



# Agricultural and Veterinary Chemicals Legislation Amendment Act 2013

No. 125, 2013

An Act to amend laws relating to agricultural and  
veterinary chemicals, and for related purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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An Act to amend laws relating to agricultural and  
veterinary chemicals, and for related purposes

[Assented to 29 June 2013]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Agricultural and Veterinary  
Chemicals Legislation Amendment Act 2013*.

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## 2 Commencement

- (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
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	29 June 2013
2. Schedules 1 to 6	1 July 2014.	1 July 2014

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## 4 Review of operation of amendments

- (1) The Minister must cause a review to be conducted of:
- (a) the operation of the amendments made by this Act; and
  - (b) any other related matter that the Minister specifies.
- (2) At least one of the persons conducting the review must be a person who is not otherwise appointed, employed or engaged by the Commonwealth.

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- (3) The review must include a request for, and consideration of, submissions from members of the public.
  - (4) The Minister must cause a written report of the review to be laid before each House of the Parliament within 15 sitting days of that House after 1 July 2019.

## 5 Review of prescribed matters

- (1) The Minister must cause a review to be conducted of matters relating to the powers and functions of the APVMA that are prescribed by the regulations.
- (2) The person conducting the review must give the Minister a report of the review in accordance with the regulations.
- (3) This section, and any regulations made for the purposes of this section, cease to have effect 5 years after the day this Act receives the Royal Assent.

## 6 Regulations for section 5

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by section 5 to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to section 5.
- (2) Without limiting subsection (1), regulations may deal with any or all of the following:
  - (a) the terms of reference for the review;
  - (b) when the review is to be conducted;
  - (c) how the review is to be conducted;
  - (d) the publication of the report of the review.
- (3) This section ceases to have effect 5 years after the day this Act receives the Royal Assent.

## Schedule 1—Approvals, registrations, permits and licences

### Agricultural and Veterinary Chemicals Code Act 1994

#### 1 Before section 1 of the Code set out in the Schedule

Insert:

#### Division 1—Object, definitions etc.

#### 2 After section 1 of the Code set out in the Schedule

Insert:

##### 1A Implementing the Code

(1) This Code recognises that:

- (a) the furthering of trade and commerce between Australia and places outside Australia; and
- (b) the present and future economic viability and competitiveness of primary industry which relies on access to chemical products and their constituents; and
- (c) a domestic industry for manufacturing and formulating chemical products and their constituents;

are essential for the well-being of the economy and require a system for regulating chemical products and their constituents that is cost effective, efficient, predictable, adaptive and responsive.

(2) This Code is to be implemented in a manner that:

- (a) recognises that the health and safety of human beings, animals and the environment is the first priority of the system for regulating chemical products and their constituents, in part to ensure that the use of chemical products at the present time will not impair the prospects of future generations; and
- (b) reflects established best-practice principles for the assessment and management of risk, based on science; and
- (c) balances regulatory effort and any burden imposed by the system of regulation on:



- (i) holders of approvals, registrations, permits and licences;  
and
- (ii) the domestic industry for manufacturing and  
formulating chemical products and their constituents;  
and
- (iii) the users of chemical products;  
with the risk of the use of the products and constituents to the  
health and safety of human beings, animals and the  
environment; and
- (d) recognises that the use of chemical products that pose  
unmanageable risks to the health and safety of human beings,  
animals and the environment is not appropriate in Australia;  
and
- (e) promotes community confidence in the regulation of  
chemical products and their constituents, is open and  
accountable, and gives opportunity for public involvement  
and participation; and
- (f) secures compliance with this Code through appropriate,  
proportionate, consistent and effective compliance and  
enforcement measures.

3 Subsection 3(1) of the Code set out in the Schedule (definition of  
*acknowledge*)

Repeal the definition.

4 Subsection 3(1) of the Code set out in the Schedule (definition of  
*adequate*)

Omit all the words after “practicable, that the”, substitute “product  
meets the safety criteria and the trade criteria”.

5 Subsection 3(1) of the Code set out in the Schedule

Insert:

***application*** means an application under this Code.

6 Subsection 3(1) of the Code set out in the Schedule (definition of  
*approved person*)

Repeal the definition.

7 Subsection 3(1) of the Code set out in the Schedule

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Insert:

**determine**, in relation to an application, means:

- (a) approve, re-approve, register, re-register, vary or issue on the application; or
- (b) refuse the application; or
- (c) if the application resulted in the reconsideration of an approval or registration as required by section 29H—cancel the approval or registration under section 34AA.

8 Subsection 3(1) of the Code set out in the Schedule

Insert:

**electronic signature** of a person means the unique identification of the person in an electronic form approved by the APVMA.

9 Subsection 3(1) of the Code set out in the Schedule (definition of *established standard*)

Repeal the definition, substitute:

**established standard** has the meaning given by subsection 8U(7).

10 Subsection 3(1) of the Code set out in the Schedule (definition of *holder*)

Repeal the definition, substitute:

**holder**:

- (a) in relation to an approval or registration, means:
  - (i) the person entered in the Record, Register or relevant APVMA file as the holder of the approval or registration; or
  - (ii) if the holder was an individual who has died or is an individual whose affairs are being lawfully administered by another person—the legal personal representative of the individual or the person administering the individual's affairs; or
  - (iii) if the holder was a body corporate—a successor in law of the body corporate; or
- (b) in relation to a permit or licence, means the person to whom the permit or licence was issued.

10A Subsection 3(1) of the Code set out in the Schedule

Insert:

***instructions approved by the APVMA*** includes authorisations and requirements (however described) set out in a permit.

11 Subsection 3(1) of the Code set out in the Schedule (definition of *instructions for use*)

Repeal the definition.

12 Subsection 3(1) of the Code set out in the Schedule (definition of *interested person*)

Repeal the definition.

13 Subsection 3(1) of the Code set out in the Schedule

Insert:

***limitation period*** has the meanings given by section 34M.

14 Subsection 3(1) of the Code set out in the Schedule (definition of *listable chemical product*)

Repeal the definition.

15 Subsection 3(1) of the Code set out in the Schedule

Insert:

***listed chemical product*** means a chemical product that is, or is included in a class of chemical products that is, listed by regulations under section 8T.

16 Subsection 3(1) of the Code set out in the Schedule (definition of *listed registration*)

Repeal the definition.

17 Subsection 3(1) of the Code set out in the Schedule (definition of *Listing Schedule*)

Repeal the definition.

17A Subsection 3(1) of the Code set out in the Schedule

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Insert:

***lodged***, in relation to an application under this Code, has the meaning prescribed by the regulations.

18 Subsection 3(1) of the Code set out in the Schedule

Insert:

***meets the application requirements*** has the meaning given by section 8A.

***meets the efficacy criteria*** has the meaning given by subsection 5B(1).

***meets the labelling criteria*** has the meaning given by subsection 5D(1).

***meets the safety criteria*** has the meaning given by subsection 5A(1).

***meets the trade criteria*** has the meaning given by subsection 5C(1).

19 Subsection 3(1) of the Code set out in the Schedule

Insert:

***nominated agent***, for an approval or registration, means the person entered in the Record, Register or relevant APVMA file as the nominated agent for the approval or registration.

20 Subsection 3(1) of the Code set out in the Schedule

Insert:

***Record*** means the Record of Approved Active Constituents for Chemical Products kept under section 17.

21 Subsection 3(1) of the Code set out in the Schedule (definition of *Record of Approved Active Constituents*)

Repeal the definition.

22 Subsection 3(1) of the Code set out in the Schedule

Insert:

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**Register** means the Register of Agricultural and Veterinary Chemical Products kept under section 18.

- 23 Subsection 3(1) of the Code set out in the Schedule (definition of *Register of Chemical Products*)

Repeal the definition.

- 24 Subsection 3(1) of the Code set out in the Schedule (definition of *registered listed chemical product*)

Repeal the definition.

- 25 Subsection 3(1) of the Code set out in the Schedule

Insert:

**relevant APVMA file** means the file in which information about approved labels is recorded as mentioned in paragraph 21(c).

- 26 Subsection 3(1) of the Code set out in the Schedule (definition of *relevant particulars*)

Repeal the definition, substitute:

**relevant particulars** means:

- (a) in relation to the approval of an active constituent—the distinguishing number, any instructions for use and any other particulars required by paragraph 19(1)(c) to be entered in the Record; and
- (b) in relation to the registration of a chemical product—the distinguishing number, any instructions for use and any other particulars required by paragraph 20(1)(c) to be entered in the Register; and
- (c) in relation to the approval of a label—the information required to be recorded in the relevant APVMA file by subparagraphs 21(c)(i) to (iva);

and includes particulars of variations of relevant particulars made under section 26, 26C, 29, 29A, 29G, 34A or 34AF.

- 27 After section 5 of the Code set out in the Schedule

Insert:

5A Definition of *meets the safety criteria*

- (1) An active constituent or chemical product ***meets the safety criteria*** if use of the constituent or product, in accordance with any instructions approved, or to be approved, by the APVMA for the constituent or product or contained in an established standard:
  - (a) is not, or would not be, an undue hazard to the safety of people exposed to it during its handling or people using anything containing its residues; and
  - (b) is not, or would not be, likely to have an effect that is harmful to human beings; and
  - (c) is not, or would not be, likely to have an unintended effect that is harmful to animals, plants or things or to the environment.
- (2) For the purposes of being satisfied as to whether an active constituent meets the safety criteria, the APVMA:
  - (a) must have regard to the following:
    - (i) the toxicity of the constituent and its residues, including metabolites and degradation products, in relation to relevant organisms and ecosystems, including human beings;
    - (ii) the method by which the constituent is, or is proposed to be, manufactured;
    - (iii) the extent to which the constituent will contain impurities;
    - (iv) whether an analysis of the chemical composition of the constituent has been carried out and, if so, the results of the analysis;
    - (v) any conditions to which its approval is, or would be, subject;
    - (vi) any relevant particulars that are, or would be, entered in the Record for the constituent;
    - (via) whether the constituent conforms, or would conform, to any standard made for the constituent under section 6E to the extent that the standard relates to matters covered by subsection (1);
    - (vii) any matters prescribed by the regulations; and
  - (b) may have regard to such other matters as it thinks relevant.

- (3) For the purposes of being satisfied as to whether a chemical product meets the safety criteria, the APVMA:
- (a) must have regard to the following:
    - (i) the toxicity of the product and its residues, including metabolites and degradation products, in relation to relevant organisms and ecosystems, including human beings;
    - (ii) the relevant poison classification of the product under the law in force in this jurisdiction;
    - (iii) how the product is formulated;
    - (iv) the composition and form of the constituents of the product;
    - (v) any conditions to which its registration is, or would be, subject;
    - (vi) any relevant particulars that are, or would be, entered in the Register for the product;
  - (via) whether the product conforms, or would conform, to any standard made for the product under section 6E to the extent that the standard relates to matters covered by subsection (1);
  - (vii) any matters prescribed by the regulations; and
  - (b) may have regard to one or more of the following:
    - (i) the acceptable daily intake of each constituent contained in the product;
    - (ii) any dietary exposure assessment prepared under subsection 82(4) of the *Food Standards Australia New Zealand Act 1991* as a result of any proposed variation notified under subsection 82(3) of that Act in relation to the product, and any comments on the assessment given to the APVMA under subsection 82(4) of that Act;
    - (iii) whether any trials or laboratory experiments have been carried out to determine the residues of the product and, if so, the results of those trials or experiments and whether those results show that the residues of the product will not be greater than limits that the APVMA has approved or approves;
    - (iv) the stability of the product;
    - (v) the specifications for containers for the product;
    - (vi) such other matters as it thinks relevant.
-

5B Definition of *meets the efficacy criteria*

- (1) A chemical product ***meets the efficacy criteria*** if use of the product, in accordance with instructions approved, or to be approved, by the APVMA for the product or contained in an established standard, is, or would be, effective according to criteria determined by the APVMA by legislative instrument.
- (2) For the purposes of being satisfied as to whether a chemical product meets the efficacy criteria, the APVMA must have regard to the following:
  - (a) whether any trials or laboratory experiments have been carried out to determine the efficacy of the product and, if so, the results of those trials or experiments;
  - (b) any conditions to which its registration is, or would be, subject;
  - (c) any relevant particulars that are, or would be, entered in the Register for the product;
  - (ca) whether the product conforms, or would conform, to any standard made for the product under section 6E to the extent that the standard relates to matters covered by subsection (1);
  - (d) any matters prescribed by the regulations.
- (3) For the purposes of the operation of this Code in relation to a particular chemical product, the APVMA is required to have regard to the matters set out in subsections (1) and (2) only:
  - (a) to the extent prescribed by the regulations; or
  - (b) if there are no such regulations—to the extent that the APVMA thinks the matters are relevant.

5C Definition of *meets the trade criteria*

- (1) A chemical product ***meets the trade criteria*** if use of the product, in accordance with instructions approved, or to be approved, by the APVMA or contained in an established standard, does not, or would not, unduly prejudice trade or commerce between Australia and places outside Australia.
- (2) For the purposes of being satisfied as to whether a chemical product meets the trade criteria, the APVMA must have regard to the following:



- (a) any conditions to which its registration is, or would be, subject;
  - (b) any relevant particulars that are, or would be, entered in the Register for the product;
  - (ba) whether the product conforms, or would conform, to any standard made for the product under section 6E to the extent that the standard relates to matters covered by subsection (1);
  - (c) any matters prescribed by the regulations.
- (3) For the purposes of the operation of this Code in relation to a particular chemical product, the APVMA is required to have regard to the matters set out in subsections (1) and (2) only:
- (a) to the extent prescribed by the regulations; or
  - (b) if there are no such regulations—to the extent that the APVMA thinks the matters are relevant.

#### 5D Definition of *meets the labelling criteria*

- (1) A label for containers for a chemical product ***meets the labelling criteria*** if the label contains adequate instructions relating to such of the following as are appropriate:
- (a) the circumstances in which the product should be used;
  - (b) how the product should be used;
  - (c) the times when the product should be used;
  - (d) the frequency of the use of the product;
  - (e) the withholding period after the use of the product;
  - (f) the re-entry period after the use of the product;
  - (g) the disposal of the product when it is no longer required;
  - (h) the disposal of containers of the product;
  - (i) the safe handling of the product and first aid in the event of an accident caused by the handling of the product;
  - (j) any matters prescribed by the regulations.
- (2) For the purposes of being satisfied as to whether a label meets the labelling criteria, the APVMA must have regard to the following:
- (a) any conditions to which its approval is, or would be, subject;
  - (b) any relevant particulars and instructions that are, or would be, entered in the relevant APVMA file for the label;

- (c) whether the label conforms, or would conform, to any standard made for the label under section 6E to the extent that the standard relates to matters covered by subsection (1).

**28** After section 6 of the Code set out in the Schedule

Insert:

**6A** APVMA may make guidelines etc.

- (1) The APVMA may make written guidelines for performing its functions and exercising its powers under this Code.
- (2) The APVMA must have regard to the guidelines.
- (3) The guidelines must include:
  - (a) principles and processes for effective and efficient regulation of chemical products and their constituents; and
  - (b) principles and processes relating to:
    - (i) the approval of active constituents for proposed or existing chemical products; and
    - (ii) the registration of chemical products; and
    - (iii) the approval of labels for containers for chemical products; and
    - (iv) the variation of relevant particulars and conditions; and
    - (v) the issue of permits and licences; and
    - (vi) the reconsideration of approvals and registrations.
- (4) The guidelines must not be inconsistent with an agvet law.
- (5) The APVMA must publish the guidelines on its website.
- (6) The guidelines are not a legislative instrument.

**6B** Varying relevant particulars and conditions

To avoid doubt, a power under this Code to vary a relevant particular or condition does not authorise the APVMA to vary a relevant particular or condition that was not imposed by the APVMA.

**6C Right of APVMA to use information**

- (1) The APVMA may use information obtained by it from any source for the purpose of performing any of its functions or exercising any of its powers under this Code.
- (2) Subsection (1) has effect subject to this Code.

**6D Failure to comply with time limit does not affect validity**

Failure by the APVMA to comply with a time limit set out in this Code does not affect the validity of anything done by the APVMA.

**6E APVMA may make standards**

- (1) The APVMA may, by legislative instrument, make standards for the following:
  - (a) constituents for chemical products;
  - (b) chemical products;
  - (c) labels for containers for chemical products.
- (2) A standard made under subsection (1) may apply, adopt or incorporate, with or without modification, any matter contained in any instrument or other writing as in force at a particular time or as in force from time to time.

**29 After section 8A of the Code set out in the Schedule**

Insert:

**Division 2—General provisions about applications**

**8A Definition of *meets the application requirements***

An application ***meets the application requirements*** if:

- (a) the application:
  - (i) is in writing in the approved form; and
  - (ii) is signed by the applicant; and
  - (iii) is accompanied by so much of the prescribed fee as is required to be paid when the application is made; and
  - (iv) is lodged with the APVMA; and

- (v) contains, or is accompanied by, any information specified for the application under section 8B; and
- (b) the constituent, product or label in relation to which the application is made complies, or will comply, with any requirement prescribed by the regulations; and
- (c) any requirement made under section 157 or 159 in relation to the application has been complied with; and
- (d) any requirement prescribed by another provision of this Code in relation to the application has been complied with; and
- (e) any amount (including an amount in respect of a tax or penalty) that is payable by the applicant to the APVMA (including under a law of another jurisdiction or the agvet law), has been paid.

Note: For giving information electronically, see section 156A.

#### **8B Information to be provided with applications**

- (1) The APVMA may, by legislative instrument, specify the information that must be contained in, or accompany, the application.
- (2) The APVMA may specify information under subsection (1) only if:
  - (a) the inclusion of the information would enable the APVMA to determine the application; and
  - (b) in relation to an application under section 29D (applications for re-approval or re-registration)—the information is information that the applicant could be reasonably expected to have, or to have access to.

#### **8C Information to be taken into account in determining applications**

- (1) In determining the application, the APVMA:
  - (a) must have regard to:
    - (i) the information in, or accompanying, the application as required under section 8B or any other provision of this Code; and
    - (ii) any information or thing given to the APVMA as required under section 157 or 159 or by section 160A in relation to the application; and

- (iii) any submission made in response to an invitation given by the APVMA in relation to the application; and
  - (b) may have regard to any other matter that it thinks relevant.
- (2) However, the APVMA must not take into account any information that:
  - (a) is given by or on behalf of the applicant in connection with the application; but
  - (b) is not covered by paragraph (1)(a).
- (3) This section does not apply in relation to an application under section 122 for a licence.

#### 8D Applications may be withdrawn

At any time after the application is made and before it is determined, the applicant may withdraw it by giving the APVMA written notice of the withdrawal signed by the applicant.

### Division 3—General provisions about notices

#### 8E Notice to Food Standards Australia New Zealand

- (1) The APVMA must notify Food Standards Australia New Zealand if an approval, registration, variation or permit proposed under this Code (whether by application or on the initiative of the APVMA) would, if it were given, made or issued, be likely to require a variation to the Maximum Residue Limits Standard.
- (2) The notice must:
  - (a) be in writing; and
  - (b) set out:
    - (i) the relevant particulars, or proposed relevant particulars, of the active constituents and products concerned, other than confidential commercial information; and
    - (ii) any other matters that the APVMA thinks appropriate; and
  - (c) be given to Food Standards Australia New Zealand:
    - (i) for an application, other than an application under section 29D—within 28 days after the APVMA

- completes a preliminary assessment of the application;  
or
  - (ii) for a variation under section 26C, 29, 29A, 29G, 34A or 34AF—before the variation is made.
- (3) This section does not apply in relation to an approval, registration, variation or permit proposed by an application that is subject to preliminary assessment before the application has passed preliminary assessment.

**8F Notice to holder of approval, registration or variation**

- (1) The APVMA must give written notice to the holder within 14 days if the APVMA:
- (a) approves (or re-approves) an active constituent; or
  - (b) registers (or re-registers) a chemical product; or
  - (c) renews the registration of a chemical product; or
  - (d) approves a label; or
  - (e) varies relevant particulars or conditions (whether on application or on the initiative of the APVMA), other than under section 34A (varying relevant particulars or conditions to allow affirmation).

Note: For notices in relation to reconsiderations, see Division 4 of Part 2.

- (2) The notice must:
- (a) for an approval or registration:
    - (i) state that the constituent, product or label has been approved or registered; and
    - (ii) set out the relevant particulars and conditions of the approval or registration; and
    - (iii) state the date the approval or registration ends; and
  - (b) for a registration—state the date (if any) after which the registration cannot be renewed under Division 6 of Part 2; and
  - (c) for the renewal of a registration—state that the registration of the chemical product has been renewed; and
  - (d) for the variation of relevant particulars or conditions:
    - (i) state that the relevant particulars or conditions have been varied; and

- (ii) set out the relevant particulars or conditions as varied; and
- (iii) state the date the approval or registration ends; and
- (iv) of a registration—state the date (if any) after which the registration cannot be renewed under Division 6 of Part 2; and
- (e) include any information prescribed by the regulations.

#### 8G Notice to applicant of refusal of application

- (1) The APVMA must give written notice to the applicant within 14 days if the APVMA refuses an application.

Note: For notices in relation to reconsiderations, see Division 4 of Part 2.

- (2) The notice must:
  - (a) state that the application has been refused; and
  - (b) set out the reasons for the refusal; and
  - (c) include any information prescribed by the regulations; and
  - (d) specify any amount of fee that is repayable because of the refusal.

Note: Other provisions of this Code specify additional requirements for certain notices of refusal.

#### 8H Published notice of approvals and registrations

- (1) If the APVMA approves an active constituent or registers a chemical product, it must, unless it thinks that in the circumstances it is unnecessary to do so, publish notice of the approval or registration.
- (2) The notice must:
  - (a) be published in the *Gazette*, as soon as practicable, and in any other manner that the APVMA thinks appropriate; and
  - (b) state that the constituent has been approved or the product has been registered and the date of the approval or registration as mentioned in section 22; and
  - (c) if the approval or registration is a re-approval or re-registration—state that fact; and

- (d) contain a brief statement of the conditions of the approval or registration that directly regulate the use of the constituent or product; and
- (e) include any information prescribed by the regulations.

**8J Published notice of variations of approvals and registrations**

- (1) If the APVMA varies any of the relevant particulars or conditions of the approval of an active constituent or the registration of a chemical product, it must, unless it thinks that in the circumstances it is unnecessary to do so, publish notice of the variation.
- (2) The notice must:
  - (a) be published in the *Gazette*, as soon as practicable, and in any other manner that the APVMA thinks appropriate; and
  - (b) state that the relevant particulars or conditions have been varied and the date on which the variation took place; and
  - (c) contain a brief statement of the nature of, and reasons for, the variation; and
  - (d) include any information prescribed by the regulations.

**8K Confidential commercial information must not be disclosed under certain provisions**

- (1) Engaging in conduct in the performance of functions or duties, or the exercise of powers, under any of the following provisions does not authorise the disclosure of confidential commercial information whose disclosure would otherwise be prohibited by section 162:
  - (a) subsection 8F(2);
  - (b) subsection 8S(2);
  - (c) subsection 17(4) or (5);
  - (d) subsection 18(4) or (5);
  - (e) subsection 34AB(2);
  - (f) subsection 34AC(2);
  - (g) subsection 47B(4).
- (2) Subsection (1) has effect despite subsection 162(1A).



## Division 4—Holders of approvals and registrations and nominated agents

### 8L Changing the holder

- (1) The holder of an approval or registration may apply to the APVMA to change the holder.
- (2) The APVMA must record the change in the Record, Register or relevant APVMA file, as required, if the APVMA is satisfied that:
  - (a) the application meets the application requirements; and
  - (b) the proposed holder has consented, by signed writing, to being the holder; and
  - (c) if the proposed holder is not a resident of, and does not carry on business in, Australia—there will be a nominated agent for the approval or registration; and
  - (d) any requirements prescribed by the regulations have been met.
- (3) Otherwise, the APVMA must refuse the application.

Note: For notice of refusal, see section 8G.

### 8M Nominated agent

- (1) The holder may, at any time, apply to the APVMA for the person nominated in the application to be the nominated agent for the approval or registration.
- (2) The APVMA must record the person as the nominated agent in the Record, Register or relevant APVMA file, as required, if the APVMA is satisfied that:
  - (a) the application meets the application requirements; and
  - (b) the nominated person has consented, by signed writing, to being the nominated agent; and
  - (c) any requirements prescribed by the regulations have been met.
- (3) Otherwise, the APVMA must refuse the application.

Note: For notice of refusal, see section 8G.

- (4) It is a condition of the approval or registration that the nominated agent is a resident of, or carries on business in, Australia.

**8N Overseas holder must have nominated agent**

If the holder is not a resident of, and does not carry on business in, Australia, it is a condition of the approval or registration that there is a nominated agent for the approval or registration.

**8P Changing the nominated agent**

- (1) The holder may apply to the APVMA to change the nominated agent.
- (2) The APVMA must record the change in the Record, Register or relevant APVMA file, as required, if the APVMA is satisfied that:
- (a) the application meets the application requirements; and
  - (b) the person to be the nominated agent has consented, by signed writing, to being the nominated agent; and
  - (c) any requirements prescribed by the regulations have been met.
- (3) Otherwise, the APVMA must refuse the application.

Note: For notice of refusal, see section 8G.

**8Q Nominated agent may withdraw**

- (1) The nominated agent may, by signed writing given to the APVMA, request to withdraw from being the nominated agent.
- (2) The APVMA must record the withdrawal in the Record, Register or relevant APVMA file, as required, if the APVMA is satisfied that:
- (a) the nominated agent has notified the holder of the withdrawal; and
  - (b) any requirements prescribed by the regulations have been met.

**8R Role of nominated agent**

Anything that may, or must, be done under this Code by, or in relation to, the holder, as the holder of the approval or registration,

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may be done by, or in relation to, either the holder or the nominated agent.

Note: For liabilities imposed on the nominated agent, see section 152.

## Division 5—Notice of certain proposed decisions

### 8S Notice of certain proposed decisions

- (1) The APVMA must give the applicant written notice of what it proposes to do before it:
  - (a) refuses an application, other than on preliminary assessment; or
  - (b) approves (or re-approves) or registers (or re-registers) an active constituent, chemical product or label with instructions or relevant particulars other than those set out in the application; or
  - (c) if the application is to vary relevant particulars or conditions—varies the relevant particulars or conditions other than in accordance with the application.

Note: For notices in relation to reconsiderations, see Division 4 of Part 2.

- (2) The notice must:
  - (a) for notice under paragraph (1)(b)—set out the proposed instructions and relevant particulars; and
  - (b) for notice under paragraph (1)(c)—set out the proposed variation; and
  - (c) include a draft statement of reasons for the proposed course of action; and
  - (d) set out the information on which the reasons are based (including information not given to the APVMA by the applicant); and
  - (e) invite written submissions from the applicant within 28 days, or within such further period as is specified in the notice.
- (3) The APVMA is not required to take account of anything given in response to the invitation under paragraph (2)(e) that is not related to information:
  - (a) already given to the APVMA by, or on behalf of, the applicant; or
  - (b) set out in the notice under paragraph (2)(d).

- (4) The APVMA is not required to comply with this section more than once in relation to a particular application.

## Division 6—Listed chemical products and established standards

### 8T Regulations may include schedule of listed chemical products

- (1) The regulations may include a schedule specifying chemical products, or classes of chemical products, that are listed chemical products for the purposes of this Code.
- (2) Before the Governor-General makes a regulation that includes, or amends, the schedule referred to in subsection (1), the APVMA must publish in the *Gazette*, and in any other manner that the APVMA thinks appropriate, a notice:
- (a) stating that it proposes to recommend to the Minister that the regulation be made; and
  - (b) setting out particulars of the chemical products, or class of chemical products, that would be covered, or otherwise affected, by the regulation; and
  - (c) setting out a draft standard the APVMA proposes to make under section 8U in relation to each chemical product that would be covered by the regulation; and
  - (d) giving the reasons for the proposed recommendation; and
  - (e) inviting any person, within a period of at least 28 days specified in the notice, to make a written submission to the APVMA as to whether the proposed regulation should be made and stating the grounds on which the submission is based, which must be grounds relating to the matters mentioned in paragraph 8V(a).
- (3) In making a recommendation to the Minister, the APVMA must take into account any submissions made in accordance with the invitation.
- (4) Before the Governor-General makes a regulation that includes, or amends, the schedule referred to in subsection (1):
- (a) the APVMA must have recommended to the Minister that the regulation be made; and
  - (b) the APVMA must have given to the Minister:

- (i) its reasons for the recommendation; and
- (ii) written particulars of the product or class of products that would be covered, or otherwise affected, by the regulation; and
- (iii) a draft of the standard that the APVMA proposes to make under section 8U for the product, or for products in the class, if the product or class is specified in the schedule; and
- (iv) a written explanation as to why the APVMA is satisfied that the product, or class of products, meets the safety criteria, the trade criteria and the efficacy criteria (see section 8V); and
- (v) a written statement identifying the consultations held by, and setting out the advice given to, the APVMA in relation to the proposed regulation.

#### 8U APVMA to prepare standards

- (1) This section applies in respect of each listed chemical product, whether or not the product is the subject of a monograph in the British Pharmacopoeia or the British Pharmacopoeia (Veterinary) or in a similar publication.
- (2) The APVMA must, by legislative instrument, make a standard for each listed chemical product. A particular standard may relate to a specified chemical product or specified chemical products or to each chemical product in a specified class of chemical products.
- (3) The standard for a listed chemical product must require that the product be labelled in a manner, or kept in containers that comply with requirements, specified in the standard.
- (4) The APVMA may, in a standard, direct that the particulars required by the standard be set out, in a manner specified in the standard, on:
  - (a) chemical products, or a class of chemical products, identified in the standard; or
  - (b) a container containing chemical products, or a class of chemical products, identified in the standard; or

- (c) a label for containers for chemical products, or a class of chemical products, identified in the standard.
- (5) A standard for a listed chemical product:
  - (a) may be specified by reference to any one or more of the following:
    - (i) the composition and form of the constituents of the product;
    - (ii) the physical and chemical properties of the chemical product;
    - (iii) the quantity of the chemical product when contained in specified containers;
    - (iv) procedures to be carried out in the manufacture of the chemical product;
    - (v) a monograph in the British Pharmacopoeia or the British Pharmacopoeia (Veterinary);
    - (vi) a monograph in another publication approved by the APVMA for the purposes of this subparagraph;
    - (vii) a monograph referred to in subparagraph (v) or (vi) as modified in a manner specified in the standard;
    - (viii) a standard published by Standards Australia;
    - (ix) such other matters as the APVMA thinks fit; and
  - (b) may require that a matter relating to the standard be determined in accordance with a particular test.
- (6) Subsections (4) and (5) do not limit subsection (3).
- (7) The standard made by the APVMA in relation to a listed chemical product is the ***established standard*** for the product.

Note: The APVMA may revoke or amend a standard. See subsection 33(3) of the *Acts Interpretation Act 1901*.

#### 8V Matters to be taken into account in preparing a standard

The APVMA must not make a standard for a listed chemical product unless the APVMA is satisfied that compliance with the standard would result in:

- (a) the product meeting the safety criteria, the trade criteria and the efficacy criteria; and

- (b) any label for containers for the product meeting the labelling criteria.

30 Section 9 of the Code set out in the Schedule

Repeal the section, substitute:

9 Explanation of Part

- (1) This Part contains provisions relating to:
  - (a) approval of active constituents for proposed or existing chemical products; and
  - (b) registration of chemical products; and
  - (c) approval of labels for containers for chemical products.
- (2) Division 2 provides for approvals and registrations.
- (3) Division 2A provides for variation of relevant particulars of approvals and registrations if the relevant particulars are of a kind set out in a legislative instrument made under section 26B. Only holders of approvals or registrations may apply under Division 2A.
- (4) Division 3 provides generally for variation of relevant particulars or conditions of approvals and registrations. Holders and other persons may apply under Division 3.
- (5) Division 3A provides for re-approval and re-registration of active constituents and chemical products.
- (6) Division 4 provides for the APVMA to reconsider approvals and registrations in order to decide whether they should remain in force.
- (7) Division 4A limits the use the APVMA can make of certain information given to it in connection with certain applications.
- (8) Division 5 sets out the circumstances in which the APVMA may suspend or cancel approvals and registrations.
- (9) Division 6 states how long approvals and registrations are to continue in force and makes provision for the renewal of registrations.

31 Division 2 of Part 2 of the Code set out in the Schedule (heading)

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Repeal the heading, substitute:

## **Division 2—Approving and registering**

32 Sections 10 to 14A of the Code set out in the Schedule

Repeal the sections, substitute:

### **9A Explanation of Division**

- (1) This Division provides for:
  - (a) approval of active constituents for proposed or existing chemical products; and
  - (b) registration of chemical products; and
  - (c) approval of labels for containers for chemical products.
- (2) Section 10 provides for applications to be made. Applications must meet the application requirements specified in section 8A.
- (3) The APVMA must complete a preliminary assessment of an application. If the application passes preliminary assessment, the APVMA must notify the applicant and publish a summary of the application (section 11).
- (4) Before determining certain applications that have passed preliminary assessment, the APVMA must publish a notice inviting public submissions (sections 12 and 13).
- (5) The APVMA must approve an active constituent or label, or register a chemical product, if specified criteria are met (section 14). Sections 14A to 16 set out special rules about approvals and registrations.
- (6) The APVMA must keep a Record of Approved Active Constituents for Chemical Products and a Register of Agricultural and Veterinary Chemical Products (sections 17 and 18).
- (7) Sections 19 to 21 set out how approvals and registrations take place, and section 22 deals with dates of approval and registration.
- (8) Approvals and registrations may be subject to conditions (section 23).



- (9) Section 26 provides for incorrect relevant particulars and conditions of a kind prescribed by the regulations to be corrected.

## 10 Applications

- (1) A person may apply to the APVMA:
- (a) for approval of an active constituent for a proposed or existing chemical product; or
  - (b) for registration of a chemical product; or
  - (c) for approval of a label for containers for a chemical product.
- (2) The application:
- (a) must meet the application requirements; and
  - (b) for an active constituent or chemical product—must include proposed instructions for use of the constituent or product.

Note: For *meets the application requirements*, see section 8A.

## 11 Preliminary assessment

- (1) The APVMA must complete a preliminary assessment of the application within 1 month after it is lodged.
- (2) If it appears from the preliminary assessment that the application meets the application requirements, the APVMA must, within 14 days:
- (a) give written notice to the applicant:
    - (i) stating that the application has passed preliminary assessment and that it will be determined under section 14; and
    - (ii) setting out any matters prescribed by the regulations; and
  - (b) publish a summary of the application that includes any details prescribed by the regulations.
- (3) Otherwise, the APVMA must refuse the application.
- Note: For notice of refusal, see section 8G.
- (4) The APVMA may alter the application, after it has passed preliminary assessment, with the written consent of the applicant.

12 APVMA to publish notice before deciding whether to approve new active constituent

- (1) This section applies if the application:
  - (a) has passed preliminary assessment; and
  - (b) is for approval of an active constituent not previously contained in a chemical product registered in this or another jurisdiction under the Agvet Code, or a corresponding previous law, of the jurisdiction concerned.
- (2) The APVMA must publish a notice in the *Gazette* and in any other manner that it thinks appropriate.
- (3) The notice must state that the APVMA has to decide whether to approve the constituent and must:
  - (a) set out the following:
    - (i) the name of the constituent;
    - (ii) particulars of the constituent;
    - (iii) a summary of the APVMA's assessment of whether the constituent meets the safety criteria;
    - (iv) any other matters that the APVMA thinks appropriate; and
  - (b) invite any person to make, within a specified period of at least 28 days, a written submission as to whether the constituent should be approved and stating the grounds on which the submission is based, which must be grounds that relate to the safety criteria.

13 APVMA to publish notice before deciding whether to register chemical product containing new active constituent

- (1) This section applies if the application:
    - (a) has passed preliminary assessment; and
    - (b) is for registration of a chemical product containing an active constituent not previously contained in a chemical product registered in this or another jurisdiction under the Agvet Code, or a corresponding previous law, of the jurisdiction concerned.
  - (2) The APVMA must publish a notice in the *Gazette* and in any other manner that it thinks appropriate.
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- (3) The notice must state that the APVMA has to decide whether to register the product and must:
- (a) set out the following:
    - (i) the name that the applicant intends to use to describe the product;
    - (ii) particulars of the product and its active constituents;
    - (iii) a summary of the APVMA's assessment of whether the product meets the safety criteria, the trade criteria and the efficacy criteria;
    - (iv) any other matters that the APVMA thinks appropriate; and
  - (b) invite any person to make, within a specified period of at least 28 days, a written submission to the APVMA as to whether the product should be registered and stating the grounds on which the submission is based, which must be grounds that relate to the safety criteria, the trade criteria or the efficacy criteria.

#### 14 Approval and registration

- (1) The APVMA must approve the active constituent or label, or register the chemical product, if it is satisfied:
- (a) that the application meets the application requirements; and
  - (b) for an active constituent—that the constituent meets the safety criteria; and
  - (c) for a chemical product—that the product:
    - (i) meets the safety criteria, the trade criteria and the efficacy criteria; or
    - (ii) complies with the established standard for the product; and
  - (d) for a label for a chemical product—that the label:
    - (i) meets the labelling criteria; or
    - (ii) complies with the established standard for the product.

