be credited to the Account amounts equal to the following:

- (a) all money appropriated by the Parliament for the purposes of the Account;
- (b) fees received by the Commonwealth under this Act, under the *Agricultural and Veterinary Chemicals Act 1988* or under the Agvet Codes or Agvet Regulations;
- (c) any amounts of levy, late payment penalty or understatement penalty paid to the Commonwealth under any Act providing for the collection of a levy imposed in respect of the disposal of chemical products;
- (d) any amounts paid by a State to the Commonwealth for the purposes of the APVMA;
- (e) money received by the APVMA in relation to property paid for with money from the Account;
- (f) amounts of any gifts given or bequests made for the purposes of the Account.

Note: An Appropriation Act provides for amounts to be credited to a Special Account if any of the purposes of the Account is a purpose that is covered by an item in the Appropriation Act.

60 Purposes of the Account

- (1) This section sets out the purposes of the Account.
-

- (2) Amounts standing to the credit of the Account may be debited for the following purposes:
- (a) to pay or discharge the costs, expenses or other obligations incurred by the APVMA in the performance of its functions;
 - (b) in payment of any remuneration and allowances payable to any person under this Act;
 - (c) in making any other payments that the APVMA is authorised or required to make by or under this Act or any other law of the Commonwealth or any law of a State or Territory that is expressed to confer functions or powers on the APVMA.

Note: See section 21 of the *Financial Management and Accountability Act 1997*.

Division 2—Reporting requirements

61 Annual report

Annual report to be given to Minister

- (1) The APVMA must, as soon as practicable after 30 June in each financial year, prepare and give to the Minister a report (an **annual report**) on the APVMA's operations during that year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains provisions about annual reports.

Contents of annual report

- (2) The APVMA must include in the report the following:
- (a) an assessment of the extent to which its operations during the year to which the report relates have contributed:
 - (i) to the objectives set out in the corporate plan applicable to the period; and
 - (ii) to the objectives set out in the annual operational plan that relates to a period corresponding to that year;
 - (b) particulars of:
 - (i) variations (if any) of the corporate plan and the annual operational plan taking effect during that year; and
 - (ii) significant purchases and disposals of real property by the APVMA during that year; and
 - (iii) any directions given to the APVMA by the Minister during that year to which subsection 10(3) applies and the impact of the directions on the operations of the APVMA;
 - (c) an evaluation of its overall performance during that year against the performance indicators set out in the corporate plan applicable to the period and the annual operational plan that came into force at the beginning of that year;
 - (d) the financial statements required by section 49 of the *Financial Management and Accountability Act 1997*;
 - (e) an audit report on those statements under section 57 of the *Financial Management and Accountability Act 1997*.

Division 3—Exemption from taxation

62 Exemption from taxation

The APVMA is not subject to taxation under the laws of the Commonwealth or of a State or Territory.

Note: Despite this section, the APVMA may be subject to taxation under certain laws. See, for example, section 177-5 of the *A New Tax System (Goods and Services Tax) Act 1999*.

Part 7A—Importation, manufacture and exportation of chemicals

Division 1—Interpretation

69A Interpretation

- (1) Unless the contrary intention appears, expressions used in this Part have the same meanings as in the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*.
- (2) In this Part, *inspector* has the meaning given by section 4.

Division 2—Importation, manufacture and exportation

69B Importation offence

- (1) A person must not:
- (a) import into Australia:
 - (i) an active constituent for a proposed or existing chemical product that is neither an approved active constituent nor an exempt active constituent; or
 - (ii) a chemical product that is not a registered chemical product, a registered listed chemical product, a reserved chemical product or an exempt chemical product; or
 - (b) arrange for the importation into Australia, on behalf of another person who, at the time of the arrangements, is neither a resident of, nor carrying on business in, Australia, of such an active constituent or chemical product.

Penalty: 300 penalty units.

- (1A) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (1A). See subsection 13.3(3) of the *Criminal Code*.

- (1B) Subsection (1) does not apply if the person has the APVMA's written consent.

Note: The defendant bears an evidential burden in relation to the matter in subsection (1B). See subsection 13.3(3) of the *Criminal Code*.

- (1C) In subparagraph (1)(a)(i), strict liability applies to the physical element of circumstance, that the active constituent is neither an approved active constituent nor an exempt active constituent.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (1D) In subparagraph (1)(a)(ii), strict liability applies to the physical element of circumstance, that the chemical product is neither a registered chemical product nor an exempt chemical product.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Section 69CA

- (2) In subsection (1):

exempt active constituent means an active constituent that is exempted by the APVMA from the operation of that subsection.

exempt chemical product means a chemical product that is exempted by the APVMA from the operation of that subsection.

- (3) The APVMA may, by writing, exempt an active constituent for a proposed or existing chemical product, or exempt a chemical product, from the operation of subsection (1).

- (4) If:

- (a) the importation of an active constituent for a proposed or existing chemical product, or of a chemical product, is prohibited under subsection (1); and
- (b) the APVMA notifies the Comptroller-General of Customs in writing that the APVMA wishes the *Customs Act 1901* to apply to that importation;

the *Customs Act 1901* has effect as if the constituent or product included in that importation were goods described as forfeited to the Crown under section 229 of that Act because they were prohibited imports within the meaning of that Act.

69CA Providing information about certain chemical products etc. to comply with international agreements

Regulations may prescribe international agreements

- (1) The regulations may prescribe an international agreement or arrangement for the purposes of this section.

Regulations may prescribe information about import etc. of certain chemicals

- (2) For the purposes of complying with a prescribed agreement or arrangement, the regulations may prescribe the following information in respect of a prescribed active constituent for a proposed or existing chemical product, or a prescribed chemical product:
- (a) information about the import of the constituent or product into Australia;

- (b) information about the manufacture or use of the constituent or product in Australia;
 - (c) information about other dealings with the constituent or product in Australia;
 - (d) information about the export of the constituent or product from Australia.
- (3) For each constituent or product, the regulations must identify the relevant international agreement or arrangement.

A person must provide prescribed information about prescribed constituents or products

- (4) A person must provide any relevant prescribed information in respect of a prescribed constituent or product if the person imports, manufactures, uses, deals with or exports the constituent or product.

Note 1: A person who fails to provide the information or who provides false or misleading information may commit an offence against section 69CD.

Note 2: Section 69C might prohibit or restrict the import, manufacture, use, dealing or export of a prescribed constituent or product.

- (5) The information must be provided to the relevant agency in an approved form within the period prescribed for the constituent or product in the regulations.

Commencement of regulations

- (6) A regulation made for the purposes of this section in respect of a constituent or product may be expressed to come into force when the relevant international agreement or arrangement enters into force for Australia, but must not be expressed to come into force before that time.

69CB Providing information about certain chemical products etc. under international consideration

Regulations may prescribe constituents and products

- (1) The regulations may prescribe the following active constituents for a proposed or existing chemical product, or the following chemical products, for the purposes of this section:

Section 69CB

- (a) a constituent or product that is the subject of an international agreement or arrangement that has not entered into force for Australia;
- (b) a constituent or product that is the subject of consideration:
 - (i) by an international organisation, or by an organ of or a body established by an international organisation, or by Australia together with any other country; and
 - (ii) in relation to an international agreement or arrangement (including one that has not entered into force for Australia) or in relation to negotiations for an international agreement or arrangement.

Regulations may prescribe information about import etc. of such constituents or products

- (2) The regulations may prescribe the following information in respect of a prescribed constituent or product:
 - (a) information about the import of the constituent or product into Australia;
 - (b) information about the manufacture or use of the constituent or product in Australia;
 - (c) information about other dealings with the constituent or product in Australia;
 - (d) information about the export of the constituent or product from Australia.

Constitutional basis for this section

- (3) The reference in paragraphs (2)(b) and (c) to the manufacture or use of, or other dealings with, a constituent or product in Australia is confined to the following:
 - (a) the manufacture or use of, or other dealings with, the constituent or product in Australia by trading corporations formed within the limits of the Commonwealth, or foreign corporations, within the meaning of paragraph 51(xx) of the Constitution;
 - (b) the manufacture or use of, or other dealings with, the constituent or product in Australia for supply in the course of trade and commerce:
 - (i) with other countries; or
 - (ii) among the States; or

- (iii) within a Territory; or
- (iv) between a State and a Territory or between 2 Territories;
- (c) the manufacture or use of, or other dealings with, the constituent or product in Australia for supply to, or to an authority or instrumentality of, the Commonwealth or a Territory;
- (d) the manufacture or use of, or other dealings with, the constituent or product in a Territory.

A person must provide prescribed information about prescribed constituents or products

- (4) A person must provide any relevant prescribed information in respect of a prescribed constituent or product if the person imports, manufactures, uses, deals with or exports the constituent or product in the circumstances mentioned in subsection (3).

Note: A person who fails to provide the information or who provides false or misleading information may commit an offence against section 69CD.

- (5) The information must be provided to the relevant agency in an approved form within the period prescribed for the constituent or product in the regulations.

69CC Relevant agency to provide information to other countries

- (1) A relevant agency may inform a country, the appropriate authority of a country or a relevant international organisation regarding the following:
 - (a) the movements into or out of Australia of an active constituent or chemical product prescribed in regulations made under section 69CA or 69CB;
 - (b) the manufacture or use of such a constituent or product in Australia;
 - (c) any other dealing with such a constituent or product in Australia.
- (2) A relevant agency may provide the information in such terms and on such conditions as the agency thinks fit, having regard to:
 - (a) the terms of any relevant international agreement or arrangement; and

- (b) the interest of any person in maintaining confidentiality in relation to movements, manufacture or use of, or other dealings with, the constituent or product.