Note: For notice of approval or registration, see section 8F.

- (2) Otherwise, the APVMA must refuse the application.

Note: For notice of refusal, see section 8G.

**14A Approval of active constituents for which information is not readily available**

- (1) The APVMA may approve an active constituent for a proposed or existing chemical product if:
  - (a) either of the following applies:
    - (i) the APVMA considers that information it requires in respect of the constituent is not readily available;
    - (ii) the constituent is, or is part of, a product in respect of which a standard is specified in the European Pharmacopoeia, the British Pharmacopoeia (Veterinary), the United States Pharmacopoeia or any other publication considered by the APVMA to be appropriate; and
  - (b) having regard to information that is readily available, the APVMA is satisfied that the constituent would meet the safety criteria.
- (2) Subsection (1) applies:
  - (a) despite subsection 14(2); and
  - (b) whether or not an application has been made for approval of the constituent.
- (3) If the APVMA approves an active constituent under this section without an application having been made for the approval, the APVMA must, under paragraph 19(1)(a), be entered in the Record as the holder of the approval.

**33 Section 14B of the Code set out in the Schedule (heading)**

Repeal the heading, substitute:

**14B APVMA not to use information for registration of new chemical product to register a similar product after disclosure**

**34 Paragraph 14B(1)(a) of the Code set out in the Schedule**

Omit “an agricultural”, substitute “a”.

**35 Paragraph 14B(1)(b) of the Code set out in the Schedule**

Repeal the paragraph, substitute:

- (b) the information related to the first product or the active constituent and:
  - (i) the safety criteria; or
  - (ii) a matter that is prescribed by the regulations; and

36 Paragraph 14B(1)(e) of the Code set out in the Schedule

Repeal the paragraph, substitute:

- (e) as a result of the disclosure, the applicant for an application for registration of a chemical product (the ***second product***) that is the same as, or similar to, the first product, seeks to have the APVMA use the information in determining the application.

37 Subsection 14B(2) of the Code set out in the Schedule

Omit “grant the application for registration of”, substitute “register”.

38 Subsection 14B(3) of the Code set out in the Schedule

Omit “granting”, substitute “determining”.

39 Subsection 14B(3) of the Code set out in the Schedule

Omit “of the grant or”.

40 Section 15 of the Code set out in the Schedule (heading)

Repeal the heading, substitute:

15 Restriction on power of APVMA to register products and approve labels

41 Paragraphs 15(1)(a) and (b) of the Code set out in the Schedule

Repeal the paragraphs, substitute:

- (a) register a chemical product unless:
  - (i) the APVMA also approves each active constituent for the product; and
  - (ii) the APVMA also approves a label for containers for the product; or
- (b) approve a label for containers for a chemical product unless it also registers the product.

41A Subsection 15(2) of the Code set out in the Schedule

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Omit all the words after “in relation”, substitute:

to:

- (a) an active constituent that is exempted by the APVMA from the operation of that subparagraph; or
- (b) an active constituent for a listed chemical product if the product complies with the established standard for the product.

42 Subsection 16(1) of the Code set out in the Schedule

Omit “for a proposed or existing chemical product”.

42A Subsection 17(4) of the Code set out in the Schedule

Omit “that does not contain confidential commercial information”.

42B At the end of subsection 17(4) of the Code set out in the Schedule

Add:

Note: This subsection does not authorise the disclosure of confidential commercial information whose disclosure would otherwise be prohibited by section 162: see section 8K.

42C Subsection 17(5) of the Code set out in the Schedule

Omit “that does not contain confidential commercial information”.

42D At the end of subsection 17(5) of the Code set out in the Schedule

Add:

Note: This subsection does not authorise the disclosure of confidential commercial information whose disclosure would otherwise be prohibited by section 162: see section 8K.

42E Subsection 18(4) of the Code set out in the Schedule

Omit “that does not contain confidential commercial information”.

42F At the end of subsection 18(4) of the Code set out in the Schedule

Add:

Note: This subsection does not authorise the disclosure of confidential commercial information whose disclosure would otherwise be prohibited by section 162: see section 8K.

42G Subsection 18(5) of the Code set out in the Schedule

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Omit “that does not contain confidential commercial information”.

42H At the end of subsection 18(5) of the Code set out in the Schedule

Add:

Note: This subsection does not authorise the disclosure of confidential commercial information whose disclosure would otherwise be prohibited by section 162: see section 8K.

43 Sections 19 to 26 of the Code set out in the Schedule

Repeal the sections, substitute:

19 How approval of active constituent takes place

- (1) Approval of an active constituent takes place when the APVMA enters the following in the Record:
  - (a) the name of the person who applied for the approval as the holder of the approval;
  - (b) the name of any nominated agent for the approval;
  - (c) the relevant particulars, which are the distinguishing number, any instructions for the use of the constituent and any other particulars prescribed by the regulations;
  - (d) any conditions of the approval imposed by the APVMA;
  - (e) the date the approval ends.
- (2) The date the approval ends must:
  - (a) be worked out in accordance with the method prescribed by the regulations; and
  - (b) be the last day of a calendar month at least 7 years but not more than 15 years after the approval takes place.
- (3) Despite subsection (2), the APVMA may approve the active constituent for a period of less than 7 years to provide for its approval to end at the same time as another approval of the active constituent.
- (4) Paragraph (2)(b) does not apply if the approval is subject to the condition that it remains in force only for a stated period of not more than 1 year (see subsection 23(2)).

## 20 How registration of chemical product takes place

- (1) Registration of a chemical product takes place when the APVMA enters the following in the Register:
- (a) the name of the person who applied for the registration as the holder of the registration;
  - (b) the name of any nominated agent for the registration;
  - (c) the relevant particulars, which are the distinguishing number, any instructions for the use of the product and any other particulars prescribed by the regulations;
  - (d) if the product is a listed chemical product—a notation to that effect;
  - (e) any conditions of the registration imposed by the APVMA;
  - (f) the date the registration ends, which must be the last day of a calendar month not more than 12 months after the registration takes place;
  - (g) unless the product is a listed chemical product, and the product and each label for the product comply with the established standard for the product—the date (the ***last renewal date***) after which the registration cannot be renewed under Division 6.

### Rules about last renewal dates

- (2) The last renewal date must:
- (a) be worked out in accordance with the method prescribed by the regulations; and
  - (b) if the last renewal date is entered in the Register when the product is registered—be the last day of a calendar month at least 7 years but not more than 15 years after the registration takes place; and
  - (c) if the last renewal date is entered in the Register when the relevant particulars or conditions of the registration are varied—be the last day of a calendar month at least 7 years but not more than 15 years after the variation takes place.

Note: For entering last renewal dates when relevant particulars or conditions are varied, see sections 26D, 29B and 34A.

- (3) However, the last renewal date may be less than 7 years after the registration or variation takes place to provide for the last renewal



date to be the same as the last renewal date for another chemical product that contains one or more of the same active constituents.

- (4) Paragraphs (2)(b) and (c) do not apply if the registration is subject to the condition that it remains in force only for a stated period of not more than 1 year (see subsection 23(2)).

## 21 How approval of label takes place

Approval of a label takes place when the APVMA:

- (a) determines the particulars prescribed by the regulations that are appropriate to be contained on the label; and
- (b) gives a distinguishing number to the label; and
- (c) records the following information in the relevant APVMA file:
  - (i) the name of the person who applied for the approval as the holder of the approval;
  - (ii) the name of any nominated agent for the approval;
  - (iii) the distinguishing number;
  - (iv) the instructions and any particulars that are to be contained on the label;
  - (iva) any other particulars prescribed by the regulations;
  - (v) any conditions of the approval imposed by the APVMA.

## 22 Date of approval or registration

- (1) The date of approval of an active constituent, of registration of a chemical product or of approval of a label is the date on which the relevant particulars are entered in the Record, Register or relevant APVMA file.
- (2) If:
  - (a) any of the relevant particulars of:
    - (i) an approval of an active constituent; or
    - (ii) a registration of a chemical product; or
    - (iii) an approval of a label; or
  - (b) any of the conditions of such an approval or registration imposed by the APVMA;
 are varied, then, the date of approval of the constituent, registration of the product, or approval of the label, as varied, or as subject to

the varied conditions, is the date on which particulars of the variation are entered in the Record, Register or relevant APVMA file.

## 23 Conditions of approval or registration

- (1) The approval of an active constituent, the registration of a chemical product or the approval of a label for containers for a chemical product is subject to:
  - (a) the conditions prescribed by the regulations (whether or not the conditions are prescribed at the time the constituent, product or label is approved or registered); and
  - (b) any conditions imposed on the approval or registration as the APVMA thinks appropriate.
- (2) An active constituent, chemical product or a label may be approved or registered on the condition that the approval or registration remains in force only for a stated period of not more than 1 year.
- (3) If:
  - (a) the approval or registration is subject to a condition referred to in subsection (2); and
  - (b) the conditions of approval or registration have not been varied before the end of the period referred to in the condition, or the end of that period as previously extended under this subsection, so as to remove the condition;the APVMA may vary the condition so as to extend the period for a further period of not more than 1 year.

## 26 Incorrect particulars and conditions

- (1) If:
  - (a) the APVMA is satisfied that a relevant particular or condition entered in the Record or Register, or recorded in the relevant APVMA file, is incorrect in a material respect; and
  - (b) the relevant particular or condition is of a kind prescribed by the regulations;the APVMA must vary the entry or record accordingly.

Note: For notice of variation, see section 8F.

- (2) If the APVMA is satisfied that a relevant particular or condition entered in the Record or Register, or recorded in the relevant APVMA file, is incorrect in a material respect because of inaccurate recording, the APVMA must vary the entry or record accordingly.

Note: For notice of variation, see section 8F.

- (3) If the holder of the approval of an active constituent, the registration of a chemical product or the approval of a label for containers for a chemical product has reasonable cause to believe that:
- (a) a relevant particular or condition entered in the Record or Register, or recorded in the relevant APVMA file, in relation to the constituent, product or label is incorrect in a material respect; and
  - (b) the relevant particular or condition is incorrect because of inaccurate recording;
- the holder must, within 28 days, give to the APVMA a written notice, signed by the holder, identifying the incorrect particular or condition and informing the APVMA of the correct particular or condition.

- (4) The holder commits an offence of strict liability if the holder contravenes subsection (3).

Penalty: 30 penalty units.

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

- (5) Subsection (3) is a civil penalty provision.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

#### 44 Divisions 2A and 3 of Part 2 of the Code set out in the Schedule

Repeal the Divisions, substitute:

## Division 2A—Varying prescribed relevant particulars

### 26A Explanation of Division

- (1) This Division provides for the variation of a relevant particular of an approval or registration if the relevant particular is set out in a legislative instrument made under section 26B.
- (2) Only the holder of the approval or registration may apply under this Division (section 26B). The application must meet the application requirements specified in section 8A.
- (3) The APVMA must vary the relevant particular if specified criteria are met, otherwise it must refuse the application (section 26C).
- (4) Section 26D sets out how a variation takes place.

### 26B Applications

- (1) The holder may apply to the APVMA for variation of a relevant particular of an approval or registration if the relevant particular is of a kind set out in a legislative instrument made by the APVMA for the purposes of this section.
- (2) The application must meet the application requirements.  
Note: For *meets the application requirements*, see section 8A.
- (3) The APVMA may alter the application with the written consent of the applicant.

### 26C Varying prescribed relevant particulars

- (1) The APVMA must vary the relevant particular if it is satisfied:
  - (a) that the application meets the application requirements; and
  - (b) for an active constituent—that, if the particular were varied in accordance with the application, the constituent would meet the safety criteria; and
  - (c) for a chemical product—that, if the particular were varied in accordance with the application, the product would:
    - (i) meet the safety criteria, the trade criteria and the efficacy criteria; or

- (ii) comply with the established standard for the product;  
and
- (d) for a label for a chemical product—that, if the particular were varied in accordance with the application, the label would:
  - (i) meet the labelling criteria; or
  - (ii) comply with the established standard for the product.

Note: For notice of variation, see section 8F.

- (2) Otherwise, the APVMA must refuse the application.

Note: For notice of refusal, see section 8G.

## 26D How variation takes place

- (1) Variation of a relevant particular under this Division takes place when the APVMA records in the Record, Register or relevant APVMA file, as required, the relevant particular as varied and the date on which the variation is made.
- (2) If:
  - (a) the relevant particular is varied in such a way that a listed chemical product or any approved label for the product does not comply with the established standard for the product; and
  - (b) there is no date entered in the Register as the date after which the registration of the product cannot be renewed under Division 6;

the APVMA must enter such a date in the Register.

Note: See section 20 for rules about the date after which a registration cannot be renewed under Division 6.

- (3) If:
  - (a) the relevant particular is varied in such a way that a listed chemical product and every approved label for the product comply with the established standard for the product; and
  - (b) there is a date entered in the Register as the date after which the registration of the product cannot be renewed under Division 6;

the APVMA must remove the date from the Register.

## Division 3—Varying relevant particulars and conditions

### 26E Explanation of Division

- (1) This Division provides generally for variation of relevant particulars or conditions of approvals and registrations.
- (2) Holders and other persons may apply under this Division.
- (3) Section 27 provides for applications to be made. An application must meet the application requirements specified in section 8A.
- (4) The APVMA must complete a preliminary assessment of the application. If the application passes preliminary assessment, the APVMA must notify the applicant and may be required to publish a summary of the application (section 28).
- (5) The APVMA must vary the relevant particulars or conditions if specified criteria are met (section 29).
- (6) The APVMA may vary relevant particulars or conditions on its own initiative with the consent of the holder (section 29A).
- (7) Section 29B sets out how a variation takes place.

### 27 Applications

- (1) The holder may apply to the APVMA for variation of the relevant particulars or conditions of:
  - (a) the approval of an active constituent; or
  - (b) the registration of a chemical product; or
  - (c) the approval of a label for containers for a chemical product.

Note: The APVMA may only vary relevant particulars or conditions that it has imposed. See section 6B.

- (2) A person may, with the consent of the holder, apply to the APVMA for variation of the relevant particulars or conditions of:
  - (a) the registration of a chemical product; or
  - (b) the approval of a label for containers for a chemical product.
- (3) An application under subsection (1) or (2) must meet the application requirements.

Note: For *meets the application requirements*, see section 8A.

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- (4) The fee (if any) for the application must be reduced (but not below zero) by the amount of any fee paid for a previous application for the variation made under Division 2A.

## 28 Preliminary assessment

- (1) The APVMA must complete a preliminary assessment of the application within 1 month after it is lodged.
- (2) If it appears from the preliminary assessment that the application meets the application requirements, the APVMA must, within 14 days:
  - (a) give written notice to the applicant:
    - (i) stating that the application has passed preliminary assessment and that it will be determined under section 29; and
    - (ii) setting out any matters prescribed by the regulations; and
  - (b) if the variation relates to the use of a chemical product—publish a summary of the application including any details prescribed by the regulations.
- (3) Otherwise, the APVMA must refuse the application.  
 Note: For notice of refusal, see section 8G.
- (4) The APVMA may alter the application, after it has passed preliminary assessment, with the written consent of:
  - (a) the applicant; and
  - (b) if the applicant is not the holder—the holder.

## 29 Varying relevant particulars and conditions

- (1) The APVMA must vary the relevant particulars or conditions if it is satisfied:
    - (a) that the application meets the application requirements; and
    - (b) for an active constituent—that, if those particulars or conditions were varied in accordance with the application, the constituent would meet the safety criteria; and
    - (c) for a chemical product—that, if those particulars or conditions were varied in accordance with the application, the product would:
-

- (i) meet the safety criteria, the trade criteria and the efficacy criteria; or
- (ii) comply with the established standard for the product; and
- (d) for a label for a chemical product—that, if those particulars or conditions were varied in accordance with the application, the label would:
  - (i) meet the labelling criteria; or
  - (ii) comply with the established standard for the product.

Note: For notice of variation, see section 8F.

- (2) Otherwise, the APVMA must refuse the application.

Note: For notice of refusal, see section 8G.

#### 29A APVMA may vary on its own initiative with holder's consent

- (1) The APVMA may, on its own initiative, and with the written consent of the holder, vary the relevant particulars or conditions of an approval or registration.

Note 1: The APVMA may only vary relevant particulars or conditions that it has imposed. See section 6B.

Note 2: For notice of variation, see section 8F.

- (2) The APVMA may vary the relevant particulars or conditions only if it is satisfied:
  - (a) for an active constituent—that, if those particulars or conditions were so varied, the constituent would meet the safety criteria; and
  - (b) for a chemical product—that, if those particulars or conditions were so varied, the product would:
    - (i) meet the safety criteria, the trade criteria and the efficacy criteria; or
    - (ii) comply with the established standard for the product; and
  - (c) for a label for a chemical product—that, if those particulars or conditions were so varied, the label would:
    - (i) meet the labelling criteria; or
    - (ii) comply with the established standard for the product; and



- (d) that the constituent, product or label complies, or will comply, with any requirement prescribed by the regulations.
- (3) No fee is payable in relation to a variation made under this section.
- (4) Nothing in this Code requires the APVMA to make a variation under this section.

## 29B How variation takes place

- (1) Variation of relevant particulars or conditions under this Division takes place when the APVMA records in the Record, Register or relevant APVMA file, as required, the relevant particulars or conditions as varied and the date on which the variation is made.
- (2) If:
  - (a) the relevant particulars or conditions are varied in such a way that a listed chemical product or any approved label for the product does not comply with the established standard for the product; and
  - (b) there is no date entered in the Register as the date after which the registration of the product cannot be renewed under Division 6;
 the APVMA must enter such a date in the Register.

Note: See section 20 for rules about the date after which a registration cannot be renewed under Division 6.

- (3) If:
  - (a) the relevant particulars or conditions are varied in such a way that a listed chemical product and every approved label for the product comply with the established standard for the product; and
  - (b) there is a date entered in the Register as the date after which the registration of the product cannot be renewed under Division 6;
 the APVMA must remove the date from the Register.

## 45 Division 4 of Part 2 of the Code set out in the Schedule (heading)

Repeal the heading, substitute:

## Division 4—Reconsidering approvals and registrations

### 46 Before section 30 of the Code set out in the Schedule

Insert:

#### 29L Explanation of Division

- (1) This Division provides for reconsideration of approvals and registrations.
- (2) The APVMA may invite proposals for reconsideration (section 30), and the APVMA may reconsider an approval or registration at any time (section 31).
- (3) Before reconsidering an approval or registration, the APVMA must prepare a work plan (section 31), notify the holder and invite the holder to make a written submission on the reconsideration. The holder will also be required to give the APVMA information relevant to the reconsideration (section 32).
- (4) The APVMA may inform any person that the APVMA proposes to reconsider, or is reconsidering, the approval or registration and invite written submissions (section 32).
- (5) The APVMA may require the holder to conduct trials or experiments or provide information or samples for the purposes of the reconsideration (section 33).
- (6) The APVMA must affirm the approval or registration if it is satisfied that the constituent or product concerned meets specified criteria (section 34).
- (7) The APVMA must vary the relevant particulars or conditions of the approval or registration if the APVMA is satisfied that they can be varied in such a way as to allow the approval or registration to be affirmed (section 34A).
- (8) If the APVMA does not affirm the approval or registration, it must suspend or cancel the approval or registration (section 34AA).
- (9) The APVMA must give notice of what it proposes to do before it:
  - (a) varies the relevant particulars or conditions; or

- (b) suspends or cancels the approval or registration (section 34AB).

- (10) If the APVMA affirms the approval or registration:
  - (a) it must notify the holder and publish a notice in the *Gazette* (section 34AC); and
  - (b) if the reconsideration was required by section 29H (reconsideration if APVMA does not re-approve or re-register)—it must re-approve or re-register the constituent or product (section 34AD); and
  - (c) it may vary the duration of the approval or registration (section 34AE).
- (11) The APVMA may reconsider the approval of a label to determine whether the instructions on the label are adequate (section 34AF).

47 Section 30 of the Code set out in the Schedule (heading)

Repeal the heading, substitute:

30 Inviting the public to propose reconsiderations

48 Subsection 30(1) of the Code set out in the Schedule

Omit “cause to be published”, substitute “at any time publish”.

49 Subsection 30(1) of the Code set out in the Schedule

Omit “for proposed or existing chemical products, or to propose chemical products,”, substitute “, chemical products or labels”.

50 At the end of section 31 of the Code set out in the Schedule

Add:

- (2) Before commencing the reconsideration, the APVMA must prepare a work plan in accordance with any requirements prescribed by the regulations.
- (3) The work plan:
  - (a) must be maintained in accordance with the regulations; and
  - (b) is not a legislative instrument.

51 Section 32 of the Code set out in the Schedule (heading)

Repeal the heading, substitute:

32 Notice of reconsideration

52 Subsections 32(1) to (3A) of the Code set out in the Schedule

Repeal the subsections, substitute:

- (1) The APVMA must give written notice to the holder:
  - (a) setting out the matters it proposes to deal with in the reconsideration and its reasons for so proposing; and
  - (b) requiring the holder, within a period stated in the notice that ends not earlier than 28 days after the day the notice is given, to give to the APVMA either or both of the following:
    - (i) any information of a kind stated in the notice of which the holder is aware and which is relevant to the reconsideration;
    - (ii) any information of which the holder is aware that is relevant to the reconsideration; and
  - (c) inviting the holder, within that period, to make a written submission to the APVMA about the matters referred to in paragraph (a); and
  - (d) setting out the work plan.
- (1A) The APVMA may, by written notice given to the holder, extend the period stated in the notice.
- (2) The APVMA may, if it thinks it desirable to do so, inform any person, in any manner that it thinks appropriate, that the APVMA proposes to reconsider, or is reconsidering, the approval or registration.
- (2A) If the APVMA informs a person as mentioned in subsection (2), it must:
  - (a) inform the person of:
    - (i) the matters that it proposes to reconsider, or is reconsidering; and
    - (ii) the work plan; and
  - (b) invite any person to make, within a specified period which must not end earlier than 28 days after the invitation is given, a written submission to the APVMA about the matters it proposes to reconsider, or is reconsidering.

(2B) Nothing in subsections (1), (2) or (2A):

- (a) requires the APVMA to deal with a particular matter as part of the reconsideration; or
- (b) prevents the APVMA from dealing with a particular matter as part of the reconsideration.

(3) The holder must comply with a requirement made of the holder under paragraph (1)(b).

Note: A person does not commit an offence by failing to do something the person is not capable of doing. See subsections 4.2(1) and (4) of the *Criminal Code*.

53 Subsection 32(4) of the Code set out in the Schedule

Omit “interested person or an approved person”, substitute “holder”.

54 Subsection 32(5) of the Code set out in the Schedule

Repeal the subsection, substitute:

(5) The holder commits an offence of strict liability if the holder contravenes subsection (3).

Penalty: 120 penalty units.

Note 1: For strict liability, see section 6.1 of the *Criminal Code*.

Note 2: A defendant bears an evidential burden in relation to the matter in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

(6) Subsection (3) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matter in subsection (4), see section 145CD.

55 Section 33 of the Code set out in the Schedule (heading)

Repeal the heading, substitute:

33 APVMA may require information, reports, results or samples

56 Subsections 33(1) to (2A) of the Code set out in the Schedule

Repeal the subsections, substitute:

- (1) The APVMA may, by written notice given to the holder, require the holder, within a reasonable period stated in the notice or such further period as the APVMA allows, to do one or more of the following for the purposes of the reconsideration:
- (a) give to the APVMA information of a kind stated in the notice;
  - (b) carry out a search of published literature for information and give a report to the APVMA on the results of that search;
  - (c) conduct, or cause to be conducted, trials or laboratory experiments and give the results of the trials or experiments to the APVMA;
  - (d) give to the APVMA, or to another body specified in the notice, a sample of an active constituent, or of a chemical product or any of its constituents, for the purpose of analysis by an approved analyst.

The information, trials, experiments or analysis must be relevant to the reconsideration.

- (1A) The period stated in the notice must be no longer than the period prescribed by the regulations.
- (1B) The APVMA may allow a further period only in the circumstances prescribed by the regulations.
- (1C) The power under subsection (1) includes the power to require the holder to give to the APVMA information, a report, results or a sample in addition to any information, report, results, or sample previously given by the holder to the APVMA under any provision of this Code other than this section.
- (1D) Any information, report, results or sample that the holder has to give to the APVMA or another body under subsection (1) must be given as follows:
- (a) information, a report or results must be given in writing:
    - (i) signed by the holder; or
    - (ii) attached to a covering letter signed by the holder;
  - (b) a sample must be:
    - (i) labelled with a label signed by the holder; or
    - (ii) attached to a covering letter signed by the holder.

Note: For giving information electronically, see section 156A.

- (2) The holder must comply with a requirement made of the holder under subsection (1).

Note: A person does not commit an offence by failing to do something the person is not capable of doing. See subsections 4.2(1) and (4) of the *Criminal Code*.

**57 Subsection 33(3) of the Code set out in the Schedule**

Omit “interested person or an approved person”, substitute “holder”.

**58 Subsection 33(4) of the Code set out in the Schedule**

Repeal the subsection, substitute:

- (4) The holder commits an offence of strict liability if the holder contravenes subsection (2).

Penalty: 120 penalty units.

Note 1: For strict liability, see section 6.1 of the *Criminal Code*.

Note 2: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

- (5) Subsection (2) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matter in subsection (3), see section 145CD.

**59 Sections 34 and 34A of the Code set out in the Schedule**

Repeal the sections, substitute:

**34 Reconsideration by APVMA**

- (1) The APVMA must affirm the approval or registration if, and only if, it is satisfied:
- (a) for an active constituent—that the constituent meets the safety criteria; and
  - (b) for a chemical product—that the product meets the safety criteria, the trade criteria and the efficacy criteria; and
  - (c) for a label—that the label meets the labelling criteria; and
  - (d) that the constituent, product or label complies with any requirement prescribed by the regulations.

- (2) Subsection (1) applies only to the extent that the APVMA decides to reconsider matters covered by the subsection.
- (3) For the purposes of subsection (1), the APVMA:
  - (a) must have regard to:
    - (i) any information given, or submissions made, to the APVMA in response to a notice given under subsection 32(1); and
    - (ii) any submissions made to the APVMA in response to an invitation under paragraph 32(2A)(b) or 34AB(2)(f); and
    - (iii) any information given by the holder in response to an invitation given by the APVMA (whether or not under this Code) in relation to the constituent, product or label; and
    - (iv) any information, report, results or sample given to the APVMA in response to a notice given under section 33; and
    - (v) any information given to the APVMA as required by section 161 in relation to the constituent, product or label; and
    - (vi) any other information that it considers necessary to enable it to make a decision on the reconsideration; but
  - (b) must not take into account any submission, information, report, results or sample not covered by paragraph (a).

#### 34A Varying relevant particulars or conditions to allow affirmation

- (1) If the APVMA:
  - (a) is not satisfied as mentioned in subsection 34(1); but
  - (b) is satisfied that the relevant particulars or conditions of the approval or registration can be varied in such a way as to allow the approval or registration to be affirmed;the APVMA must vary the relevant particulars or conditions.

Note: The APVMA may only vary relevant particulars or conditions that it has imposed. See section 6B.

- (2) For the purposes of paragraph (1)(b), the APVMA may have regard only to the following:



- (a) submissions, information, reports, results or samples that it had regard to under section 34;
  - (b) submissions made to the APVMA in response to the invitation under paragraph 34AB(2)(f).
- (3) If the variation would affect any instructions for the use of an active constituent or chemical product, or any instructions on a label, the APVMA must not make the variation until it has consulted each co-ordinator designated for a jurisdiction and taken into account any recommendations made by the co-ordinators.
- (4) If the APVMA varies the relevant particulars or conditions, it must record in the Record, Register or relevant APVMA file, as required, the relevant particulars or conditions as varied and the date on which the variation is made.
- (5) If:
  - (a) the relevant particulars or conditions are varied in such a way that a listed chemical product or any approved label for the product does not comply with the established standard for the product; and
  - (b) there is no date entered in the Register as the date after which the registration of the product cannot be renewed under Division 6;
 the APVMA must enter such a date in the Register.
 

Note: See section 20 for rules about the date after which a registration cannot be renewed under Division 6.
- (6) If:
  - (a) the relevant particulars or conditions are varied in such a way that a listed chemical product and every approved label for the product comply with the established standard for the product; and
  - (b) there is a date entered in the Register as the date after which the registration of the product cannot be renewed under Division 6;
 the APVMA must remove the date from the Register.

#### 34AA Suspension or cancellation

- (1) If the APVMA does not affirm the approval or registration, it must suspend or cancel the approval or registration.
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- (2) If the reconsideration is of the approval of a label for containers for a chemical product, the APVMA must suspend or cancel the approval if:
- (a) the APVMA is satisfied that the relevant particulars of the approval can be varied in such a way as to allow the approval to be affirmed; but
  - (b) the holder does not satisfy the APVMA that a label, including the particulars as varied, will be attached to the containers for the product.
- (3) Subsection (2) has effect despite subsection 34A(1).

Note: For general requirements in relation to suspension and cancellation, see Division 5.

### 34AB Notice of proposed decision

- (1) The APVMA must give notice of what it proposes to do before it:
- (a) varies the relevant particulars or conditions under section 34A; or
  - (b) suspends or cancels the approval or registration under section 34AA.
- (2) The notice must:
- (a) be given to the holder in writing; and
  - (b) be given to the other persons informed of the reconsideration as mentioned in subsection 32(2):
    - (i) in writing; or
    - (ii) in the way the persons were informed under that subsection; and
  - (c) include a draft statement of reasons for the proposed course of action; and
  - (d) set out the information on which the reasons are based (including information not given to the APVMA by the holder); and
  - (e) for variation of relevant particulars or conditions—set out the proposed variation; and
  - (f) invite written submissions from the holder or other persons within 3 months.
- (3) The APVMA is not required to comply with this section more than once in relation to:

- (a) variation of the relevant particulars or conditions; or
- (b) suspension or cancellation of the approval or registration.

#### 34AC Notice of decision on reconsideration

- (1) If the APVMA affirms the approval or registration, the APVMA must, within 14 days:
  - (a) give written notice of the affirmation to the holder; and
  - (b) publish a notice of the affirmation in the *Gazette* and in any other manner that it thinks appropriate.
- (2) The notice given to the holder must:
  - (a) state that the approval or registration has been affirmed; and
  - (b) set out the relevant particulars and conditions of the approval or registration as affirmed; and
  - (c) state the date the approval or registration ends; and
  - (d) for registration—state the date (if any) after which the registration cannot be renewed under Division 6; and
  - (e) include any information prescribed by the regulations.
- (3) The notice in the *Gazette* must:
  - (a) state that the approval or registration has been affirmed; and
  - (b) contain a brief statement of the reasons for the affirmation.

Note: If the APVMA does not affirm the approval or registration, it must suspend or cancel the approval or registration under section 34AA. For notice of suspension or cancellation, see Division 5.

#### 34AD Affirmation leading to re-approval or re-registration

If:

- (a) the APVMA affirms the approval or registration; and
  - (b) the reconsideration was required by section 29H (reconsideration if APVMA does not re-approve or re-register);
- the APVMA must, as soon as practicable, re-approve or re-register the constituent or product.

#### 34AE Varying duration of approval or registration

- (1) If the APVMA affirms the approval or registration, it may vary:

- (a) the date (the **end date**) the approval ends, which, if varied, must be the last day of a calendar month at least 7 years but not more than 15 years after the approval is affirmed; or
  - (b) either or both of the following:
    - (i) the date the registration ends, which must be the last day of a calendar month;
    - (ii) if, before the reconsideration began, there was a date entered in the Register as the date after which the registration cannot be renewed under Division 6—that date (the **last renewal date**).
- (2) If varied, the end date or last renewal date must:
  - (a) be worked out in accordance with the method prescribed by the regulations; and
  - (b) be the last day of a calendar month at least 7 years but not more than 15 years after the approval or registration is affirmed.
- (3) However, the end date or renewal date, as varied, may be less than 7 years after the approval or registration is affirmed to provide for the date to be the same as:
  - (a) for an approval—the end date for another approval of the active constituent; or
  - (b) for a registration—the last renewal date for another chemical product that contains one or more of the same active constituents.
- (4) Paragraph (2)(b) does not apply if the approval or registration is subject to the condition that it remains in force only for a stated period of not more than 1 year (see subsection 23(2)).
- (5) Nothing in this Code requires the APVMA to make a variation under this section.
- (6) This section does not apply in relation to a reconsideration required by section 29H (reconsideration if APVMA does not re-approve or re-register).

34AF Reconsideration of approval of label without notice in certain circumstances

- (1) The APVMA may, at any time, reconsider the approval of a label for the purpose of deciding whether the label contains adequate instructions relating to matters prescribed by the regulations for the purposes of this section.
- (2) The matters that may be prescribed must be matters covered by the definition of *meets the labelling criteria*.
- (3) If the APVMA considers that the particulars do not contain adequate instructions in relation to a matter, the APVMA must:
  - (a) vary the relevant particulars; and
  - (b) record in the relevant APVMA file the relevant particulars as varied and the date on which the record is made; and
  - (c) give written notice to the holder setting out particulars of the variation.
- (4) Sections 30 to 34AE do not apply to a reconsideration under this section.

60 Section 40 of the Code set out in the Schedule

Repeal the section.

61 Subsection 43(2) of the Code set out in the Schedule

After “sections”, insert “29D,”.

62 Division 7 of Part 2 of the Code set out in the Schedule

Repeal the Division.

63 Part 2A of the Code set out in the Schedule

Repeal the Part.

64 Subsection 56ZU(3) of the Code set out in the Schedule

Omit “having custody of, use of, or other dealing with, each”, substitute “custody or use of each”.

65 Paragraph 56ZU(4)(c) of the Code set out in the Schedule

Repeal the paragraph, substitute:

- (c) the APVMA must have given to the Minister a written explanation as to why the APVMA is satisfied that the product, or class of products, meets the safety criteria, the trade criteria and the efficacy criteria; and

66 Paragraphs 72(2)(a), (b) and (c) of the Code set out in the Schedule

Repeal the paragraphs, substitute:

- (a) the supply of unapproved active constituents for chemical products and unregistered chemical products; and
- (b) their possession for the purposes of supply; and
- (c) the supply of active constituents for chemical products that have been approved and the supply of chemical products that have been registered or reserved in contravention of the conditions of their approval, registration or reservation.

67 Subsection 72(4) of the Code set out in the Schedule

Omit “or”, substitute “for chemical products and”.

68 Subsection 74(5) of the Code set out in the Schedule

Repeal the subsection.

69 Section 75 of the Code set out in the Schedule (heading)

Repeal the heading, substitute:

75 Possession or custody of chemical products, other than registered or reserved products, with the intention of supply

70 Subsection 75(1) of the Code set out in the Schedule

Omit “, a registered listed chemical product”.

71 Subsection 75(3) of the Code set out in the Schedule

Omit “, a registered listed chemical product”.

72 Subsection 75(5) of the Code set out in the Schedule

Repeal the subsection.

73 Subsection 76(5) of the Code set out in the Schedule

Repeal the subsection.

- 74 Section 78 of the Code set out in the Schedule (heading)  
Repeal the heading, substitute:
- 78 Supply of chemical products that are not registered products or reserved products
- 75 Subsection 78(1) of the Code set out in the Schedule  
Omit “, a registered listed chemical product”.
- 76 Subparagraph 78(1)(c)(i) of the Code set out in the Schedule  
Omit “, granted listed registration, or reserved,”, substitute “or reserved”.
- 77 Subparagraph 78(1)(c)(ii) of the Code set out in the Schedule  
Omit “, granted listed registration,”.
- 78 Subparagraph 78(1)(c)(iii) of the Code set out in the Schedule  
Omit “, granted listed registration,”.
- 78A Subparagraph 78(1)(c)(vi) of the Code set out in the Schedule  
Omit “or listed registration”.
- 79 Subsection 78(3) of the Code set out in the Schedule  
Omit “, a registered listed chemical product”.
- 80 Subsection 78(5) of the Code set out in the Schedule  
Repeal the subsection.
- 81 Paragraph 83(1)(a) of the Code set out in the Schedule  
Omit “of Chemical Products”.
- 82 Section 83A of the Code set out in the Schedule  
Repeal the section.
- 83 Paragraph 84(1)(a) of the Code set out in the Schedule  
Omit “or registered listed chemical product”.
- 84 Paragraph 84(1)(b) of the Code set out in the Schedule
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Omit “or registered listed chemical product”.

**85 Subsection 84(1) of the Code set out in the Schedule**

Omit “listed” (last 2 occurring).

**86 Subsection 87(1) of the Code set out in the Schedule**

Repeal the subsection, substitute:

(1) This section applies to a chemical product if:

(a) a standard is prescribed in respect of the product or in respect of a constituent contained in the product; and

(b) the product is:

(i) a listed chemical product; or

(ii) prescribed for the purposes of this section.

**87 Paragraph 88(2)(b) of the Code set out in the Schedule**

Omit “neither a registered chemical product nor a registered listed”, substitute “not a registered”.

**88 Paragraph 88(2)(c) of the Code set out in the Schedule**

Omit “or listed registration”.