69CD Offences relating to providing information under sections 69CA and 69CB

Offence for failing to provide information

- (1) A person commits an offence if:
 - (a) the person is required to provide information under section 69CA or 69CB; and
 - (b) the person fails to provide the information under that section.

Penalty: 50 penalty units.

- (2) In subsection (1), strict liability applies to the physical element of circumstance that the information is required to be provided under section 69CA or 69CB.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Offence for false or misleading information

- (3) A person commits an offence if:
 - (a) the person provides information (whether orally or in writing) to a relevant agency under section 69CA or 69CB; and
 - (b) the person knows that the information is false or misleading in a material particular; and
 - (c) the information is provided:
 - (i) without the person indicating to the agency that it is false or misleading; and
 - (ii) without the person indicating how it is false or misleading; and
 - (iii) without the person providing to the agency correct information that the person possesses or can reasonably acquire.

Penalty: 300 penalty units.

- (4) The fault element for paragraph (3)(c) is recklessness.

Note: For recklessness, see section 5.4 of the *Criminal Code*.

- (5) In subsection (3), strict liability applies to the physical element of circumstance that the information is provided under section 69CA or 69CB.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

69C Prohibition on import, manufacture, use or export of certain chemical products etc. under international agreements

Regulations may prohibit import etc. of certain chemical products under international agreements

- (1) If an active constituent for a proposed or existing chemical product, or a chemical product, is the subject of an international agreement or arrangement prescribed for the purposes of this section, the regulations may prohibit any one or more of the following:
- (a) the import of the constituent or product into Australia;
 - (b) the manufacture or use of the constituent or product in Australia;
 - (c) any other dealing with the constituent or product in Australia;
 - (d) the export of the constituent or product from Australia.

The prohibition may be either absolute or subject to such conditions or restrictions as are prescribed.

Requirements for making regulations

- (2) A regulation prescribing conditions or restrictions for the purposes of subsection (1) must not be made unless:
- (a) a relevant agency has published in the *Gazette*, and in any other manner that it thinks appropriate, a notice:
 - (i) identifying the agreement or arrangement; and
 - (ii) listing the name or names by which the constituent or product is known to the public; and
 - (b) a period of 30 days has elapsed since the notice was published.
- (2A) A regulation made for the purposes of subsection (1) in respect of a constituent or product may be expressed to come into force when the relevant international agreement or arrangement enters into force for Australia, but must not be expressed to come into force before that time.

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Offence for contravening conditions or restrictions

- (5) A person must not import, manufacture, use, deal with or export an active constituent for a proposed or existing chemical product, or a chemical product, in contravention of a condition or restriction prescribed by a regulation made for the purposes of subsection (1).

Penalty: 300 penalty units.

- (5A) Subsection (5) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (5A). See subsection 13.3(3) of the *Criminal Code*.

- (5B) In subsection (5), strict liability applies to the physical element of circumstance, that the condition or restriction that the conduct contravenes is a condition or restriction prescribed by a regulation made for the purposes of subsection (1).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

69D Export of chemical products

- (1) The APVMA may, upon the written application of a person wishing to export a chemical product to a foreign country and upon payment of the prescribed fee (if any), give to the person or to the government of that country or to any authority of that country named by the person, a certificate setting out the findings (if any) of the APVMA in relation to any matters relating to the chemical product that are required to be established for the purposes of its export.

- (1A) If the APVMA refuses to give a certificate under subsection (1), it must:

- (a) give written notice of its refusal to the person who applied for the certificate; and
(b) include in the notice brief particulars of the reasons for the refusal.

- (1B) Application may be made to the Administrative Appeals Tribunal for review of a decision of the APVMA refusing to give a certificate under subsection (1).

- (1C) A notice given under subsection (1A) must include a statement to the effect that:
- (a) subject to the *Administrative Appeals Tribunal Act 1975*, application may be made by or on behalf of a person whose interests are affected by the decision to the Administrative Appeals Tribunal for a review of the decision to which the notice relates; and
 - (b) unless subsection 28(4) of that Act applies, application may be made in accordance with section 28 of that Act by or on behalf of a person whose interests are affected by the decision for a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.
- (1D) A failure to comply with subsection (1C) in relation to a decision does not affect the validity of the decision.
- (2) If the APVMA becomes aware that a chemical product:
- (a) in respect of which an application for registration has been refused; or
 - (b) the registration of which has been suspended or cancelled; or
 - (c) the registration of which is subject to conditions significantly limiting the use of the product;
- is proposed to be exported to a foreign country, the APVMA may, on its own initiative, tell a body established in that country and having functions similar to its own functions that the application has been so refused, that the registration has been so suspended or cancelled or that the registration of the product has been made subject to those conditions, as the case may be, and the reasons for that refusal, suspension, cancellation or imposition of conditions.

69E Annual returns

- (1) Subject to subsection (2), a person who imports into, manufactures in, or exports from, Australia:
- (a) active constituents for proposed or existing chemical products; or
 - (b) chemical products;
- during the year ending on 30 June 1995 or a later year must give to the APVMA, not later than 3 months after the end of the year

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concerned, a return setting out the respective quantities of those active constituents, or of the active constituents contained in those products, as the case may be, that were so imported, manufactured or exported during that year.

Penalty: 30 penalty units.

- (2) Subsection (1) does not apply to a person in respect of a particular year ending on 30 June if the total quantity of the active constituents that were, or were included in chemical products that were, imported, manufactured or exported by the person during that year was not greater than a quantity prescribed by the regulations for the purposes of this section.
- (2A) An offence under subsection (1) is an offence of strict liability.
- Note: For strict liability, see section 6.1 of the *Criminal Code*.
- (3) From the returns given to the APVMA in relation to a year ending on 30 June, the APVMA must prepare a statement or statements setting out the total quantities of each active constituent that were imported into, manufactured in, or exported from, Australia by all persons during the year and give the statement or statements to the Department.

69EA Keeping of records

Records relating to compliance with sections 69B, 69C and 69E

- (1) A person who imports into, manufactures in, or exports from, Australia an active constituent for a proposed or existing chemical product, or a chemical product, must:
- (a) keep any records relating to the importation, manufacture or exportation that are reasonably necessary to enable the APVMA to find out whether sections 69B, 69C and 69E have been complied with; and
 - (b) retain those records for 6 years.

Penalty: 30 penalty units.

Records relating to import etc. of chemical products prescribed under section 69CA, 69CB or 69C

- (1A) A person who imports into Australia, manufactures, uses or deals with in Australia, or exports from Australia, an active constituent or chemical product prescribed in regulations made under section 69CA, 69CB or 69C must:
- (a) keep any records relating to the import, manufacture, use, dealing or export that are reasonably necessary to enable the Department to find out whether those sections have been complied with; and
 - (b) retain those records for 6 years.

Penalty: 30 penalty units.

Strict liability

- (2) An offence under subsection (1) or (1A) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

69EAA Definitions

In this Division:

approved form means a form approved by the Secretary or prescribed by the regulations.

deal with, in relation to an active constituent for a proposed or existing chemical product, or in relation to a chemical product, includes supply or otherwise dispose of the constituent or product.

relevant agency means the Department or the APVMA.

Division 3—Powers of entry, search and seizure

69EB Searches to monitor compliance with Part

- (1) Subject to this section, to the extent that it is reasonably necessary to do so for the purpose of finding out whether this Part has been complied with, 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 active constituents for proposed or existing chemical products, or chemical products, or records relating to any such constituents or products, are kept and may do any one or more of the following:
 - (a) search the premises and any thing found at the premises;
 - (b) inspect and take photographs (including video recordings), or make sketches, of the premises or any thing at the premises;
 - (c) take and keep samples of any thing at the premises;
 - (d) inspect any document kept at the premises;
 - (e) seize any thing at the premises if the inspector believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction;
 - (f) open any container at the premises for the purpose of inspecting, or taking a sample of, its contents provided that the container is resealed after the inspection is made or the sample is taken;
 - (g) give any directions for, or with respect to, the detention of a thing that has been seized under paragraph (e).
- (2) An inspector may not:
 - (a) under paragraph (1)(c)—take samples of a thing; or
 - (b) under paragraph (1)(e)—seize a thing;that appears to the inspector to be in the possession or custody of a person unless the inspector makes out and tenders to the person a receipt in or to the effect of the approved form for the sample taken or thing seized.
- (3) An inspector may not, under subsection (1), enter premises that are a residence unless the occupier of the premises has consented to the entry.

- (4) 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.
- (5) If a direction given by an inspector under this section is inconsistent with an earlier direction given by an inspector under this section, the earlier direction is, to the extent of the inconsistency, of no effect.
- (6) A person must not refuse or fail to comply with a direction given by an inspector under this section.
- Penalty: 30 penalty units.
- (7) Subsection (6) does not apply if the person has a reasonable excuse.
- Note: The defendant bears an evidential burden in relation to the matter in subsection (7). See subsection 13.3(3) of the *Criminal Code*.
- (8) An offence under subsection (6) is an offence of strict liability.
- Note: For strict liability, see section 6.1 of the *Criminal Code*.

69EC Offence-related searches and seizures

- (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 Part, the inspector, with any necessary help, may:
- (a) with the consent of the occupier of the premises; or
 - (b) under a warrant issued under section 69ED;
- enter the premises and:
- (c) search the premises for the thing; and
 - (d) if the thing is found, take photographs (including video recordings) of the premises or thing, take samples of the thing, seize the thing or undertake more than one of those activities; and
 - (e) give any directions for, or with respect to, the detention of a thing that has been seized under paragraph (d).

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- (2) If, in the course of searching, under a warrant issued under section 69ED, for a particular thing in relation to a particular offence, an inspector finds another thing that the inspector believes, on reasonable grounds, to be:
- (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 Part;
- 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.

69ED Offence-related warrants

- (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 Part.
- (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 69EC(1)(c), (d) and (e) in respect of the thing; and

- (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.

69EE Announcement before entry

- (1) Subject to subsection (2), an inspector who is authorised to enter premises under a warrant issued under section 69ED 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 does not have 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.

69EF Details of warrant to be given to occupier

- (1) If a warrant under section 69ED 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.

69EG Use of equipment to examine or process things

- (1) An inspector who enters premises under section 69EB or 69EC or a person helping the inspector may bring to the premises any

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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
 - (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 69EB or 69EC, 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 69EB or 69EC, 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.

69EH Use of electronic equipment at premises

- (1) Subject to subsection (4), if a thing found at premises that an inspector has entered under section 69EB or 69EC 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 this Part has been complied with.
- (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
 - (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 whose use 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 be 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.

69EI Compensation for damage to electronic equipment

- (1) If:
 - (a) equipment is damaged because of being operated as mentioned in section 69EG or 69EH; and
 - (b) the damage was caused by:
 - (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 APVMA 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.

69EJ Copies of seized things to be given

- (1) Subject to subsection (2), if an inspector who has entered premises under section 69EB or 69EC seizes:
 - (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 asked 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 69EH(2)(b) or (c); or
 - (b) possession by the occupier of the document, film, computer file, thing or information could be an offence.

69EK Return of things that are seized

- (1) If an inspector seizes a thing under section 69EB or 69EC, 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 have not been completed (including an appeal to a court in relation to those proceedings); or
 - (b) the inspector may keep the thing because of an order under section 69EL; or
 - (c) the inspector is authorised by this Part or by an order of a court to keep, destroy or dispose of the thing.
- (3) If the thing has 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 sections 69EL and 69ET.

69EL Court of summary jurisdiction may permit a thing to be kept

- (1) If:
 - (a) before the end of 60 days after an inspector seizes a thing under section 69EB or 69EC; 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);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

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- (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.

69EM Warrants may be granted by telephone in urgent circumstances

- (1) If, because of circumstances of urgency, an inspector considers it necessary to do so, the inspector may apply for a warrant under subsection 69ED(1), by telephone, in accordance with this section.
- (2) Before so applying, an inspector must prepare an information of a kind referred to in subsection 69ED(2) that sets out the grounds on which the issue of the warrant is being sought, but the inspector may, if it is necessary to do so, apply before the information has been sworn.
- (3) If a magistrate to whom an application under subsection (1) is made is satisfied:
 - (a) after having considered the terms of the information prepared in accordance with subsection (2); and
 - (b) after having received any further information that the magistrate requires about the grounds on which the issue of the warrant is being sought;that there are reasonable grounds for issuing the warrant, the magistrate must complete and sign such a search warrant as the magistrate would have issued under section 69ED if the application had been made in accordance with that section.
- (4) If a magistrate signs a warrant under subsection (3):
 - (a) the magistrate must notify the inspector of the terms of the warrant and the date on which and the time at which it was signed, and write on it the reasons for the granting of the warrant; and
 - (b) the inspector must complete a form of warrant in the terms notified to the inspector by the magistrate and write on it the

name of the magistrate and the date on which and the time at which the warrant was signed.

- (5) If an inspector completes a form of warrant in accordance with subsection (4), the inspector must, not later than the day after the date on which the warrant ended or was executed, whichever is the earlier, send to the magistrate who signed the warrant the form of warrant completed by the inspector and the information duly sworn in connection with the warrant.
- (6) Upon receiving the documents referred to in subsection (5), the magistrate must attach to them the warrant signed by the magistrate and deal with the documents in the manner in which the magistrate would have dealt with the information if the application for the warrant had been made in accordance with section 69ED.
- (7) A form of warrant duly completed by an inspector in accordance with subsection (4) is, if it is in accordance with the terms of the warrant signed by the magistrate, authority for any entry, search, seizure or direction that the warrant so signed authorises.
- (8) If it is material, in any proceedings, for a court to be satisfied that an entry, search, seizure or direction was authorised in accordance with this section, and the warrant signed by a magistrate in accordance with this section authorising the entry, search, seizure or direction is not produced in evidence, the court must assume, unless the contrary is proved, that the entry, search, seizure or direction was not authorised by such a warrant.

69EN Power of inspector to require information or documents

- (1) Subject to subsection (2), an inspector who has entered premises under this Division may, to the extent that it is reasonably necessary for the purpose of finding out whether this Part has been complied with, require a person to give information to the inspector and to produce any documents referred to 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.

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- (3) A person must not refuse or fail to comply with a requirement made under subsection (1).

Penalty: 30 penalty units.

- (4) Subsection (3) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

- (5) An offence under subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

69EO False or misleading information or document

- (1) A person commits an offence if, for the purposes of, or in connection with, the making of a decision by the APVMA as to whether it should give a consent under section 69B, the person:
- (a) gives information (whether orally or in writing) that the person knows to be false or misleading in a material particular; or
 - (b) produces 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.
- (2) The penalty for an offence against subsection (1) is a fine not exceeding 300 penalty units.
- (3) A person commits an offence if, in compliance or purported compliance with a requirement made by an inspector under this Part, or for the purposes of, or in connection with, any provision (other than section 69B) of this Part, the person:
- (a) gives information (whether orally or in writing) that the person knows to be false or misleading in a material particular; or

- (b) produces 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.
- (4) The penalty for an offence against subsection (3) is a fine not exceeding 60 penalty units.

Division 4—Miscellaneous

69EP Hearings

- (1) The APVMA may hold hearings for the purposes of the performance or exercise of any of its functions or powers.
- (2) Before holding a hearing, the APVMA must cause to be published in the *Gazette*, and in any other manner that it thinks appropriate, a notice setting out the place and time for the hearing.
- (3) Subject to subsection (4), a hearing is to be held in public.
- (4) The APVMA, having regard to the confidential nature of any submissions or evidence or for any other reason, may direct that a part of a hearing be in private and may determine who may be present.
- (5) The APVMA may give directions prohibiting or restricting the publication of submissions or evidence given at a hearing, whether in public or in private, or of matters contained in such submissions or evidence or in documents produced at such a hearing.
- (6) A person must not contravene a direction given under subsection (5).

Penalty: 20 penalty units.

- (6A) Subsection (6) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (6A). See subsection 13.3(3) of the *Criminal Code*.

- (6B) An offence under subsection (6) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (7) If the APVMA directs that a part of a hearing be in private, a person must not be present at that part of the hearing unless he or she:
 - (a) is a Board member, or the Chief Executive Officer, of the APVMA; or

- (b) is a member of the staff of the APVMA that the APVMA has authorised to be present; or
- (c) is entitled to be present because of a determination under subsection (4).

Penalty: 20 penalty units.

- (7A) Subsection (7) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (7A). See subsection 13.3(3) of the *Criminal Code*.

- (8) At a hearing the APVMA may receive submissions or evidence, in a form determined by it, from persons who, in its opinion, are likely to be able to help it in the performance or exercise of the functions or powers to which the hearing relates.
- (9) A hearing is to be conducted with as little formality and technicality as is practicable and the APVMA is not bound by the rules of evidence.

69EQ Self-incrimination to be a reasonable excuse for non-compliance with requirement

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 Part that the information, the production of the document or the doing of that other thing would tend to incriminate the person.

69ER Copying of documents

If an inspector inspects a document under section 69EB or seizes a document under section 69EC or a person produces a document to an inspector in accordance with a requirement under subsection 69EN(1), the inspector may make copies of, or take extracts from, the document.

69ES Evidential certificates

- (1) This section has effect for the purposes of any proceeding before a court or tribunal or an authority or person having power to require the production of documents or the answering of questions, other

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than a proceeding for an offence that is directly punishable by imprisonment.

- (2) A certificate that states a matter referred to in subsection (3) is evidence of that matter if it is signed by the Chief Executive Officer of the APVMA, or by a member of the staff of the APVMA whom the APVMA has authorised to give certificates under this section.
- (3) The matters that may be stated in a certificate referred to in subsection (2) are as follows:
 - (a) that a substance referred to in the certificate was, or was not, at a particular time, or during a particular period, an active constituent, or an approved active constituent, for a proposed or existing chemical product;
 - (b) that a chemical product referred to in the certificate was, or was not, at a particular time, or during a particular period, a chemical product or a registered chemical product;
 - (c) that a person named in the certificate was an inspector at a particular time or during a particular period;
 - (d) that a notice, direction or requirement referred to in the certificate was given at a particular time to a particular person under this Part;
 - (e) any matter that could be stated in a certificate given under section 149 of any of the Agvet Codes.
- (4) Unless the contrary is proved, a document purporting to be a certificate referred to in subsection (2) is taken to be such a certificate and to have been duly given.

69ET Forfeiture

- (1) If a person is convicted of an offence against this Part in respect of a thing that the court finds to be the property of that person, the court may order all or any part of the thing to be forfeited to the APVMA.
- (2) If the court makes an order under subsection (1) in respect of, or in respect of part of, a thing, the thing, or that part of the thing, as the case may be, becomes the property of the APVMA and may be dealt with or disposed of in any manner that the APVMA considers appropriate.