**89 Subparagraph 88(2)(d)(i) of the Code set out in the Schedule**

Omit “neither a registered chemical product nor a registered listed”, substitute “not a registered”.

**90 Paragraph 88(3)(b) of the Code set out in the Schedule**

Omit “neither a registered chemical product nor a registered listed”, substitute “not a registered”.

**91 Section 89A of the Code set out in the Schedule**

Omit “listable”, substitute “listed”.

**92 Paragraph 97(4)(b) of the Code set out in the Schedule**

Omit “or listed registration”.

**93 Section 99 of the Code set out in the Schedule (heading)**

Repeal the heading, substitute:



- 99 Analysis of chemical products and active constituents
- 94 Subsection 99(1) of the Code set out in the Schedule  
Omit “If”, substitute “This section applies if”.
- 95 Subsection 99(1) of the Code set out in the Schedule  
Omit “, the following provisions apply”.
- 96 Subsection 99(2) of the Code set out in the Schedule  
Omit “, or has been granted listed registration under Division 4 of Part 2A,”.
- 97 Paragraphs 99(2)(a), (b) and (c) of the Code set out in the Schedule  
Omit “of Chemical Products”.
- 98 Subsection 99(6) of the Code set out in the Schedule  
Omit “cause to be published”, substitute “publish”.
- 99 Subparagraph 99(6)(a)(ii) of the Code set out in the Schedule  
Omit “interested person in relation to the product—the interested person”, substitute “holder of the registration—the holder”.
- 100 Subsection 99(8) of the Code set out in the Schedule  
Repeal the subsection.
- 101 Section 101 of the Code set out in the Schedule (heading)  
Repeal the heading, substitute:
- 101 Recall of products that are not registered or whose registration is being reconsidered
- 102 Paragraph 101(1)(a) of the Code set out in the Schedule  
Omit “, and has not been granted listed registration,”.
- 103 Paragraph 101(1)(b) of the Code set out in the Schedule  
Repeal the paragraph, substitute:  
(b) the APVMA is reconsidering the registration of a chemical product under Division 4 of Part 2 of that Code;
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- 104 Paragraph 101(2)(c) of the Code set out in the Schedule  
Omit “and has not been granted listed registration”.
- 105 Subsection 101(3) of the Code set out in the Schedule  
Repeal the subsection.
- 106 Paragraphs 102(1)(a) and (aa) of the Code set out in the Schedule  
Repeal the paragraphs, substitute:  
(a) a chemical product may not meet the safety criteria, the trade criteria or the efficacy criteria; or
- 107 Paragraph 102(1)(b) of the Code set out in the Schedule  
Omit “of Chemical Products”.
- 108 Paragraph 102(1)(ba) of the Code set out in the Schedule  
Repeal the paragraph.
- 109 Paragraph 102(1)(c) of the Code set out in the Schedule  
Omit “of Chemical Products”.
- 110 Paragraph 102(1)(ca) of the Code set out in the Schedule  
Repeal the paragraph.
- 111 Paragraph 102(1)(d) of the Code set out in the Schedule  
Omit “of Chemical Products”.
- 112 Paragraph 102(1)(e) of the Code set out in the Schedule  
Repeal the paragraph.
- 113 Subsection 102(3) of the Code set out in the Schedule  
Repeal the subsection.
- 114 Subsection 103(1) of the Code set out in the Schedule  
Repeal the subsection, substitute:  
(1) If it appears to the APVMA that labels attached to the containers:  
(a) of stocks of a registered chemical product; or  
(b) of a particular batch of a registered chemical product;
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differ from the approved label for the product or the label required by the established standard for the product, the APVMA may give written notice to any person (the ***notified person***) who has, or has had, possession or custody of any of those stocks or of that batch in this jurisdiction requiring the person to do any one or more of the things mentioned in subsection (2).

115 Subsection 103(3) of the Code set out in the Schedule

Repeal the subsection.

116 Subsection 104(1) of the Code set out in the Schedule

Repeal the subsection, substitute:

- (1) If the APVMA issues a recall notice, it must, within 14 days, publish notice of the issue of the recall notice in the *Gazette* and in any other manner that it thinks appropriate.

117 Paragraph 108(2)(a) of the Code set out in the Schedule

Omit “, a registered listed chemical product”.

118 Paragraph 108(2)(a) of the Code set out in the Schedule

Omit “, registration or listed”, substitute “or”.

119 Paragraph 108(2)(b) of the Code set out in the Schedule

Omit “product; or”, substitute “product.”.

120 Paragraph 108(2)(c) of the Code set out in the Schedule

Repeal the paragraph.

121 Section 110 of the Code set out in the Schedule (heading)

Repeal the heading, substitute:

110 Applications

122 Subsections 110(2) to (4) of the Code set out in the Schedule

Repeal the subsections, substitute:

- (2) The application must meet the application requirements.

Note: For ***meets the application requirements***, see section 8A.

123 After section 110 of the Code set out in the Schedule

Insert:

110A Preliminary assessment

- (1) The APVMA must complete a preliminary assessment of the application within 1 month after it is lodged.
- (2) If it appears from the preliminary assessment that the application meets the application requirements, the APVMA must, within 14 days, give written notice to the applicant:
  - (a) stating that the application has passed preliminary assessment and that it will be determined under section 112; and
  - (b) setting out any matters prescribed by the regulations.
- (3) If it appears from the preliminary assessment that the application does not meet the application requirements but that the defects in the application can reasonably be rectified, the APVMA must, within 14 days, give written notice to the applicant:
  - (a) stating that the application does not meet the application requirements; and
  - (b) giving particulars of the defects in the application; and
  - (c) requiring the defects to be rectified within 1 month.
- (4) The APVMA must refuse the application if:
  - (a) the APVMA is not satisfied that defects in the application can reasonably be rectified; or
  - (b) the defects are not rectified to the satisfaction of the APVMA within the period mentioned in paragraph (3)(c).

Note: For notice of refusal, see section 8G.

- (5) The APVMA may alter the application, after it has passed preliminary assessment, with the written consent of the applicant.

124 Paragraph 111(1)(c) of the Code set out in the Schedule

Omit “application should be granted”, substitute “permit should be issued”.

125 Section 112 of the Code set out in the Schedule (heading)

Repeal the heading, substitute:

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112 Issuing permits

126 Subsections 112(2) to (5) of the Code set out in the Schedule

Repeal the subsections, substitute:

- (2) The APVMA must issue the permit if it is satisfied:
- (a) that the application meets the application requirements; and
  - (b) that the applicant has complied with any requirement made by the APVMA under subparagraph 111(1)(b)(iii); and
  - (c) for an active constituent—that the constituent would meet the safety criteria; and
  - (d) for a chemical product—that the product would meet the safety criteria, the trade criteria and the efficacy criteria; and
  - (e) that any requirements prescribed by the regulations in relation to the issue of a permit under this section have been complied with; and
  - (f) if an application has not been made for approval of the constituent or registration of the product or such an application has not been determined—that there are reasonable grounds for the application not having been made or for issuing the permit pending determination of the application; and
  - (g) if the application is for a permit to do, or omit to do, any thing which would, apart from the permit, be an offence against subsection 121(4A) or (5A) or a contravention of the civil penalty provision set out in subsection 121(4) or (5)—that there are exceptional circumstances that justify issuing the permit.

Note: For how permits are issued, see section 114.

- (3) Otherwise, the APVMA must refuse the application.

Note: For notice of refusal, see section 8G.

- (4) Despite subsection (2), the APVMA must also refuse the application if it is satisfied that:
- (a) the applicant will be unable to comply with the conditions of the permit; or
  - (b) at least one of the following persons:
    - (i) the applicant;

- (ii) any other person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the applicant's affairs;
  - (iii) if the applicant is a body corporate—a major interest holder of the body corporate;  
has, within the 10 years immediately before the application:
    - (iv) been convicted of an offence against an agvet law; or
    - (v) been convicted of an offence against a law of this or another jurisdiction relating to chemical products; or
    - (vi) been convicted of an offence against a law of the Commonwealth or a law of a State or Territory involving fraud or dishonesty; or
    - (vii) been ordered to pay a pecuniary penalty for the contravention of an agvet penalty provision; or
    - (viii) been ordered to pay a pecuniary penalty for the contravention of another law of this or another jurisdiction relating to chemical products; or
    - (ix) been ordered to pay a pecuniary penalty for the contravention of a civil penalty provision of a law of the Commonwealth or a law of a State or Territory involving fraud or dishonesty; or
    - (x) held a permit that was cancelled under subsection 119(2) or section 119B of this Code or under a corresponding provision of the Agvet Code of another jurisdiction; or
    - (xi) been a manager, or a major interest holder, of a body corporate in respect of which subparagraph (iv), (v), (vi), (vii), (viii), (ix) or (x) applies in that 10 year period, if the conduct resulting in that subparagraph applying occurred when the person was a manager or major interest holder of the body corporate.
- (5) A reference in paragraph (4)(b) to a person convicted of an offence includes a reference to a person in respect of whom an order has been made relating to the offence under:
- (a) section 19B of the *Crimes Act 1914*; or
  - (b) a corresponding provision of a law of a State or Territory.

Note: Section 19B of the *Crimes Act 1914* empowers a court that has found a person to have committed an offence to take action without proceeding to record a conviction.

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- (6) However, the APVMA may issue the permit despite subsection (4) if, in the opinion of the APVMA, special circumstances make it appropriate to do so.
- (7) If the APVMA refuses the application, it must give written notice of the refusal to each co-ordinator to whom a copy of the application was given.

127 After section 112 of the Code set out in the Schedule

Insert:

112A APVMA may issue permit on its own initiative

- (1) The APVMA may, on its own initiative and in accordance with this section, issue a permit to a person in respect of an active constituent for a proposed or existing chemical product or in respect of a chemical product.
- (2) The APVMA may issue the permit if it is satisfied of the following:
  - (a) that the active constituent or chemical product in respect of which the permit is to be issued meets the safety criteria, the trade criteria and the efficacy criteria;
  - (b) that any requirements prescribed by the regulations in relation to the issue of a permit under this section have been complied with;
  - (c) if an application has not been made for approval of the constituent or registration of the product or such an application has not been determined—that there are reasonable grounds for the application not having been made or for issuing the permit pending determination of the application, as the case may be;
  - (d) if the permit would authorise a person to do, or omit to do, any thing which would, apart from the permit, be an offence against subsection 121(4A) or (5A) or a contravention of the civil penalty provision set out in subsection 121(4) or (5)—that there are exceptional circumstances that justify issuing the permit.

Note: For how permits are issued, see section 114.

- (3) However, the APVMA must not issue the permit to a person (the ***proposed permit holder***) if it is satisfied that:
- (a) the proposed permit holder will be unable to comply with the conditions of the permit; or
  - (b) at least one of the following persons:
    - (i) the proposed permit holder;
    - (ii) any other person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the proposed permit holder's affairs;
    - (iii) if the proposed permit holder is a body corporate—a major interest holder of the body corporate; has, within the previous 10 years:
      - (iv) been convicted of an offence against an agvet law; or
      - (v) been convicted of an offence against a law of this or another jurisdiction relating to chemical products; or
      - (vi) been convicted of an offence against a law of the Commonwealth or a law of a State or Territory involving fraud or dishonesty; or
      - (vii) been ordered to pay a pecuniary penalty for the contravention of an agvet penalty provision; or
      - (viii) been ordered to pay a pecuniary penalty for the contravention of another law of this or another jurisdiction relating to chemical products; or
      - (ix) been ordered to pay a pecuniary penalty for the contravention of a civil penalty provision of a law of the Commonwealth or a law of a State or Territory involving fraud or dishonesty; or
      - (x) held a permit that was cancelled under subsection 119(2) or section 119B of this Code or under a corresponding provision of the Agvet Code of another jurisdiction; or
      - (xi) been a manager, or a major interest holder, of a body corporate in respect of which subparagraph (iv), (v), (vi), (vii), (viii), (ix) or (x) applies, if the conduct resulting in that subparagraph applying occurred when the person was a manager or major interest holder of the body corporate.



- (4) A reference in paragraph (3)(b) to a person convicted of an offence includes a reference to a person in respect of whom an order has been made relating to the offence under:

- (a) section 19B of the *Crimes Act 1914*; or
- (b) a corresponding provision of a law of a State or Territory.

Note: Section 19B of the *Crimes Act 1914* empowers a court that has found a person to have committed an offence to take action without proceeding to record a conviction.

- (5) However, the APVMA may issue the permit despite subsection (3) if, in the opinion of the APVMA, special circumstances make it appropriate to do so.

- (6) If the active constituent or chemical product in respect of which the permit is to be issued is approved or registered, the APVMA:

- (a) must, before issuing the permit, give written notice of its intention to do so to the holder of the approval or registration; and
- (b) must not issue the permit before the end of 28 days after the day on which the notice is given.

- (7) However, subsection (6) does not apply to the extent that, in the opinion of the APVMA, special circumstances make it appropriate to:

- (a) issue the permit without giving written notice to the holder of the approval or registration; or
- (b) issue the permit before the end of the 28 days.

128 Section 114 of the Code set out in the Schedule (heading)

Repeal the heading, substitute:

114 How permits are issued

129 Subsections 114(1) and (1A) of the Code set out in the Schedule

Repeal the subsections.

130 Subsection 114(5) of the Code set out in the Schedule

Omit “As soon as practicable”, substitute “Within 14 days”.

131 Subsection 115(3) of the Code set out in the Schedule

Omit all the words after “extensions of the permit”.

**132** After subsection 115(3) of the Code set out in the Schedule

Insert:

(3A) The APVMA may extend the permit for a further period that it thinks appropriate if it is satisfied that:

- (a) the application meets the application requirements; and
- (b) any requirements prescribed by the regulations have been met.

(3B) If the APVMA does not extend the permit, it must refuse the application.

Note: For notice of refusal, see section 8G.

**133** At the end of subsection 115(5) of the Code set out in the Schedule

Add:

Note: For notice of refusal, see section 8G.

**134** Subsection 115(6) of the Code set out in the Schedule

Repeal the subsection.

**135** Subsection 117(1) of the Code set out in the Schedule

Omit “an approved person”, substitute “the holder”.

**136** Subsection 117(3) of the Code set out in the Schedule

Omit “as soon as practicable”, substitute “within 14 days”.

**137** Subsection 118(8) of the Code set out in the Schedule

Repeal the subsection.

**138** Subsection 118(10) of the Code set out in the Schedule

Omit “as soon as practicable”, substitute “within 14 days”.

**139** Subsection 119(8) of the Code set out in the Schedule

Repeal the subsection.

**140** Subsection 119(11) of the Schedule

Omit “as soon as practicable”, substitute “within 14 days”.

141 Section 120A of the Code set out in the Schedule

Omit “listable”, substitute “listed”.

142 Paragraphs 122(1)(a) to (e) of the Code set out in the Schedule

Repeal the paragraphs, substitute:

- (a) be in writing in the approved form; and
- (b) be signed by the applicant; and
- (c) be accompanied by so much of the prescribed fee as is required to be paid when the application is made; and
- (d) be lodged with the APVMA; and
- (e) contain, or be accompanied by, any information specified for the application under section 8B.

143 Subsection 122(2) of the Code set out in the Schedule

Omit “in relation to an application for a licence, by written notice given to an approved person”, substitute “by written notice given to the applicant”.

144 Subsection 123(1) of the Code set out in the Schedule

Repeal the subsection, substitute:

- (1) If an application is made for a licence to carry out steps in the manufacture of chemical products (other than prohibited chemical products) at particular premises, the APVMA must issue the licence to the applicant unless the APVMA is satisfied that:
  - (a) the applicant has not complied with subsection 122(1) or any requirement under subsection 122(2); or
  - (b) any requirement prescribed by the regulations in relation to the application or the issue of the licence has not been complied with; or
  - (c) the applicant will be unable to comply with the conditions of the licence; or
  - (d) the applicant will be unable to comply with the manufacturing principles; or
  - (e) at least one of the following persons:
    - (i) the applicant;
    - (ii) any other person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the applicant’s affairs;

- (iii) if the applicant is a body corporate—a major interest holder of the body corporate;  
has, within the 10 years immediately before the application:
- (iv) been convicted of an offence against an agvet law; or
- (v) been convicted of an offence against a law of this or another jurisdiction relating to chemical products; or
- (vi) been convicted of an offence against a law of the Commonwealth or a law of a State or Territory involving fraud or dishonesty; or
- (vii) been ordered to pay a pecuniary penalty for the contravention of an agvet penalty provision; or
- (viii) been ordered to pay a pecuniary penalty for the contravention of another law of this or another jurisdiction relating to chemical products; or
- (ix) been ordered to pay a pecuniary penalty for the contravention of a civil penalty provision of a law of the Commonwealth or a law of a State or Territory involving fraud or dishonesty; or
- (x) contravened a condition of a manufacturing licence issued under an agvet law; or
- (xi) held a manufacturing licence or permit that was cancelled under an agvet law, other than paragraph 127(1)(d) or (e) of this Code or a corresponding provision of the Agvet Code of another jurisdiction; or
- (xii) been a manager, or a major interest holder, of a body corporate in respect of which subparagraph (iv), (v), (vi), (vii), (viii), (ix), (x) or (xi) applies in that 10 year period, if the conduct resulting in that subparagraph applying occurred when the person was a manager or major interest holder of the body corporate; or
- (f) at least one of the following persons:
  - (i) the applicant;
  - (ii) any other person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the applicant's affairs;
  - (iii) if the applicant is a body corporate—a major interest holder of the body corporate;

has, within the 5 years immediately before the application, failed to comply with a manufacturing principle in connection with the manufacture of chemical products.

- (1A) If the APVMA does not issue the licence, it must refuse the application.

Note: For notice of refusal, see section 8G.

- (1B) A reference in paragraph (1)(e) to a person convicted of an offence includes a reference to a person in respect of whom an order has been made relating to the offence under:

- (a) section 19B of the *Crimes Act 1914*; or
- (b) a corresponding provision of a law of a State or Territory.

Note: Section 19B of the *Crimes Act 1914* empowers a court that has found a person to have committed an offence to take action without proceeding to record a conviction.

- (1C) Paragraph (1)(f) does not apply to the extent that the APVMA thinks the failure to comply with the manufacturing principle is not relevant.

- 145 Subsection 123(2) of the Code set out in the Schedule

Omit “(b) or (c)”, substitute “(e) or (f)”.

- 146 Subsection 123(5) of the Code set out in the Schedule

Omit “cause”, substitute “publish”.

- 147 Subsection 123(5) of the Code set out in the Schedule

Omit “to be published”.

- 148 Section 124 of the Code set out in the Schedule

Repeal the section.

- 149 Paragraphs 126(3)(a) and (b) of the Code set out in the Schedule

Repeal the paragraphs, substitute:

- (a) on the day on which the notice is given to the holder, but only if the notice states that the action is necessary to prevent one or more of the following:
  - (i) an imminent risk to persons of death, serious injury or serious illness;

- (ii) an imminent risk of unintended harm to animals, plants or things, or to the environment;
- (iii) an imminent risk of impact on trade or commerce between Australia and places outside Australia; or
- (b) otherwise—on a day stated for the purpose in the notice that, unless the APVMA and the holder agree, is not earlier than 28 days after the notice is given to the holder.

150 Subsection 126(5) of the Code set out in the Schedule

Repeal the subsection.

151 Subsection 127(1) of the Code set out in the Schedule

Omit “in relation to a licence, by written notice given to an approved person”, substitute “by written notice given to the holder of a licence”.

152 Paragraph 127(2)(a) of the Code set out in the Schedule

Omit “an approved person”, substitute “the holder”.

153 Subsection 127(6) of the Code set out in the Schedule

Repeal the subsection.

154 Paragraph 149(3)(b) of the Code set out in the Schedule

Omit “, a registered chemical product or a registered listed”, substitute “or a registered”.

155 Paragraph 152(2)(a) of the Code set out in the Schedule

Omit “a person”, substitute “the holder of an approval or registration”.

156 Paragraph 152(2)(a) of the Code set out in the Schedule

Omit all the words after “jurisdiction”, substitute “in relation to an active constituent or chemical product covered by the approval or registration; and”.

157 Paragraph 152(2)(b) of the Code set out in the Schedule

Omit “that person”, substitute “the holder”.

158 Subsection 152(2) of the Code set out in the Schedule

Omit “approved person who signed the application for the approval of the constituent or the registration or listed registration, or the renewal of the registration or listed registration, of the product”, substitute “nominated agent for the approval or registration”.

159 Subsection 152(2) of the Code set out in the Schedule

Omit “first-mentioned person”, substitute “holder”.

160 Subsection 152(2) of the Code set out in the Schedule

Omit “approved person” (second occurring), substitute “nominated agent”.

161 After section 156 of the Code set out in the Schedule

Insert:

156A Giving information electronically

- (1) If, under this Code, a person is required or permitted to give the APVMA information (including an application) in writing, that requirement is taken to have been met if:
  - (a) the APVMA consents to the information being given electronically; and
  - (b) the person gives the information electronically in accordance with any requirements mentioned in subsection (3); and
  - (c) in a case where this Code requires the signature of an applicant or holder—the information includes the electronic signature of the applicant or holder.
- (2) If, under this Code, a person is required or permitted to give the APVMA information in writing, the regulations may, despite any other provision of this Code, require that the information be given only electronically and in accordance with any requirements mentioned in subsection (3).
- (3) For the purposes of subsections (1) and (2), the APVMA may require that the information be given, in accordance with particular information technology requirements, by means of a particular kind of electronic communication.

- (4) If, under this Code, the APVMA is required or permitted to give a person information in writing, that requirement is taken to have been met if:
  - (a) the person consents to the information being given electronically; and
  - (b) the APVMA gives the information electronically; and
  - (c) where applicable, the information includes the Chief Executive Officer's electronic signature; and
  - (d) in a case where a person's failure to do, or not do, a thing set out in the information is an offence against this Code or the contravention of a civil penalty provision—the APVMA has adequate systems for proving the person received the information.
- (5) This section applies to a requirement or permission to give information, whether the expression “give”, “lodge”, “send” or “serve”, or any other expression, is used.
- (6) For the purposes of this section, giving information includes, but is not limited to, the following:
  - (a) making or withdrawing an application;
  - (b) making or lodging a claim;
  - (c) giving, sending or serving a notification;
  - (d) giving a report;
  - (e) making a request;
  - (f) making a declaration;
  - (g) lodging or issuing a certificate;
  - (h) giving a statement of reasons.

**162 Subsection 157(1) of the Code set out in the Schedule**

Omit “If the APVMA so requires, a person who makes an application under this Code must”, substitute “For the purposes of determining an application under this Code, the APVMA may require the applicant to”.

**163 Paragraphs 159(1)(a) and (b) of the Code set out in the Schedule**

Before “an application”, insert “determining”.

**164 Paragraph 159(1)(c) of the Code set out in the Schedule**

Repeal the paragraph.



165 Subparagraph 159(1)(d)(iv) of the Code set out in the Schedule

Repeal the subparagraph.

166 Subsection 159(1) of the Code set out in the Schedule

Omit “interested person or an approved person, require the interested person, or the applicant for or holder of the relevant permit”, substitute “applicant (for the purposes of paragraph (a) or (b)) or the holder (for the purposes of paragraph (d)), require the applicant or holder”.

167 Paragraph 159(1)(e) of the Code set out in the Schedule

Omit “, that may be relevant to the application, reconsideration or decision”.

168 After subsection 159(1) of the Code set out in the Schedule

Insert:

(1AA) The period stated in the notice must be no longer than the period prescribed by the regulations.

(1AB) The APVMA may allow a further period only in the circumstances prescribed by the regulations.

169 Subsection 159(2) of the Code set out in the Schedule

Omit “a person”, substitute “an applicant or holder”.

170 Subsection 159(2) of the Code set out in the Schedule

Omit “an approved person”, substitute “the applicant or holder”.

171 At the end of subsection 159(2) of the Code set out in the Schedule

Add:

Note: For giving information electronically, see section 156A.

172 Subsection 159(3)

Repeal the subsection.

174 Subsections 159(4) and (5) of the Code set out in the Schedule

Repeal the subsections.

175 Section 160 of the Code set out in the Schedule (heading)

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Repeal the heading, substitute:

160 Overseas trials and experiments etc.

176 Section 160 of the Code set out in the Schedule

Omit “For”, substitute “(1) This section applies for”.

177 Paragraph 160(a) of the Code set out in the Schedule

Before “an application”, insert “determining”.

178 Paragraph 160(b) of the Code set out in the Schedule

Before “an application” (first occurring), insert “determining”.

179 Paragraph 160(c) of the Code set out in the Schedule

Omit “registration or listed”.

180 Paragraph 160(d) of the Code set out in the Schedule

Omit “product;”, substitute “product.”.

181 Section 160 of the Code set out in the Schedule

Omit all the words from and including “the APVMA”.

182 At the end of section 160 of the Code set out in the Schedule

Add:

(2) The APVMA may take account of any of the following:

(a) the results of any trials or experiments already carried out in a foreign country in relation to an active constituent for a proposed or existing chemical product, or in relation to a chemical product or any of its constituents;

(b) any decisions or evaluations made by regulators of agricultural or veterinary chemicals in a foreign country;

(c) any information on which a decision or evaluation mentioned in paragraph (b) is based;

to the extent that those results, decisions or evaluations are, or that information is, relevant having regard to any matters the APVMA thinks appropriate, including any of the matters mentioned in subsection (3).

- (3) The matters are:
- (a) any significant differences in the proposed use of the constituent, or of the product, in Australia and in that foreign country; or
  - (b) any different environmental factors affecting the use of the constituent, or of the product, in Australia and in that foreign country; or
  - (c) any significant additional information relating to the properties of the constituent, or of the product or of any of its constituents, that has become available since the conduct of those trials or experiments; or
  - (d) any significant differences in the way decisions or evaluations are made in Australia and by the national regulatory authority in that foreign country.

183 Subparagraph 160A(1)(a)(iii) of the Code set out in the Schedule  
Repeal the subparagraph.

184 Paragraph 160A(1)(c) of the Code set out in the Schedule  
Omit “an appropriate person”, substitute “the applicant”.

185 Subsection 160A(2) of the Code set out in the Schedule  
Omit “appropriate person”, substitute “applicant”.

186 Subsection 160A(2) of the Code set out in the Schedule  
Omit “practicable after the person”, substitute “the applicant”.

187 Subsection 160A(3) of the Code set out in the Schedule  
Repeal the subsection.

188 Paragraphs 160A(4)(a) to (d) of the Code set out in the Schedule  
Repeal the paragraphs, substitute:

- (a) contradicts any information that:
  - (i) was given to the APVMA by the applicant in an application mentioned in paragraph (1)(a); and
  - (ii) relates to particulars prescribed by the regulations for the purposes of paragraph 19(1)(c) or 20(1)(c); or
- (b) shows that the constituent or product may not meet the safety criteria, the trade criteria or the efficacy criteria.

189 Subsection 160A(7) of the Code set out in the Schedule

Omit “that a person has to give”, substitute “given”.

190 Subsection 160A(7) of the Code set out in the Schedule

Omit “an approved person”, substitute “the applicant”.

191 At the end of subsection 160A(7) of the Code set out in the Schedule

Add:

Note: For giving information electronically, see section 156A.

192 Paragraph 161(1)(a) of the Code set out in the Schedule

Repeal the paragraph, substitute:

- (a) the holder of the approval of an active constituent for a proposed or existing chemical product or the registration of a chemical product; or

193 Subsection 161(1) of the Code set out in the Schedule

Omit “person must, as soon as practicable after the person”, substitute “holder must, as soon as the holder”.

194 Paragraphs 161(2)(a) to (d) of the Code set out in the Schedule

Repeal the paragraphs, substitute:

- (a) contradicts any information entered in the Record, Register or Record of Permits for the constituent or product; or
- (b) shows that the constituent or product may not meet the safety criteria, the trade criteria or the efficacy criteria.

195 Subsection 161(3) of the Code set out in the Schedule

Omit “that a person has to give”, substitute “given”.

196 Subsection 161(3) of the Code set out in the Schedule

Omit “an approved person”, substitute “the holder”.

197 At the end of subsection 161(3) of the Code set out in the Schedule

Add:

Note: For giving information electronically, see section 156A.

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- 198 Subparagraph 162(3)(a)(i) of the Code set out in the Schedule  
Omit “assessment”, substitute “evaluation”.
- 199 Subparagraph 162(3)(b)(i) of the Code set out in the Schedule  
Omit “or listed registration”.
- 200 Subparagraph 162(3)(b)(i) of the Code set out in the Schedule  
Omit “assessment”, substitute “evaluation”.
- 201 Subparagraph 162(3)(b)(ii) of the Code set out in the Schedule  
Omit “or of the listed registration of the product under Division 6 of Part 2A”.
- 201A After subparagraph 162(3)(c)(i) of the Code set out in the Schedule  
Insert:  
(ia) the authorising party for the information; or
- 202 Subparagraph 162(3)(c)(ii) of the Code set out in the Schedule  
Omit “interested person in relation to the constituent or product”,  
substitute “authorising party for the information”.
- 203 Paragraph 162(3)(d) of the Code set out in the Schedule  
Omit “interested person in relation to the constituent or product”,  
substitute “authorising party for the information”.
- 204 Subsection 162(4) of the Code set out in the Schedule  
Omit “interested person” (first occurring), substitute “authorising party for the information”.
- 205 Paragraph 162(4)(a) of the Code set out in the Schedule  
Omit “interested person”, substitute “authorising party”.
- 206 Subsection 162(5) of the Code set out in the Schedule  
Repeal the subsection.
- 207 Section 163 of the Code set out in the Schedule (heading)  
Repeal the heading, substitute:
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- 163 Notice to the applicant or holder of proposed disclosure of information that is claimed to be confidential commercial information
- 208 Subsection 163(1) of the Code set out in the Schedule  
Omit “(1)”.
- 209 Paragraph 163(1)(b) of the Code set out in the Schedule  
Omit “interested person in relation to the constituent, product or label”, substitute “applicant or holder concerned”.
- 210 Paragraph 163(1)(d) of the Code set out in the Schedule  
Omit “interested person”, substitute “applicant or holder”.
- 211 Subsection 163(2) of the Code set out in the Schedule  
Repeal the subsection.
- 212 Subsection 164(10) of the Code set out in the Schedule  
Repeal the subsection.
- 213 Paragraph 165(2)(a) of the Code set out in the Schedule  
Repeal the paragraph, substitute:  
(a) if the application is for re-approval of an active constituent or re-registration of a chemical product:  
(i) any period beginning on the day when the APVMA makes a requirement of the applicant in connection with the application and ending on the day when the requirement is complied with; or  
(ii) any period during which the approval or registration concerned is being reconsidered as required by subsection 29H(1); and
- 214 Paragraph 165(2)(b) of the Code set out in the Schedule  
Omit “caused to be”.
- 215 Paragraph 165(2)(c) of the Code set out in the Schedule  
Omit “caused such a notice to be published”, substitute “published such a notice”.
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216 At the end of subsection 165(2) of the Code set out in the Schedule

Add:

- ; and (d) if the APVMA has given written notice to an applicant under subsection 8S(1)—the 28 day period after the notice is given, or such further period as is specified in the notice, within which submissions may be made.

217 At the end of section 165 of the Code set out in the Schedule

Add:

- (3) If, at the end of the period referred to in subsection (1), the application has not been determined, the applicant may give the APVMA written notice that the applicant wishes to treat the application as having been refused.
- (4) The notice may be given at any time after the end of the period referred to in subsection (1) and before the application is determined.
- (5) If the notice is given, this Code has effect as if:
  - (a) the APVMA had refused the application; and
  - (b) the APVMA had confirmed the refusal under section 166; and
  - (c) the decisions mentioned in paragraphs (a) and (b) had been made on the day on which notice was given to the APVMA under subsection (3).

218 After section 165 of the Code set out in the Schedule

Insert:

165A Period within which APVMA is to conclude reconsiderations under Division 4 of Part 2

- (1) If the APVMA reconsiders an approval or registration under Division 4 of Part 2, the APVMA must conclude the reconsideration within a period stated in, or determined in accordance with, the regulations.
  - (2) The APVMA may make a legislative instrument setting out criteria for working out which period stated in, or determined in accordance with, the regulations applies in a particular case.
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- (3) In working out the period within which the reconsideration is to be concluded, no regard is to be had to:
- (a) the period, stated in the notice given to the holder under subsection 32(1), within which information must be given and submissions may be made; and
  - (b) if the APVMA has given written notice to the holder under subsection 33(1)—the period stated in the notice within which any information, report, results or sample must be given to the APVMA.

219 Section 166 of the Code set out in the Schedule (heading)

Repeal the heading, substitute:

166 Internal review of decisions

220 Paragraph 166(1)(a) of the Code set out in the Schedule

Omit “other than this section”.

221 After subsection 166(1) of the Code set out in the Schedule

Insert:

(1A) This section also applies if:

- (a) a decision (the *original decision*) on a particular matter (the *relevant matter*) has been made under this Code on behalf of the APVMA by a member of the staff of the APVMA; and
- (b) the original decision is:
  - (i) a decision under subsection 14(2), 26C(2), 29(2), 29E(3) or 115(3B) to refuse an application based only on requirements set out in paragraph 8A(a) or (b); or
  - (ii) a decision under subsection 112(3) to refuse an application based only on requirements set out in paragraph 8A(a) or (b) or a requirement made by the APVMA under subparagraph 111(1)(b)(iii); or
  - (iii) a decision under subsection 123(1A) to refuse an application based only on requirements set out in subsection 122(1); and
- (c) if the original decision were reviewable by the Administrative Appeals Tribunal, a person would be entitled to apply to the Administrative Appeals Tribunal for review of the original decision.



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221A Subsection 166(2) of the Code set out in the Schedule

After “by writing”, insert “within 42 days after the original decision is made”.

222 Subsection 166(3) of the Code set out in the Schedule

Omit “decision and”, substitute “decision having regard only to the information used to make it, and must”.

223 Subsection 166(6) of the Code set out in the Schedule

Repeal the subsection, substitute:

- (6) If the APVMA has not given notice under subsection (4) of its decision on the reconsideration within 90 days after the request is made, the person who made the request may, by writing, notify the APVMA that the person considers that the APVMA has confirmed the original decision.
- (7) If the person so notifies the APVMA, the decision on the reconsideration is taken to be a decision to confirm the original decision.

224 Section 167 of the Code set out in the Schedule (heading)

Repeal the heading, substitute:

167 Review of decisions by Administrative Appeals Tribunal

225 Paragraphs 167(1)(aa) to (e) of the Code set out in the Schedule

Repeal the paragraphs, substitute:

- (a) a decision under subsection 14(1) to approve or register a constituent, product or label:
    - (i) with an instruction or relevant particular other than an instruction or particular set out in the application for the approval or registration; or
    - (ii) subject to particular conditions;
  - (b) a decision under subsection 14(2) to refuse an application for approval or registration, other than a decision based only on requirements set out in paragraph 8A(a) or (b);
  - (c) a decision under subsection 26C(2) to refuse an application to vary relevant particulars, other than a decision based only on requirements set out in paragraph 8A(a) or (b);
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- (d) a decision under subsection 29(2) to refuse an application to vary relevant particulars or conditions, other than a decision based only on requirements set out in paragraph 8A(a) or (b);
  - (da) a decision under subsection 29D(3) to refuse to accept a late application;
  - (db) a decision under subsection 29G(1) to vary relevant particulars or conditions;
  - (e) a decision under subsection 34A(1) or 34AF(3) to vary relevant particulars or conditions;
- 226 Paragraph 167(1)(ea) of the Code set out in the Schedule  
Omit “34D(3)”, substitute “34J(3)”.
- 227 Paragraph 167(1)(ea) of the Code set out in the Schedule  
Omit “34C”, substitute “34G”.
- 228 Paragraph 167(1)(ea) of the Code set out in the Schedule  
Omit all the words from and including “*substantive decision*”, substitute “*substantive decision*”;
- 229 Paragraph 167(1)(f) of the Code set out in the Schedule  
After “under”, insert “section 34AA or”.
- 230 Paragraphs 167(1)(fa) to (ff) of the Code set out in the Schedule  
Repeal the paragraphs.
- 231 Paragraph 167(1)(g) of the Code set out in the Schedule  
Omit “or 56ZL(3)”.
- 232 At the end of paragraph 167(1)(l) of the Code set out in the Schedule  
Add “, other than a decision based only on requirements set out in paragraph 8A(a) or (b) or a requirement made by the APVMA under subparagraph 111(1)(b)(iii)”.
- 232A At the end of paragraph 167(1)(n) of the Code set out in the Schedule  
Add “other than a decision based only on requirements set out in paragraph 8A(a) or (b)”.
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233 Paragraphs 167(1)(o) and (p) of the Code set out in the Schedule

Repeal the paragraphs, substitute:

- (o) a decision under section 118, 119, 119A or 119B to suspend or cancel a permit;

233A At the end of paragraph 167(1)(q) of the Code set out in the Schedule

Add “other than a decision based only on requirements set out in subsection 122(1)”.

234 Paragraph 167(1)(u) of the Code set out in the Schedule

Repeal the paragraph.

235 Paragraph 167(1)(v) of the Code set out in the Schedule

Omit “interested person”, substitute “applicant or holder”.