69EU Conduct by directors, servants and agents

- (1) Subject to subsection (2), in proceedings against a body corporate for an offence against this Part:
 - (a) any conduct engaged in by a director, servant or agent of the body corporate within the actual or apparent scope of his or her employment or within his or her actual or apparent authority is taken to have been engaged in also by the body corporate; and
 - (b) it is taken to be established that conduct (the **relevant conduct**) was engaged in by the body corporate intentionally, knowingly or recklessly if it is proved:
 - (i) that the directors of the body corporate intentionally, knowingly or recklessly engaged in the relevant conduct or expressly, tacitly or impliedly authorised or permitted the relevant conduct to be engaged in; or
 - (ii) that a servant or agent of the body corporate with duties of such responsibility that his or her conduct may fairly be assumed to represent the policy of the body corporate intentionally, knowingly or recklessly engaged in the relevant conduct or expressly, tacitly or impliedly authorised or permitted the relevant conduct to be engaged in.
- (2) Subparagraph (1)(b)(ii) does not apply if the body corporate proves that it exercised due diligence to prevent the relevant conduct.
- (3) Subject to subsection (4), in proceedings against an individual for an offence against this Part:
 - (a) any conduct engaged in by a servant or agent of the individual within the actual or apparent scope of his or her employment or within his or her actual or apparent authority is taken to have been engaged in also by the individual; and
 - (b) it is taken to be established that conduct (the **relevant conduct**) was engaged in by the individual intentionally, knowingly or recklessly if it is proved that a servant or agent of the individual with duties of such responsibility that his or her conduct may fairly be assumed to represent the policy of the individual intentionally, knowingly or recklessly engaged in the relevant conduct or expressly, tacitly or impliedly authorised or permitted the relevant conduct to be engaged in.

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- (4) Paragraph (3)(b) does not apply if the individual proves that he or she exercised due diligence to prevent the relevant conduct.
- (5) If:
 - (a) an individual is convicted of an offence against this Part; and
 - (b) the individual would not have been convicted of that offence if subsections (3) and (4) had not been enacted;the individual is not liable to be punished by imprisonment for that offence.
- (6) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

Part 7B—Modification of the Agvet Codes for the purpose of giving effect to paragraph 3 of Article 39 of the TRIPS Agreement

69EV Definitions

- (1) In this Part:

current application has the meaning given by section 69EX.

information includes, but is not limited to, information obtained from trials or laboratory experiments.

previous application has the meaning given by section 69EX.

relevant information has the meaning given by section 69EX.

- (2) Expressions used in this Part that are defined or otherwise used in the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* have the same meanings as in that Code.

69EW Modification of Agvet Codes

- (1) This Part modifies the Agvet Codes for the purpose of giving effect to Australia's obligations under paragraph 3 of Article 39 of the Agreement on Trade-Related Aspects of Intellectual Property Rights set out in Annex 1C to the Marrakesh Agreement establishing the World Trade Organization, done at Marrakesh on 15 April 1994.

Note: The English text of the Marrakesh Agreement establishing the World Trade Organization is set out in Australian Treaty Series 1995 No. 8.

- (2) The Agvet Codes have effect subject to this Part.

69EX Application of Part

This Part applies to an application (the *current application*) made to the APVMA after the commencement of this Part for approval of an active constituent for a proposed or existing chemical product where:

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- (a) the APVMA cannot grant the application without using information (the *relevant information*) given to the APVMA in connection with a previous application (the *previous application*) made to the APVMA (other than a previous application made before the commencement of this Part or after the commencement of Division 4A of Part 2 of the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*) for approval of an active constituent for a proposed or existing chemical product; and
- (b) the relevant information has not been made publicly available in Australia; and
- (c) at the time immediately before the previous application was made, no application had been made to the APVMA for approval of the active constituent to which that application related.

69EY APVMA not to grant current application except in certain circumstances

The APVMA must not grant the current application unless:

- (a) the person who made that application:
 - (i) has given to the APVMA information that makes it unnecessary for the APVMA to use the relevant information in connection with that application; or
 - (ii) has given to the APVMA evidence that satisfies the APVMA that the person who made the previous application has consented to the APVMA using the relevant information in connection with the current application; or
- (b) at least 5 years have elapsed since the previous application was determined by the APVMA or was withdrawn, as the case may be.

69EZ Approval given in contravention of section 69EY is not invalid but is to be cancelled

- (1) If:
 - (a) the APVMA approves an active constituent for a proposed or existing chemical product; and
-

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- (b) the APVMA was prohibited by section 69EY from giving the approval;
the approval is not invalid.
- (2) However, the APVMA must cancel the approval when it finds out that the giving of the approval was prohibited by section 69EY.

69EZA Power of APVMA to grant multiple approvals to be subject to section 69EY

The power of the APVMA under subsection 16(1) of the Agvet Codes to approve the same active constituent for a proposed or existing chemical product on applications made by different persons is subject to section 69EY.

69EZB Power of APVMA to use information obtained by it for other purposes not to be affected

Except as provided by section 69EY, the power of the APVMA under subsection 58(1) of the Agvet Codes to use information obtained by it from any source for the purpose of performing any of its functions or exercising any of its powers under those Codes is not affected.

Part 8—Miscellaneous

69F Appointment of inspectors

- (1) The APVMA may, by writing, appoint members of its staff, persons engaged under the *Public Service Act 1999*, or other persons having appropriate qualifications, to be inspectors for the purposes of a relevant law referred to in the document of appointment.
- (2) If:
 - (a) a Department of State of a State; or
 - (b) a Department or administrative unit of the Public Service of a participating Territory; or
 - (c) an authority of a State or of a participating Territory;has functions relating to agricultural or veterinary chemicals, the Chief Executive Officer may, by signed writing, authorise officers of the Department, administrative unit or authority to exercise the powers and perform the functions of inspectors for the purposes of a particular relevant law.
- (3) An inspector is a Commonwealth officer for the purposes of section 70 of the *Crimes Act 1914*.
- (4) The APVMA must cause to be issued to each person who is an inspector for the purposes of a relevant law an identity card which states the name of the person and the fact that the person is an inspector for the purposes of that law and to which is attached a photograph of the person taken within the 3 years before the identity card is issued.
- (5) A person who has ceased to be an inspector must, as soon as practicable, return to the APVMA the identity card issued to him or her under this section.

Penalty: One penalty unit.

(5A) Subsection (5) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (5A). See subsection 13.3(3) of the *Criminal Code*.

(5B) An offence under subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(6) In this section:

relevant law means:

- (a) this Act; or
- (b) the Agvet Codes; or
- (c) any other Act providing for the collection of a levy imposed in respect of the disposal of chemical products.

69G Approval of analysts

- (1) The APVMA may, by writing, appoint persons whom it considers to have appropriate qualifications and experience to be approved analysts for the purposes of the Agvet Codes.
- (2) The APVMA must cause the name, and the address of the place of business, of each approved analyst to be published in the *Gazette*.

69H Exemptions from liability for damages

- (1) Subject to subsection (3), no action, suit or other proceeding for damages lies against the Commonwealth, the APVMA, or any other Commonwealth authority, or a person who is or has been an officer or employee of the Commonwealth, of the APVMA or of any other Commonwealth authority, or is or has been a delegate of the APVMA, a director of the APVMA, a consultant to the APVMA, an inspector, or a mediator or arbitrator appointed by the APVMA under any of the Agvet Codes, for any loss or injury directly or indirectly suffered as a result of:
 - (a) the handling of an approved active constituent for a proposed or existing chemical product; or
 - (b) the handling of a registered chemical product, a registered listed chemical product or a reserved chemical product; or

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- (c) the handling of an active constituent for a proposed or existing chemical product, or of a chemical product, in respect of which a permit or exemption has been issued or given by the APVMA; or
- (d) an inability to use, or to use in a particular manner, an active constituent for a proposed or existing chemical product:
 - (i) because an approval, permit or exemption permitting its use, or permitting its use in that manner, has been refused by the APVMA or such an approval, permit or exemption that was previously granted by the APVMA has been suspended or cancelled; or
 - (ii) because its use, or its use in that manner, is precluded by the conditions of an approval, permit or exemption; or
- (e) an inability to use, or to use in a particular manner, a chemical product:
 - (i) because a registration, listed registration, permit or exemption permitting its use, or permitting its use in that manner, has been refused by the APVMA or such a registration, listed registration, permit or exemption that was previously granted by the APVMA has been suspended or cancelled; or
 - (ii) because its use, or its use in that manner, is precluded by the conditions of a registration, listed registration, permit or exemption; or
- (f) the carrying out of a step in the manufacture of a chemical product in respect of which a licence has been issued by the APVMA; or
- (g) an inability to carry out, or to carry out in a particular manner or at particular premises, a step in the manufacture of a chemical product:
 - (i) because a licence to carry out that step, or to carry out that step in that manner or at those premises, has been refused by the APVMA or such a licence that was previously granted by the APVMA has been suspended or cancelled; or
 - (ii) because the carrying out of that step, or the carrying out of that step in that manner or at those premises, is precluded by the conditions of a licence.

- (2) If an action, suit or other proceeding is brought against a person responsible for the importation, manufacture, supply or handling of:
- (a) an approved active constituent for a proposed or existing chemical product; or
 - (b) a registered chemical product; or
 - (ba) a registered listed chemical product; or
 - (c) an active constituent for a proposed or existing chemical product, or a chemical product, in respect of which the APVMA has issued a permit or given an exemption; or
 - (d) a chemical product in respect of a step in the manufacture of which the APVMA has issued a licence;
- in relation to any loss or injury directly or indirectly suffered because of the importation, manufacture, supply or handling of the constituent or product, it is not a defence to that action, suit or other proceeding that the APVMA had approved the constituent, registered the product, granted listed registration to the product, issued a permit or given an exemption in relation to the constituent or the product, or issued a licence in relation to a step in the manufacture of the product.
- (3) This section does not affect section 148 of Schedule 2 to the *Competition and Consumer Act 2010*, as that section applies as a law of the Commonwealth.
- (4) Expressions used in this section have the same meanings as in the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*.

69J Documents or substances held by APVMA at commencement of Agvet Codes

Any documents or substances that were in the possession or custody of the APVMA under the *Agricultural and Veterinary Chemicals Act 1988* immediately before the repeal of that Act are taken to be in the possession or custody of the APVMA under the Agvet Codes.

70 Acts done by APVMA

- (1) A certificate that:
- (a) purports to be signed by:
 - (ii) the Chief Executive Officer; or
 - (iii) another person authorised by the APVMA to sign certificates for the purposes of this subsection; and
 - (b) states any of the following:
 - (i) that the APVMA has done any act or thing or formed any opinion;
 - (ii) that a substance referred to in a certificate was, or was not, at a particular time, or during a particular period, an active constituent, or an approved active constituent, for a proposed or existing chemical product;
 - (iii) that a chemical product referred to in the certificate was, or was not, at a particular time, or during a particular period, a chemical product, a registered chemical product, a registered listed chemical product or a reserved chemical product;
- is, upon mere production, receivable as prima facie evidence of the matters stated in the certificate.

- (2) A certificate that:
- (a) purports to be signed by the Chief Executive Officer; and
 - (b) states that a named person is authorised by the APVMA to sign certificates for the purposes of subsection (1);
- is, upon mere production, receivable as prima facie evidence that the person is so authorised.

71 Delegation by Minister

- (1) The Minister may, by signed writing, delegate to an officer of, or person employed in, the Department all or any of:
- (a) the powers conferred on the Minister under this Act, the *Agricultural and Veterinary Chemicals Act 1994*, the *Agricultural and Veterinary Chemicals Code Act 1994* or the Agvet Codes or the Agvet Regulations; or
 - (b) the powers expressed to be conferred on the Minister under a law of a State relating to agricultural or veterinary chemicals.

- (2) A delegate of the Minister is, in the exercise of the delegate's delegated powers, subject to the Minister's directions.

73 Regulations

The Governor-General may make regulations prescribing all 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.

Part 9—Transitional provisions

74 Staff

- (1) A person who:
 - (a) immediately before the commencement of this Act was an officer or temporary employee under the *Public Service Act 1922*; and
 - (b) from and including that commencement is employed by the APVMA;is taken, subject to any determination or determinations made by the APVMA under subsection 45(2), to be engaged on the same terms and conditions, and to be subject to the same industrial award, as in force from time to time, as applied to the person immediately before that commencement.
- (2) Before making a determination under subsection 45(2) affecting persons mentioned in subsection (1) of this section, the APVMA must consult fully with organisations representing such persons for industrial relations purposes.

75 Transfers of certain assets to APVMA

- (1) The Minister may cause to be transferred to the APVMA any assets held by the Commonwealth that the Minister considers appropriate to be transferred to the APVMA for the performance of its functions and the exercise of its powers.
- (2) Subsection (1) does not prevent the Commonwealth from transferring any asset to the APVMA otherwise than under that subsection.
- (3) If, immediately before the transfer:
 - (a) a right of the Commonwealth arising out of a debt, liability or obligation of any other person in favour of the Commonwealth existed in respect of the assets; or

- (b) a debt, liability or obligation of the Commonwealth existed in respect of the assets;
the right, debt, liability or obligation, as the case may be, of the Commonwealth is, by force of this section, transferred to the APVMA.
- (4) If, immediately before the transfer:
- (a) proceedings by the Commonwealth were pending in a court;
and
 - (b) the proceedings related to such a debt, liability or obligation;
- then, to the extent that the proceedings so relate, they may be continued by the APVMA and the APVMA is to be substituted for the Commonwealth.

76 Agreements etc.—Minister may make arrangements

The Minister may, by signed writing, declare that a specified agreement or a specified instrument:

- (a) to which the Commonwealth or the Commonwealth Government is a party; and
 - (b) that immediately before the commencement of this Act related to chemical products;
- has effect, after that commencement, as if:
- (c) the APVMA were substituted for the Commonwealth or the Commonwealth Government, as the case may be, as a party to the agreement or instrument; and
 - (d) any reference in the agreement or instrument to the Commonwealth or the Commonwealth Government were (except in relation to matters that occurred before that commencement) a reference to the APVMA;
- and, if the Minister makes such a declaration, it has effect accordingly.

77 Estimates

Unless the Minister otherwise directs, the first period for which estimates are to be prepared under subsection 61(1) is to be the period beginning on the day on which this Act commences and ending on the following 30 June.

78 Money paid in advance to Commonwealth

If:

- (a) a function of the APVMA was formerly performed by the Department; and
- (b) an amount received by the Commonwealth is or includes an amount paid in advance on account of anything to be done by the Commonwealth under that function; and
- (c) that thing was not done by the Commonwealth before the commencement of this Act;

there is payable to the APVMA by the Commonwealth an amount that the Minister, having regard to all matters that he or she considers relevant, determines in writing as being payable because of the receipt of the first-mentioned amount.

79 Rights in respect of services and facilities formerly provided by Department

(1) If, immediately before the commencement of this Act:

- (a) a function of the APVMA was being performed by the Department; and
- (b) a right of the Commonwealth existed, arising out of a debt, liability or obligation of any other person in favour of the Commonwealth in respect of a service or facility provided by the Department in the performance of that function;

the right of the Commonwealth is transferred to the APVMA, by force of this section, to the extent determined in writing by the Minister and the Minister for Finance.

(2) If, immediately before the commencement of this Act:

- (a) proceedings by the Commonwealth were pending in a court; and
- (b) the proceedings related to such a debt, liability or obligation;

then, to the extent to which the proceedings so relate, they may be continued by the APVMA and the APVMA is to be substituted for the Commonwealth.

(3) In subsection (1):

liability includes liability to pay a fee under the *Agricultural and Veterinary Chemicals Act 1988*, whether or not an invoice was issued, or a demand made, in respect of the fee before the commencement of this Act.

80 Delegations

A delegation made by the Australian Agricultural and Veterinary Chemicals Council to a person of all or any of its powers or functions under the *Agricultural and Veterinary Chemicals Act 1988* that was in force immediately before the commencement of this Act is taken to be a delegation duly made by the APVMA to that person under section 11 of this Act of the corresponding powers or functions of the APVMA.

Table of Acts

Notes to the *Agricultural and Veterinary Chemicals (Administration) Act 1992***Note 1**

The *Agricultural and Veterinary Chemicals (Administration) Act 1992* as shown in this compilation comprises Act No. 262, 1992 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions see Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Agricultural and Veterinary Chemicals (Administration) Act 1992</i>	262, 1992	24 Dec 1992	15 June 1993 (see <i>Gazette</i> 1993, No. GN22)	
<i>Primary Industries and Energy Legislation Amendment Act 1993</i>	94, 1993	16 Dec 1993	Parts 11 and 12 (ss. 47–65): 1 Jan 1994 S. 69(1)(b): 1 July 1989 Remainder: Royal Assent	—
<i>Agricultural and Veterinary Chemicals (Consequential Amendments) Act 1994</i>	37, 1994	15 Mar 1994	15 Mar 1995 (see s. 2)	—
<i>Agricultural and Veterinary Chemicals (Administration) Amendment Act 1994</i>	76, 1994	21 June 1994	1 July 1994 (see s. 2(1) and <i>Gazette</i> 1994, No. S222)	—
<i>Primary Industries and Energy Legislation Amendment Act 1994</i>	94, 1994	29 June 1994	S. 11: (a)	—
<i>Customs, Excise and Bounty Legislation Amendment Act 1995</i>	85, 1995	1 July 1995	S. 12: 1 July 1995 (b)	—
<i>Primary Industries and Energy Legislation Amendment Act (No. 2) 1996</i>	59, 1996	20 Nov 1996	Schedule 2: Royal Assent	—
<i>Audit (Transitional and Miscellaneous) Amendment Act 1997</i>	152, 1997	24 Oct 1997	Schedule 2 (items 142–151): 1 Jan 1998 (see <i>Gazette</i> 1997, No. GN49) (c)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Primary Industries and Energy Legislation Amendment Act (No. 1) 1998</i>	102, 1998	30 July 1998	Schedule 1 (items 1, 2): 30 July 1998	—
<i>Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 1) 1999</i>	4, 1999	31 Mar 1999	31 Mar 1999	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 58–61): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (d)	—
<i>Corporate Law Economic Reform Program Act 1999</i>	156, 1999	24 Nov 1999	Schedule 10 (item 12): 13 Mar 2000 (see <i>Gazette</i> 2000, No. S114) (e)	—
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Schedule 2 (items 22, 418, 419): 24 May 2001	Sch. 2 (items 418, 419)
<i>Gene Technology (Consequential Amendments) Act 2000</i>	170, 2000	21 Dec 2000	22 June 2001 (see s. 2)	—
<i>Agriculture, Fisheries and Forestry Legislation Amendment (Application of Criminal Code) Act 2001</i>	115, 2001	18 Sept 2001	16 Oct 2001	S. 4
<i>Agricultural and Veterinary Chemicals Legislation Amendment Act 2003</i>	13, 2003	8 Apr 2003	S. 4 and Schedule 2: 8 Oct 2003	Sch. 2 (items 6, 8)
<i>Agricultural and Veterinary Chemicals (Administration) Amendment Act 2004</i>	12, 2004	11 Mar 2004	12 Mar 2004	—
<i>Agricultural and Veterinary Chemicals Legislation Amendment (Name Change) Act 2004</i>	79, 2004	23 June 2004	Schedule 1 (items 7–131): 30 July 2004 (see <i>Gazette</i> 2004, No. GN30)	—
<i>US Free Trade Agreement Implementation Act 2004</i>	120, 2004	16 Aug 2004	Schedule 2 (item 2): 1 Jan 2005	—
<i>Financial Framework Legislation Amendment Act 2005</i>	8, 2005	22 Feb 2005	S. 4, Schedule 1 (items 72, 73, 496) and Schedule 2 (items 13–20, 174): Royal Assent	S. 4, Sch. 1 (item 496) and Sch. 2 (item 174)