235A At the end of subsection 167(1) of the Code set out in the Schedule

Add:

- ; (y) a decision under this Code prescribed by the regulations.

236 Subsection 167(2) of the Code set out in the Schedule

Repeal the subsection.

237 Subsection 167(2A) of the Code set out in the Schedule

Omit “34E”, substitute “34K”.

238 Subsection 167(2A) of the Code set out in the Schedule

Omit “to public health or occupational health or safety”, substitute “to persons of death, serious injury or serious illness”.

239 Subparagraph 178(1)(a)(ii) of the Code set out in the Schedule

Omit “of Chemical Products”.

240 Paragraphs 180(c) and (ca) of the Code set out in the Schedule

Omit “32(2)”, substitute “32(1)”.

241 Paragraph 184(a) of the Code set out in the Schedule

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Repeal the paragraph.

242 After paragraph 184(b) of the Code set out in the Schedule

Insert:

; and (c) the person had not complied with the notice before that commencement;

243 Section 184 of the Code set out in the Schedule

Omit “and the person had not complied with the notice before that commencement,”.

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## Schedule 2—Re-approvals and re-registrations

### Agricultural and Veterinary Chemicals Code Act 1994

- 1 Subsection 3(1) of the Code set out in the Schedule (definition of *approval*)

Repeal the definition, substitute:

***approval*** means approval under Part 2 of:

- (a) an active constituent for a proposed or existing chemical product; or
  - (b) a label for containers for a chemical product;
- and, in relation to an active constituent, other than in Division 2 of Part 2 and Part 3, includes re-approval.

- 2 Subsection 3(1) of the Code set out in the Schedule

Insert:

***re-approval*** means re-approval of an active constituent under Division 3A of Part 2.

- 3 Subsection 3(1) of the Code set out in the Schedule (definition of *registration*)

Repeal the definition, substitute:

***registration*** means registration under Part 2 of a chemical product and, other than in Division 2 of Part 2 and Part 3, includes re-registration.

- 4 Subsection 3(1) of the Code set out in the Schedule

Insert:

***re-registration*** means re-registration of a chemical product under Division 3A of Part 2.

- 5 After Division 3 of Part 2 of the Code set out in the Schedule

Insert:

## Division 3A—Re-approving and re-registering

### 29C Explanation of Division

- (1) This Division provides for re-approval and re-registration of active constituents and chemical products.
- (2) Section 29D provides for holders of approvals and registrations to make applications, and sets out the time for making applications. Applications must meet the application requirements specified in section 8A.
- (3) The APVMA must complete a preliminary assessment of an application. If the application passes preliminary assessment, the APVMA must notify the applicant (section 29E).
- (4) Section 29F sets out the circumstances in which the APVMA must re-approve or re-register an active constituent or chemical product.
- (5) The APVMA may vary relevant particulars or conditions to allow re-approval or re-registration (section 29G).
- (6) If the APVMA does not re-approve or re-register an active constituent or chemical product, it must reconsider the existing approval or registration under Division 4 (section 29H).
- (7) Sections 29J and 29K set out how re-approval and re-registration take place.

### 29D Applications

- (1) The holder of the approval of an active constituent or the registration of a chemical product may apply for re-approval or re-registration of the constituent or product.
- (2) The application must:
  - (a) meet the application requirements; and
  - (b) be made:
    - (i) for re-approval—not earlier than 6 calendar months, and not later than 3 calendar months, before the date entered in the Record as the date the approval ends; or
    - (ii) for re-registration—not earlier than 6 calendar months, and not later than 3 calendar months, before the date

- entered in the Register as the date after which the registration cannot be renewed under Division 6; or
- (iii) within such further period as the APVMA allows under subsection (3).

Note: For *meets the application requirements*, see section 8A.

- (3) In circumstances prescribed by the regulations and upon payment of the prescribed fee (if any), the APVMA may accept a late application if the application is made on or before:
- (a) for re-approval—the day the approval ends; or
  - (b) for re-registration—the day after which the registration cannot be renewed under Division 6.
- (4) Subsection (1) has effect subject to any condition imposed on the approval or registration under subsection 23(2).

Note: Subsection 23(2) provides for an approval or registration to last for not more than one year.

## 29E Preliminary assessment

- (1) The APVMA must complete a preliminary assessment of the application within 2 months after it is lodged.
- (2) If it appears from the preliminary assessment that the application meets the application requirements, the APVMA must, within 14 days, give written notice to the applicant:
- (a) stating that the application has passed preliminary assessment and that it will be determined under section 29F; and
  - (b) setting out any matters prescribed by the regulations.
- (3) Otherwise, the APVMA must refuse the application.

Note: For notice of refusal, see section 8G.

- (4) The APVMA may alter the application, after it has passed preliminary assessment, with the written consent of the applicant.

## 29F Re-approval or re-registration

- (1) If the application is for re-approval of an active constituent, the APVMA must re-approve the constituent unless it appears to the APVMA that there are reasonable grounds to believe that the constituent does not meet the safety criteria.

Note: For notice of re-approval, see section 8F.

- (2) If the application is for re-registration of a chemical product, the APVMA must re-register the product unless it appears to the APVMA that there are reasonable grounds to believe that the product does not do one or more of the following:
- (a) meet the safety criteria;
  - (b) meet the trade criteria;
  - (c) meet the efficacy criteria.

Note: For notice of re-registration, see section 8F.

- (3) For the purposes of subsections (1) and (2), the APVMA must have regard to any submission given in response to a notice in relation to the constituent or product under section 47B (advance notice of end of approval or registration).

## 29G Varying relevant particulars and conditions to allow re-approval or re-registration

- (1) To allow the re-approval or re-registration, the APVMA may:
- (a) vary the relevant particulars or conditions of the approval or registration; or
  - (b) for a chemical product—vary the relevant particulars or conditions of the approval of any label for the product.

Note: The APVMA may only vary relevant particulars or conditions that it has imposed. See section 6B.

- (2) If the variation would affect any instructions for the use of the active constituent or chemical product, or any instructions on a label, the APVMA must not make the variation until it has consulted each co-ordinator designated for a jurisdiction and taken into account any recommendations made by the co-ordinators.
- (3) If the APVMA decides to vary the relevant particulars or conditions, it must record in the Record, Register or relevant APVMA file, as required, the relevant particulars or conditions as varied and the date on which the variation is made.
- (4) If the relevant particulars or conditions of the registration of a listed chemical product are varied in such a way that the product and every label for the product comply with the established standard for the product, the APVMA must remove from the



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Register the date after which the registration of the product cannot be renewed under Division 6.

**29H Reconsideration if APVMA does not re-approve or re-register**

- (1) If the APVMA does not re-approve or re-register the active constituent or chemical product it must:
  - (a) reconsider the existing approval or registration under Division 4; and
  - (b) give written notice of the reconsideration to the holder within 14 days.
- (2) The notice must:
  - (a) set out the reasons for the reconsideration; and
  - (b) state that:
    - (i) for an approval—the approval will not end until the reconsideration has been concluded; or
    - (ii) for a registration—the date after which the registration cannot be renewed under Division 6 will be the day on which the reconsideration is concluded; and
  - (c) state that, if the approval or registration is affirmed on reconsideration, the active constituent or chemical product will be re-approved or re-registered.
- (3) The notice may be included with the notice in relation to the reconsideration given under subsection 32(1).

**29J How re-approval takes place**

- (1) Re-approval of an active constituent takes place when the APVMA records the following in the Record:
  - (a) a statement that the constituent has been re-approved and the date of the re-approval;
  - (b) the date the approval (as re-approved) ends.
- (2) The date the approval ends must:
  - (a) be worked out in accordance with the method prescribed by the regulations; and
  - (b) be the last day of a calendar month at least 7 years but not more than 15 years after the re-approval takes place.

- (3) Despite subsection (2), the APVMA may re-approve the active constituent for a period of less than 7 years to provide for the approval to end at the same time as another approval of the active constituent.
- (4) Paragraph (2)(b) does not apply if the approval is subject to the condition that it remains in force only for a stated period of not more than 1 year (see subsection 23(2)).

#### 29K How re-registration takes place

- (1) Re-registration of a chemical product takes place when the APVMA records the following in the Register:
  - (a) a statement that the product has been re-registered and the date of the re-registration;
  - (b) the date the registration (as re-registered) ends, which must be the last day of a calendar month not more than 12 months after the re-registration takes place;
  - (c) unless the product and each label for the product comply with the established standard for the product—the date (the ***last renewal date***) after which the registration cannot be renewed under Division 6.
- (2) The last renewal date must:
  - (a) be worked out in accordance with the method prescribed by the regulations; and
  - (b) be the last day of a calendar month at least 7 years but not more than 15 years after the re-registration takes place.
- (3) However, the last renewal date may be less than 7 years after the re-registration takes place to provide for the last renewal date to be the same as the last renewal date for another chemical product that contains one or more of the same active constituents.
- (4) Paragraph (2)(b) does not apply if the registration is subject to the condition that it remains in force only for a stated period of not more than 1 year (see subsection 23(2)).

#### 6 Division 6 of Part 2 of the Code set out in the Schedule (heading)

Repeal the heading, substitute:

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## Division 6—Duration of approvals and registrations and renewal of registrations

### 7 Section 47 of the Code set out in the Schedule

Repeal the section, substitute:

### Subdivision A—Preliminary

#### 46A Explanation of Division

- (1) This Division deals with the duration of approvals and registrations, and with renewing registrations.
- (2) Section 47 sets out the periods for which approvals and registrations are in force.
- (3) Section 47A provides for the APVMA to vary the duration of the approval of an active constituent or the registration of a chemical product containing an active constituent if 2 or more foreign regulators have prohibited the use of the active constituent on safety grounds.
- (4) The APVMA must publish at least 12 months' advance notice of:
  - (a) the end of an approval; and
  - (b) the date after which a registration cannot be renewed (section 47B).The APVMA may give less than 12 months' notice if it varied the date under section 47A.
- (5) The APVMA must publish notice of the end of an approval or registration as soon as practicable after the approval or registration has ended (section 47C).
- (6) If the APVMA publishes notice of the end of the approval or registration of a constituent or a product under section 47C, then:
  - (a) certain persons are taken to have a permit to possess, have custody of or use of the constituent or product for a limited period (section 47D); and
  - (b) persons may only supply the constituent or product in accordance with instructions contained in the notice (section 47E).

- (7) Section 48 provides for applications for renewal of a registration.
- (8) The APVMA must renew the registration if the application requirements are met (section 49).
- (9) Renewal takes place by entry in the Register (section 50).
- (10) The approval of a label for a container for a chemical product is automatically renewed when the registration of the product is renewed (section 51).

## Subdivision B—Period of approval or registration

### 47 Period of approval or registration

- (1) The approval of an active constituent ends on the later of the following days:
  - (a) the day entered in the Record as the date the approval ends;
  - (b) if an application is made for re-approval of the active constituent but is not determined by the day entered in the Record—the day on which the application is determined.
- (2) The registration of a chemical product ends on the later of the following days:
  - (a) the day entered in the Register as the date the registration ends;
  - (b) if an application is made for renewal of the registration but is not determined by the day entered in the Register—the day on which the application is determined.
- (3) The registration of a chemical product also ends if the approval of an active constituent for the product ends.
- (4) The approval of a label for containers for a chemical product ends when the registration of the product ends.
- (5) If:
  - (a) the registration of a chemical product ends; but
  - (b) a person is taken under section 47D to have been issued with a permit to possess, have custody of or use the product;the approval of a label for containers for the product continues in force until the permit ceases to have effect.

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- (6) To avoid doubt, this section does not limit any power under this Code to cancel or suspend an approval or registration.

47A Varying duration—decisions of foreign regulators

- (1) This section applies if:
- (a) regulators of agricultural or veterinary chemicals of 2 or more foreign countries, being regulators who are prescribed by the regulations, have decided, within a 7 year period, to prohibit all uses of:
    - (i) the same active constituent; or
    - (ii) one or more chemical products containing the same active constituent; and
  - (b) the uses were prohibited because the active constituent:
    - (i) was an undue hazard to the safety of people exposed to it during its handling or people using anything containing its residues; or
    - (ii) was likely to have an effect that is harmful to human beings; or
    - (iii) was likely to have an unintended effect that is harmful to animals, plants or things or to the environment; and
  - (c) the active constituent is:
    - (i) approved under this Code, but not approved or re-approved after the first of those decisions; or
    - (ii) contained in a chemical product that is registered under this Code, but not registered or re-registered after the first of those decisions; and
  - (d) the approval or registration is not being reconsidered under Division 4.
- (2) The APVMA must vary the following as necessary to meet the requirement in subsection (3):
- (a) the date (the ***end date***) entered in the Record or Register as the day the approval or registration ends;
  - (b) for a chemical product for which there is a date entered in the Register as the date after which the registration of the product cannot be renewed under Division 6—that date (the ***last renewal date***).

- (3) The end date and last renewal date (if applicable) must be the last day of a calendar month in the period that begins 6 months and ends 18 months after the second of those decisions was made.
- (4) Neither the end date nor the last renewal date may be varied again under this section.
- (5) If the end date or last renewal date is varied, the holder must be given written notice of the date as varied at least 6 months before it occurs.
- (6) This section does not apply to extend:
  - (a) the duration of the approval or registration; or
  - (b) the period before the day after which the registration cannot be renewed.

### Subdivision C—Notifying end of approvals and registrations

#### 47B Advance notice of end of approval or registration

- (1) The APVMA must publish in the *Gazette* at least 12 months' notice of the following:
  - (a) the end of the approval of an active constituent;
  - (b) the date after which the registration of a chemical product cannot be renewed under this Division.
- (2) The notice must:
  - (a) invite submissions about whether or not:
    - (i) the constituent should be re-approved; or
    - (ii) the product should be re-registered; and
  - (b) specify the time by which the submissions must be given to the APVMA, which must be no later than 6 months before the existing approval or registration ends.
- (3) The APVMA must give the holder at least 12 months' notice of:
  - (a) the end of the approval of an active constituent; and
  - (b) the date after which the registration of a chemical product cannot be renewed under this Division.
- (4) The notice must:
  - (a) set out the relevant particulars and conditions of the approval or registration; and

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- (b) state:
    - (i) the date the approval ends; or
    - (ii) the date after which the registration cannot be renewed under this Division; and
  - (c) include any information prescribed by the regulations.
- (5) The APVMA may give less than 12 months' notice if, under section 47A, the APVMA varied:
- (a) the date the approval or registration ends; or
  - (b) the date after which the registration cannot be renewed under this Division.

#### 47C Notice of end of approval or registration

- (1) The APVMA must publish in the *Gazette*, and in any other manner that it thinks appropriate, notice of the following:
  - (a) the end of the approval of an active constituent;
  - (b) the end of the registration of a chemical product.
- (2) The notice must:
  - (a) be published as soon as practicable after the approval or registration ends; and
  - (b) state that the approval or registration has ended; and
  - (c) set out the date on which the approval or registration ended; and
  - (d) contain instructions for possessing, having custody of or using the constituent or product; and
  - (e) contain a warning of the consequences if a person fails to comply with the instructions, including a statement of any period after which it will be an offence against this Code to supply the constituent or product or to possess or have custody of the constituent or product with the intention of supplying it; and
  - (f) contain any other warnings or explanations in relation to the constituent or product that the APVMA thinks desirable; and
  - (g) contain any other information that the APVMA thinks appropriate.
- (3) Subsection (1) does not apply if the APVMA thinks that, in the circumstances, it is unnecessary to publish the notice.

- (4) If a notice is published under this section, the APVMA must:
  - (a) as soon as practicable cause a copy of the notice to be given to the holder; and
  - (b) cause a copy of the notice to be given to any other person who, in the opinion of the APVMA, should be given notice of the ending of the approval or registration and of the instructions, warnings and explanations contained in the notice.

#### 47D Permit taken to have been issued

- (1) If, after the publication of a notice under section 47C, a person possesses, has custody of or uses the constituent or product in accordance with the instructions contained in the notice, the person is taken to have been issued with a permit to possess, have custody of or use the constituent or product in accordance with those instructions until:
  - (a) 1 year after the day on which the approval or registration ended; or
  - (b) the APVMA, by notice published in the *Gazette*, declares that this subsection ceases to apply in respect of the constituent or product;whichever first occurs.
- (2) A permit that is taken to have been issued to a person under subsection (1) does not authorise the person to manufacture or import the constituent or product.

#### 47E Possession or custody with intention of supply

- (1) This section applies if, after the publication of a notice under section 47C, a person has possession or custody of the constituent or product with the intention of supplying it.
- (2) The person must not possess, have custody of or otherwise deal with the constituent or product except in accordance with the instructions contained in the notice.
- (3) Subsection (2) does not apply to a possession, custody or dealing if the constituent or product was approved or registered when the possession, custody or dealing took place because of its having



been approved or registered or having become reserved after its previous approval or registration ended.

- (4) A person commits an offence if the person contravenes subsection (2).

Penalty: 300 penalty units.

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

- (5) For the purposes of subsection (4), strict liability applies to the physical element of circumstance in subsection (1), that the publishing of the notice was under section 47C.

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

- (6) Subsection (2) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matter in subsection (3), see section 145CD.

## Subdivision D—Renewing registrations

### 8 Section 48 of the Code set out in the Schedule (heading)

Repeal the heading, substitute:

#### 48 Applications

### 9 Subsection 48(1) of the Code set out in the Schedule

Omit “interested person”, substitute “holder”.

### 10 Subsection 48(2) of the Code set out in the Schedule

Repeal the subsection, substitute:

- (2) The application (the ***renewal application***) must be made:
- (a) subject to subsection (3), not later than one month, or a shorter period that the APVMA permits, before the registration ends; and
  - (b) before the day entered in the Register as the day after which the registration cannot be renewed under this Division.

11 At the end of section 48 of the Code set out in the Schedule

Add:

- (4) If an application (the *re-registration application*):
- (a) has been made for re-registration of the chemical product; but
  - (b) has not been determined before the day by which the renewal application must be made;  
the day entered in the Register as the day after which the registration cannot be renewed under this Division is taken to be the day on which the re-registration application is determined.
- (5) The APVMA may alter the renewal application with the written consent of the holder.
- (6) Subsection (1) has effect subject to any condition imposed on the registration under subsection 23(2).

Note: Subsection 23(2) provides for an approval or registration to last for not more than one year.

12 Sections 49 and 50 of the Code set out in the Schedule

Repeal the sections, substitute:

49 Renewal of registration

- (1) If the APVMA is satisfied that the renewal application meets the application requirements, the APVMA must renew the registration:
- (a) if the application was made in accordance with subsection 48(2)—before the day entered in the Register as the day the registration ends; or
  - (b) if the application was made in accordance with subsection 48(3)—within 1 month after the application was made.

Note: For notice of renewal, see section 8F.

- (2) Otherwise, the APVMA must refuse the application.

Note: For notice of refusal, see section 8G.

50 How renewal takes place

Renewal of the registration of a chemical product takes place when the APVMA enters in the Register a statement that the registration has been renewed and the date on which the registration (as

renewed) ends, which must be the last day of a calendar month not more than 12 months after the renewal takes place.

## Schedule 3—Enforcement

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

1 Subsection 3(1)

Insert:

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

2 Subsection 3(1)

Insert:

***civil penalty provision*** means a provision declared by this Act to be a civil penalty provision.

3 Subsection 3(1) (definition of *occupier*)

Repeal the definition.

4 Subsection 3(1) (definition of *premises*)

Repeal the definition.

5 Subsection 15(2) (penalty)

Repeal the penalty.

6 After subsection 15(2)

Insert:

(2AA) A person commits an offence of strict liability if the person contravenes subsection (2).

Penalty: 50 penalty units.

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

7 Subsection 15(2A)

Omit “Subsection (2)”, substitute “Subsection (2AA)”.

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**8 Subsection 15(2B)**

Repeal the subsection, substitute:

(2B) Subsection (2) is a civil penalty provision.

Note 1: For monitoring and investigation powers of inspectors in relation to this Act, see Part 7AA of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

Note 2: Division 1 of Part 7AB of the *Agricultural and Veterinary Chemicals (Administration) Act 1992* provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 3: For infringement notices, enforceable undertakings and formal warnings in relation to contraventions of this provision, see Divisions 2, 3 and 6 of Part 7AB of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

**9 Subsection 20(3) (penalty)**

Repeal the penalty.

**10 After subsection 20(3)**

Insert:

(3A) A person commits an offence of strict liability if the person contravenes subsection (3).

Penalty: 50 penalty units.

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

**11 Subsection 20(4)**

Omit “Subsection (3)”, substitute “Subsection (3A)”.

**12 Subsection 20(5)**

Repeal the subsection, substitute:

(5) Subsection (3) is a civil penalty provision.

Note 1: For monitoring and investigation powers of inspectors in relation to this Act, see Part 7AA of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

Note 2: Division 1 of Part 7AB of the *Agricultural and Veterinary Chemicals (Administration) Act 1992* provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 3: For infringement notices, enforceable undertakings and formal warnings in relation to contraventions of this provision, see

Divisions 2, 3 and 6 of Part 7AB of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

13 Sections 21 to 32

Repeal the sections.

14 Section 34

Repeal the section, substitute:

34 Self-incrimination etc.

- (1) A person is not excused from:
  - (a) giving information; or
  - (b) producing a document or thing; or
  - (c) answering a question asked by an inspector;under this Act on the ground that doing so might tend to incriminate the person or expose the person to a penalty.
- (2) However, in the case of an individual, none of the following:
  - (a) the information or answer given;
  - (b) the document or thing produced;
  - (c) the giving of the information or the answer, or the producing of the document or thing;
  - (d) any information, document or thing obtained as a direct or indirect consequence of giving the information or answer, or producing the document or thing;is admissible in evidence against the individual in:
  - (e) criminal proceedings, other than:
    - (i) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (which deal with false or misleading information or documents) that relates to this Act; or
    - (ii) proceedings for an offence against section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) that relates to this Act; or
  - (f) civil proceedings for a contravention of a civil penalty provision.

15 Section 35

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Repeal the section.

16 Subsection 36(1) (penalty)

Repeal the penalty.

17 Subsection 36(2)

Repeal the subsection, substitute:

- (2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 50 penalty units.

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

- (3) Subsection (1) is a civil penalty provision.

Note 1: For monitoring and investigation powers of inspectors in relation to this Act, see Part 7AA of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

Note 2: Division 1 of Part 7AB of the *Agricultural and Veterinary Chemicals (Administration) Act 1992* provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 3: For infringement notices, enforceable undertakings and formal warnings in relation to contraventions of this provision, see Divisions 2, 3 and 6 of Part 7AB of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

## Agricultural and Veterinary Chemicals (Administration) Act 1992

18 Section 4

Insert:

***civil penalty order*** has the meaning given by subsection 69EJ(4).

19 Section 4

Insert:

***civil penalty provision*** means a provision declared by this Act or the Collection Act to be a civil penalty provision.

20 Section 4

Insert:

***Collection Act*** means the *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994*.

21 Section 4

Insert:

***confidential commercial information*** has the same meaning as in the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*.

22 Section 4

Insert:

***copy***, in relation to a warrant issued under section 69EH or 69EHA (or a form of warrant completed under subsection 69EHB(6)), includes:

- (a) a copy sent by fax or other electronic means; or
- (b) a copy of a copy so sent.

23 Section 4

Insert:

***damage*** has the same meaning as in the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*.

24 Section 4

Insert:

***data*** has the same meaning as in the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*.

25 Section 4

Insert:

***evidential burden***, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

26 Section 4

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Insert:

***evidential material*** means any of the following:

- (a) a thing with respect to which an offence against this Act or the Collection Act has been committed or is suspected, on reasonable grounds, to have been committed;
- (b) a thing with respect to which a civil penalty provision has been contravened or is suspected, on reasonable grounds, to have been contravened;
- (c) a thing that there are reasonable grounds for suspecting will afford evidence as to the commission of such an offence or contravention of such a civil penalty provision;
- (d) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of committing such an offence or contravening such a civil penalty provision.

27 Section 4

Insert:

***executive officer*** of a body corporate means a person, by whatever name called and whether or not a director of the body, who is concerned in, or takes part in, the management of the body.

28 Section 4

Insert:

***investigation powers*** has the meaning given by sections 69EBA, 69EBB and 69EBC.

29 Section 4

Insert:

***investigation warrant*** means:

- (a) a warrant issued under section 69EHA; or
- (b) a warrant signed by a magistrate under section 69EHB, being a warrant of the same kind as would have been issued under section 69EHA.

30 Section 4

Insert:

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***monitoring powers*** has the meaning given by sections 69EAC, 69EAD and 69EAE.

31 Section 4

Insert:

***monitoring warrant*** means:

- (a) a warrant issued under section 69EH; or
- (b) a warrant signed by a magistrate under section 69EHB, being a warrant of the same kind as would have been issued under section 69EH.

32 Section 4

Insert:

***occupier*** has the same meaning as in the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*.

33 Section 4

Insert:

***person assisting*** an inspector:

- (a) in relation to the exercise of monitoring powers—has the meaning given by section 69EAF; and
- (b) in relation to the exercise of investigation powers—has the meaning given by section 69EBD.

34 Section 4

Insert:

***premises*** has the same meaning as in the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*.

35 Section 4

Insert:

***prescribed civil penalty provision*** means a civil penalty provision that is prescribed by the regulations.

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36 Section 4

Insert:

***relevant data*** means information relevant to determining whether:

- (a) this Act, or the Collection Act, has been, or is being, complied with; or
- (b) information provided under this Act, or the Collection Act, is correct; or
- (c) levy is payable under the Collection Act.

37 Section 4

Insert:

***warrant*** means a monitoring warrant or an investigation warrant.

38 After subsection 11(1)

Insert:

- (1A) The APVMA may only delegate its powers under section 130 or section 131AA of the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* to a member of staff who is an SES, or acting SES, employee.

39 After paragraph 59(c)

Insert:

- (ca) any amounts paid to the APVMA, on behalf of the Commonwealth, under section 149A of the Agvet Codes;

40 After paragraph 61(2)(c)

Insert:

- (ca) particulars of any exercise of powers under section 131AA of the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* during that year;

41 Subsection 69A(1)

Omit “(1)”.

42 Subsection 69A(2)

Repeal the subsection.

43 Before section 69B

Insert:

Subdivision A—Importation

44 Subsection 69B(1) (penalty)

Repeal the penalty.

45 After subsection 69B(1)

Insert:

(1AA) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

46 Subsections 69B(1A) and (1B)

Omit “Subsection (1)”, substitute “Subsection (1AA)”.

47 Subsection 69B(1C)

Omit “In subparagraph (1)(a)(i), strict liability applies to the physical element of circumstance”, substitute “For the purposes of subsection (1AA), strict liability applies to the physical element of circumstance in subparagraph (1)(a)(i)”.

48 Subsection 69B(1D)

Omit “In subparagraph (1)(a)(ii), strict liability applies to the physical element of circumstance”, substitute “For the purposes of subsection (1AA), strict liability applies to the physical element of circumstance in subparagraph (1)(a)(ii)”.

49 After subsection 69B(1D)

Insert:

(1E) Subsection (1) is a civil penalty provision.

Note 1: Part 7AB provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matters in subsection (1B), see section 69EJP.

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50 After subsection 69B(3)

Insert:

- (3A) A consent given under subsection (1B) may be subject to any conditions that the APVMA thinks appropriate.
- (3B) The APVMA may impose a condition, by writing, on a consent at any time while the consent is in force.

51 Before section 69CA

Insert:

**Subdivision B—Provision of information**

52 Section 69CD (heading)

Repeal the heading, substitute:

**69CD Contraventions relating to providing information under sections 69CA and 69CB**

53 After subsection 69CD(2)

Insert:

**Civil penalty provision**

- (2A) A person contravenes this subsection 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.
- (2B) Subsection (2A) is a civil penalty provision.

**Note:** Part 7AB provides for pecuniary penalties for contraventions of civil penalty provisions.

54 Before section 69C

Insert:

Subdivision C—Chemical products etc. subject to international agreements

55 Before section 69D

Insert:

Subdivision D—Exportation

56 Paragraph 69D(1A)(b)

Omit “brief particulars of”.

57 After section 69D

Insert:

Subdivision E—Miscellaneous

58 Subsection 69E(1) (penalty)

Repeal the penalty.

58A Subsection 69E(2)

Omit all the words after “does not”, substitute:

apply:

- (a) in relation to an active constituent or chemical product prescribed by the regulations; or
- (b) 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.

59 Subsection 69E(2A)

Repeal the subsection, substitute:

- (2A) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 50 penalty units.

Note 1: For strict liability, see section 6.1 of the *Criminal Code*.

Note 2: A defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

(2B) Subsection (1) is a civil penalty provision.

Note 1: Part 7AB provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matters in subsection (2), see section 69EJP.

#### 60 Subsection 69EA(1) (penalty)

Repeal the penalty.

#### 61 After subsection 69EA(1)

Insert:

(1AA) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 50 penalty units.

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

(1AB) Subsection (1) is a civil penalty provision.

Note: Part 7AB provides for pecuniary penalties for contraventions of civil penalty provisions.

#### 62 Subsection 69EA(1A) (penalty)

Repeal the penalty.

#### 63 Subsection 69EA(2)

Repeal the subsection, substitute:

(2) A person commits an offence of strict liability if the person contravenes subsection (1A).

Penalty: 50 penalty units.

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

(3) Subsection (1A) is a civil penalty provision.

Note: Part 7AB provides for pecuniary penalties for contraventions of civil penalty provisions.

#### 64 Division 3 of Part 7A

Repeal the Division, substitute:

## Part 7AA—Investigative powers

### Division 1—Monitoring

#### Subdivision A—Monitoring powers etc.

##### 69EAB Powers available to inspectors for monitoring compliance

- (1) Subject to subsections (2) and (3), for the purpose of finding out whether this Act or the Collection Act has been, or is being, complied with, or of assessing the correctness of information provided under this Act or the Collection Act, or of finding out whether levy is payable under the Collection Act, an inspector may:
  - (a) enter any premises; and
  - (b) exercise the monitoring powers.
- (2) If premises mentioned in paragraph (1)(a) are a residence, an inspector may only enter the premises if:
  - (a) the premises are used for commercial purposes in relation to active constituents or chemical products, in addition to residential purposes; and
  - (b) paragraph (3)(a) or (b) is satisfied.
- (3) An inspector is not authorised to enter premises under subsection (1) unless:
  - (a) the occupier of the premises has consented to the entry and the inspector has shown his or her identity card if required by the occupier; or
  - (b) the entry is made under a monitoring warrant.

Note: If entry to the premises is with the occupier's consent, the inspector must leave the premises if the consent ceases to have effect. See section 69ED.

##### 69EAC Monitoring powers—with consent or with warrant

- (1) The following are the **monitoring powers** that an inspector may exercise in relation to premises:



- 
- (a) the power to search the premises and any thing on the premises;
  - (b) the power to examine or observe any activity conducted on the premises;
  - (c) the power to inspect, examine, take measurements of or conduct tests on any thing on the premises;
  - (d) the power to make any still or moving image or any recording of the premises or any thing on the premises;
  - (e) the power to inspect any document on the premises;
  - (f) the power to take extracts from, or make copies of, any such document;
  - (g) the power to take and keep samples of any thing on the premises;
  - (h) the power to 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;
  - (i) the power to give directions for dealing with a container, or a label on a container, that has been opened or sampled in accordance with paragraph (h);
  - (j) the power to destroy or make harmless, or give directions for the destruction or making harmless of, a chemical product at the premises;
  - (k) the power to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;
  - (l) the powers set out in subsections 69EAD(1) and (3) and 69EAE(1).
- (2) A person who is given a direction under subsection (1) must comply with the direction.
- (3) A person commits an offence of strict liability if the person contravenes subsection (2).

Penalty: 30 penalty units.

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

- (4) Subsection (2) is a civil penalty provision.

Note: Part 7AB provides for pecuniary penalties for contraventions of civil penalty provisions.

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69EAD Operating electronic equipment

- (1) The **monitoring powers** include the power to:
  - (a) operate electronic equipment on the premises; and
  - (b) use a disk, tape or other storage device that:
    - (i) is on the premises; and
    - (ii) can be used with the equipment or is associated with it.
- (2) The monitoring powers include the powers mentioned in subsection (3) if relevant data is found in the exercise of the power under subsection (1).
- (3) The powers are as follows:
  - (a) the power to operate electronic equipment on the premises to put the relevant data in documentary form and remove the documents so produced from the premises;
  - (b) the power to operate electronic equipment on the premises to transfer the relevant data to a disk, tape or other storage device that:
    - (i) is brought to the premises for the exercise of the power; or
    - (ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises;and remove the disk, tape or other storage device from the premises.
- (4) An inspector may operate electronic equipment as mentioned in subsection (1) or (3) only if the inspector believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

Note: For compensation for damage to electronic equipment, see section 69EDE.

69EAE Securing evidence of the contravention of a related provision

- (1) The **monitoring powers** include the power to secure a thing for a period not exceeding 7 days if:
  - (a) the thing is found during the exercise of monitoring powers on the premises; and

- 
- (b) an inspector believes on reasonable grounds that the thing affords evidence of one or more of the following:
    - (i) the commission of an offence against this Act or the Collection Act;
    - (ii) the contravention of a civil penalty provision;
    - (iii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act or the Collection Act; and
  - (c) the inspector believes on reasonable grounds that:
    - (i) it is necessary to secure the thing in order to prevent it from being concealed, lost or destroyed before a warrant to seize the thing is obtained; and
    - (ii) it is necessary to secure the thing without a warrant because the circumstances are serious and urgent.
- The thing may be secured by locking it up, placing a guard or any other means.
- (2) If an inspector believes on reasonable grounds that the thing needs to be secured for more than 7 days, the inspector may apply to a magistrate for an extension of that period.
  - (3) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.
  - (4) The provisions of this Part relating to the issue of monitoring warrants apply, with such modifications as are necessary, to the issue of an extension.
  - (5) The 7 day period may be extended more than once.

#### 69EAF Persons assisting inspectors

Inspectors may be assisted by other persons

- (1) When exercising monitoring powers, an inspector may be assisted by other persons in exercising powers or performing functions or duties under this Part, if that assistance is necessary and reasonable. A person giving such assistance is a ***person assisting*** the inspector.

Powers, functions and duties of a person assisting the inspector

- (2) A person assisting the inspector:
  - (a) may enter the premises; and
  - (b) may exercise powers and perform functions and duties under this Part for the purposes of assisting the inspector to determine whether:
    - (i) this Act, or the Collection Act, has been, or is being, complied with; or
    - (ii) information provided under this Act, or the Collection Act, is correct; or
    - (iii) levy is payable under the Collection Act; and
  - (c) must do so in accordance with a direction given to the person assisting by the inspector.
- (3) A power exercised by a person assisting the inspector as mentioned in subsection (2) is taken for all purposes to have been exercised by the inspector.
- (4) A function or duty performed by a person assisting the inspector as mentioned in subsection (2) is taken for all purposes to have been performed by the inspector.
- (5) If a direction is given under paragraph (2)(c) in writing, the direction is not a legislative instrument.

69EAG Use of force in executing a monitoring warrant

In executing a monitoring warrant, an inspector and a person assisting the inspector may use such force against things as is necessary and reasonable in the circumstances.

Subdivision B—Powers of inspectors to ask questions and seek production of documents

69EAH Inspector may ask questions and seek production of documents

- (1) This section applies if an inspector enters premises for the purposes of determining whether:
  - (a) this Act, or the Collection Act, has been, or is being, complied with; or

- 
- (b) information provided under this Act, or the Collection Act, is correct; or
  - (c) levy is payable under the Collection Act.
- (2) If the entry is authorised because the occupier of the premises consented to the entry, the inspector may ask the occupier to answer any questions, and produce any document, relating to:
- (a) the operation of this Act or the Collection Act; or
  - (b) the information.
- (3) If the entry is authorised by a monitoring warrant, the inspector may require any person on the premises to answer any questions, and produce any document, relating to:
- (a) the operation of this Act or the Collection Act; or
  - (b) the information.

#### Offence

- (4) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (3); and
  - (b) the person fails to comply with the requirement.

Penalty for contravention of this subsection: 50 penalty units.

#### 69EAJ Copying of documents

If a person produces a document to an inspector in accordance with a requirement under section 69EAH, the inspector may make copies of, or take extracts from, the document.

### Division 2—Investigation

#### Subdivision A—Investigation powers

#### 69EB Powers available to inspectors to investigate potential breaches of this Act and the Collection Act

- (1) Subject to subsections (2) and (3), if an inspector has reasonable grounds for suspecting that there may be evidential material on any premises, the inspector may:

- (a) enter the premises; and
  - (b) exercise the investigation powers.
- (2) If premises mentioned in paragraph (1)(a) are a residence, an inspector may only enter the premises if:
  - (a) the premises are used for commercial purposes in relation to active constituents or chemical products, in addition to residential purposes; and
  - (b) paragraph (3)(a) or (b) is satisfied.
- (3) An inspector is not authorised to enter the premises unless:
  - (a) the occupier of the premises has consented to the entry and the inspector has shown his or her identity card if required by the occupier; or
  - (b) the entry is made under an investigation warrant.

Note: If entry to the premises is with the occupier's consent, the inspector must leave the premises if the consent ceases to have effect. See section 69ED.