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Agricultural and Veterinary Chemicals Legislation Amendment (Levy and Fees) Act 2005</i>	42, 2005	1 Apr 2005	Schedule 1 (items 41, 42): Royal Assent	—
<i>Agricultural and Veterinary Chemicals (Administration) Amendment Act 2007</i>	90, 2007	22 June 2007	Schedules 1 and 2: 1 July 2007 Remainder: Royal Assent	Sch. 2 (items 1–21)
<i>Statute Law Revision Act 2008</i>	73, 2008	3 July 2008	Schedule 1 (item 4): (f)	—
<i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i>	103, 2010	13 July 2010	Schedule 6 (item 152): 1 Jan 2011	—
<i>Food Standards Australia New Zealand Amendment Act 2010</i>	121, 2010	17 Nov 2010	Schedule 1 (item 1): 1 Mar 2011 (see F2011L00312)	—
<i>Acts Interpretation Amendment Act 2011</i>	46, 2011	27 June 2011	Schedule 2 (items 46–48) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)

Act Notes

- (a) The *Agricultural and Veterinary Chemicals (Administration) Act 1992* was amended by section 11 only of the *Primary Industries and Energy Legislation Amendment Act 1994*, subsection 2(3) of which provides as follows:
- (3) The amendment of the *Agricultural and Veterinary Chemicals (Administration) Act 1992* made by the Schedule commences or is taken to have commenced immediately after the commencement of the *Agricultural and Veterinary Chemicals (Consequential Amendments) Act 1994*.
- The *Agricultural and Veterinary Chemicals (Consequential Amendments) Act 1994* came into operation on 15 March 1995.
- (b) The *Agricultural and Veterinary Chemicals (Administration) Act 1992* was amended by section 12 only of the *Customs, Excise and Bounty Legislation Amendment Act 1995*, subsection 2(5) of which provides as follows:
- (5) Schedules 2 and 3, items 1, 26 to 45, 49 to 53 and 56 and 67 of Schedule 4, Schedule 6, items 6 to 11 of Schedule 7 and Schedules 8 and 10 commence on 1 July 1995.
- (c) The *Agricultural and Veterinary Chemicals (Administration) Act 1992* was amended by Schedule 2 (items 142–151) only of the *Audit (Transitional and Miscellaneous) Amendment Act 1997*, subsection 2(2) of which provides as follows:
- (2) Schedules 1, 2 and 4 commence on the same day as the *Financial Management and Accountability Act 1997*.
- (d) The *Agricultural and Veterinary Chemicals (Administration) Act 1992* was amended by Schedule 1 (items 58–61) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
- (2) Subject to this section, this Act commences at the commencing time.
- (e) The *Agricultural and Veterinary Chemicals (Administration) Act 1992* was amended by Schedule 10 (item 12) only of the *Corporate Law Economic Reform Program Act 1999*, subsection 2(2) of which provides as follows:
- (2) The following provisions commence on a day or days to be fixed by Proclamation:
- (a) section 3;
- (b) the items in Schedules 1 to 7 (other than item 18 of Schedule 7);
- (c) the items in Schedules 10, 11 and 12.
- (f) Subsection 2(1) (item 5) of the *Statute Law Revision Act 2008* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
5. Schedule 1, item 4	Immediately after the commencement of item 51 of Schedule 1 to the <i>Agricultural and Veterinary Chemicals (Administration) Amendment Act 2007</i> .	1 July 2007

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Title.....	rs. No. 79, 2004
Part 1	
S. 3.....	am. No. 79, 2004
S. 4.....	am. No. 37, 1994; No. 170, 2000; No. 79, 2004; No. 8, 2005; No. 90, 2007
S. 5.....	rs. No. 37, 1994
S. 5A.....	ad. No. 115, 2001
Part 2	
Heading to Part 2.....	rs. No. 79, 2004
S. 6.....	rs. No. 79, 2004
S. 7.....	am. Nos. 37 and 94, 1994; No. 13, 2003; No. 79, 2004; No. 121, 2010
Note to s. 7(3).....	ad. No. 90, 2007
Ss. 7AA, 7AB.....	ad. No. 90, 2007
S. 7A.....	ad. No. 37, 1994 am. No. 13, 2003; No. 79, 2004
S. 8.....	am. No. 37, 1994; No. 79, 2004; No. 90, 2007
S. 8A.....	ad. No. 170, 2000 am. No. 13, 2003; No. 79, 2004
S. 9.....	am. No. 79, 2004
Heading to s. 9A.....	am. No. 79, 2004
S. 9A.....	ad. No. 37, 1994 rs. No. 59, 1996 am. No. 79, 2004
S. 10.....	am. No. 37, 1994; No. 59, 1996; No. 152, 1997; No. 79, 2004; No. 90, 2007
S. 10A.....	ad. No. 90, 2007
Heading to s. 11.....	am. No. 79, 2004
S. 11.....	am. No. 146, 1999; No. 79, 2004; No. 90, 2007
Part 3	
Heading to Part 3.....	rs. No. 79, 2004; No. 90, 2007
Division 1	
Heading to Div. 1 of Part 3.....	ad. No. 90, 2007
Heading to s. 12.....	am. No. 79, 2004
S. 12.....	am. No. 79, 2004
Note to s. 12(1).....	ad. No. 152, 1997 am. No. 79, 2004 rep. No. 90, 2007
Heading to s. 13.....	am. No. 79, 2004
S. 13.....	am. No. 102, 1998; No. 79, 2004 rs. No. 90, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 2	
Heading to Div. 2 of Part 3.....	ad. No. 90, 2007
S. 14	am. No. 102, 1998 rs. No. 90, 2007
S. 15	am. No. 79, 2004 rs. No. 90, 2007
S. 16	rs. No. 90, 2007
Division 3	
Heading to Div. 3 of Part 3.....	ad. No. 90, 2007
S. 17	rs. No. 90, 2007
S. 18	rs. No. 90, 2007
Note to s. 18.....	am. No. 46, 2011
S. 19	rs. No. 90, 2007
S. 20	rep. No. 90, 2007
Ss. 21, 22.....	rs. No. 90, 2007
Heading to s. 23.....	am. No. 152, 1997 rs. No. 90, 2007
S. 23	am. No. 152, 1997; No. 79, 2004 rs. No. 90, 2007
S. 24	am. No. 152, 1997; No. 156, 1999; No. 79, 2004 rs. No. 90, 2007
S. 25	am. No. 90, 2007
Division 4	
Heading to Div. 4 of Part 3.....	ad. No. 90, 2007
Heading to s. 26.....	am. No. 79, 2004 rs. No. 90, 2007
S. 26	am. No. 37, 1994; No. 79, 2004 rs. No. 90, 2007
S. 27	am. No. 79, 2004 rs. No. 90, 2007
Division 5	
Heading to Div. 5 of Part 3.....	ad. No. 90, 2007
S. 28	am. No. 79, 2004; No. 90, 2007
S. 29	am. No. 79, 2004
S. 29A.....	ad. No. 90, 2007
S. 30	am. No. 79, 2004; No. 90, 2007
Part 4	
S. 31	am. No. 79, 2004
S. 32	am. No. 37, 1994; No. 79, 2004; No. 90, 2007
S. 32A.....	ad. No. 90, 2007
S. 33	am. No. 79, 2004 rs. No. 90, 2007
S. 34	am. No. 79, 2004; No. 90, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 35	am. No. 79, 2004 rs. No. 90, 2007
S. 36	am. No. 79, 2004 rep. No. 90, 2007
Ss. 37, 38	am. No. 79, 2004; No. 90, 2007
S. 39	am. No. 146, 1999
S. 40	am. No. 79, 2004 rs. No. 90, 2007
S. 41	am. No. 90, 2007
S. 41A	ad. No. 90, 2007
S. 42	am. No. 90, 2007
S. 43	am. No. 13, 2003; No. 79, 2004; No. 90, 2007; No. 46, 2011
Note to s. 43(1)	ad. No. 46, 2011
S. 44	am. No. 37, 1994; No. 79, 2004
Part 5	
Heading to Part 5	rs. No. 90, 2007
S. 45	am. No. 79, 2004 rs. No. 90, 2007
Heading to s. 46	am. No. 79, 2004
S. 46	am. No. 37, 1994; No. 146, 1999; No. 79, 2004
S. 47	am. No. 79, 2004
S. 48	am. No. 79, 2004 rep. No. 90, 2007
S. 49	rep. No. 90, 2007
Part 6	
S. 50	am. No. 13, 2003; No. 79, 2004 rs. No. 90, 2007
S. 51	am. No. 37, 1994; No. 79, 2004 rs. No. 90, 2007
Heading to s. 52	am. No. 79, 2004 rs. No. 90, 2007
S. 52	am. No. 79, 2004 rs. No. 90, 2007
Ss. 53, 54	am. No. 79, 2004 rep. No. 90, 2007
S. 55	am. No. 13, 2003; No. 79, 2004; No. 90, 2007
S. 56	am. No. 79, 2004
S. 57	am. No. 79, 2004; No. 90, 2007; No. 73, 2008
Part 7	
Part 7	rs. No. 90, 2007
Division 1	
S. 58	am. Nos. 37 and 76, 1994; No. 59, 1996; No. 79, 2004; Nos. 8 and 42, 2005 rs. No. 90, 2007