#### 69EBA Investigation powers

- (1) The following are the *investigation powers* that an inspector may exercise in relation to premises under section 69EB:
  - (a) if entry to the premises is with the occupier's consent—the power to search the premises and any thing on the premises for the evidential material the inspector has reasonable grounds for suspecting may be on the premises;
  - (b) if entry to the premises is under an investigation warrant:
    - (i) the power to search the premises and any thing on the premises for the kind of evidential material specified in the warrant; and
    - (ii) the power to seize evidential material of that kind if the inspector finds it on the premises;
  - (c) the power to inspect, examine, take measurements of, and conduct tests on evidential material referred to in paragraph (a) or (b);
  - (d) the power to make any still or moving image or any recording of the premises or evidential material referred to in paragraph (a) or (b);
  - (e) the power to inspect any document on the premises;

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- (f) the power to take extracts from, or make copies of, any such document;
  - (g) the power to take and keep samples of any thing on the premises;
  - (h) the power to 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;
  - (i) the power to give directions for dealing with a container, or a label on a container, that has been opened or sampled in accordance with paragraph (h);
  - (j) the power to destroy or make harmless, or give directions for the destruction or making harmless of, a chemical product at the premises;
  - (k) the power to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;
  - (l) the powers set out in subsections 69EBB(1) and (2) and subsections 69EBC(2) and (3).
- (2) A person who is given a direction under subsection (1) must comply with the direction.
- (3) A person commits an offence of strict liability if the person contravenes subsection (2).

Penalty: 30 penalty units.

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

- (4) Subsection (2) is a civil penalty provision.

Note: Part 7AB provides for pecuniary penalties for contraventions of civil penalty provisions.

## 69EBB Operating electronic equipment

- (1) The ***investigation powers*** include the power to:
- (a) operate electronic equipment on the premises; and
  - (b) use a disk, tape or other storage device that:
    - (i) is on the premises; and
    - (ii) can be used with the equipment or is associated with it;

if an inspector has reasonable grounds for suspecting that the electronic equipment, disk, tape or other storage device is or contains evidential material.

- (2) The *investigation powers* include the following powers in relation to evidential material found in the exercise of the power under subsection (1):
- (a) if entry to the premises is under an investigation warrant—the power to seize the equipment and the disk, tape or other storage device referred to in that subsection;
  - (b) the power to operate electronic equipment on the premises to put the evidential material in documentary form and remove the documents so produced from the premises;
  - (c) the power to operate electronic equipment on the premises to transfer the evidential material to a disk, tape or other storage device that:
    - (i) is brought to the premises for the exercise of the power; or
    - (ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises;and remove the disk, tape or other storage device from the premises.
- (3) An inspector may operate electronic equipment as mentioned in subsection (1) or (2) only if the inspector believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.
- Note: For compensation for damage to electronic equipment, see section 69EDE.
- (4) An inspector may seize equipment or a disk, tape or other storage device as mentioned in paragraph (2)(a) only if:
- (a) it is not practicable to put the evidential material in documentary form as mentioned in paragraph (2)(b) or to transfer the evidential material as mentioned in paragraph (2)(c); or
  - (b) possession of the equipment or the disk, tape or other storage device by the occupier could constitute an offence against a law of the Commonwealth.



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**69EBC Seizing evidence of related offences and civil penalty provisions**

- (1) This section applies if an inspector enters premises under an investigation warrant to search for evidential material.
- (2) The **investigation powers** include seizing a thing that is not evidential material of the kind specified in the warrant if:
  - (a) in the course of searching for the kind of evidential material specified in the warrant, the inspector finds the thing; and
  - (b) the inspector believes on reasonable grounds that the thing affords evidence of one or more of the following:
    - (i) the commission of an offence against this Act or the Collection Act;
    - (ii) the contravention of a civil penalty provision;
    - (iii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act or the Collection Act; and
  - (c) the inspector believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction or to protect the health of the public or of any person.
- (3) If an inspector seizes a thing as mentioned in subsection (2), the **investigation powers** include:
  - (a) the power to direct the occupier of the premises or the owner of the thing to keep it at the premises, or at other premises under the control of the occupier or owner that will, in the opinion of the inspector, cause least danger to the health of the public or of any person; and
  - (b) the power to give any other directions for, or with respect to, the detention of the thing.
- (4) A person who is given a direction under subsection (3) must comply with the direction.
- (5) A person commits an offence of strict liability if the person contravenes subsection (4).

Penalty: 30 penalty units.

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

- (6) Subsection (4) is a civil penalty provision.

Note: Part 7AB provides for pecuniary penalties for contraventions of civil penalty provisions.

#### 69EBD Persons assisting inspectors

Inspectors may be assisted by other persons

- (1) When exercising investigation powers, an inspector may be assisted by other persons in exercising powers or performing functions or duties under this Part, if that assistance is necessary and reasonable. A person giving such assistance is a ***person assisting*** the inspector.

Powers, functions and duties of a person assisting the inspector

- (2) A person assisting the inspector:
  - (a) may enter premises; and
  - (b) may exercise powers and perform functions and duties under this Part in relation to evidential material; and
  - (c) must do so in accordance with a direction given to the person assisting by the inspector.
- (3) A power exercised by a person assisting the inspector as mentioned in subsection (2) is taken for all purposes to have been exercised by the inspector.
- (4) A function or duty performed by a person assisting the inspector as mentioned in subsection (2) is taken for all purposes to have been performed by the inspector.
- (5) If a direction is given under paragraph (2)(c) in writing, the direction is not a legislative instrument.

#### 69EBE Use of force in executing an investigation warrant

In executing an investigation warrant, an inspector and a person assisting the inspector may use such force against things as is necessary and reasonable in the circumstances.

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## Subdivision B—Powers of inspectors to ask questions and seek production of documents

### 69EC Inspector may ask questions and seek production of documents

- (1) This section applies if an inspector enters premises to search for evidential material.
- (2) If the entry is authorised because the occupier of the premises consented to the entry, the inspector may ask the occupier to answer any questions, and produce any document, relating to evidential material.
- (3) If the entry is authorised by an investigation warrant, the inspector may require any person on the premises to answer any questions, and produce any document, relating to evidential material of the kind specified in the warrant.
- (4) A person commits an offence if:
  - (a) the person is subject to a requirement under subsection (3); and
  - (b) the person fails to comply with the requirement.

Penalty for contravention of this subsection: 50 penalty units.

### 69ECA Copying of documents

If a person produces a document to an inspector in accordance with a requirement under section 69EC, the inspector may make copies of, or take extracts from, the document.

## Division 3—Obligations and incidental powers of inspectors

### 69ED Consent

- (1) Before obtaining the consent of an occupier of premises for the purposes of paragraph 69EAB(3)(a) or 69EB(3)(a), an inspector must inform the occupier that the occupier may refuse consent.
- (2) A consent has no effect unless the consent is voluntary.

- (3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.
- (5) If an inspector entered premises because of the consent of the occupier of the premises, the inspector, and any person assisting the inspector, must leave the premises if the consent ceases to have effect.

#### 69EDA Announcement before entry under warrant

- (1) Before entering premises under a warrant, an inspector must:
  - (a) announce that:
    - (i) he or she is authorised to enter the premises; and
    - (ii) any person assisting the inspector is authorised to enter the premises; and
  - (b) show his or her identity card to the occupier of the premises, or to another person who apparently represents the occupier, if the occupier or other person is present at the premises; and
  - (c) give any person at the premises an opportunity to allow entry to the premises.
- (2) However, an inspector is not required to comply with subsection (1) if the inspector believes on reasonable grounds that immediate entry to the premises is required:
  - (a) to ensure the safety of a person; or
  - (b) to ensure that the effective execution of the warrant is not frustrated.
- (3) If:
  - (a) an inspector does not comply with subsection (1) because of subsection (2); and
  - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises;the inspector must, as soon as practicable after entering the premises, show his or her identity card to the occupier or other person.

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**69EDB Inspector to be in possession of warrant**

An inspector executing a warrant must be in possession of:

- (a) the warrant issued by the magistrate under section 69EH or 69EHA, or a copy of the warrant as so issued; or
- (b) the form of warrant completed under subsection 69EHB(6), or a copy of the form as so completed.

**69EDC Details of warrant etc. to be given to occupier**

- (1) An inspector must comply with subsection (2) if:
  - (a) a warrant is being executed in relation to premises; and
  - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises.
- (2) The inspector executing the warrant must, as soon as practicable:
  - (a) do one of the following:
    - (i) if the warrant was issued under section 69EH or 69EHA—make a copy of the warrant available to the occupier or other person (which need not include the signature of the magistrate who issued it);
    - (ii) if the warrant was signed by a magistrate under section 69EHB—make a copy of the form of warrant completed under subsection 69EHB(6) available to the occupier or other person; and
  - (b) inform the occupier or other person of the rights and responsibilities of the occupier or other person under Division 5 of this Part.

**69EDD Expert assistance to operate electronic equipment**

- (1) This section applies if an inspector enters premises under a warrant.

**Securing equipment**

- (2) An inspector may do whatever is necessary to secure any electronic equipment that is on the premises if the inspector believes on reasonable grounds that:
  - (a) in the case of a monitoring warrant:
    - (i) there is relevant data on the premises; and

- (ii) the relevant data may be accessible by operating the equipment; and
- (iii) expert assistance is required to operate the equipment; and
- (iv) the relevant data may be destroyed, altered or otherwise interfered with, if the inspector does not take action under this subsection; and
- (b) in the case of an investigation warrant:
  - (i) there is evidential material of the kind specified in the warrant on the premises; and
  - (ii) the evidential material may be accessible by operating the electronic equipment; and
  - (iii) expert assistance is required to operate the equipment; and
  - (iv) the evidential material may be destroyed, altered or otherwise interfered with, if the inspector does not take action under this subsection.

The equipment may be secured by locking it up, placing a guard or any other means.

- (3) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of:
  - (a) the inspector's intention to secure the equipment; and
  - (b) the fact that the equipment may be secured for up to 72 hours.

Period equipment may be secured

- (4) The equipment may be secured until the earlier of the following happens:
  - (a) the 72-hour period ends;
  - (b) the equipment has been operated by the expert.

Note: For compensation for damage to electronic equipment, see section 69EDE.

Extensions

- (5) The inspector may apply to a magistrate for an extension of the 72-hour period, if the inspector believes on reasonable grounds that the equipment needs to be secured for a longer period.

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- (6) Before making the application, the inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of the inspector's intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.
  - (7) The provisions of this Part relating to the issue of a warrant apply, with such modifications as are necessary, to the issue of an extension.
  - (8) The 72-hour period may be extended more than once.

#### 69EDE Compensation for damage to electronic equipment

- (1) This section applies if:
  - (a) as a result of equipment being operated as mentioned in this Part:
    - (i) damage is caused to the equipment; or
    - (ii) the data recorded on the equipment is damaged; or
    - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
  - (b) the damage or corruption occurs because:
    - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
    - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The APVMA must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the APVMA and the owner or user agree on.
- (3) However, if the owner or user and the APVMA fail to agree, the owner or user may institute proceedings in a court of competent jurisdiction for such reasonable amount of compensation as the court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees or agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

## Division 4—Execution of an investigation warrant interrupted

### 69EE Completing execution of an investigation warrant after temporary cessation

- (1) This section applies if an inspector, and all persons assisting, who are executing an investigation warrant in relation to premises temporarily cease its execution and leave the premises.
- (2) The inspector, and persons assisting, may complete the execution of the warrant if:
  - (a) the warrant is still in force; and
  - (b) the inspector and persons assisting are absent from the premises:
    - (i) for not more than 1 hour; or
    - (ii) if there is an emergency situation, for not more than 12 hours or such longer period as allowed by a magistrate under subsection (5); or
    - (iii) for a longer period if the occupier of the premises consents in writing.

#### Application for extension in emergency situation

- (3) An inspector, or person assisting, may apply to a magistrate for an extension of the 12-hour period mentioned in subparagraph (2)(b)(ii) if:
  - (a) there is an emergency situation; and
  - (b) the inspector or person assisting believes on reasonable grounds that the inspector and the persons assisting will not be able to return to the premises within that period.
- (4) If it is practicable to do so, before making the application, the inspector or person assisting must give notice to the occupier of the premises of his or her intention to apply for an extension.

#### Extension in emergency situation

- (5) A magistrate may extend the period during which the inspector and persons assisting may be away from the premises if:
  - (a) an application is made under subsection (3); and



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- (b) the magistrate is satisfied, by information on oath or affirmation, that there are exceptional circumstances that justify the extension; and
  - (c) the extension would not result in the period ending after the warrant ceases to be in force.

**69EEA Completing execution of an investigation warrant stopped by court order**

An inspector, and any persons assisting, may complete the execution of an investigation warrant that has been stopped by an order of a court if:

- (a) the order is later revoked or reversed on appeal; and
- (b) the warrant is still in force when the order is revoked or reversed.

**Division 5—Occupier’s rights and responsibilities**

**69EF Occupier entitled to observe execution of warrant**

- (1) The occupier of premises to which a warrant relates, or another person who apparently represents the occupier, is entitled to observe the execution of the warrant if the occupier or other person is present at the premises while the warrant is being executed.
- (2) The right to observe the execution of the warrant ceases if the occupier or other person impedes that execution.
- (3) This section does not prevent the execution of the warrant in 2 or more areas of the premises at the same time.

**69EFA Occupier to provide inspector with facilities and assistance**

- (1) The occupier of premises to which a warrant relates, or another person who apparently represents the occupier, must provide:
  - (a) an inspector executing the warrant; and
  - (b) any person assisting;with all reasonable facilities and assistance for the effective exercise of their powers.
- (2) A person commits an offence if:

- (a) the person is subject to subsection (1); and
- (b) the person fails to comply with that subsection.

Penalty for contravention of this subsection: 30 penalty units.

## Division 6—General provisions relating to seizure

### 69EG Copies of seized things to be provided

- (1) Subject to subsection (2), if an inspector who has entered premises under an investigation warrant 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) However, the inspector is not required to comply with the request if possession of the document, film, computer file, thing or information by the occupier or other person could constitute an offence against a law of the Commonwealth.

### 69EGA Receipts for seized things

- (1) An inspector must provide a receipt for a thing that is seized under an investigation warrant.
- (2) One receipt may cover 2 or more things seized.

### 69EGB Return of seized things

- (1) An inspector must take reasonable steps to return a thing seized under an investigation warrant when the earliest of the following happens:
  - (a) the reason for the thing's seizure no longer exists;
  - (b) it is decided that the thing is not to be used in evidence;
  - (c) the period of 60 days after the thing's seizure ends.

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Exceptions

- (2) Subsection (1):
  - (a) is subject to any contrary order of a court; and
  - (b) does not apply if the thing:
    - (i) is forfeited or forfeitable to the Commonwealth (see section 69ET); or
    - (ii) is the subject of a dispute as to ownership.
- (3) The inspector is not required to take reasonable steps to return a thing because of paragraph (1)(c) if:
  - (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 69EGC; or
  - (c) the inspector is authorised by this Part or by an order of a court to keep, destroy or dispose of the thing.

**69EGC Magistrate may permit a thing to be kept**

- (1) If:
  - (a) before the end of 60 days after an inspector seizes a thing under an investigation warrant; or
  - (b) before the end of a period previously stated in an order 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 magistrate for an order that he or she may keep the thing for a further period.
- (2) Before making the application, the inspector must:
  - (a) take reasonable steps to discover who has an interest in the retention of the thing; and
  - (b) if it is practicable to do so, notify each person who the inspector believes has such an interest of the proposed application.

Order to retain thing

- (3) A magistrate may order that the thing may continue to be retained for a period specified in the order if the magistrate is satisfied that it is necessary for the thing to continue to be retained:
  - (a) for the purposes of an investigation as to whether:
    - (i) an offence against this Act or the Collection Act has been committed; or
    - (ii) a civil penalty provision has been contravened; or
  - (b) for the purposes of an investigation as to whether an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act or the Collection Act has been committed; or
  - (c) to enable evidence of:
    - (i) an offence mentioned in paragraph (a) or (b) to be secured for the purposes of a prosecution; or
    - (ii) a contravention mentioned in paragraph (a) to be secured for the purposes of proceedings for a civil penalty order.
- (4) The period specified must not exceed 3 years.

69EGD Disposal of things

- (1) The APVMA may dispose of a thing seized under an investigation warrant if:
  - (a) an inspector has taken reasonable steps to return the thing to a person; and
  - (b) either:
    - (i) the inspector has been unable to locate the person; or
    - (ii) the person has refused to take possession of the thing.
- (2) The APVMA may dispose of the thing in such manner as it considers appropriate.

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## Division 7—Applying for warrants etc.

### 69EH Monitoring warrants

#### Application for warrant

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

#### Issue of warrant

- (2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more inspectors should have access to the premises for the purpose of determining whether:
  - (a) this Act, or the Collection Act, has been, or is being, complied with; or
  - (b) information provided under this Act, or the Collection Act, is correct; or
  - (c) levy is payable under the Collection Act.
- (3) However, the magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the monitoring warrant is being sought.

#### Content of warrant

- (4) The monitoring warrant must:
  - (a) describe the premises to which the warrant relates; and
  - (b) state that the warrant is issued under this section; and
  - (c) state the purpose for which the warrant is issued; and
  - (d) authorise one or more inspectors (whether or not named in the warrant) from time to time while the warrant remains in force:
    - (i) to enter the premises; and
    - (ii) to exercise the monitoring powers in relation to the premises; and
  - (e) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and

- (f) specify the day (not more than 6 months after the issue of the warrant) the warrant ceases to be in force.
- (5) If the application for the warrant is made under section 69EHB, this section applies as if paragraph (4)(f) required the warrant to specify the period for which the warrant is to remain in force, which must not be more than 48 hours.

#### 69EHA Investigation warrants

##### Application for warrant

- (1) An inspector may apply to a magistrate for an investigation warrant under this section in relation to premises.

##### Issue of warrant

- (2) The magistrate may issue the investigation warrant if the magistrate is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, evidential material on the premises.
- (3) However, the magistrate must not issue the investigation warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

##### Content of warrant

- (4) The investigation warrant must:
  - (a) state the offence or offences, or civil penalty provision or civil penalty provisions, to which the warrant relates; and
  - (b) describe the premises to which the warrant relates; and
  - (c) state that the warrant is issued under this section; and
  - (d) specify the kinds of evidential material that are to be searched for under the warrant; and
  - (e) state that the evidential material specified may be seized under the warrant; and
  - (f) state that any thing found in the course of executing the warrant that the person executing the warrant believes on

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reasonable grounds to be evidence of one or more of the following:

- (i) the commission of an offence against this Act or the Collection Act;
  - (ii) the contravention of a civil penalty provision;
  - (iii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act or the Collection Act;
- may be seized under the warrant; and
- (g) name one or more inspectors; and
  - (h) authorise the inspectors named in the warrant:
    - (i) to enter the premises; and
    - (ii) to exercise the powers set out in Divisions 2, 3 and 4 of this Part in relation to the premises; and
  - (i) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and
  - (j) specify the day (not more than 1 week after the issue of the warrant) the warrant ceases to be in force.
- (5) If the application for the warrant is made under section 69EHB, this section applies as if:
- (a) subsection (2) referred to 48 hours rather than 72 hours; and
  - (b) paragraph (4)(j) required the warrant to specify the period for which the warrant is to remain in force, which must not be more than 48 hours.

#### 69EHB Warrants by telephone, fax etc.

##### Application for warrant

- (1) An inspector may apply to a magistrate by telephone, fax or other electronic means for a warrant in relation to premises:
  - (a) in an urgent case; or
  - (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (2) The magistrate may require communication by voice to the extent that it is practicable in the circumstances.
- (3) Before applying for a warrant, the inspector must:

- (a) in the case of a monitoring warrant—prepare an information of the kind mentioned in subsection 69EH(2); and
  - (b) in the case of an investigation warrant—prepare an information of the kind mentioned in subsection 69EHA(2);
- in relation to the premises that sets out the grounds on which the warrant is sought. If it is necessary to do so, the inspector may apply for the warrant before the information is sworn or affirmed.

Magistrate may complete and sign warrant

- (4) The magistrate may complete and sign the same warrant that would have been issued under section 69EH or 69EHA if the magistrate is satisfied that there are reasonable grounds for doing so:
  - (a) after considering the terms of the information; and
  - (b) after receiving such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.
- (5) After completing and signing the warrant, the magistrate must inform the inspector, by telephone, fax or other electronic means, of:
  - (a) the terms of the warrant; and
  - (b) the day and time the warrant was signed.

Obligations on inspector

- (6) The inspector must then do the following:
  - (a) complete and sign a form of warrant in the same terms as the warrant completed and signed by the magistrate;
  - (b) state on the form the following:
    - (i) the name of the magistrate;
    - (ii) the day and time the warrant was signed by the magistrate;
  - (c) send the following to the magistrate:
    - (i) the form of warrant completed by the inspector;
    - (ii) the information referred to in subsection (3), which must have been duly sworn or affirmed.
- (7) The inspector must comply with paragraph (6)(c) by the end of the day after the earlier of the following:
  - (a) the day the warrant ceases to be in force;



- (b) the day the warrant is executed.

Magistrate to attach documents together

- (8) The magistrate must attach the documents provided under paragraph (6)(c) to the warrant signed by the magistrate.

#### 69EHC Authority of warrant

- (1) A form of warrant duly completed under subsection 69EHB(6) is authority for the same powers as are authorised by the warrant signed by the magistrate under subsection 69EHB(4).
- (2) In any proceedings, a court is to assume (unless the contrary is proved) that an exercise of power was not authorised by a warrant under section 69EHB if:
- (a) it is material, in those proceedings, for the court to be satisfied that the exercise of power was authorised by that section; and
  - (b) the warrant signed by the inspector authorising the exercise of the power is not produced in evidence.

#### 69EHD Offence relating to warrants by telephone, fax etc.

An inspector must not:

- (a) state in a document that purports to be a form of warrant under section 69EHB the name of a magistrate unless that magistrate signed the warrant; or
- (b) state on a form of warrant under that section a matter that, to the inspector's knowledge, departs in a material particular from the terms of the warrant signed by the magistrate under that section; or
- (c) purport to execute, or present to another person, a document that purports to be a form of warrant under that section that the inspector knows departs in a material particular from the terms of a warrant signed by a magistrate under that section; or
- (d) purport to execute, or present to another person, a document that purports to be a form of warrant under that section where the inspector knows that no warrant in the terms of the form of warrant has been completed and signed by a magistrate; or

- (e) give to a magistrate a form of warrant under that section that is not the form of warrant that the inspector purported to execute.

Penalty: Imprisonment for 2 years.

## Division 8—Powers of magistrates

### 69EI Powers of issuing officers

Powers conferred personally

- (1) A power conferred on a magistrate by this Part is conferred on the magistrate:
  - (a) in a personal capacity; and
  - (b) not as a court or a member of a court.

Powers need not be accepted

- (2) The magistrate need not accept the power conferred.

Protection and immunity

- (3) A magistrate exercising a power conferred by this Part has the same protection and immunity as if the magistrate were exercising the power:
  - (a) as the court of which the magistrate is a member; or
  - (b) as a member of the court of which the magistrate is a member.

### 65 Division 4 of Part 7A (heading)

Repeal the heading.

### 66 Before section 69EP

Insert:

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## Part 7AB—Enforcement

### Division 1—Civil penalty orders

#### Subdivision A—Obtaining a civil penalty order

##### 69EJ Civil penalty orders

###### Application for order

- (1) The APVMA may, on behalf of the Commonwealth, apply to a court of competent jurisdiction for an order that a person, who is alleged to have contravened a civil penalty provision, pay the Commonwealth a pecuniary penalty.
- (2) The APVMA must make the application within 6 years of the alleged contravention.

###### Court may order person to pay pecuniary penalty

- (3) If the court is satisfied that the person has contravened the civil penalty provision, the court may order the person to pay to the Commonwealth such pecuniary penalty for the contravention as the court determines to be appropriate.

Note: Section 69EJA sets out the maximum penalty that the court may order the person to pay.

- (4) An order under subsection (3) is a ***civil penalty order***.

###### Determining pecuniary penalty

- (5) In determining the pecuniary penalty, the court may take into account all relevant matters, including:
  - (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered because of the contravention; and
  - (c) the circumstances in which the contravention took place; and
  - (d) whether the person has previously been found by a court to have engaged in any similar conduct; and
  - (e) the extent to which the person has cooperated with the authorities; and

- (f) if the person is a body corporate:
  - (i) the level of the employees, officers or agents of the body corporate involved in the contravention; and
  - (ii) whether the body corporate exercised due diligence to avoid the contravention; and
  - (iii) whether the body corporate had a corporate culture conducive to compliance.

#### 69EJA Maximum penalties for contravention of civil penalty provisions

##### Penalty for body corporate

- (1) The pecuniary penalty for a contravention of a civil penalty provision by a body corporate must not exceed 5 times the amount of the maximum monetary penalty that could be imposed by a court if the body corporate were convicted of an offence constituted by conduct that is the same as the conduct constituting the contravention.

##### Penalty for individuals

- (2) The pecuniary penalty for a contravention of a civil penalty provision by an individual must not exceed 3 times the amount of the maximum monetary penalty that could be imposed by a court if the person were convicted of an offence constituted by conduct that is the same as the conduct constituting the contravention.

##### Penalty for contravention of subsection 69EJR(1)

- (3) The pecuniary penalty for a contravention, by an executive officer of a body corporate, of subsection 69EJR(1) in relation to the contravention by the body corporate of a civil penalty provision must not exceed 12% of the amount of the maximum monetary penalty that could be imposed on the body corporate for the contravention.

#### 69EJB Civil enforcement of penalty

- (1) A pecuniary penalty is a debt payable to the Commonwealth.
- (2) The Commonwealth may enforce a civil penalty order as if it were an order made in civil proceedings against a person to recover a

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debt due by the person. The debt arising from the order is taken to be a judgement debt.

**69EJC Conduct contravening more than one civil penalty provision**

- (1) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Division against a person in relation to the contravention of any one or more of those provisions.
- (2) However, the person is not liable to more than one pecuniary penalty under this Division in relation to the same conduct.

**69EJD Multiple contraventions**

- (1) A court may make a single civil penalty order against a person for multiple contraventions of a civil penalty provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form, or are part of, a series of contraventions of the same or a similar character.

Note: For continuing contraventions of civil penalty provisions, see section 69EJL.

- (2) However, the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions.

**69EJE Proceedings may be heard together**

A court may direct that 2 or more proceedings for civil penalty orders be heard together.

**69EJF Civil evidence and procedure rules for civil penalty orders**

A court must apply the rules of evidence and procedure for civil matters when hearing and determining an application for a civil penalty order.

**69EJG Contravening a civil penalty provision is not an offence**

A contravention of a civil penalty provision is not an offence.

Subdivision B—Civil proceedings and criminal proceedings

69EJH Civil proceedings after criminal proceedings

A court may not make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is the same, or substantially the same, as the conduct constituting the contravention.

69EJI Criminal proceedings during civil proceedings

- (1) Proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if:
  - (a) criminal proceedings are commenced or have already been commenced against the person for an offence; and
  - (b) the offence is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order (the *civil proceedings*) may be resumed if the person is not convicted of the offence. Otherwise, the civil proceedings are dismissed.

69EJJ Criminal proceedings after civil proceedings

Criminal proceedings may be commenced against a person for conduct that is the same, or substantially the same, as conduct that would constitute a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person in relation to the contravention.

69EJK Evidence given in civil proceedings not admissible in criminal proceedings

- (1) Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual for an offence if:
  - (a) the individual previously gave the evidence or produced the documents in proceedings for a civil penalty order against the

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individual for an alleged contravention of a civil penalty provision (whether or not the order was made); and

- (b) the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.

- (2) However, subsection (1) does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

### Subdivision C—Miscellaneous

#### 69EJL Continuing contraventions of civil penalty provisions

- (1) If an act or thing is required under a civil penalty provision to be done:
- (a) within a particular period; or
  - (b) before a particular time;
- then the obligation to do that act or thing continues until the act or thing is done (even if the period has expired or the time has passed).
- (2) A person who contravenes a civil penalty provision that requires an act or thing to be done:
- (a) within a particular period; or
  - (b) before a particular time;
- commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant civil penalty order is made or any later day).

#### 69EJM Ancillary contravention of civil penalty provisions

- (1) A person must not:
- (a) attempt to contravene a civil penalty provision; or
  - (b) aid, abet, counsel or procure a contravention of a civil penalty provision; or
  - (c) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
  - (d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision; or

- (e) conspire with others to effect a contravention of a civil penalty provision.

Civil penalty

- (2) A person who contravenes subsection (1) in relation to a civil penalty provision is taken to have contravened the provision.

Note: Section 69EJO (which provides that a person's state of mind does not need to be proven in relation to a civil penalty provision) does not apply to the extent that proceedings relate to the contravention of subsection (1).

69EJN Mistake of fact

- (1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if:
  - (a) at or before the time of the conduct constituting the contravention, the person:
    - (i) considered whether or not facts existed; and
    - (ii) was under a mistaken but reasonable belief about those facts; and
  - (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.
- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
  - (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
  - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.
- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.



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**69EJO State of mind**

- (1) In proceedings for a civil penalty order against a person for a contravention of a civil penalty provision, it is not necessary to prove:
  - (a) the person's intention; or
  - (b) the person's knowledge; or
  - (c) the person's recklessness; or
  - (d) the person's negligence; or
  - (e) any other state of mind of the person.
- (2) Subsection (1) does not apply to the extent that the proceedings relate to a contravention of subsection 69EJM(1) (which is about ancillary contraventions of civil penalty provisions).
- (3) Subsection (1) does not affect the operation of section 69EJN (which is about mistake of fact).
- (4) Subsection (1) does not apply to the extent that the civil penalty provision, or a provision that relates to the civil penalty provision, expressly provides otherwise.

**69EJP Evidential burden for exceptions**

In proceedings for a civil penalty order, a person who wishes to rely on any exception, exemption, excuse, qualification or justification in relation to a civil penalty provision bears an evidential burden in relation to that matter.

**69EJQ Liability of body corporate for actions by employees, agents or officers**

If an element of a civil penalty provision is done by an employee, agent or officer of a body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, the element must also be attributed to the body corporate.

**69EJR Liability of executive officers**

- (1) An executive officer of a body corporate contravenes this subsection if:

- (a) the body corporate contravenes a civil penalty provision; and
- (b) the officer knew that the contravention would occur; and
- (c) the officer was in a position to influence the conduct of the body in relation to the contravention; and
- (d) the officer failed to take all reasonable steps to prevent the contravention.

(2) Subsection (1) is a civil penalty provision.

Note: Subdivision A of this Division provides for pecuniary penalties for contraventions of civil penalty provisions.

**69EJS Establishing whether an executive officer took reasonable steps to prevent the contravention of a civil penalty provision**

- (1) For the purposes of section 69EJR, in determining whether an executive officer of a body corporate failed to take all reasonable steps to prevent the contravention of a civil penalty provision, a court is to have regard to:
  - (a) what action (if any) the officer took towards ensuring that the body's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with this Act or the Collection Act, in so far as those requirements affect the employees, agents or contractors concerned; and
  - (b) what action (if any) the officer took when he or she became aware that the body was contravening this Act or the Collection Act.
- (2) This section does not, by implication, limit the generality of section 69EJR.

**Division 2—Infringement notices**

**69EK When an infringement notice may be given**

- (1) If an inspector has reasonable grounds to believe that a person has contravened a prescribed civil penalty provision, the inspector may give the person an infringement notice for the alleged contravention.

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- (2) The infringement notice must be given within 12 months after the day the contravention is alleged to have taken place.
  - (3) A single infringement notice must relate only to a single contravention of a single prescribed civil penalty provision.

#### 69EKA Matters to be included in an infringement notice

- (1) An infringement notice must:
  - (a) be identified by a unique number; and
  - (b) state the day it is given; and
  - (c) state the name of the person to whom the notice is given; and
  - (d) state the name of the person who gave the notice; and
  - (e) give brief details of the alleged contravention, including:
    - (i) the provision that was allegedly contravened; and
    - (ii) the maximum penalty that a court could impose for the contravention; and
    - (iii) the time (if known) and day of, and the place of, the alleged contravention; and
  - (f) state the amount that is payable under the notice; and
  - (g) give an explanation of how payment of the amount is to be made; and
  - (h) state that, if the person to whom the notice is given pays the amount within 28 days after the day the notice is given, then (unless the notice is withdrawn) proceedings seeking a civil penalty order will not be brought in relation to the alleged contravention; and
  - (i) state that payment of the amount is not an admission of liability; and
  - (j) state that the person may apply to the APVMA to have the period in which to pay the amount extended; and
  - (k) state that the person may choose not to pay the amount and, if the person does so, proceedings seeking a civil penalty order may be brought in relation to the alleged contravention; and
  - (l) set out how the notice can be withdrawn; and
  - (m) state that if the notice is withdrawn proceedings seeking a civil penalty order may be brought in relation to the alleged contravention; and

- (n) state that the person may make written representations to the APVMA seeking the withdrawal of the notice.
- (2) For the purposes of paragraph (1)(f), the amount to be stated in the notice for the alleged contravention of the provision must not exceed one-fifth of the maximum penalty that a court could impose on the person for that contravention.
- (3) The regulations may, subject to subsection (2), provide for a scale of amounts that may apply for an alleged contravention.

**69EKB Extension of time to pay amount**

- (1) A person to whom an infringement notice has been given may apply to the APVMA for an extension of the period referred to in paragraph 69EKA(1)(h).
- (2) If the application is made before the end of that period, the APVMA may, in writing, extend that period. The APVMA may do so before or after the end of that period.
- (3) If the APVMA extends that period, a reference in this Division to the period referred to in paragraph 69EKA(1)(h) is taken to be a reference to that period so extended.
- (4) If the APVMA does not extend that period, a reference in this Division to the period referred to in paragraph 69EKA(1)(h) is taken to be a reference to the period that ends on the later of the following days:
  - (a) the day that is the last day of the period referred to in paragraph 69EKA(1)(h);
  - (b) the day that is 7 days after the day the person was given notice of the APVMA's decision not to extend.
- (5) The APVMA may extend the period more than once under subsection (2).

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**69EKC Withdrawal of an infringement notice****Representations seeking withdrawal of notice**

- (1) A person to whom an infringement notice has been given may make written representations to the APVMA seeking the withdrawal of the notice.

**Withdrawal of notice**

- (2) The APVMA may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).
- (3) When deciding whether or not to withdraw an infringement notice (the ***relevant infringement notice***), the APVMA:
- (a) must take into account any written representations seeking the withdrawal that were given by the person to the APVMA; and
  - (b) may take into account the following:
    - (i) whether a court has previously imposed a penalty on the person for a contravention of a prescribed civil penalty provision if the contravention is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the relevant infringement notice;
    - (ii) the circumstances of the alleged contravention;
    - (iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of a prescribed civil penalty provision if the contravention is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the relevant infringement notice;
    - (iv) any other matter the APVMA considers relevant.

**Notice of withdrawal**

- (4) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:
- (a) the person's name and address; and
  - (b) the day the infringement notice was given; and

- (c) the identifying number of the infringement notice; and
- (d) that the infringement notice is withdrawn; and
- (e) that proceedings seeking a civil penalty order may be brought in relation to the alleged contravention.

Refund of amount if infringement notice withdrawn

- (5) If:
  - (a) the APVMA withdraws the infringement notice; and
  - (b) the person has already paid the amount stated in the notice;the Commonwealth must refund to the person an amount equal to the amount paid.

#### 69EKD Effect of payment of amount

- (1) If the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount stated in the notice before the end of the period referred to in paragraph 69EKA(1)(h):
  - (a) any liability of the person for the alleged contravention is discharged; and
  - (b) proceedings seeking a civil penalty order may not be brought against the person in relation to the alleged contravention; and
  - (c) the person is not regarded as having admitted liability for the alleged contravention.
- (2) Subsection (1) does not apply if the notice has been withdrawn.

#### 69EKE Effect of this Division

This Division does not:

- (a) require an infringement notice to be given to a person for an alleged contravention of a prescribed civil penalty provision; or
- (b) affect the liability of a person for an alleged contravention of a prescribed civil penalty provision if:
  - (i) the person does not comply with an infringement notice given to the person for the contravention; or

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- (ii) an infringement notice is not given to the person for the contravention; or
  - (iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or
  - (c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of a prescribed civil penalty provision; or
  - (d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened a prescribed civil penalty provision.

### Division 3—Enforceable undertakings

#### 69EL Acceptance of undertakings

- (1) The APVMA may accept any of the following undertakings:
  - (a) a written undertaking given by a person that the person will, in order to comply with a provision of this Act or the Collection Act, take specified action;
  - (b) a written undertaking given by a person that the person will, in order to comply with a provision of this Act or the Collection Act, refrain from taking specified action;
  - (c) a written undertaking given by a person that the person will take specified action directed towards ensuring one or more of the following:
    - (i) that the person does not commit an offence against this Act or the Collection Act;
    - (ii) that the person does not contravene a civil penalty provision;
    - (iii) that the person is unlikely to commit an offence against this Act or the Collection Act, or to contravene a civil penalty provision, in the future.
- (2) The undertaking must be expressed to be an undertaking under this section.
- (3) The person may withdraw or vary the undertaking at any time, but only with the written consent of the APVMA.
- (4) The APVMA's consent is not a legislative instrument.

- (5) The APVMA may, by written notice given to the person, cancel the undertaking.
- (6) The APVMA must publish the undertaking on the APVMA's website.
- (7) However, the APVMA is not required to publish so much of the undertaking that the APVMA is satisfied:
  - (a) is confidential commercial information; or
  - (b) is personal information (within the meaning of the *Privacy Act 1988*); or
  - (c) should not be disclosed because it would be against the public interest to do so.

69ELA Enforcement of undertakings

- (1) If:
  - (a) a person has given an undertaking under section 69EL; and
  - (b) the undertaking has not been withdrawn or cancelled; and
  - (c) the APVMA considers that the person has breached the undertaking;the APVMA may, on behalf of the Commonwealth, apply to a court of competent jurisdiction for an order under subsection (2).
- (2) If the court is satisfied that the person has breached the undertaking, the court may make any or all of the following orders:
  - (a) an order directing the person to comply with the undertaking;
  - (b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
  - (c) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
  - (d) any other order that the court considers appropriate.



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## Division 4—Injunctions

### 69EM Grant of injunctions

#### Restraining injunctions

- (1) If a person has engaged, is engaging or is proposing to engage, in conduct that constitutes an offence against this Act or the Collection Act or a contravention of a civil penalty provision, a court of competent jurisdiction may, on application by any person, grant an injunction:
  - (a) restraining the first-mentioned person from engaging in the conduct; and
  - (b) if, in the court's opinion, it is desirable to do so—requiring the first-mentioned person to do a thing.

#### Performance injunctions

- (2) If:
  - (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do a thing; and
  - (b) the refusal or failure was, is or would be, an offence against this Act or the Collection Act or a contravention of a civil penalty provision;the court may, on application by any person, grant an injunction requiring the first-mentioned person to do that thing.

#### Grant of interim injunctions

- (3) Before deciding an application for an injunction under this section, the court may grant an interim injunction:
  - (a) restraining a person from engaging in conduct; or
  - (b) requiring a person to do a thing.

### 69EMA Discharging or varying injunctions

A court may discharge or vary an injunction granted by that court under this Division.

69EMB Certain limits on granting injunctions not to apply

Restraining injunctions

- (1) The power of a court under this Division to grant an injunction restraining a person from engaging in conduct may be exercised:
  - (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
  - (b) whether or not the person has previously engaged in conduct of that kind; and
  - (c) whether or not the conduct involves a serious and immediate risk of:
    - (i) an effect that is harmful to human beings; or
    - (ii) an unintended effect that is harmful to animals, plants or things, or to the environment.

Performance injunctions

- (2) The power of a court under this Division to grant an injunction requiring a person to do a thing may be exercised:
  - (a) whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that thing; and
  - (b) whether or not the person has previously refused or failed to do that thing; and
  - (c) whether or not the conduct involves a serious and immediate risk of:
    - (i) an effect that is harmful to human beings; or
    - (ii) an unintended effect that is harmful to animals, plants or things, or to the environment.

69EMC Other powers of a court unaffected

The powers conferred on a court under this Division are in addition to, and not instead of, any other powers of the court, whether conferred by this Act or otherwise.

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## Division 5—Substantiation notices

69EN APVMA may require claims to be substantiated etc.

- (1) This section applies if a person has made a claim or representation in relation to:
  - (a) the import, or possible import, of a chemical product by the person or another person; or
  - (b) the export of a chemical product by the person or another person.
- (2) The APVMA may give the person who made the claim or representation a written notice that requires the person to do either or both of the following:
  - (a) give information or produce documents to the APVMA that could be capable of substantiating or supporting the claim or representation;
  - (b) give information or produce documents to the APVMA that are of a kind specified in the notice;within 21 days after the notice is given to the person who made the claim or representation.
- (3) Any kind of information or documents that the APVMA specifies under paragraph (2)(b) must be a kind that the APVMA is satisfied is relevant to substantiating or supporting the claim or representation.
- (4) The notice must:
  - (a) name the person to whom it is given; and
  - (b) specify the claim or representation to which it relates; and
  - (c) explain the effect of sections 69ENA and 69ENB.
- (5) The notice may relate to more than one claim or representation that the person has made.
- (6) This section does not apply to a person who made the claim or representation if the person:
  - (a) made the claim or representation by publishing it on behalf of another person in the course of carrying on a business of providing information; and

- (b) does not have a commercial relationship with the other person other than for the purpose of:
  - (i) publishing claims or representations promoting, or apparently intended to promote, the other person's business or other activities; or
  - (ii) the other person supplying goods or services.

#### 69ENA Compliance with substantiation notices

- (1) A person given a substantiation notice under section 69EN must comply with the notice:
  - (a) within the period specified in the notice; or
  - (b) within such further time as the APVMA allows under subsection (3).
- (2) A person given a substantiation notice under section 69EN may apply to the APVMA for further time to comply with the notice. An application must be in writing and made within 21 days after the notice is given to the person.
- (3) The APVMA may, by written notice given to the person, extend the period within which the person must comply with the notice.
- (4) Despite subsection (1), an individual may refuse or fail to give particular information or produce a particular document in compliance with a substantiation notice on the ground that the information, or production of the document, might tend to incriminate the individual or to expose the individual to a penalty.

#### 69ENB Failure to comply with substantiation notice

- (1) A person contravenes this section if:
  - (a) the person is given a notice under section 69EN; and
  - (b) the person fails to comply with the notice:
    - (i) within the period specified in the notice; or
    - (ii) if the APVMA has allowed the person further time under subsection 69ENA(3)—within such further time.
- (2) Subsection (1) does not apply if:
  - (a) the person is an individual; and

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- (b) the person refuses or fails to give particular information or produce a particular document in compliance with a substantiation notice; and
  - (c) the information, or production of the document, might tend to incriminate the individual or to expose the individual to a penalty.
- (3) A person commits an offence if the person contravenes subsection (1).
- Penalty: 50 penalty units.
- Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.
- (4) Subsection (1) is a civil penalty provision.
- Note 1: Division 1 of this Part provides for pecuniary penalties for contraventions of civil penalty provisions.
- Note 2: For the evidential burden in civil penalty proceedings in relation to the matter in subsection (2), see section 69EJP.

## Division 6—Formal warnings

### 69EO APVMA may issue a formal warning

- (1) The APVMA may, by written notice, issue a formal warning to a person if the APVMA has reasonable grounds to suspect that the person may have contravened this Act or the Collection Act.
- (2) A formal warning under subsection (1) is not a legislative instrument.

## Division 7—Miscellaneous

### 67 Subsections 69EP(6) and 69EP(7) (penalties)

Repeal the penalties, substitute:

Penalty: 50 penalty units.

### 68 Section 69EQ

Before “this Part”, insert “Part 7A, 7AA or”.

### 69 Section 69ER

Repeal the section, substitute:

69ER 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.

Penalty: 300 penalty units.

- (2) A person commits an offence if, in compliance or purported compliance with a requirement made by an inspector under Part 7A, Part 7AA or this Part or for the purposes of, or in connection with, any provision of Part 7A (other than section 69B), Part 7AA or 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.

Penalty: 60 penalty units.

70 Subsections 69ET(1), 69EU(1) and 69EU(3)

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Before “this Part”, insert “Part 7A, 7AA or”.

71 Paragraph 69EU(5)(a)

Before “this Part”, insert “Part 7A, 7AA or”.

72 Subsection 69F(2)

Omit “particular”.

73 Subsection 69F(5)

Omit “who has ceased to be an inspector must, as soon as practicable,”,  
substitute “must, within 14 days of ceasing to be an inspector,”.

74 After section 69H

Insert:

69HA Protection of inspectors etc.

An inspector, a person assisting an inspector, or other member of the staff of the APVMA, is not liable to any proceedings relating to an act done, or omitted to be done, in good faith in the performance or purported performance of a function, or in the exercise or purported exercise of a power, conferred on the inspector, person or member by this Act or the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*.

## Agricultural and Veterinary Chemicals Code Act 1994

75 Paragraph 6(2)(i)

Repeal the paragraph, substitute:

- (i) prescribing penalties of not more than 50 penalty units for offences against the regulations; or
- (j) declaring provisions of the regulations to be civil penalty provisions.

76 Subsection 3(1) of the Code set out in the Schedule

Insert:

***agvet law*** means:

- (a) the Agvet Code of this, or another, jurisdiction; or

- (b) the *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994*; or
- (c) the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

77 Subsection 3(1) of the Code set out in the Schedule

Insert:

***agvet penalty provision*** means:

- (a) a civil penalty provision of the Agvet Code of this, or another, jurisdiction; or
- (b) a civil penalty provision of the *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994*; or
- (c) a civil penalty provision of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

78 Subsection 3(1) of the Code set out in the Schedule

Insert:

***approved active constituent*** means an active constituent that complies with the relevant particulars set out in the Record for the constituent.

79 Subsection 3(1) of the Code set out in the Schedule

Insert:

***civil penalty order*** has the meaning given by section 145A.

80 Subsection 3(1) of the Code set out in the Schedule

Insert:

***civil penalty provision*** means a provision declared by this Code to be a civil penalty provision.

81 Subsection 3(1) of the Code set out in the Schedule (definition of *continued use*)

Repeal the definition.

82 Subsection 3(1) of the Code set out in the Schedule

Insert:

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**copy**, in relation to a warrant issued under section 143 or 143A (or a form of warrant completed under subsection 143B(6)), includes:

- (a) a copy sent by fax or other electronic means; or
- (b) a copy of a copy so sent.

83 Subsection 3(1) of the Code set out in the Schedule

Insert:

**damage**, in relation to data, includes damage by erasure of data or addition of other data.

84 Subsection 3(1) of the Code set out in the Schedule

Insert:

**data** includes:

- (a) information in any form; and
- (b) any program (or part of a program).

85 Subsection 3(1) of the Code set out in the Schedule

Insert:

**evidential burden**, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

86 Subsection 3(1) of the Code set out in the Schedule

Insert:

**evidential material** means any of the following:

- (a) a thing with respect to which an offence against an agvet law has been committed or is suspected, on reasonable grounds, to have been committed;
- (b) a thing with respect to which an agvet penalty provision has been contravened or is suspected, on reasonable grounds, to have been contravened;
- (c) a thing that there are reasonable grounds for suspecting will afford evidence as to the commission of such an offence or contravention of such an agvet penalty provision;

- (d) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of committing such an offence or contravening such an agvet penalty provision.

87 Subsection 3(1) of the Code set out in the Schedule

Insert:

***executive officer*** of a body corporate means a person, by whatever name called and whether or not a director of the body, who is concerned in, or takes part in, the management of the body.

88 Subsection 3(1) of the Code set out in the Schedule

Insert:

***investigation powers*** has the meaning given by sections 132A, 132B and 132C.

89 Subsection 3(1) of the Code set out in the Schedule

Insert:

***investigation warrant*** means:

- (a) a warrant issued under section 143A; or
- (b) a warrant signed by a magistrate under section 143B, being a warrant of the same kind as would have been issued under section 143A.

90 Subsection 3(1) of the Code set out in the Schedule

Insert:

***manufacture***, in relation to a chemical product, means:

- (a) to produce the chemical product; or
- (b) to engage in any part of the process of producing the chemical product, or any component or ingredient of the chemical product as part of that process, or of bringing the chemical product to its final state, including by formulating, processing, assembling, packaging, labelling, storing, sterilising, testing, supplying or releasing for supply.

91 Subsection 3(1) of the Code set out in the Schedule

Insert:

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***monitoring powers*** has the meaning given by sections 131A, 131B and 131C.

92 Subsection 3(1) of the Code set out in the Schedule

Insert:

***monitoring warrant*** means:

- (a) a warrant issued under section 143; or
- (b) a warrant signed by a magistrate under section 143B, being a warrant of the same kind as would have been issued under section 143.

93 Subsection 3(1) of the Code set out in the Schedule

Insert:

***person assisting*** an inspector:

- (a) in relation to the exercise of monitoring powers—has the meaning given by section 131D; and
- (b) in relation to the exercise of investigation powers—has the meaning given by section 132E.

94 Subsection 3(1) of the Code set out in the Schedule

Insert:

***prescribed civil penalty provision*** means a civil penalty provision that is prescribed by the regulations.

95 Subsection 3(1) of the Code set out in the Schedule

Repeal the definition, substitute:

***registered chemical product*** means a chemical product that complies with the relevant particulars set out in the Register for the product.

96 Subsection 3(1) of the Code set out in the Schedule

Insert:

***relevant data*** means information relevant to determining whether:

- (a) an agvet law has been, or is being, complied with; or
- (b) information provided under an agvet law is correct.

97 Subsection 3(1) of the Code set out in the Schedule

Insert:

*use*, in relation to an active constituent for a proposed or existing chemical product, or in relation to a chemical product, includes deal with the constituent or product.

98 Subsection 3(1) of the Code set out in the Schedule

Insert:

**warrant** means a monitoring warrant or an investigation warrant.

99 Section 8A of the Code set out in the Schedule

Renumber as section 8AA.

100 Division 5 of Part 2 of the Code set out in the Schedule (heading)

Repeal the heading, substitute:

**Division 5—Suspending and cancelling approvals and registrations**

101 Before section 35 of the Code set out in the Schedule

Insert:

34N Explanation of Division

- (1) This Division provides for suspension and cancellation of approvals and registrations.
- (2) In most cases, the APVMA must not suspend or cancel an approval or registration without giving notice to the holder (section 34P).
- (3) In most cases, the APVMA must not suspend or cancel an approval or registration without giving notice to the co-ordinators for other jurisdictions (section 35).
- (4) The APVMA may suspend or cancel an approval or registration:
  - (a) if it is necessary to prevent imminent risk to persons of death, serious injury or serious illness (section 35A); or
  - (b) if a condition of the approval or registration is contravened (section 36); or

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- (c) if the holder does not comply with a requirement under section 32, 33, 159, 160A or 161 to give the APVMA information, a report or a sample (section 38); or
  - (d) if the holder has given information that is false or misleading (section 38A); or
  - (e) if primary and secondary holders cannot agree on compensation during the course of arbitration (section 39); or
  - (f) if it appears to the APVMA that the criteria for approval or registration are not, or are no longer, satisfied (section 41); or
  - (g) at the request of the holder if the APVMA agrees with the reasons for the request (section 42).
- (5) A suspension must be for a stated period, and does not prevent cancellation (section 43).
  - (6) Section 44 deals with inter-related suspensions and cancellations.
  - (7) Suspensions and cancellations are done by entries in the Record, the Register and the relevant APVMA file (section 45).
  - (8) Notice of suspension and cancellation must be given to certain persons and must be published in the *Gazette* (section 45A).
  - (9) If the APVMA suspends or cancels the approval of a constituent or the registration of a product, then:
    - (a) certain persons are taken to have a permit to possess, have custody of or use of the constituent or product for a limited period (section 45B); and
    - (b) such persons may only supply the constituent or product in accordance with instructions contained in the notice provided by the APVMA under section 45A (section 45C).
  - (10) Section 46 sets out how suspensions and cancellations are revoked.

#### 34P Notice of proposed suspension or cancellation to be given to holder

- (1) The APVMA must not suspend or cancel an approval or registration unless it has given the holder a written notice that:
  - (a) states that the APVMA proposes to suspend or cancel the approval, or suspend or cancel the registration, as the case may be; and

- (b) sets out the reasons for the proposed suspension or cancellation; and
  - (c) invites the holder to make, within a reasonable period specified in the notice, submissions to the APVMA in relation to the proposed suspension or cancellation.
- (2) The APVMA must not make a decision relating to the proposed suspension or cancellation, as the case may be, until it has had regard to any submission made by the person in response to an invitation under paragraph (1)(c).
- (3) A written notice under subsection (1) must specify the period of the suspension.
- (4) Subsection (1) does not apply to a suspension or cancellation under section 34AA, 35A, 39 or 42.

102 Section 35 of the Code set out in the Schedule

Before “The APVMA”, insert “(1)”.

103 Section 35 of the Code set out in the Schedule

Omit “The APVMA”, substitute “Subject to subsection (2), the APVMA”.

104 At the end of section 35 of the Code set out in the Schedule

Add:

- (2) Subsection (1) does not apply to a suspension or cancellation under section 35A.

105 After section 35 of the Code set out in the Schedule

Insert:

35A Suspension or cancellation of registration if imminent risk to persons of death, serious injury or serious illness

- (1) The APVMA may suspend or cancel the registration of a chemical product if the APVMA considers that doing so is necessary to prevent imminent risk to persons of death, serious injury or serious illness.

Note: Section 43 deals with the effect of suspension of registration.

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- (2) The APVMA may suspend or cancel the registration of the product under subsection (1) whether or not the product is being used in accordance with instructions for its use that the APVMA has approved.

Note: Sections 34P and 35 do not apply to a suspension or cancellation under this section.

106 Section 37 of the Code set out in the Schedule

Repeal the section.

107 Section 38 of the Code set out in the Schedule (heading)

Repeal the heading, substitute:

38 Suspension of approval or registration for failing to give information, results, report or sample to APVMA

108 Subsection 38(1) of the Code set out in the Schedule

Repeal the subsection, substitute:

- (1) If the holder of an approval or registration fails, without reasonable excuse, to comply with a requirement contained in a notice under subsection 32(1) or section 33 or 159, or to comply with section 160A or 161, the APVMA may suspend the approval or registration.

109 Subsections 38(2) and (3) of the Code set out in the Schedule

After “information,” insert “results,”.

110 After section 38 of the Code set out in the Schedule

Insert:

38A Suspension or cancellation of approval or registration for providing false or misleading information

- (1) The APVMA may suspend or cancel the approval of an active constituent for a proposed or existing chemical product if:
- (a) the holder has given information:
    - (i) in or in connection with an application for approval of the constituent; or
    - (ii) in response to a notice under section 33 or 159; or

- (iii) as required by section 160A or 161; and
- (b) the information was false or misleading in a material particular.

(2) The APVMA may suspend or cancel the registration of a chemical product if:

- (a) the holder has given information:
  - (i) in or in connection with an application for registration of the product; or
  - (ii) in response to a notice under section 33 or 159; or
  - (iii) as required by section 160A or 161; and
- (b) the information was false or misleading in a material particular.

111 Paragraphs 39(1)(a) and (2)(a) of the Code set out in the Schedule  
Omit “applicant” (wherever occurring), substitute “holder”.

112 At the end of section 39 of the Code set out in the Schedule  
Add:

Note: Section 34P does not apply to a suspension or cancellation under this section.

113 Section 41 of the Code set out in the Schedule  
Repeal the section, substitute:

41 Suspension or cancellation of approval or registration for  
non-compliance with criteria for approval or registration or  
prescribed requirements

- (1) The APVMA may suspend or cancel the approval of an active constituent for a proposed or existing chemical product, or the registration of a chemical product, if it appears to the APVMA:
  - (a) for an active constituent—that the constituent may not meet the safety criteria; or
  - (b) for a chemical product—that the product may not meet the safety criteria, the trade criteria or the efficacy criteria; or
  - (c) that the constituent or product may not comply with any requirement prescribed by the regulations.



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- (2) The APVMA may suspend or cancel the approval of a label for containers for a chemical product if it appears to the APVMA that the label may not meet the labelling criteria or may not comply with any requirement prescribed by the regulations.

114 Section 42 of the Code set out in the Schedule (heading)

Repeal the heading, substitute:

42 Cancellation of approval or registration at request of holder

115 Paragraph 42(1)(a) of the Code set out in the Schedule

Omit “interested person in relation to an approval or registration or an approved person”, substitute “holder”.

116 At the end of section 42 of the Code set out in the Schedule

Add:

Note: Section 34P does not apply to a suspension or cancellation under this section.

117 Subsection 44(1) of the Code set out in the Schedule

Omit “only approval, or all the approvals,”, substitute “approval”.

118 Subsection 45(1) of the Code set out in the Schedule

Omit “(1)”.

119 Subsection 45(1) of the Code set out in the Schedule

Omit “relevant Record or Register or recording in the relevant file”, substitute “Record or Register (as appropriate) or recording in the relevant APVMA file”.

120 Section 45A of the Code set out in the Schedule

Repeal the section, substitute:

45A Notice of suspension or cancellation

- (1) If the APVMA suspends or cancels the approval of an active constituent, the registration of a chemical product or the approval of a label, it must:

- (a) give written notice of the suspension or cancellation to the holder and to any other person to whom, in its opinion, such a notice should be given; and
  - (b) publish in the *Gazette*, and in any other manner that it thinks appropriate, notice of the suspension or cancellation containing any information that it thinks relevant.
- (2) A notice under subsection (1):
  - (a) must include a statement that the APVMA will publish a notice of the suspension or cancellation in the *Gazette*; and
  - (b) in respect of a suspension or cancellation of the approval of an active constituent for a proposed or existing chemical product or the registration of a chemical product—must contain the following matters:
    - (i) brief reasons for the suspension or cancellation;
    - (ii) instructions for possessing, having custody of or using the constituent or product;
    - (iii) a warning of the consequences of failing to comply with the instructions, including a statement of any period after which it will be an offence against this Code to supply the constituent or product or to possess or have custody of the constituent or product with the intention of supplying it;
    - (iv) any other warnings or explanations in relation to the constituent or product that the APVMA thinks desirable.
- (3) If the reason, or one of the reasons, for the suspension or cancellation was:
  - (a) for an active constituent—that the constituent may not meet the safety criteria; or
  - (b) for a chemical product—that the product may not meet the safety criteria, the trade criteria or the efficacy criteria; or
  - (c) for a label—that the label may not meet the labelling criteria;the notice published in the *Gazette* must contain a statement to that effect and must include the matters mentioned in subparagraphs (2)(b)(ii), (iii) and (iv).
- (4) Subsection (1) does not require notice of the cancellation under section 42 of an approval or registration to be given to the holder who requested the cancellation.

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**45B Permit taken to have been issued**

Holder and certain persons taken to have permit

- (1) If notice of the suspension or cancellation is given to a holder or other person under paragraph 45A(1)(a), the holder or person is taken to have been issued with a permit to possess, have custody of or use the constituent or product, or the product as labelled, in accordance with the instructions contained in the notice.
- (2) A permit that is taken to have been issued under subsection (1) remains in force until:
  - (a) 1 year after the day of the suspension or cancellation; or
  - (b) the APVMA revokes the suspension or cancellation; or
  - (c) the APVMA, by notice published in the *Gazette*, declares that this subsection ceases to apply in respect of the constituent or product;whichever first occurs.

Certain persons who possess etc. constituent or product taken to have permit

- (3) If notice of the suspension or cancellation is published under paragraph 45A(1)(b), a person who possesses, has custody of or uses the constituent or product, or the product as labelled, in accordance with the instructions contained in the notice, is taken to have been issued with a permit to possess, have custody of or use the constituent or product, or product as labelled, in accordance with those instructions.
- (4) A permit that is taken to have been issued under subsection (3) remains in force until whichever of the events mentioned in paragraph (2)(a), (b) or (c) first occurs.

Deemed permit does not authorise manufacture or import

- (5) A permit that is taken to have been issued to a holder or other person under subsection (1) or (3) does not authorise the holder or person to manufacture or import the constituent or product.

45C Possession or custody with intention of supply

- (1) This section applies if a person has possession or custody of the constituent or product with the intention of supplying it.
- (2) If notice of the suspension or cancellation is:
  - (a) given to the person under paragraph 45A(1)(a); or
  - (b) published under paragraph 45A(1)(b);the person may only possess, have custody of or otherwise deal with the constituent or product if the possession, custody or dealing is in accordance with the instructions contained in the notice.
- (3) Subsection (2) does not apply to a possession, custody or dealing if the constituent was an approved active constituent or the product was a registered chemical product or a reserved chemical product when the possession, custody or use took place because of its having been approved or registered or having become reserved after its previous approval or registration had been cancelled.
- (4) Subsection (2) does not apply to a person (other than a person to whom a notice is given under paragraph 45A(1)(a)) if the person proves that, when the person possessed, had custody of or otherwise dealt with the constituent or product, the person did not know, and could not reasonably be expected to have known, of the existence of the notice published in the *Gazette* or that the possession, custody or dealing was not in accordance with the instructions contained in the *Gazette* notice.
- (5) A person commits an offence if the person contravenes subsection (2).

Penalty: 300 penalty units.

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

Note 2: A defendant bears a legal burden in relation to the matter in subsection (4). See section 13.4 of the *Criminal Code*.

- (6) For the purposes of subsection (5), strict liability applies to the physical elements of circumstance:
  - (a) in paragraph (2)(a), that the notice is a notice given to the person under paragraph 45A(1)(a); and
  - (b) in paragraph (2)(b), that the publishing of the notice was under paragraph 45A(1)(b).

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

(7) Subsection (2) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matter in subsection (3), see section 145CD.

121 Subsection 46(1) of the Code set out in the Schedule

Omit “relevant Record or Register”, substitute “Record or Register (as appropriate)”.

122 Subsection 46(2) of the Code set out in the Schedule

Repeal the subsection, substitute:

(2) If the APVMA revokes the suspension or cancellation of an approval or registration, it must, within 14 days:

- (a) give written notice of the revocation to the holder and to any other person to whom, in its opinion, such a notice should be given; and
- (b) publish in the *Gazette*, and in any other manner that it thinks appropriate, notice of the revocation containing any information that it thinks relevant.

123 Subsection 74(1) of the Code set out in the Schedule (penalty)

Repeal the penalty.

124 Subsection 74(1) of the Code set out in the Schedule (note)

Repeal the note.

125 After subsection 74(2) of the Code set out in the Schedule

Insert:

(2A) A person commits an offence if the person contravenes subsection (1).

Penalty: 200 penalty units.

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

126 Subsection 74(3) of the Code set out in the Schedule

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Omit “subsection (1)”, substitute “subsection (2A)”.

127 After subsection 74(3) of the Code set out in the Schedule

Insert:

(3A) Subsection (1) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matters in paragraphs (1)(a) to (d), see section 145CD.

128 Subsection 75(1) of the Code set out in the Schedule (penalty)

Repeal the penalty.

129 Subsection 75(1) of the Code set out in the Schedule (note)

Repeal the note.

130 After subsection 75(2) of the Code set out in the Schedule

Insert:

(2A) A person commits an offence if the person contravenes subsection (1).

Penalty: 200 penalty units.

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

131 Subsection 75(3) of the Code set out in the Schedule

Omit “subsection (1)”, substitute “subsection (2A)”.

132 After subsection 75(3) of the Code set out in the Schedule

Insert:

(3A) Subsection (1) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matters in paragraphs (1)(a) to (c), see section 145CD.

133 Subsection 76(1) of the Code set out in the Schedule (penalty)

Repeal the penalty.

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134 Subsection 76(1) of the Code set out in the Schedule (note)

Repeal the note.

135 After subsection 76(2) of the Code set out in the Schedule

Insert:

(2A) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

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

136 Subsection 76(3) of the Code set out in the Schedule

Omit “subsection (1)”, substitute “subsection (2A)”.

137 After subsection 76(3) of the Code set out in the Schedule

Insert:

(3A) Subsection (1) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matters in paragraphs (1)(a) to (c), see section 145CD.

138 Subsection 77(1) of the Code set out in the Schedule (penalty)

Repeal the penalty.

139 Subsection 77(1) of the Code set out in the Schedule (note)

Repeal the note.

140 After subsection 77(1) of the Code set out in the Schedule

Insert:

(1A) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

Note: The defendant bears an evidential burden in relation to establishing that the supply is in accordance with the conditions or is authorised by a permit. See subsection 13.3(3) of the *Criminal Code*.

141 Subsection 77(2) of the Code set out in the Schedule

Omit “subsection (1)”, substitute “subsection (1A)”.

142 At the end of section 77 of the Code set out in the Schedule

Add:

(3) Subsection (1) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to establishing that the supply is in accordance with the conditions or is authorised by a permit, see section 145CD.

143 Subsection 78(1) of the Code set out in the Schedule (penalty)

Repeal the penalty.

144 Subsection 78(1) of the Code set out in the Schedule (note)

Repeal the note.

145 After subsection 78(2) of the Code set out in the Schedule

Insert:

(2A) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

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

146 Subsection 78(3) of the Code set out in the Schedule

Omit “subsection (1)”, substitute “subsection (2A)”.

147 After subsection 78(3) of the Code set out in the Schedule

Insert:

(3A) Subsection (1) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matters in paragraphs (1)(a) to (c), see section 145CD.



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148 Subsection 79(1) of the Code set out in the Schedule (penalty)

Repeal the penalty.

149 Subsection 79(1) of the Code set out in the Schedule (note)

Repeal the note.

150 After subsection 79(1) of the Code set out in the Schedule

Insert:

(1A) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

Note: The defendant bears an evidential burden in relation to establishing that the supply is in accordance with the conditions or is authorised by a permit. See subsection 13.3(3) of the *Criminal Code*.

151 Subsection 79(2) of the Code set out in the Schedule

Omit “subsection (1)”, substitute “subsection (1A)”.

152 At the end of section 79 of the Code set out in the Schedule

Add:

(3) Subsection (1) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to establishing that the supply is in accordance with the conditions or is authorised by a permit, see section 145CD.

153 Section 79A of the Code set out in the Schedule

Repeal the section.

154 Subsection 79B(1) of the Code set out in the Schedule (penalty)

Repeal the penalty.

155 After subsection 79B(1) of the Code set out in the Schedule

Insert:

(1A) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

156 At the end of section 79B of the Code set out in the Schedule  
Add:

(3) Subsection (1) is a civil penalty provision.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

157 Subsection 80(1) of the Code set out in the Schedule (penalty)  
Repeal the penalty.

158 Subsection 80(1) of the Code set out in the Schedule (note)  
Repeal the note.

159 After subsection 80(1) of the Code set out in the Schedule  
Insert:

(1A) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

Note: A defendant bears an evidential burden in relation to establishing that the supply is authorised by a permit. See subsection 13.3(3) of the *Criminal Code*.

160 Subsection 80(2) of the Code set out in the Schedule  
Omit “subsection (1)”, substitute “subsection (1A)”.

161 At the end of section 80 of the Code set out in the Schedule  
Add:

(3) Subsection (1) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation establishing that the supply is authorised by a permit, see section 145CD.

162 Subsection 81(1) of the Code set out in the Schedule (penalty)  
Repeal the penalty.

163 After subsection 81(1) of the Code set out in the Schedule

Insert:

(1A) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

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

164 Subsection 81(2) of the Code set out in the Schedule

Omit “subsection (1)”, substitute “subsection (1A)”.

165 At the end of section 81 of the Code set out in the Schedule

Add:

(4) Subsection (1) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matter in subsection (3), see section 145CD.

166 Section 82 of the Code set out in the Schedule

Repeal the section.

167 Subsection 83(1) of the Code set out in the Schedule (penalty)

Repeal the penalty.

168 After subsection 83(1) of the Code set out in the Schedule

Insert:

(1A) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

169 Subsection 83(2) of the Code set out in the Schedule

Omit “Subsection (1)”, substitute “Subsection (1A)”.

170 At the end of section 83 of the Code set out in the Schedule

Add:

(3) Subsection (1) is a civil penalty provision.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

171 Subsection 84(1) of the Code set out in the Schedule (penalty)

Repeal the penalty.

172 Paragraph 84(2)(b) of the Code set out in the Schedule

Omit “section 55”, substitute “paragraph 45A(1)(b)”.

173 After subsection 84(3) of the Code set out in the Schedule

Insert:

(3A) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

174 Subsection 84(4) of the Code set out in the Schedule

Omit “Subsection (1)”, substitute “Subsection (3A)”.

175 At the end of section 84 of the Code set out in the Schedule

Add:

(5) Subsection (1) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matter in subsection (3), see section 145CD.

176 Subsection 85(1) of the Code set out in the Schedule (penalty)

Repeal the penalty.

177 Subsection 85(2) of the Code set out in the Schedule

Omit “section 55”, substitute “paragraph 45A(1)(b)”.

178 After subsection 85(3) of the Code set out in the Schedule

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Insert:

(3A) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

179 Subsection 85(4) of the Code set out in the Schedule

Omit “Subsection (1)”, substitute “Subsection (3A)”.

180 At the end of section 85 of the Code set out in the Schedule

Add:

(6) Subsection (1) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matter in subsection (3), see section 145CD.

181 Subsection 86(1) of the Code set out in the Schedule

Omit “commits an offence”, substitute “contravenes this subsection”.

182 Subsection 86(1) of the Code set out in the Schedule (penalty)

Repeal the penalty.

183 After subsection 86(1) of the Code set out in the Schedule

Insert:

(1A) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

184 Subsection 86(2) of the Code set out in the Schedule

Omit “commits an offence”, substitute “contravenes this subsection”.

185 Subsection 86(2) of the Code set out in the Schedule (penalty)

Repeal the penalty.

186 After subsection 86(2) of the Code set out in the Schedule

Insert:

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- (2A) A person commits an offence if the person contravenes subsection (2).

Penalty: 300 penalty units.

187 After subsection 86(3) of the Code set out in the Schedule

Insert:

- (3A) Subsections (1) and (2) do not apply:
- (a) if a person acts in accordance with a direction given to the person under:
    - (i) subsection 131A(1) or 132A(1) of this Code; or
    - (ii) subsection 69EAC(1) or 69EBA(1) of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*; or
  - (b) to the extent that the person is authorised by a permit to engage in the conduct concerned.

188 Subsection 86(4) of the Code set out in the Schedule

Omit “Subsection (1) and (2)”, substitute “Subsections (1A) and (2A)”.

189 Subsection 86(4) of the Code set out in the Schedule (note)

Omit “matter in subsection (4)”, substitute “matters in subsections (3), (3A) and (4)”.

190 At the end of section 86 of the Code set out in the Schedule

Add:

- (5) Subsections (1) and (2) are civil penalty provisions.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matters in subsections (3) and (3A), see section 145CD.

191 Subsection 87(2) of the Code set out in the Schedule (penalty)

Repeal the penalty.

192 After subsection 87(3) of the Code set out in the Schedule

Insert:

(3A) A person commits an offence if the person contravenes subsection (2).

Penalty: 300 penalty units.

193 Subsection 87(4) of the Code set out in the Schedule

Omit “Subsection (2)”, substitute “Subsection (3A)”.

194 At the end of section 87 of the Code set out in the Schedule

Add:

(5) Subsection (2) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matter in subsection (3), see section 145CD.

195 Section 87A of the Code set out in the Schedule

Repeal the section.

196 Subsection 88(2) of the Code set out in the Schedule (penalty)

Repeal the penalty.

197 Subsection 88(2) of the Code set out in the Schedule (note)

Repeal the note.

198 After subsection 88(2) of the Code set out in the Schedule

Insert:

(2A) A person commits an offence if the person contravenes subsection (2).

Penalty: 50 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in paragraphs (2)(c) and (d). See subsection 13.3(3) of the *Criminal Code*.

199 Subsection 88(3) of the Code set out in the Schedule

Omit “subsection (2)”, substitute “subsection (2A)”.

200 At the end of section 88 of the Code set out in the Schedule

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Add:

(4) Subsection (2) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matters in paragraphs (2)(c) and (d), see section 145CD.

201 Subsection 89(1) of the Code set out in the Schedule (penalty)

Repeal the penalty.

202 After subsection 89(5) of the Code set out in the Schedule

Insert:

(5A) A person commits an offence if the person contravenes subsection (1).

Penalty: 50 penalty units.

203 Subsection 89(6) of the Code set out in the Schedule

Omit “Subsection (1)”, substitute “Subsection (5A)”.

204 At the end of section 89 of the Code set out in the Schedule

Add:

(8) Subsection (1) is a civil penalty provision.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

205 Paragraph 90(1)(a) of the Code set out in the Schedule

Omit “as soon as practicable make a record in or to the effect of”, substitute “within 28 days make a record in”.

206 Subsection 90(1) of the Code set out in the Schedule (penalty)

Repeal the penalty.

207 After subsection 90(1) of the Code set out in the Schedule

Insert:

(1A) A person commits an offence if the person contravenes subsection (1).



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Penalty: 120 penalty units.

208 Subsection 90(2) of the Code set out in the Schedule

Omit “Subsection (1)”, substitute “Subsection (1A)”.

209 At the end of section 90 of the Code set out in the Schedule

Add:

(4) Subsection (1) is a civil penalty provision.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

210 After subsection 91(1A) of the Code set out in the Schedule

Insert:

(1AA) A person commits an offence if the person contravenes subsection (1).

Penalty: 120 penalty units.

211 Subsection 91(1B) of the Code set out in the Schedule

Omit “Subsection (1)”, substitute “Subsection (1AA)”.

212 Subsection 91(1C) of the Code set out in the Schedule

Omit “In subsection (1)”, substitute “For the purposes of subsection (1AA)”.

213 After subsection 91(1C) of the Code set out in the Schedule

Insert:

(1D) Subsection (1) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matters in subsection (1A), see section 145CD.

214 Subsection 91(2) of the Code set out in the Schedule (penalty)

Repeal the penalty.

215 After subsection 91(2) of the Code set out in the Schedule

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Insert:

(2A) A person commits an offence if the person contravenes subsection (1).

Penalty: 120 penalty units.