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to s. 59	am. No. 79, 2004 rs. No. 90, 2007
S. 59	am. No. 79, 2004; No. 8, 2005 rs. No. 90, 2007
Heading to s. 59A.....	am. No. 79, 2004 rep. No. 90, 2007
S. 59A	ad. No. 94, 1993 am. No. 79, 2004 rep. No. 90, 2007
Heading to s. 60	am. No. 79, 2004 rs. No. 90, 2007
S. 60	am. No. 79, 2004; No. 8, 2005 rs. No. 90, 2007
Division 2	
S. 61	rep. No. 152, 1997 ad. No. 90, 2007
Division 3	
Heading to s. 62	am. No. 79, 2004 rs. No. 90, 2007
S. 62	am. No. 152, 1997; No. 79, 2004 rs. No. 90, 2007
Ss. 63, 64	am. No. 79, 2004; No. 8, 2005 rep. No. 90, 2007
S. 65	am. No. 79, 2004 rep. No. 90, 2007
Heading to s. 66	am. No. 79, 2004 rep. No. 90, 2007
Ss. 66, 67	am. No. 79, 2004 rep. No. 90, 2007
Heading to s. 68	am. No. 79, 2004 rep. No. 90, 2007
Ss. 68, 69	am. No. 152, 1997; No. 79, 2004 rep. No. 90, 2007
S. 69AA.....	ad. No. 8, 2005 rep. No. 90, 2007
Part 7A	
Part 7A	ad. No. 37, 1994
Division 1	
S. 69A	ad. No. 37, 1994
Division 2	
S. 69B	ad. No. 37, 1994 am. No. 85, 1995; No. 115, 2001; No. 13, 2003; No. 79, 2004
Ss. 69CA–69CD	ad. No. 12, 2004
Heading to s. 69C.....	am. No. 59, 1996 rs. No. 12, 2004
Subhead. to s. 69C(2)	ad. No. 12, 2004

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subhead. to s. 69C(5)	ad. No. 12, 2004
S. 69C	ad. No. 37, 1994 am. No. 59, 1996; No. 115, 2001; No. 12, 2004
S. 69D	ad. No. 37, 1994 am. No. 59, 1996; No. 79, 2004
S. 69E	ad. No. 37, 1994 am. No. 59, 1996; No. 115, 2001; No. 79, 2004
Subheads. to s. 69EA(1), (2)	ad. No. 12, 2004
S. 69EA	ad. No. 37, 1994 am. No. 115, 2001; Nos. 12 and 79, 2004
S. 69EAA	ad. No. 12, 2004 am. No. 79, 2004
Division 3	
S. 69EB	ad. No. 37, 1994 am. No. 115, 2001
Ss. 69EC–69EH	ad. No. 37, 1994
S. 69EI	ad. No. 37, 1994 am. No. 79, 2004
Ss. 69EJ–69EM	ad. No. 37, 1994
S. 69EN	ad. No. 37, 1994 am. No. 115, 2001
S. 69EO	ad. No. 37, 1994 rs. No. 13, 2003 am. No. 79, 2004
Division 4	
S. 69EP	ad. No. 37, 1994 am. No. 115, 2001; No. 79, 2004; No. 90, 2007
Ss. 69EQ, 69ER	ad. No. 37, 1994
S. 69ES	ad. No. 37, 1994 am. No. 13, 2003; No. 79, 2004
S. 69ET	ad. No. 37, 1994 am. No. 79, 2004
S. 69EU	ad. No. 37, 1994
Part 7B	
Part 7B	ad. No. 4, 1999
Ss. 69EV–69EW	ad. No. 4, 1999
S. 69EX	ad. No. 4, 1999 am. Nos. 79 and 120, 2004
Heading to s. 69EY	am. No. 79, 2004
Ss. 69EY, 69EZ	ad. No. 4, 1999 am. No. 79, 2004
Heading to s. 69EZA	am. No. 79, 2004
S. 69EZA	ad. No. 4, 1999 am. No. 79, 2004

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to s. 69EZB	am. No. 79, 2004
S. 69EZB.....	ad. No. 4, 1999 am. No. 79, 2004
Part 8	
S. 69F	ad. No. 37, 1994 am. No. 146, 1999; No. 137, 2000; No. 115, 2001; No. 79, 2004
S. 69G.....	ad. No. 37, 1994 am. No. 79, 2004
S. 69H.....	ad. No. 37, 1994 am. No. 13, 2003; No. 79, 2004; No. 103, 2010
Heading to s. 69J	am. No. 79, 2004
S. 69J.....	ad. No. 37, 1994 am. No. 79, 2004
Heading to s. 70	am. No. 79, 2004
S. 70	am. No. 13, 2003; No. 79, 2004; No. 90, 2007
S. 71	am. No. 37, 1994
S. 72	rep. No. 8, 2005
Part 9	
S. 74	am. No. 94, 1993; No. 79, 2004
Heading to s. 75	am. No. 79, 2004
S. 75	am. No. 79, 2004
S. 76	am. No. 37, 1994; No. 79, 2004
Ss. 78–80.....	am. No. 79, 2004
S. 81	rep. No. 152, 1997

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Application, saving or transitional provisions

Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000 (No. 137, 2000)

Schedule 2

418 Transitional—pre-commencement offences

- (1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:
- (a) an offence committed before the commencement of this item; or
 - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
 - (c) any matter connected with, or arising out of, such proceedings;
- as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

419 Transitional—pre-commencement notices

If:

- (a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
 - (b) any or all of those other provisions are repealed by this Schedule; and
 - (c) the first-mentioned provision is amended by this Schedule;
- the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.
-

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Agriculture, Fisheries and Forestry Legislation Amendment (Application of Criminal Code) Act 2001 (No. 115, 2001)

4 Application of amendments

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Agricultural and Veterinary Chemicals Legislation Amendment Act 2003
(No. 13, 2003)

Schedule 2

6 Application

The amendment made by item 5 applies for the calendar year beginning on 1 January 2003 and all following calendar years.

8 Application

The amendment made by item 7 applies for the calendar year beginning on 1 January 2003 and all following calendar years.

Financial Framework Legislation Amendment Act 2005 (No. 8, 2005)

4 Saving of matters in Part 2 of Schedule 1

- (1) If:
 - (a) a decision or action is taken or another thing is made, given or done; and
 - (b) the thing is taken, made, given or done under a provision of a Part 2 Act that had effect immediately before the commencement of this Act;

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then the thing has the corresponding effect, for the purposes of the Part 2 Act as amended by this Act, as if it had been taken, made, given or done under the Part 2 Act as so amended.

(2) In this section:

Part 2 Act means an Act that is amended by an item in Part 2 of Schedule 1.

Schedule 1

496 Saving provision—Finance Minister’s determinations

If a determination under subsection 20(1) of the *Financial Management and Accountability Act 1997* is in force immediately before the commencement of this item, the determination continues in force as if it were made under subsection 20(1) of that Act as amended by this Act.

Schedule 2

174 Saving provision—provisions that formerly referred to the Treasurer

(1) Any thing that:

- (a) was done by the Treasurer, or by a delegate of the Treasurer, before the commencing time under an affected provision; and
- (b) was in effect immediately before the commencing time;

continues to have effect after the commencing time as if it had been done by the Finance Minister under the affected provision.

(2) In this item:

affected provision means a provision that is amended by an item in this Schedule so as to replace references to the Treasurer with references to the Finance Minister.

commencing time means the day this Act receives the Royal Assent.

Finance Minister means the Minister who administers the *Financial Management and Accountability Act 1997*.

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Agricultural and Veterinary Chemicals (Administration) Amendment Act 2007
(No. 90, 2007)

Schedule 2

1 Definitions

In this Schedule:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

APVMA has the same meaning as in the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

asset means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; or
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective.

assets official, in relation to an asset other than land, means the person or authority who, under a law of the Commonwealth, a State or a Territory, under a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned.

commencement time means the time when this Schedule commences.

director has the same meaning as in the *Agricultural and Veterinary Chemicals (Administration) Act 1992* as in force immediately before this Schedule commences.

financial liability means a liability to pay a person if the amount, or the method for working out the amount, has been determined.

instrument:

- (a) includes:
 - (i) a contract, deed, undertaking or agreement; and
 - (ii) a notice, authority, order or instruction; and
 - (iii) an instrument made under an Act or regulations; but
- (b) does not include an Act.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

land means any legal or equitable estate or interest in real property, whether actual, contingent or prospective.

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land registration official, in relation to land, means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

liability means any liability, duty or obligation, whether actual, contingent or prospective.

new law means the *Agricultural and Veterinary Chemicals (Administration) Act 1992* as in force immediately after the commencement time.

old law means the *Agricultural and Veterinary Chemicals (Administration) Act 1992* as in force immediately before the commencement time.

staffing procedures includes procedures and policies, and any actions or decisions taken under or in accordance with those procedures and policies, that relate to recruitment, promotion, performance management, inefficiency, misconduct, forfeiture of position, fitness for duty, loss of essential qualifications, disciplinary action, reviews of or appeals against staffing decisions, transfers, redundancy, resignations, termination of employment, grievance processes and leave.