Note: The defendant bears an evidential burden in relation to the matters in paragraphs (2)(a) and (b). See subsection 13.3(3) of the *Criminal Code*.

216 Subsection 91(3) of the Code set out in the Schedule

Omit “Subsection (2)”, substitute “Subsection (2A)”.

217 At the end of section 91 of the Code set out in the Schedule

Add:

(4) Subsection (2) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matters in paragraphs (2)(a) and (b), see section 145CD.

218 Subsection 92(2) of the Code set out in the Schedule (penalty)

Repeal the penalty.

219 After subsection 92(2) of the Code set out in the Schedule

Insert:

(2A) A person commits an offence if the person contravenes subsection (1).

Penalty: 120 penalty units.

Note: The defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

220 Subsection 92(3) of the Code set out in the Schedule

Omit “Subsection (1)”, substitute “Subsection (2A)”.

221 At the end of section 92 of the Code set out in the Schedule

Add:

(4) Subsection (1) is a civil penalty provision.

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Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matter in subsection (2), see section 145CD.

222 Subsection 94(1) of the Code set out in the Schedule (penalty)

Repeal the penalty.

223 After subsection 94(1) of the Code set out in the Schedule

Insert:

(1A) A person commits an offence if the person contravenes subsection (1).

Penalty: 120 penalty units.

224 Subsection 94(2) of the Code set out in the Schedule

Omit “Subsection (1)”, substitute “Subsection (1A)”.

225 At the end of section 94 of the Code set out in the Schedule

Add:

(3) Subsection (1) is a civil penalty provision.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

226 Subsection 95(1) of the Code set out in the Schedule (penalty)

Repeal the penalty.

227 After subsection 95(1) of the Code set out in the Schedule

Insert:

(1A) A person commits an offence if the person contravenes subsection (1).

Penalty: 120 penalty units.

228 Subsection 95(2) of the Code set out in the Schedule

Omit “Subsection (1)”, substitute “Subsection (1A)”.

229 At the end of section 95 of the Code set out in the Schedule

Insert:

(3) Subsection (1) is a civil penalty provision.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

230 Subsection 97(1) of the Code set out in the Schedule

Omit “paragraph 131(1)(c) or 132(1)(d)”, substitute “section 131A or 132A”.

231 Subsection 97(2) of the Code set out in the Schedule

Omit “or to the effect of”.

232 Subsection 97(7) of the Code set out in the Schedule

Omit “section 131 or 132”, substitute “an investigation warrant”.

233 Subsection 97(7) of the Code set out in the Schedule

Omit “paragraph 131(1)(c) or 132(1)(d)”, substitute “section 131A or 132A”.

234 Subsection 98(1) of the Code set out in the Schedule

Omit “or to the effect of”.

235 Subsection 98(6) of the Code set out in the Schedule

Omit “section 131 or 132”, substitute “an investigation warrant”.

236 Subsection 98(6) of the Code set out in the Schedule

Omit “paragraph 131(1)(c) or 132(1)(d)”, substitute “section 131A or 132A”.

237 After subsection 99(3) of the Code set out in the Schedule

Insert:

(3A) This section also applies if a person has possession or custody of a substance or mixture of substances that is intended for supply as an active constituent, under a particular name, for a proposed or existing chemical product.

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(3B) If an active constituent having that name is approved under Division 2 of Part 2 and the APVMA, on the advice of an inspector, reasonably suspects that:

- (a) the constituents of the substance or mixture differ by more than the prescribed extent from the constituents stated in relation to the active constituent in the Record; or
- (b) the concentration of the constituents of the substance or mixture differs by more than the prescribed extent from the concentration of the constituents stated in relation to the active constituent in the Record; or
- (c) the composition or purity of a constituent of the substance or mixture differs by more than the prescribed extent from the composition or purity of that constituent stated in relation to the active constituent in the Record;

the APVMA may, by written notice given to the person, require the person to have the substance or mixture analysed to find out its constituents, their concentration and the composition and purity of each of them.

238 Subsection 99(4) of the Code set out in the Schedule

Omit “subsections (2) and (3), a notice given to a person under either”, substitute “subsections (2), (3) and (3B), a notice given to a person under any”.

239 Subsection 99(5) of the Code set out in the Schedule

Omit “subsection (2) or (3)”, substitute “subsection (2), (3) or (3B)”.

240 Subsection 99(5) of the Code set out in the Schedule (penalty)

Repeal the penalty.

241 After subsection 99(5) of the Code set out in the Schedule

Insert:

(5AA) A person commits an offence of strict liability if the person contravenes subsection (5).

Penalty: 120 penalty units.

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

242 Subsection 99(5A) of the Code set out in the Schedule

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Omit “Subsection (5)”, substitute “Subsection (5AA)”.

243 Subsection 99(5B) of the Code set out in the Schedule

Repeal the subsection, substitute:

(5B) Subsection (5) is a civil penalty provision.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

244 Subsection 105(1) of the Code set out in the Schedule (penalty)

Repeal the penalty.

245 After subsection 105(1) of the Code set out in the Schedule

Insert:

(1A) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 120 penalty units.

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

246 Subsection 105(2) of the Code set out in the Schedule

Omit “Subsection (1)”, substitute “Subsection (1A)”.

247 Subsection 105(3) of the Code set out in the Schedule

Repeal the subsection, substitute:

(3) Subsection (1) is a civil penalty provision.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

248 Section 109 of the Code set out in the Schedule (paragraph (a) of the definition of *permit*)

Repeal the paragraph, substitute:

(a) an offence against section 74, 75, 76, 77, 78, 79, 79B, 80, 81, 84, 85, 86, 87 or 91 or subsection 121(4A) or (5A); or

249 At the end of section 109 of the Code set out in the Schedule

Add:

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; or (c) a contravention of a civil penalty provision mentioned in section 74, 75, 76, 77, 78, 79, 79A, 79B, 80, 81, 84, 85, 86, 87 or 91 or a contravention of the civil penalty provision set out in subsection 121(4) or (5).

250 Subsection 115(1) of the Code set out in the Schedule

After “section 119”, insert “, 119A or 119B”.

251 Section 116 of the Code set out in the Schedule (heading)

Repeal the heading, substitute:

116 Effect of permit and compliance with conditions of permit

252 After subsection 116(3) of the Code set out in the Schedule

Insert:

(3A) A person to whom a permit applies must not contravene a condition of the permit.

(3B) A person commits an offence if the person contravenes subsection (3A).

Penalty: 300 penalty units.

(3C) Subsection (3A) is a civil penalty provision.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions..

253 After section 117 of the Code set out in the Schedule

Insert:

117A Notice of proposed suspension or cancellation to be given to permit holder

(1) Subject to subsection (4), the APVMA must not suspend or cancel a permit unless it has given the permit holder a written notice that:

(a) states that the APVMA proposes to suspend or cancel the approval, or suspend or cancel the registration, as the case may be; and

(b) sets out the reasons for the proposed suspension or cancellation; and

- (c) invites the permit holder to make, within a reasonable period specified in the notice, submissions to the APVMA in relation to the proposed suspension or cancellation.
- (2) The APVMA must not make a decision relating to the proposed suspension or cancellation, as the case may be, until it has had regard to any submission made by the permit holder in response to an invitation under paragraph (1)(c).
- (3) A written notice under subsection (1) must specify the period of the proposed suspension.
- (4) Subsection (1) does not apply to a suspension or cancellation under section 119A.

254 Section 118 of the Code set out in the Schedule (heading)

Repeal the heading, substitute:

118 Suspension of permit—general grounds

255 Subsection 118(1) of the Code set out in the Schedule

Repeal the subsection, substitute:

- (1) The APVMA may, by written notice given to the holder of a permit, suspend the permit if it appears to the APVMA:
  - (a) for an active constituent—that the constituent may not meet the safety criteria; or
  - (b) for a chemical product—that the product may not meet the safety criteria, the trade criteria or the efficacy criteria; or
  - (c) that the use of the active constituent or chemical product in accordance with the permit is inappropriate for any other reason; or
  - (d) that the holder has contravened a condition of the permit.

256 Subsection 118(7) of the Code set out in the Schedule

Omit “brief particulars of”.

257 Section 119 of the Code set out in the Schedule (heading)

Repeal the heading, substitute:



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**119 Cancellation of permit—general grounds****258 Subsection 119(1) of the Code set out in the Schedule**

Repeal the subsection, substitute:

- (1) The APVMA, by written notice given to the holder of a permit, may cancel the permit if it appears to the APVMA:
  - (a) for an active constituent—that the constituent may not meet the safety criteria; or
  - (b) for a chemical product—that the product may not meet the safety criteria, the trade criteria or the efficacy criteria; or
  - (c) that the use of the active constituent or chemical product in accordance with the permit is inappropriate for any other reason.

**259 Subsection 119(4) of the Code set out in the Schedule**

Repeal the subsection, substitute:

- (4) The APVMA may, by written notice given to the holder of a permit, cancel the permit if the APVMA is satisfied that:
  - (a) the holder has contravened a condition of the permit; or
  - (b) at least one of the following persons:
    - (i) the holder;
    - (ii) any other person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the holder's affairs;
    - (iii) if the holder is a body corporate—a major interest holder of the body corporate;  
has, within the 10 years immediately before the notice is given:
    - (iv) been convicted of an offence against an agvet law of this or another jurisdiction; or
    - (v) been convicted of an offence against a law of this or another jurisdiction relating to chemical products; or
    - (vi) been convicted of an offence against a law of the Commonwealth or a law of a State or Territory involving fraud or dishonesty; or
    - (vii) been ordered to pay a pecuniary penalty for the contravention of an agvet penalty provision; or

- (viii) been ordered to pay a pecuniary penalty for the contravention of another law of this or another jurisdiction relating to chemical products; or
  - (ix) been ordered to pay a pecuniary penalty for the contravention of a civil penalty provision of a law of the Commonwealth or a law of a State or Territory involving fraud or dishonesty; or
  - (x) held a permit that was cancelled under subsection 119(2) or section 119B of this Code or under a corresponding provision of the Agvet Code of another jurisdiction; or
  - (xi) been a manager, or a major interest holder, of a body corporate in respect of which subparagraph (iv), (v), (vi), (vii), (viii), (ix) or (x) applies, if the conduct resulting in that subparagraph applying occurred when the person was a manager or major interest holder of the body corporate.
- (4A) A reference in paragraph (4)(b) to a person convicted of an offence includes a reference to a person in respect of whom an order has been made relating to the offence under:
- (a) section 19B of the *Crimes Act 1914*; or
  - (b) a corresponding provision of a law of a State or Territory.

Note: Section 19B of the *Crimes Act 1914* empowers a court that has found a person to have committed an offence to take action without proceeding to record a conviction.

260 Subsection 119(7) of the Code set out in the Schedule

Omit “brief particulars of”.

261 After section 119 of the Code set out in the Schedule

Insert:

119A Suspension or cancellation of permit—imminent risk to persons of death, serious injury or serious illness

- (1) The APVMA may, by written notice to the holder of a permit, suspend or cancel the permit if the APVMA considers that doing so is necessary to prevent imminent risk to persons of death, serious injury or serious illness.

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- (2) The APVMA may suspend or cancel the permit whether or not the conditions of the permit have been, or are being, complied with.
- (3) A notice under subsection (1) must specify the period of the suspension.

Note: Section 117A does not apply to a suspension or cancellation under this section.

**119B Suspension or cancellation of permit—providing false or misleading information**

The APVMA may suspend or cancel a permit if:

- (a) the holder of the permit has given information:
- (i) in or in connection with an application for the permit; or
  - (ii) in response to a notice under section 159; or
  - (iii) as required by section 160A or 161; and
- (b) the information was false or misleading in a material particular.

**262 Subsection 120(3) of the Code set out in the Schedule**

Repeal the subsection, substitute:

- (3) A licensee is required to comply with conditions imposed on a licence by the APVMA in relation to the manufacture of chemical products. A licence is also subject to various statutory conditions.

**263 Subsections 121(1) and (2)**

Repeal the subsections.

**264 Subsection 121(3) of the Code set out in the Schedule (penalty)**

Repeal the penalty.

**265 After subsection 121(3) of the Code set out in the Schedule**

Insert:

- (3A) A person commits an offence of strict liability if the person contravenes subsection (3).

Penalty: 240 penalty units.

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

266 Paragraph 121(4)(c) of the Code set out in the Schedule

Repeal the paragraph, substitute:

- (c) the person holds a permit that authorises the carrying out of that step in relation to the product at those premises.

267 Subsection 121(4) of the Code set out in the Schedule (penalty)

Repeal the penalty.

268 After subsection 121(4) of the Code set out in the Schedule

Insert:

- (4A) A person commits an offence of strict liability if the person contravenes subsection (4).

Penalty: 240 penalty units.

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

269 At the end of subsection 121(5) of the Code set out in the Schedule

Add “unless the person holds a permit that authorises the conduct that would contravene the condition of the licence”.

270 Subsection 121(5) of the Code set out in the Schedule (penalty)

Repeal the penalty.

271 After subsection 121(5) of the Code set out in the Schedule

Insert:

- (5A) A person commits an offence of strict liability if the person contravenes subsection (5).

Penalty: 120 penalty units.

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

272 Subsection 121(6) of the Code set out in the Schedule

Omit “Subsections (3), (4) and (5)”, substitute “Subsections (3A), (4A) and (5A)”.

273 Subsection 121(7) of the Code set out in the Schedule

Repeal the subsection, substitute:

(7) Subsections (3), (4) and (5) are civil penalty provisions.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

274 After paragraph 126(4)(a) of the Code set out in the Schedule

Insert:

- (aa) allow an inspector to enter premises at which the chemical products are manufactured and to exercise the monitoring powers under section 131A in relation to premises; and

275 Paragraphs 127(1)(a), (b) and (c) of the Code set out in the Schedule

Repeal the paragraphs, substitute:

- (a) the APVMA is satisfied that at least one of the following persons:
  - (i) the holder of the licence;
  - (ii) any other person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the holder's affairs;
  - (iii) if the holder is a body corporate—a major interest holder of the body corporate;
 has, within the 10 years immediately before the notice is given:
  - (iv) given information to the APVMA in connection with an application for a licence, in response to a notice under section 159, or as required by section 160A or 161, and the information was false or misleading in a material particular; or
  - (v) been convicted of an offence against an agvet law; or
  - (vi) been convicted of an offence against a law of this or another jurisdiction relating to chemical products; or
  - (vii) been convicted of an offence against a law of the Commonwealth or a law of a State or Territory involving fraud or dishonesty; or
  - (viii) been ordered to pay a pecuniary penalty for the contravention of an agvet penalty provision; or
  - (ix) been ordered to pay a pecuniary penalty for the contravention of another law of this or another jurisdiction relating to chemical products; or

- (x) been ordered to pay a pecuniary penalty for the contravention of a civil penalty provision of a law of the Commonwealth or a law of a State or Territory involving fraud or dishonesty; or
- (xi) contravened a condition of a manufacturing licence issued under an agvet law; or
- (b) the APVMA is satisfied that the holder failed, within the 5 years immediately before the notice was given, to comply with a manufacturing principle in connection with the manufacture of chemical products; or
- (c) any other circumstances prescribed by the regulations for the purposes of this paragraph exist; or

276 Subsection 127(2) of the Code set out in the Schedule

Omit “it thinks that failure to suspend or cancel the licence immediately would create an imminent risk to public health or occupational health or safety, or an imminent risk of impact on trade or commerce between Australia and places outside Australia”, substitute “subsection (2A) applies”.

277 After subsection 127(2) of the Code set out in the Schedule

Insert:

- (2A) This subsection applies if the APVMA thinks that a failure to suspend or cancel the licence immediately would result in:
- (a) imminent risk to persons of death, serious injury or serious illness; or
  - (b) imminent risk of unintended harm to animals, plants or things, or to the environment; or
  - (c) imminent risk of impact on trade or commerce between Australia and places outside Australia.

278 Subsection 127(3) of the Code set out in the Schedule

Omit “is not to”, substitute “must not”.

279 Subsection 127(5) of the Code set out in the Schedule

Omit “brief particulars of”.

280 Subsection 127(8) of the Code set out in the Schedule

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Omit “must cause particulars of the suspension, cancellation or revocation to be published”, substitute “must publish particulars of the suspension, cancellation or revocation”.

281 Part 9 of the Code set out in the Schedule (heading)

Repeal the heading, substitute:

**Part 9—Investigative powers**

282 Section 129 of the Code set out in the Schedule

Repeal the section, substitute:

129 Explanation of Part

- (1) This Part contains powers:
  - (a) to gather information; and
  - (b) to search premises with or, in some cases, without a warrant to find out whether either or both of the following apply:
    - (i) an offence against an agvet law has been committed;
    - (ii) an agvet penalty provision has been contravened.
- (2) It also contains various ancillary provisions.

283 Division 2 of Part 9 of the Code set out in the Schedule

Repeal the Division, substitute:

**Division 2—Requiring people to attend, give information and produce documents or things**

**Subdivision A—Notices by the APVMA**

130 Notice to produce or attend

- (1) The APVMA may give a notice to a person under subsection (2) if the APVMA has reason to believe that the person has information, a document or thing that is relevant to the administration or enforcement of this Code.
- (2) The APVMA may, by notice in writing, given to the person, require the person to do one or more of the following:

- (a) give any such information as is specified in the notice to a specified inspector;
  - (b) produce any such document or thing as is specified in the notice to a specified inspector;
  - (c) appear before a specified inspector to answer questions.
- (3) The APVMA may require that information to be provided under paragraph (2)(a) is to be provided in writing or verified on oath or affirmation.
- (4) The inspector may require that answers under paragraph (2)(c) be given on oath or affirmation, and for that purpose the inspector may administer an oath or affirmation.
- (5) The notice must:
  - (a) be served on the person; and
  - (b) be signed by the Chief Executive Officer; and
  - (c) if paragraph (2)(a) or (b) applies—specify the period within which the person must comply with the notice; and
  - (d) if paragraph (2)(c) applies—both:
    - (i) specify the time and place at which the person must appear; and
    - (ii) state that the person may be accompanied by a lawyer; and
  - (e) set out the effect of sections 130B and 130C.
- (6) The period specified under paragraph (5)(c) must be at least 14 days after the notice is served on the person.
- (7) The person must comply with the notice within the time specified in the notice, or within such further time as the APVMA allows.

Note: Failure to comply with a notice is an offence, see section 130B.

#### 130A APVMA may retain documents and things

- (1) If a document or thing is produced to the APVMA in accordance with a notice served under section 130, the APVMA:
  - (a) may take possession of, and may make copies of, the document or thing, or take extracts from the document; and
  - (b) may retain possession of the document or thing for such period as is necessary:



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- (i) for the purposes of this Code; or
  - (ii) for the purposes of an investigation to which the document or thing relates; or
  - (iii) to enable evidence to be secured for the purposes of a prosecution or proceedings for a civil penalty order.
- (2) While the APVMA retains the document or thing, it must allow a person who would otherwise be entitled to inspect the document or view the thing to do so at the times that the person would ordinarily be able to do so.

### Subdivision B—Offence and related provisions

#### 130B Failure to comply with notice etc.

- (1) A person commits an offence if:
- (a) the person is served with a notice under section 130; and
  - (b) the notice requires the person to:
    - (i) give information; or
    - (ii) produce documents or things; specified in the notice; and
  - (c) the person fails to comply with the notice:
    - (i) within the period specified in the notice; or
    - (ii) if the APVMA has allowed the person further time under subsection 130(7)—within such further time.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

- (2) A person commits an offence if:
- (a) the person is served with a notice under section 130; and
  - (b) the notice requires the person to appear before an inspector to answer questions put by the inspector; and
  - (c) the person fails to comply with the notice.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

- (3) A person commits an offence if:
- (a) the person is required to take an oath; and
  - (b) the person refuses or fails to comply with the requirement.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

- (4) A person commits an offence if:
- (a) the person is served with a notice under section 130; and
  - (b) the notice requires the person to appear before an inspector to answer questions put by the inspector; and
  - (c) the person refuses or fails to answer a question put by the inspector.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

#### 130C Self-incrimination etc.

- (1) A person is not excused from:
- (a) giving information; or
  - (b) producing a document or thing; or
  - (c) answering a question;
- in relation to a notice under section 130 on the ground that doing so might tend to incriminate the person or expose the person to a penalty.
- (2) However, in the case of an individual, none of the following:
- (a) the information or answer given;
  - (b) the document or thing produced;
  - (c) the giving of the information or the answer, or the producing of the document or thing;
  - (d) any information, document or thing obtained as a direct or indirect consequence of giving the information or answer, or producing the document or thing;
- is admissible in evidence against the individual in:
- (e) criminal proceedings, other than:
    - (i) proceedings for an offence against section 130B or 146; or
    - (ii) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (which deal with false or misleading information or documents) that relates to this Code; or
    - (iii) proceedings for an offence against section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) that relates to this Code; or

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- (f) civil proceedings for a contravention of a civil penalty provision.

284 Division 3 of Part 9 of the Code set out in the Schedule (heading)

Repeal the heading, substitute:

**Division 3—Monitoring**

**Subdivision A—Monitoring powers etc.**

285 Sections 131 to 133 of the Code set out in the Schedule

Repeal the sections, substitute:

**131 Powers available to inspectors for monitoring compliance**

- (1) Subject to subsections (2) and (3), for the purpose of finding out whether an agvet law has been, or is being, complied with or of assessing the correctness of information provided under an agvet law, an inspector may do both of the following:
- (a) enter any premises;
  - (b) exercise the monitoring powers.
- (2) If premises mentioned in subsection (1) are a residence, an inspector may only enter the premises if:
- (a) the premises are used for commercial purposes in relation to active constituents or chemical products, in addition to residential purposes; and
  - (b) paragraph (3)(a), (b) or (c) is satisfied.
- (3) An inspector is not authorised to enter premises under subsection (1) unless:
- (a) the occupier of the premises has consented to the entry and the inspector has shown his or her identity card if required by the occupier; or
  - (b) if the premises are covered by a licence under section 123—both the following apply:
    - (i) it is a condition of the licence under subsection 126(4) that the holder of the licence will allow an inspector to enter the premises and exercise monitoring powers under section 131A in relation to the premises;

- (ii) the inspector has shown his or her identity card if required by the occupier; or
- (c) the entry is made under a monitoring warrant.

Note: If entry to the premises is with the occupier's consent, the inspector must leave the premises if the consent ceases to have effect, see section 133.

#### 131AA Monitoring powers to prevent imminent risk to persons of death, serious injury or serious illness

- (1) Subject to subsection (3), this section applies if an inspector has reasonable grounds for suspecting that it is necessary to exercise monitoring powers under section 131A in relation to premises to prevent imminent risk to persons of death, serious injury or serious illness.
- (2) The inspector may, to the extent that it is reasonably necessary for the purpose of preventing imminent risk to persons of death, serious injury or serious illness, enter the premises and exercise monitoring powers under section 131A.
- (3) An inspector is not entitled to exercise monitoring powers in accordance with subsection (2) 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.
- (4) An inspector is not entitled to exercise monitoring powers in accordance with subsection (2) unless the inspector has been authorised in writing by the APVMA for the purposes of this section.

#### 131A Monitoring powers—with consent or with warrant

- (1) The following are the **monitoring powers** that an inspector may exercise in relation to premises:
  - (a) the power to search the premises and any thing on the premises;
  - (b) the power to examine or observe any activity conducted on the premises;

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- (c) the power to inspect, examine, take measurements of or conduct tests on any thing on the premises;
  - (d) the power to make any still or moving image or any recording of the premises or any thing on the premises;
  - (e) the power to inspect any document on the premises;
  - (f) the power to take extracts from, or make copies of, any such document;
  - (g) the power to take and keep samples of any thing on the premises;
  - (h) the power to 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;
  - (i) the power to give directions for dealing with a container, or a label on a container, that has been opened or sampled in accordance with paragraph (h);
  - (j) the power to destroy or make harmless, or give directions for the destruction or making harmless of, a chemical product at the premises;
  - (k) the power to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;
  - (l) the powers set out in subsections 131B(1) and (3) and 131C(1).
- (2) A person who is given a direction under subsection (1) must comply with the direction.
  - (3) A person commits an offence of strict liability if the person contravenes subsection (2).

Penalty: 30 penalty units.

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

- (4) Subsection (2) is a civil penalty provision.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

## 131B Operating electronic equipment

- (1) The ***monitoring powers*** include the power to:
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- (a) operate electronic equipment on the premises; and
  - (b) use a disk, tape or other storage device that:
    - (i) is on the premises; and
    - (ii) can be used with the equipment or is associated with it.
- (2) The **monitoring powers** include the powers mentioned in subsection (3) if relevant data is found in the exercise of the power under subsection (1).
- (3) The powers are as follows:
  - (a) the power to operate electronic equipment on the premises to put the relevant data in documentary form and remove the documents so produced from the premises;
  - (b) the power to operate electronic equipment on the premises to transfer the relevant data to a disk, tape or other storage device that:
    - (i) is brought to the premises for the exercise of the power; or
    - (ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises;and remove the disk, tape or other storage device from the premises.
- (4) An inspector may operate electronic equipment as mentioned in subsection (1) or (3) only if the inspector believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

Note: For compensation for damage to electronic equipment, see section 138.

#### 131C Securing evidence of the contravention of a related provision

- (1) The **monitoring powers** include the power to secure a thing for a period not exceeding 7 days if:
  - (a) the thing is found during the exercise of monitoring powers on the premises; and
  - (b) an inspector believes on reasonable grounds that the thing affords evidence of:

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- (i) the commission of an offence against an agvet law or the contravention of an agvet penalty provision or both; or
  - (ii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to an agvet law; and
  - (c) the inspector believes on reasonable grounds that:
    - (i) it is necessary to secure the thing in order to prevent it from being concealed, lost or destroyed before a warrant to seize the thing is obtained; and
    - (ii) it is necessary to secure the thing without a warrant because the circumstances are serious and urgent.
- The thing may be secured by locking it up, placing a guard or any other means.
- (2) If an inspector believes on reasonable grounds that the thing needs to be secured for more than 7 days, the inspector may apply to a magistrate for an extension of that period.
  - (3) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.
  - (4) The provisions of this Part relating to the issue of monitoring warrants apply, with such modifications as are necessary, to the issue of an extension.
  - (5) The 7 day period may be extended more than once.

#### 131D Persons assisting inspectors

Inspectors may be assisted by other persons

- (1) When exercising monitoring powers, an inspector may be assisted by other persons in exercising powers or performing functions or duties under this Part, if that assistance is necessary and reasonable. A person giving such assistance is a ***person assisting*** the inspector.

Powers, functions and duties of a person assisting the inspector

- (2) A person assisting the inspector:

- (a) may enter premises; and
  - (b) may exercise powers and perform functions and duties under this Part for the purposes of assisting the inspector to determine whether:
    - (i) an agvet law has been, or is being, complied with; or
    - (ii) information provided under an agvet law is correct; and
  - (c) must do so in accordance with a direction given to the person assisting by the inspector.
- (3) A power exercised by a person assisting the inspector as mentioned in subsection (2) is taken for all purposes to have been exercised by the inspector.
- (4) A function or duty performed by a person assisting the inspector as mentioned in subsection (2) is taken for all purposes to have been performed by the inspector.
- (5) If a direction is given under paragraph (2)(c) in writing, the direction is not a legislative instrument.

#### 131E Use of force in executing a monitoring warrant

In executing a monitoring warrant, an inspector and a person assisting the inspector may use such force against things as is necessary and reasonable in the circumstances.

### Subdivision B—Powers of inspectors to ask questions and seek production of documents

#### 131F Inspector may ask questions and seek production of documents

- (1) This section applies if an inspector enters premises for the purposes of determining whether:
- (a) an agvet law has been, or is being, complied with; or
  - (b) information provided under an agvet law is correct.
- (2) If the entry is authorised because the occupier of the premises consented to the entry, the inspector may ask the occupier to answer any questions, and produce any document, relating to:
- (a) the operation of an agvet law; or
  - (b) the information.



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- (3) If the entry is authorised by a monitoring warrant, the inspector may require any person on the premises to answer any questions, and produce any document, relating to:
- (a) the operation of an agvet law; or
  - (b) the information.

Offence

- (4) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (3); and
  - (b) the person fails to comply with the requirement.

Penalty for contravention of this subsection: 50 penalty units.

**131G Copying of documents**

If a person produces a document to an inspector in accordance with a requirement under section 131G, the inspector may make copies of, or take extracts from, the document.

**Division 4—Investigation**

**Subdivision A—Investigation powers**

**132 Powers available to inspectors to investigate potential breaches of an agvet law**

- (1) Subject to subsections (2) and (3), if an inspector has reasonable grounds for suspecting that there may be evidential material on any premises, the inspector may:
- (a) enter the premises; and
  - (b) exercise the investigation powers; and
  - (c) do one or more of the things mentioned in subsection 132D(2).
- (2) If the premises are a residence, an inspector may only enter the premises if:
- (a) the premises are used for commercial purposes in relation to active constituents or chemical products, in addition to residential purposes; and

(b) paragraph (3)(a) or (b) is satisfied.

(3) An inspector is not authorised to enter the premises unless:

- (a) the occupier of the premises has consented to the entry and the inspector has shown his or her identity card if required by the occupier; or
- (b) the entry is made under an investigation warrant.

Note: If entry to the premises is with the occupier's consent, the inspector must leave the premises if the consent ceases to have effect, see section 133.

### 132A Investigation powers

(1) The following are the *investigation powers* that an inspector may exercise in relation to premises under section 132:

- (a) if entry to the premises is with the occupier's consent—the power to search the premises and any thing on the premises for the evidential material the inspector has reasonable grounds for suspecting may be on the premises;
- (b) if entry to the premises is under an investigation warrant:
  - (i) the power to search the premises and any thing on the premises for the kind of evidential material specified in the warrant; and
  - (ii) the power to seize evidential material of that kind if the inspector finds it on the premises;
- (c) the power to inspect, examine, take measurements of, and conduct tests on evidential material referred to in paragraph (a) or (b);
- (d) the power to make any still or moving image or any recording of the premises or evidential material referred to in paragraph (a) or (b);
- (e) the power to inspect any document on the premises;
- (f) the power to take extracts from, or make copies of, any such document;
- (g) the power to take and keep samples of any thing on the premises;
- (h) the power to 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;

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- (i) the power to give directions for dealing with a container, or a label on a container, that has been opened or sampled in accordance with paragraph (h);
  - (j) the power to destroy or make harmless, or give directions for the destruction or making harmless of, a chemical product at the premises;
  - (k) the power to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;
  - (l) the powers set out in subsections 132B(1) and (2) and section 132C.
- (2) A person who is given a direction under subsection (1) must comply with the direction.
- (3) A person commits an offence of strict liability if the person contravenes subsection (2).

Penalty: 30 penalty units.

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

- (4) Subsection (2) is a civil penalty provision.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

### 132B Operating electronic equipment

- (1) The **investigation powers** include the power to:
- (a) operate electronic equipment on the premises; and
  - (b) use a disk, tape or other storage device that:
    - (i) is on the premises; and
    - (ii) can be used with the equipment or is associated with it;
- if an inspector has reasonable grounds for suspecting that the electronic equipment, disk, tape or other storage device is or contains evidential material.
- (2) The **investigation powers** include the following powers in relation to evidential material found in the exercise of the power under subsection (1):

- (a) if entry to the premises is under an investigation warrant—the power to seize the equipment and the disk, tape or other storage device referred to in that subsection;
  - (b) the power to operate electronic equipment on the premises to put the evidential material in documentary form and remove the documents so produced from the premises;
  - (c) the power to operate electronic equipment on the premises to transfer the evidential material to a disk, tape or other storage device that:
    - (i) is brought to the premises for the exercise of the power; or
    - (ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises;and remove the disk, tape or other storage device from the premises.
- (3) An inspector may operate electronic equipment as mentioned in subsection (1) or (2) only if the inspector believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.
- Note: For compensation for damage to electronic equipment, see section 138.
- (4) An inspector may seize equipment or a disk, tape or other storage device as mentioned in paragraph (2)(a) only if:
- (a) it is not practicable to put the evidential material in documentary form as mentioned in paragraph (2)(b) or to transfer the evidential material as mentioned in paragraph (2)(c); or
  - (b) possession of the equipment or the disk, tape or other storage device by the occupier could constitute an offence against a law of this jurisdiction.

### 132C Seizing evidence of related offences and civil penalty provisions

- (1) This section applies if an inspector enters premises under an investigation warrant to search for evidential material.
- (2) The **investigation powers** include seizing a thing that is not evidential material of the kind specified in the warrant if:

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- (a) in the course of searching for the kind of evidential material specified in the warrant, the inspector finds the thing; and
  - (b) the inspector believes on reasonable grounds that the thing affords evidence of:
    - (i) the commission of an offence against an agvet law or the contravention of an agvet penalty provision or both; or
    - (ii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to an agvet law; and
  - (c) the inspector believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction or to protect the health of the public or of any person.
- (3) If an inspector seizes a thing as mentioned in subsection (2), the ***investigation powers*** include:
- (a) the power to direct the occupier of the premises or the owner of the thing to keep it at the premises, or at other premises under the control of the occupier or owner that will, in the opinion of the inspector, cause least danger to the health of the public or of any person; and
  - (b) the power to give any other directions for, or with respect to, the detention of the thing.
- (4) A person who is given a direction under subsection (3) must comply with the direction.
- (5) A person commits an offence of strict liability if the person contravenes subsection (4).
- Penalty: 30 penalty units.
- Note: For strict liability, see section 6.1 of the *Criminal Code*.
- (6) Subsection (4) is a civil penalty provision.
- Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

## 132D Supervisory powers of seized things

- (1) If:
  - (a) an inspector seizes a thing under section 132A or 132C; and

- (b) the inspector is authorised by the APVMA to exercise powers under this section;
- the inspector may do one or more of the things mentioned in subsection (2).
- (2) The things are:
- (a) if the seizure related to a substance and the inspector suspects that this Code has not been complied with in respect of any of its constituents, or in respect of the concentration, composition or purity of any of its active constituents—supervise the reformulation of the substance so as to ensure compliance with this Code; and
  - (b) if the seizure related to a substance and its container and the inspector suspects that this Code has not been complied with in respect of the container—supervise the placing of the substance in a container so that there is compliance with this Code; and
  - (c) if the seizure related to a substance and its container and the inspector suspects that this Code has not been complied with in respect of the label attached to the container—supervise the attaching to the container of a label so that there is compliance with this Code.

#### 132E Persons assisting inspectors

Inspectors may be assisted by other persons

- (1) When exercising investigation powers, an inspector may be assisted by other persons in exercising powers or performing functions or duties under this Part, if that assistance is necessary and reasonable. A person giving such assistance is a ***person assisting*** the inspector.

Powers, functions and duties of a person assisting the inspector

- (2) A person assisting the inspector:
- (a) may enter premises; and
  - (b) may exercise powers and perform functions and duties under this Part in relation to evidential material; and
  - (c) must do so in accordance with a direction given to the person assisting by the inspector.

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- (3) A power exercised by a person assisting the inspector as mentioned in subsection (2) is taken for all purposes to have been exercised by the inspector.
  - (4) A function or duty performed by a person assisting the inspector as mentioned in subsection (2) is taken for all purposes to have been performed by the inspector.
  - (5) If a direction is given under paragraph (2)(c) in writing, the direction is not a legislative instrument.

#### 132F Use of force in executing an investigation warrant

In executing an investigation warrant, an inspector and a person assisting the inspector may use such force against things as is necessary and reasonable in the circumstances.

### Subdivision B—Powers of inspectors to ask questions and seek production of documents

#### 132G Inspector may ask questions and seek production of documents

- (1) This section applies if an inspector enters premises to search for evidential material.
- (2) If the entry is authorised because the occupier of the premises consented to the entry, the inspector may ask the occupier to answer any questions, and produce any document, relating to evidential material.
- (3) If the entry is authorised by an investigation warrant, the inspector may require any person on the premises to answer any questions, and produce any document, relating to evidential material of the kind specified in the warrant.
- (4) A person commits an offence if:
  - (a) the person is subject to a requirement under subsection (3); and
  - (b) the person fails to comply with the requirement.

Penalty for contravention of this subsection: 50 penalty units.

### 132H Copying of documents

If a person produces a document to an inspector in accordance with a requirement under section 132G, the inspector may make copies of, or take extracts from, the document.

## Division 5—Obligations and incidental powers of inspectors

### 133 Consent

- (1) Before obtaining the consent of an occupier of premises for the purposes of paragraph 131(3)(a) or 132(3)(a), an inspector must inform the occupier that the occupier may refuse consent.
- (2) A consent has no effect unless the consent is voluntary.
- (3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.
- (5) If an inspector entered premises because of the consent of the occupier of the premises, the inspector, and any person assisting the inspector, must leave the premises if the consent ceases to have effect.

### 286 Subsection 134(1) of the Code set out in the Schedule

Repeal the subsection, substitute:

- (1) Before entering premises under a warrant, an inspector must:
  - (a) announce that:
    - (i) he or she is authorised to enter the premises; and
    - (ii) any person assisting the inspector is authorised to enter the premises; and
  - (b) show his or her identity card to the occupier of the premises, or to another person who apparently represents the occupier, if the occupier or other person is present at the premises; and
  - (c) give any person at the premises an opportunity to allow entry to the premises.