2 Existing property, money and financial liabilities

- (1) Any real or personal property or any money that is held by the APVMA immediately before the commencement time is taken, at the commencement time, to be held by the APVMA for and on behalf of the Commonwealth.
- (2) Any financial liabilities of the APVMA that exist immediately before the commencement time are taken, at the commencement time, to be liabilities of the Commonwealth.
- (3) Subitems (1) and (2) have effect subject to items 3 and 4 of this Schedule.
- (4) If an amount of money (the **original amount**) is covered by subitem (1), an amount equal to the original amount may be paid out of the Consolidated Revenue Fund, which is appropriated accordingly, for the purpose of the performance of the functions of the APVMA.

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3 Vesting of assets held on trust by the APVMA

- (1) This item applies to any assets held on trust by the APVMA immediately before the commencement time.
- (2) At the commencement time, the assets cease to be assets held on trust by the APVMA and become assets held on trust by the Commonwealth, without any conveyance, transfer or assignment. The Commonwealth becomes the APVMA's successor in law in relation to those assets.

4 Vesting of liabilities relating to assets held on trust

- (1) This item applies to the liabilities of the APVMA relating to assets to which item 3 of this Schedule applies.
- (2) At the commencement time, the liabilities cease to be liabilities of the APVMA relating to the assets and become liabilities of the Commonwealth relating to the assets, without any conveyance, transfer or assignment. The Commonwealth becomes the APVMA's successor in law in relation to these liabilities.

5 Certificates relating to vesting of land

- (1) This item applies if:
 - (a) any land vests in the Commonwealth under this Schedule; and
 - (b) there is lodged with a land registration official a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the land, whether by reference to a map or otherwise; and
 - (iii) states that the land has become vested in the Commonwealth under this Schedule.

Note: Certificates under paragraph (1)(b) are presumed to be authentic: see item 19 of this Schedule.

- (2) The land registration official may:
 - (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
 - (b) deal with, and give effect to, the certificate.

6 Certificates relating to vesting of assets other than land

- (1) This item applies if:
- (a) any asset other than land vests in the Commonwealth under this Schedule; and
 - (b) there is lodged with an assets official a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the asset; and
 - (iii) states that the asset has become vested in the Commonwealth under this Schedule.

Note: Certificates under paragraph (1)(b) are presumed to be authentic: see item 19 of this Schedule.

- (2) The assets official may:
- (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and
 - (b) make such entries in the register as are necessary having regard to the effect of this Schedule.

7 Substitution of parties to proceedings

If any proceedings relating to an asset held on trust, to which the APVMA was a party, were pending in any court or tribunal immediately before the commencement time, the Commonwealth is substituted for the APVMA, from the commencement time, as a party to the proceedings.

8 Directors of the APVMA

A person who is a director of the APVMA immediately before the commencement time ceases, immediately after the commencement time, to hold office as such a director by force of this item.

9 Chief Executive Officer

- (1) The person holding office as the Chief Executive Officer under section 33 of the old law immediately before the commencement time is taken to have been duly appointed as the Chief Executive Officer by the Minister under section 33 of the new law:
- (a) for the balance of the person's term of appointment that remained immediately before the commencement time; and

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- (b) subject to subitems (2) and (3), on the same terms and conditions as applied to the person immediately before the commencement time.
- (2) Section 36 of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*, as repealed by Schedule 1 to this Act, has effect after the commencement time in relation to the Chief Executive Officer.
- (3) Section 41A of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*, as inserted by Schedule 1 to this Act, has effect after the commencement time in relation to the Chief Executive Officer.

10 Transfer of staff

- (1) The APVMA's staffing procedures that were in effect immediately before the commencement time continue to apply after the commencement time in relation to:
 - (a) processes begun before, but not completed by, the commencement time; and
 - (b) things done by, for or in relation to the APVMA or an employee of the APVMA before the commencement time.
- (2) The regulations may prescribe:
 - (a) details relating to how the APVMA's staffing procedures will continue to apply under subitem (1); and
 - (b) other matters of a transitional nature in relation to the transfer of persons:
 - (i) who were employed by the APVMA before the commencement time; and
 - (ii) who will be employed under the *Public Service Act 1999* after the commencement time.
- (3) Subitem (1) and any regulations made under subitem (2) have effect despite the *Public Service Act 1999*.

11 Operation of laws—things done by, or in relation to, directors of the APVMA

- (1) If, before the commencement time, a thing was done by, or in relation to, the directors of the APVMA, then, for the purposes of the operation

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of any law after the commencement time, the thing is taken to have been done by, or in relation to, the Chief Executive Officer.

- (2) For the purposes of subitem (1), a thing done before the commencement time under a provision amended by Schedule 1 to this Act has effect from that time as if it were done under that provision as amended. However, this is not taken to change the time at which the thing was actually done.
- (3) The Minister may, by writing, determine that subitem (1):
- (a) does not apply in relation to a specified thing done by, or in relation to, the directors of the APVMA; or
 - (b) applies as if the reference in that subitem to the Chief Executive Officer were a reference to the Commonwealth.
- A determination under this subitem has effect accordingly.
- (4) The regulations may provide for a thing specified in a determination under paragraph (3)(a) to be taken to have been done by, or in relation to, a person or body other than the Chief Executive Officer or the Commonwealth.
- (5) To avoid doubt, for the purposes of this item, doing a thing includes making an instrument.
- (6) A determination made under subitem (3) is not a legislative instrument.

12 References in instruments

- (1) If:
- (a) an instrument is in force immediately before the commencement time; and
 - (b) the instrument contains a reference to the directors of the APVMA;
- the instrument has effect from the commencement time as if the reference to the directors of the APVMA were a reference to the Chief Executive Officer.
- (2) The Minister may, by writing, determine that subitem (1):
- (a) does not apply in relation to a specified reference; or
 - (b) applies as if the reference in that subitem to the Chief Executive Officer were a reference to the Commonwealth.
- A determination under this subitem has effect accordingly.

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- (3) The regulations may provide that an instrument containing a reference specified in a determination under paragraph (2)(a) has effect from the commencement time as if the reference were a reference to a person or body other than the Chief Executive Officer or the Commonwealth.
- (4) A determination made under subitem (2) is not a legislative instrument.

13 Reporting requirements

Reports for periods ending after the commencement time

- (1) If:
 - (a) immediately before the commencement time, a law required the APVMA or the directors of the APVMA to provide a report (whether financial statements or otherwise) for a period; and
 - (b) the period ends after the commencement time;the Chief Executive Officer must provide the report, as required, for so much of the period as occurs before the commencement time.

- (2) If:
 - (a) under subitem (1), the Chief Executive Officer is required to provide a report for a part of a period; and
 - (b) the APVMA is also required to provide a similar report for the remainder of the period;the Chief Executive Officer may meet the requirements in a single report for the period.

Reports for periods ending before the commencement time

- (3) If:
 - (a) a law required the APVMA or the directors of the APVMA to provide a report (whether financial statements or otherwise) for a period that ended before the commencement time; and
 - (b) the report has not been provided by the commencement time;the Chief Executive Officer must provide the report as required.

Application of law to Chief Executive Officer

- (4) To avoid doubt, if under this item the Chief Executive Officer is required to provide a report under a law, the law applies to the Chief

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Executive Officer in respect of the report in the same way as the law would have applied to the APVMA or the directors of the APVMA in respect of the report.

14 New annual report requirements to apply from 2007-2008 and later financial years

Section 61 of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*, as inserted by Schedule 1 to this Act, applies to the 2007-2008 financial year and later financial years.

15 Access to records

For the purposes of the operation of subsection 27L(4) of the *Commonwealth Authorities and Companies Act 1997* in relation to the books of the APVMA, the reference in that subsection to a Commonwealth authority is to be read, after the commencement time, as a reference to the Chief Executive Officer.

16 Continuing obligation to keep records

Section 20 of the *Commonwealth Authorities and Companies Act 1997* (as in force from time to time) continues to apply after the commencement time in relation to accounting records kept by the APVMA under that section before that time as if the APVMA continued to be subject to that Act.

17 Exemption from stamp duty and other State or Territory taxes

No stamp duty or other tax is payable under a law of a State or Territory in respect of, or in respect of anything connected with:

- (a) the transfer of an asset or liability under this Schedule; or
- (b) the operation of this Schedule in any other respect.

18 Constitutional safety net—acquisition of property

- (1) If the operation of this Schedule would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of

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competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

19 Certificates taken to be authentic

A document that appears to be a certificate made or issued under this Schedule:

- (a) is taken to be such a certificate; and
- (b) is taken to have been properly given;

unless the contrary is established.

20 Delegation by Minister

- (1) The Minister may, by writing, delegate all or any of his or her powers and functions under this Schedule to the Chief Executive Officer.
- (2) In exercising or performing powers or functions under a delegation, the Chief Executive Officer must comply with any directions of the Minister.

21 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Schedule to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.
- (2) The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by Schedule 1 to this Act.

Acts Interpretation Amendment Act 2011 (No. 46, 2011)

Schedule 3

10 Saving—appointments

The amendments made by Schedule 2 do not affect the validity of an appointment that was made under an Act before the commencement of this item and that was in force immediately before that commencement.

11 Transitional regulations

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments and repeals made by Schedules 1 and 2.