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287 Subsection 134(2) of the Code set out in the Schedule

Omit “or a person helping the inspector”.

288 Paragraph 134(2)(a) of the Code set out in the Schedule

Omit “person helping the inspector”, substitute “person assisting”.

289 At the end of section 134 of the Code set out in the Schedule

Add:

(3) If:

- (a) an inspector does not comply with subsection (1) because of subsection (2); and
- (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises; the inspector must show his or her identity card to the occupier or other person as soon as practicable after entering the premises.

290 Sections 135 to 138 of the Code set out in the Schedule

Repeal the sections, substitute:

135 Inspector to be in possession of warrant

An inspector executing a warrant must be in possession of:

- (a) the warrant issued by the magistrate under section 143 or 143A or a copy of the warrant as so issued; or
- (b) the form of warrant completed under subsection 143B(6) or a copy of the form as so completed.

136 Details of warrant etc. to be given to occupier

(1) An inspector must comply with subsection (2) if:

- (a) a warrant is being executed in relation to premises; and
- (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises.

(2) The inspector must, as soon as practicable:

- (a) do one of the following:
  - (i) if the warrant was issued under section 143 or 143A—make a copy of the warrant available to the occupier or

- other person (which need not include the signature of the magistrate who issued it);
- (ii) if the warrant was signed by a magistrate under section 143B—make a copy of the form of warrant completed under subsection 143B(6) available to the occupier or other person; and
- (b) inform the occupier or other person of the rights and responsibilities of the occupier or other person under Division 7 of this Part.

### 137 Expert assistance to operate electronic equipment

- (1) This section applies if an inspector enters premises under a warrant.

#### Securing equipment

- (2) An inspector may do whatever is necessary to secure any electronic equipment that is on the premises if the inspector believes on reasonable grounds that:
  - (a) in the case of a monitoring warrant:
    - (i) there is relevant data on the premises; and
    - (ii) the relevant data may be accessible by operating the equipment; and
    - (iii) expert assistance is required to operate the equipment; and
    - (iv) the relevant data may be destroyed, altered or otherwise interfered with, if the inspector does not take action under this subsection; and
  - (b) in the case of an investigation warrant:
    - (i) there is evidential material of the kind specified in the warrant on the premises; and
    - (ii) the evidential material may be accessible by operating the electronic equipment; and
    - (iii) expert assistance is required to operate the equipment; and
    - (iv) the evidential material may be destroyed, altered or otherwise interfered with, if the inspector does not take action under this subsection.

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The equipment may be secured by locking it up, placing a guard or any other means.

- (3) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of:
- (a) the inspector's intention to secure the equipment; and
  - (b) the fact that the equipment may be secured for up to 72 hours.

Period equipment may be secured

- (4) The equipment may be secured until the earlier of the following happens:
- (a) the 72-hour period ends;
  - (b) the equipment has been operated by the expert.

Note: For compensation for damage to electronic equipment, see section 138.

Extensions

- (5) The inspector may apply to a magistrate for an extension of the 72-hour period, if the inspector believes on reasonable grounds that the equipment needs to be secured for a longer period.
- (6) Before making the application, the inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of the inspector's intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.
- (7) The provisions of this Part relating to the issue of a warrant apply, with such modifications as are necessary, to the issue of an extension.
- (8) The 72-hour period may be extended more than once.

### 138 Compensation for damage to electronic equipment

- (1) This section applies if:
- (a) as a result of electronic equipment being operated as mentioned in this Part:
    - (i) damage is caused to the equipment; or

- (ii) the data recorded on the equipment is damaged; or
  - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
- (b) the damage or corruption occurs because:
  - (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
  - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The APVMA must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the APVMA and the owner or user agree on.
- (3) However, if the owner or user and the APVMA fail to agree, the owner or user may institute proceedings in a court of competent jurisdiction for such reasonable amount of compensation as the court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees or agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

## Division 6—Execution of an investigation warrant interrupted

### 138A Completing execution of an investigation warrant after temporary cessation

- (1) This section applies if an inspector, and all persons assisting, who are executing an investigation warrant in relation to premises temporarily cease its execution and leave the premises.
- (2) The inspector, and persons assisting, may complete the execution of the warrant if:
  - (a) the warrant is still in force; and
  - (b) the inspector and persons assisting are absent from the premises:
    - (i) for not more than 1 hour; or

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- (ii) if there is an emergency situation, for not more than 12 hours or such longer period as allowed by a magistrate under subsection (5); or
  - (iii) for a longer period if the occupier of the premises consents in writing.

Application for extension in emergency situation

- (3) An inspector, or person assisting, may apply to a magistrate for an extension of the 12-hour period mentioned in subparagraph (2)(b)(ii) if:
  - (a) there is an emergency situation; and
  - (b) the inspector or person assisting believes on reasonable grounds that the inspector and the persons assisting will not be able to return to the premises within that period.
- (4) If it is practicable to do so, before making the application, the inspector or person assisting must give notice to the occupier of the premises of his or her intention to apply for an extension.

Extension in emergency situation

- (5) A magistrate may extend the period during which the inspector and persons assisting may be away from the premises if:
  - (a) an application is made under subsection (3); and
  - (b) the magistrate is satisfied, by information on oath or affirmation, that there are exceptional circumstances that justify the extension; and
  - (c) the extension would not result in the period ending after the warrant ceases to be in force.

**138B Completing execution of an investigation warrant stopped by court order**

An inspector, and any persons assisting, may complete the execution of an investigation warrant that has been stopped by an order of a court if:

- (a) the order is later revoked or reversed on appeal; and
- (b) the warrant is still in force when the order is revoked or reversed.

## Division 7—Occupier’s rights and responsibilities

### 138C Occupier entitled to observe execution of warrant

- (1) The occupier of premises to which a warrant relates, or another person who apparently represents the occupier, is entitled to observe the execution of the warrant if the occupier or other person is present at the premises while the warrant is being executed.
- (2) The right to observe the execution of the warrant ceases if the occupier or other person impedes that execution.
- (3) This section does not prevent the execution of the warrant in 2 or more areas of the premises at the same time.

### 138D Occupier to provide inspector with facilities and assistance

- (1) The occupier of premises to which a warrant relates, or another person who apparently represents the occupier, must provide:
  - (a) an inspector executing the warrant; and
  - (b) any person assisting;with all reasonable facilities and assistance for the effective exercise of their powers.
- (2) A person commits an offence if:
  - (a) the person is subject to subsection (1); and
  - (b) the person fails to comply with that subsection.

Penalty for contravention of this subsection: 30 penalty units.

## Division 8—General provisions relating to seizure

### 291 Subsection 139(1) of the Code set out in the Schedule

Omit “section 131 or 132”, substitute “an investigation warrant”.

### 292 Subsection 139(2) of the Code set out in the Schedule

Repeal the subsection, substitute:

- (2) However, the inspector is not required to comply with the request if possession of the document, film, computer file, thing or

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information by the occupier or other person could constitute an offence against a law of this jurisdiction.

293 After section 139 of the Code set out in the Schedule

Insert:

139A Receipts for seized things

- (1) An inspector must provide a receipt for a thing that is seized under an investigation warrant.
- (2) One receipt may cover 2 or more things seized.

294 Subsection 140(1) of the Code set out in the Schedule

Repeal the subsection, substitute:

- (1) An inspector must take reasonable steps to return a thing seized under an investigation warrant when the earliest of the following happens:
  - (a) the reason for the thing's seizure no longer exists;
  - (b) it is decided that the thing is not to be used in evidence;
  - (c) the period of 60 days after the thing's seizure ends.

Exception

- (1A) Subsection (1):
  - (a) is subject to any contrary order of a court; and
  - (b) does not apply if the thing:
    - (i) is forfeited or forfeitable to the Commonwealth (see section 150); or
    - (ii) is the subject of a dispute as to ownership.

295 Subsection 140(2) of the Code set out in the Schedule

Omit all the words before paragraph (a), substitute "The inspector is not required to take reasonable steps to return a thing because of paragraph (1)(c) if".

296 Subsections 140(4) and (5) of the Code set out in the Schedule

Repeal the subsections.

297 Section 141 of the Code set out in the Schedule (heading)

Repeal the heading, substitute:

141 Magistrate may permit a thing to be kept

298 Paragraph 141(1)(a) of the Code set out in the Schedule

Omit “section 131 or 132”, substitute “an investigation warrant”.

299 Paragraph 141(1)(b) of the Code set out in the Schedule

Omit “of a court”.

300 Subsection 141(1) of the Code set out in the Schedule

Omit “court of summary jurisdiction”, substitute “magistrate”.

301 Subsections 141(2) and (3) of the Code set out in the Schedule

Repeal the subsections, substitute:

(2) Before making the application, the inspector must:

- (a) take reasonable steps to discover who has an interest in the retention of the thing; and
- (b) if it is practicable to do so, notify each person who the inspector believes has such an interest of the proposed application.

Order to retain thing

(3) A magistrate may order that the thing may continue to be retained for a period specified in the order if the magistrate is satisfied that it is necessary for the thing to continue to be retained:

- (a) for the purposes of an investigation as to whether an offence against an agvet law has been committed or an agvet penalty provision has been contravened; or
- (b) for the purposes of an investigation as to whether an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to an agvet law has been committed; or
- (c) to enable evidence of:
  - (i) an offence mentioned in paragraph (a) or (b) to be secured for the purposes of a prosecution; or



- (ii) a contravention mentioned in paragraph (a) to be secured for the purposes of proceedings for a civil penalty order.

(4) The period specified must not exceed 3 years.

302 After section 141 of the Code set out in the Schedule

Insert:

141A Disposal of things

- (1) The APVMA may dispose of a thing seized under an investigation warrant if:
  - (a) an inspector has taken reasonable steps to return the thing to a person; and
  - (b) either:
    - (i) the inspector has been unable to locate the person; or
    - (ii) the person has refused to take possession of the thing.
- (2) The APVMA may dispose of the thing in such manner as it considers appropriate.

303 Subsection 142(1) of the Code set out in the Schedule

Omit “paragraph 131(1)(i)”, substitute “paragraph 131A(1)(j) or 132A(1)(j)”.

304 Subsection 142(2) of the Code set out in the Schedule

Omit “subsection 132(3)”, substitute “subsection 132D(2)”.

305 After subsection 142(4) of the Code set out in the Schedule

Insert:

- (4A) Any expense incurred by the APVMA under section 141A in disposing of a thing is a debt due to the APVMA by the owner of the thing.

306 Sections 143 to 145 of the Code set out in the Schedule

Repeal the sections, substitute:

## Division 9—Applying for warrants etc.

### 143 Monitoring warrants

#### Application for warrant

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

#### Issue of warrant

- (2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more inspectors should have access to the premises for the purpose of determining whether:
  - (a) an agvet law has been, or is being, complied with; or
  - (b) information provided under an agvet law is correct.
- (3) However, the magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the monitoring warrant is being sought.

#### Content of warrant

- (4) The monitoring warrant must:
  - (a) describe the premises to which the warrant relates; and
  - (b) state that the warrant is issued under this section; and
  - (c) state the purpose for which the warrant is issued; and
  - (d) authorise one or more inspectors (whether or not named in the warrant) from time to time while the warrant remains in force:
    - (i) to enter the premises; and
    - (ii) to exercise the powers set out in Divisions 3 and 5 of this Part in relation to the premises; and
  - (e) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and
  - (f) specify the day (not more than 6 months after the issue of the warrant) the warrant ceases to be in force.

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- (5) If the application for the warrant is made under section 143B, this section applies as if paragraph (4)(f) required the warrant to specify the period for which the warrant is to remain in force, which must not be more than 48 hours.

#### 143A Investigation warrants

##### Application for warrant

- (1) An inspector may apply to a magistrate for an investigation warrant under this section in relation to premises.

##### Issue of warrant

- (2) The magistrate may issue the investigation warrant if the magistrate is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, evidential material on the premises.
- (3) However, the magistrate must not issue the investigation warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

##### Content of warrant

- (4) The investigation warrant must:
- (a) state the offence or offences, or civil penalty provision or civil penalty provisions, to which the warrant relates; and
  - (b) describe the premises to which the warrant relates; and
  - (c) state that the warrant is issued under this section; and
  - (d) specify the kinds of evidential material that are to be searched for under the warrant; and
  - (e) state that the evidential material specified may be seized under the warrant; and
  - (f) state that any thing found in the course of executing the warrant that the person executing the warrant believes on reasonable grounds to be evidence of:

- (i) the commission of an offence against an agvet law or the contravention of an agvet penalty provision or both; or
    - (ii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to an agvet law;may be seized under the warrant; and
  - (g) name one or more inspectors; and
  - (h) authorise the inspectors named in the warrant:
    - (i) to enter the premises; and
    - (ii) to exercise the powers set out in Divisions 4, 5 and 6 of this Part in relation to the premises; and
  - (i) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and
  - (j) specify the day (not more than 1 week after the issue of the warrant) the warrant ceases to be in force.
- (5) If the application for the warrant is made under section 143B, this section applies as if:
- (a) subsection (2) referred to 48 hours rather than 72 hours; and
  - (b) paragraph (4)(j) required the warrant to specify the period for which the warrant is to remain in force, which must not be more than 48 hours.

#### 143B Warrants by telephone, fax etc.

##### Application for warrant

- (1) An inspector may apply to a magistrate by telephone, fax or other electronic means for a warrant in relation to premises:
  - (a) in an urgent case; or
  - (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (2) The magistrate may require communication by voice to the extent that it is practicable in the circumstances.
- (3) Before applying for a warrant, the inspector must:
  - (a) in the case of a monitoring warrant—prepare an information of the kind mentioned in subsection 143(2); and

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(b) in the case of an investigation warrant—prepare an information of the kind mentioned in subsection 143A(2); in relation to the premises that sets out the grounds on which the warrant is sought. If it is necessary to do so, the inspector may apply for the warrant before the information is sworn or affirmed.

Magistrate may complete and sign warrant

- (4) The magistrate may complete and sign the same warrant that would have been issued under section 143 or 143A if the magistrate is satisfied that there are reasonable grounds for doing so:
- (a) after considering the terms of the information; and
  - (b) after receiving such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.
- (5) After completing and signing the warrant, the magistrate must inform the inspector, by telephone, fax or other electronic means, of:
- (a) the terms of the warrant; and
  - (b) the day and time the warrant was signed.

Obligations on inspector

- (6) The inspector must then do the following:
- (a) complete and sign a form of warrant in the same terms as the warrant completed and signed by the magistrate;
  - (b) state on the form the following:
    - (i) the name of the magistrate;
    - (ii) the day and time the warrant was signed by the magistrate;
  - (c) send the following to the magistrate:
    - (i) the form of warrant completed by the inspector;
    - (ii) the information referred to in subsection (3), which must have been duly sworn or affirmed.
- (7) The inspector must comply with paragraph (6)(c) by the end of the day after the earlier of the following:
- (a) the day the warrant ceases to be in force;
  - (b) the day the warrant is executed.

Magistrate to attach documents together

- (8) The magistrate must attach the documents provided under paragraph (6)(c) to the warrant signed by the magistrate.

#### 143C Authority of warrant

- (1) A form of warrant duly completed under subsection 143B(6) is authority for the same powers as are authorised by the warrant signed by the magistrate under subsection 143B(4).
- (2) In any proceedings, a court is to assume (unless the contrary is proved) that an exercise of power was not authorised by a warrant under section 143B if:
  - (a) it is material, in those proceedings, for the court to be satisfied that the exercise of power was authorised by that section; and
  - (b) the warrant signed by the inspector authorising the exercise of the power is not produced in evidence.

#### 143D Offence relating to warrants by telephone, fax etc.

An inspector must not:

- (a) state in a document that purports to be a form of warrant under section 143B the name of a magistrate unless that magistrate signed the warrant; or
- (b) state on a form of warrant under that section a matter that, to the inspector's knowledge, departs in a material particular from the terms of the warrant signed by the magistrate under that section; or
- (c) purport to execute, or present to another person, a document that purports to be a form of warrant under that section that the inspector knows departs in a material particular from the terms of a warrant signed by a magistrate under that section; or
- (d) purport to execute, or present to another person, a document that purports to be a form of warrant under that section where the inspector knows that no warrant in the terms of the form of warrant has been completed and signed by a magistrate; or

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- (e) give to a magistrate a form of warrant under that section that is not the form of warrant that the inspector purported to execute.

Penalty: Imprisonment for 2 years.

**143E Effect of warrant**

If a warrant is issued under the Agvet Code of a jurisdiction other than this jurisdiction, the warrant has effect and may be executed in this jurisdiction as if the warrant had been issued under this Code.

**Division 10—Powers of magistrates**

**143F Powers of magistrates**

Powers conferred personally

- (1) A power conferred on a magistrate by this Part is conferred on the magistrate:
  - (a) in a personal capacity; and
  - (b) not as a court or a member of a court.

Powers need not be accepted

- (2) The magistrate need not accept the power conferred.

Protection and immunity

- (3) A magistrate exercising a power conferred by this Part has the same protection and immunity as if the magistrate were exercising the power:
  - (a) as the court of which the magistrate is a member; or
  - (b) as a member of the court of which the magistrate is a member.

**307 Division 4 of Part 9 of the Code set out in the Schedule (heading)**

Repeal the heading.

**308 Before section 146 of the Code set out in the Schedule**

Insert:

## Part 9A—Enforcement

### Division 1—Preliminary

#### 145 Explanation of Part

This Part contains provisions for the enforcement of this Code, including provisions relating to the following:

- (a) the use of civil penalties to enforce civil penalty provisions;
- (b) the use of infringement notices to enforce certain civil penalty provisions;
- (c) the acceptance and enforcement of undertakings to comply with provisions;
- (d) the use of injunctions in the enforcement of provisions;
- (e) the issue of substantiation notices in relation to certain claims and representations;
- (f) the giving of enforceable directions in relation to suspected contraventions;
- (g) the issue of formal warnings in relation to suspected contraventions;
- (h) other ancillary matters.

### Division 2—Civil penalty orders

#### Subdivision A—Obtaining a civil penalty order

##### 145A Civil penalty orders

###### Application for order

- (1) The APVMA may, on behalf of the Commonwealth, apply to a court of competent jurisdiction for an order that a person, who is alleged to have contravened a civil penalty provision, pay the Commonwealth a pecuniary penalty.
- (2) The APVMA must make the application within 6 years of the alleged contravention.



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Court may order person to pay pecuniary penalty

- (3) If the court is satisfied that the person has contravened the civil penalty provision, the court may order the person to pay to the Commonwealth such pecuniary penalty for the contravention as the court determines to be appropriate.

Note: Section 145AA sets out the maximum penalty that the court may order the person to pay.

- (4) An order under subsection (3) is a *civil penalty order*.

Determining pecuniary penalty

- (5) In determining the pecuniary penalty, the court may take into account all relevant matters, including:
- (a) the nature and extent of the contravention; and
  - (b) the nature and extent of any loss or damage suffered because of the contravention; and
  - (c) the circumstances in which the contravention took place; and
  - (d) whether the person has previously been found by a court to have engaged in any similar conduct; and
  - (e) the extent to which the person has cooperated with the authorities; and
  - (f) if the person is a body corporate:
    - (i) the level of the employees, officers or agents of the body corporate involved in the contravention; and
    - (ii) whether the body corporate exercised due diligence to avoid the contravention; and
    - (iii) whether the body corporate had a corporate culture conducive to compliance.

#### 145AA Maximum penalties for contravention of civil penalty provisions

Penalty for body corporate

- (1) The pecuniary penalty for a contravention of a civil penalty provision by a body corporate must not exceed 5 times the amount of the maximum monetary penalty that could be imposed by a court if the body corporate were convicted of an offence constituted by conduct that is the same as the conduct constituting the contravention.

Penalty for individuals

- (2) The pecuniary penalty for a contravention of a civil penalty provision by an individual must not exceed 3 times the amount of the maximum monetary penalty that could be imposed by a court if the person were convicted of an offence constituted by conduct that is the same as the conduct constituting the contravention.

Penalty for contravention of subsection 145CF(1)

- (3) The pecuniary penalty for a contravention, by an executive officer of a body corporate, of subsection 145CF(1) in relation to the contravention by the body corporate of a civil penalty provision must not exceed 12% of the amount of the maximum monetary penalty that could be imposed on the body corporate for the contravention.

145AB Civil enforcement of penalty

- (1) A pecuniary penalty is a debt payable to the Commonwealth.
- (2) The Commonwealth may enforce a civil penalty order as if it were an order made in civil proceedings against a person to recover a debt due by the person. The debt arising from the order is taken to be a judgement debt.

145AC Conduct contravening more than one civil penalty provision

- (1) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Division against a person in relation to the contravention of any one or more of those provisions.
- (2) However, the person is not liable to more than one pecuniary penalty under this Division in relation to the same conduct.

145AD Multiple contraventions

- (1) A court may make a single civil penalty order against a person for multiple contraventions of a civil penalty provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form, or are part of, a series of contraventions of the same or a similar character.

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Note: For continuing contraventions of civil penalty provisions, see section 145C.

- (2) However, the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions.

**145AE Proceedings may be heard together**

A court may direct that 2 or more proceedings for civil penalty orders be heard together.

**145AF Civil evidence and procedure rules for civil penalty orders**

A court must apply the rules of evidence and procedure for civil matters when hearing and determining an application for a civil penalty order.

**145AG Contravening a civil penalty provision is not an offence**

A contravention of a civil penalty provision is not an offence.

**Subdivision B—Civil proceedings and criminal proceedings**

**145B Civil proceedings after criminal proceedings**

A court may not make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is the same, or substantially the same, as the conduct constituting the contravention.

**145BA Criminal proceedings during civil proceedings**

- (1) Proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if:
- (a) criminal proceedings are commenced or have already been commenced against the person for an offence; and
  - (b) the offence is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention.

- (2) The proceedings for the order (the *civil proceedings*) may be resumed if the person is not convicted of the offence. Otherwise, the civil proceedings are dismissed.

145BB Criminal proceedings after civil proceedings

Criminal proceedings may be commenced against a person for conduct that is the same, or substantially the same, as conduct that would constitute a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person in relation to the contravention.

145BC Evidence given in civil proceedings not admissible in criminal proceedings

- (1) Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual for an offence if:
- (a) the individual previously gave the evidence or produced the documents in proceedings for a civil penalty order against the individual for an alleged contravention of a civil penalty provision (whether or not the order was made); and
  - (b) the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) However, subsection (1) does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

Subdivision C—Miscellaneous

145C Continuing contraventions of civil penalty provisions

- (1) If an act or thing is required under a civil penalty provision to be done:
- (a) within a particular period; or
  - (b) before a particular time;
- then the obligation to do that act or thing continues until the act or thing is done (even if the period has expired or the time has passed).

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- (2) A person who contravenes a civil penalty provision that requires an act or thing to be done:
- (a) within a particular period; or
  - (b) before a particular time;
- commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant civil penalty order is made or any later day).

#### 145CA Ancillary contravention of civil penalty provisions

- (1) A person must not:
- (a) attempt to contravene a civil penalty provision; or
  - (b) aid, abet, counsel or procure a contravention of a civil penalty provision; or
  - (c) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
  - (d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision; or
  - (e) conspire with others to effect a contravention of a civil penalty provision.

#### Civil penalty

- (2) A person who contravenes subsection (1) in relation to a civil penalty provision is taken to have contravened the provision.

Note: Section 145CC (which provides that a person's state of mind does not need to be proven in relation to a civil penalty provision) does not apply to the extent that proceedings relate to the contravention of subsection (1).

#### 145CB Mistake of fact

- (1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if:
- (a) at or before the time of the conduct constituting the contravention, the person:
    - (i) considered whether or not facts existed; and
    - (ii) was under a mistaken but reasonable belief about those facts; and
  - (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.

- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
  - (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
  - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.
- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

#### 145CC State of mind

- (1) In proceedings for a civil penalty order against a person for a contravention of a civil penalty provision (other than subsection 145CA(1)), it is not necessary to prove:
  - (a) the person's intention; or
  - (b) the person's knowledge; or
  - (c) the person's recklessness; or
  - (d) the person's negligence; or
  - (e) any other state of mind of the person.
- (2) Subsection (1) does not apply to the extent that the proceedings relate to a contravention of subsection 145CA(1) (which is about ancillary contraventions of civil penalty provisions).
- (3) Subsection (1) does not affect the operation of section 145CB (which is about mistake of fact).
- (4) Subsection (1) does not apply to the extent that the civil penalty provision, or a provision that relates to the civil penalty provision, expressly provides otherwise.

#### 145CD Evidential burden for exceptions

In proceedings for a civil penalty order, a person who wishes to rely on any exception, excuse, qualification or justification in relation to a civil penalty provision bears an evidential burden in relation to that matter.

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**145CE Liability of body corporate for actions by employees, agents or officers**

If an element of a civil penalty provision is done by an employee, agent or officer of a body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, the element must also be attributed to the body corporate.

**145CF Liability of executive officers**

- (1) An executive officer of a body corporate contravenes this subsection if:
  - (a) the body corporate contravenes a civil penalty provision; and
  - (b) the officer knew that the contravention would occur; and
  - (c) the officer was in a position to influence the conduct of the body in relation to the contravention; and
  - (d) the officer failed to take all reasonable steps to prevent the contravention.
- (2) Subsection (1) is a civil penalty provision.

Note: Subdivision A of this Division provides for pecuniary penalties for contraventions of civil penalty provisions.

**145CG Establishing whether an executive officer took reasonable steps to prevent the contravention of a civil penalty provision**

- (1) For the purposes of section 145CF, in determining whether an executive officer of a body corporate failed to take all reasonable steps to prevent the contravention of a civil penalty provision, a court is to have regard to:
  - (a) what action (if any) the officer took towards ensuring that the body's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with this Code, in so far as those requirements affect the employees, agents or contractors concerned; and
  - (b) what action (if any) the officer took when he or she became aware that the body was contravening this Code.
- (2) This section does not, by implication, limit the generality of section 145CF.

## Division 3—Infringement notices

### 145DA When an infringement notice may be given

- (1) If an inspector has reasonable grounds to believe that a person has contravened a prescribed civil penalty provision, the inspector may give the person an infringement notice for the alleged contravention.
- (2) The infringement notice must be given within 12 months after the day the contravention is alleged to have taken place.
- (3) A single infringement notice must relate only to a single contravention of a single prescribed civil penalty provision.

### 145DB Matters to be included in an infringement notice

- (1) An infringement notice must:
  - (a) be identified by a unique number; and
  - (b) state the day it is given; and
  - (c) state the name of the person to whom the notice is given; and
  - (d) state the name of the person who gave the notice; and
  - (e) give brief details of the alleged contravention, including:
    - (i) the provision that was allegedly contravened; and
    - (ii) the maximum penalty that a court could impose for the contravention; and
    - (iii) the time (if known) and day of, and the place of, the alleged contravention; and
  - (f) state the amount that is payable under the notice, and that the amount is payable to the Commonwealth; and
  - (g) give an explanation of how payment of the amount is to be made; and
  - (h) state that, if the person to whom the notice is given pays the amount within 28 days after the day the notice is given, then (unless the notice is withdrawn) proceedings seeking a civil penalty order will not be brought in relation to the alleged contravention; and
  - (i) state that payment of the amount is not an admission of liability; and



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- (j) state that the person may apply to the APVMA to have the period in which to pay the amount extended; and
  - (k) state that the person may choose not to pay the amount and, if the person does so, proceedings seeking a civil penalty order may be brought in relation to the alleged contravention; and
  - (l) set out how the notice can be withdrawn; and
  - (m) state that if the notice is withdrawn proceedings seeking a civil penalty order may be brought in relation to the alleged contravention; and
  - (n) state that the person may make written representations to the APVMA seeking the withdrawal of the notice.
- (2) For the purposes of paragraph (1)(f), the amount to be stated in the notice for the alleged contravention of the provision must not exceed one-fifth of the maximum penalty that a court could impose on the person for that contravention.
  - (3) The regulations may, subject to subsection (2), provide for a scale of amounts that may apply for an alleged contravention.

#### 145DC Extension of time to pay amount

- (1) A person to whom an infringement notice has been given may apply to the APVMA for an extension of the period referred to in paragraph 145DB(1)(h).
- (2) If the application is made before the end of that period, the APVMA may, in writing, extend that period. The APVMA may do so before or after the end of that period.
- (3) If the APVMA extends that period, a reference in this Division to the period referred to in paragraph 145DB(1)(h) is taken to be a reference to that period so extended.
- (4) If the APVMA does not extend that period, a reference in this Division to the period referred to in paragraph 145DB(1)(h) is taken to be a reference to the period that ends on the later of the following days:
  - (a) the day that is the last day of the period referred to in paragraph 145DB(1)(h);
  - (b) the day that is 7 days after the day the person was given notice of the APVMA's decision not to extend.

- (5) The APVMA may extend the period more than once under subsection (2).

#### 145DD Withdrawal of an infringement notice

##### Representations seeking withdrawal of notice

- (1) A person to whom an infringement notice has been given may make written representations to the APVMA seeking the withdrawal of the notice.

##### Withdrawal of notice

- (2) The APVMA may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).
- (3) When deciding whether or not to withdraw an infringement notice (the **relevant infringement notice**), the APVMA:
- (a) must take into account any written representations seeking the withdrawal that were given by the person to the APVMA; and
  - (b) may take into account the following:
    - (i) whether a court has previously imposed a penalty on the person for a contravention of a prescribed civil penalty provision if the contravention is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the relevant infringement notice;
    - (ii) the circumstances of the alleged contravention;
    - (iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of a prescribed civil penalty provision if the contravention is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the relevant infringement notice;
    - (iv) any other matter the APVMA considers relevant.

##### Notice of withdrawal

- (4) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:

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- (a) the person's name and address; and
  - (b) the day the infringement notice was given; and
  - (c) the identifying number of the infringement notice; and
  - (d) that the infringement notice is withdrawn; and
  - (e) that proceedings seeking a civil penalty order may be brought in relation to the alleged contravention.

Refund of amount if infringement notice withdrawn

(5) If:

- (a) the APVMA withdraws the infringement notice; and
  - (b) the person has already paid the amount stated in the notice;
- the Commonwealth must refund to the person an amount equal to the amount paid.

**145DE Effect of payment of amount**

- (1) If the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount stated in the notice before the end of the period referred to in paragraph 145DB(1)(h):
  - (a) any liability of the person for the alleged contravention is discharged; and
  - (b) proceedings seeking a civil penalty order may not be brought against the person in relation to the alleged contravention; and
  - (c) the person is not regarded as having admitted liability for the alleged contravention.
- (2) Subsection (1) does not apply if the notice has been withdrawn.

**145DF Effect of this Division**

This Division does not:

- (a) require an infringement notice to be given to a person for an alleged contravention of a prescribed civil penalty provision; or
- (b) affect the liability of a person for an alleged contravention of a prescribed civil penalty provision if:

- (i) the person does not comply with an infringement notice given to the person for the contravention; or
- (ii) an infringement notice is not given to the person for the contravention; or
- (iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or
- (c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of a prescribed civil penalty provision; or
- (d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened a prescribed civil penalty provision.

## Division 4—Enforceable undertakings

### 145E Acceptance of undertakings

- (1) The APVMA may accept any of the following undertakings:
  - (a) a written undertaking given by a person that the person will, in order to comply with a provision of this Code, take specified action;
  - (b) a written undertaking given by a person that the person will, in order to comply with a provision of this Code, refrain from taking specified action;
  - (c) a written undertaking given by a person that the person will take specified action directed towards ensuring that the person does not commit an offence against this Code or contravene a civil penalty provision, or is unlikely to do so, in the future.
- (2) The undertaking must be expressed to be an undertaking under this section.
- (3) The person may withdraw or vary the undertaking at any time, but only with the written consent of the APVMA.
- (4) The APVMA's consent is not a legislative instrument.
- (5) The APVMA may, by written notice given to the person, cancel the undertaking.

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- (6) The APVMA must publish the undertaking on the APVMA's website.
  - (7) However, the APVMA is not required to publish so much of the undertaking that the APVMA is satisfied:
    - (a) is confidential commercial information; or
    - (b) is personal information (within the meaning of the *Privacy Act 1988*); or
    - (c) should not be disclosed because it would be against the public interest to do so.

#### 145EA Enforcement of undertakings

- (1) If:
  - (a) a person has given an undertaking under section 145E; and
  - (b) the undertaking has not been withdrawn or cancelled; and
  - (c) the APVMA considers that the person has breached the undertaking;the APVMA may, on behalf of the Commonwealth, apply to a court of competent jurisdiction for an order under subsection (2).
- (2) If the court is satisfied that the person has breached the undertaking, the court may make any or all of the following orders:
  - (a) an order directing the person to comply with the undertaking;
  - (b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
  - (c) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
  - (d) any other order that the court considers appropriate.

## Division 5—Injunctions

### 145F Grant of injunctions

#### Restraining injunctions

- (1) If a person has engaged, is engaging or is proposing to engage, in conduct that constitutes an offence against this Code or a contravention of a civil penalty provision, a court of competent jurisdiction may, on application by any person, grant an injunction:
  - (a) restraining the first-mentioned person from engaging in the conduct; and
  - (b) if, in the court's opinion, it is desirable to do so—requiring the first-mentioned person to do a thing.

#### Performance injunctions

- (2) If:
  - (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do a thing; and
  - (b) the refusal or failure was, is or would be, an offence against this Code or a contravention of a civil penalty provision;the court may, on application by any person, grant an injunction requiring the first-mentioned person to do that thing.

#### Grant of interim injunctions

- (3) Before deciding an application for an injunction under this section, the court may grant an interim injunction:
  - (a) restraining a person from engaging in conduct; or
  - (b) requiring a person to do a thing.

### 145FA Discharging or varying injunctions

A court may discharge or vary an injunction granted by that court under this Division.

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**145FB Certain limits on granting injunctions not to apply****Restraining injunctions**

- (1) The power of a court under this Division to grant an injunction restraining a person from engaging in conduct may be exercised:
  - (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
  - (b) whether or not the person has previously engaged in conduct of that kind; and
  - (c) whether or not the conduct involves a serious and immediate risk of:
    - (i) an effect that is harmful to human beings; or
    - (ii) an unintended effect that is harmful to animals, plants or things, or to the environment.

**Performance injunctions**

- (2) The power of a court under this Division to grant an injunction requiring a person to do a thing may be exercised:
  - (a) whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that thing; and
  - (b) whether or not the person has previously refused or failed to do that thing; and
  - (c) whether or not the conduct involves a serious and immediate risk of:
    - (i) an effect that is harmful to human beings; or
    - (ii) an unintended effect that is harmful to animals, plants or things, or to the environment.

**145FC Other powers of a court unaffected**

The powers conferred on a court under this Division are in addition to, and not instead of, any other powers of the court, whether conferred by this Code or otherwise.

## Division 6—Substantiation notices

145G APVMA may require claims to be substantiated etc.

- (1) This section applies if a person has made a claim or representation in relation to:
  - (a) a supply, or possible supply, of a chemical product by the person or another person; or
  - (b) the manufacture of a chemical product by the person or another person; or
  - (c) the safety or efficacy of a chemical product.
- (2) The APVMA may give the person who made the claim or representation a written notice that requires the person to do one or more of the following:
  - (a) give information or produce documents to the APVMA that could be capable of substantiating or supporting the claim or representation;
  - (b) if the claim or representation relates to a supply, or possible supply, of chemical products by the person or another person—give information or produce documents to the APVMA that could be capable of substantiating:
    - (i) the quantities in which; and
    - (ii) the place in which; and
    - (iii) the period for which;the person or other person is or will be able to make such a supply (whether or not the claim or representation relates to those quantities, that place or that period);
  - (c) give information or produce documents to the APVMA that are of a kind specified in the notice;within 21 days after the notice is given to the person who made the claim or representation.
- (3) Any kind of information or documents that the APVMA specifies under paragraph (2)(c) must be a kind that the APVMA is satisfied is relevant to:
  - (a) substantiating or supporting the claim or representation; or
  - (b) if the claim or representation relates to a supply, or possible supply, of chemical products by the person or another person—substantiating the quantities in which, the place in



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which, or the period for which, the person or other person is or will be able to make such a supply.

- (4) The notice must:
  - (a) name the person to whom it is given; and
  - (b) specify the claim or representation to which it relates; and
  - (c) explain the effect of sections 145GA and 145GB.
- (5) The notice may relate to more than one claim or representation that the person has made.
- (6) This section does not apply to a person who made the claim or representation if the person:
  - (a) made the claim or representation by publishing it on behalf of another person in the course of carrying on a business of providing information; and
  - (b) does not have a commercial relationship with the other person other than for the purpose of:
    - (i) publishing claims or representations promoting, or apparently intended to promote, the other person's business or other activities; or
    - (ii) the other person supplying goods or services.

#### 145GA Compliance with substantiation notices

- (1) A person given a substantiation notice under section 145G must comply with the notice:
  - (a) within the period specified in the notice; or
  - (b) within such further time as the APVMA allows under subsection (3).
- (2) A person given a substantiation notice under section 145G may apply to the APVMA for further time to comply with the notice. An application must be in writing and made within 21 days after the notice is given to the person.
- (3) The APVMA may, by written notice given to the person, extend the period within which the person must comply with the notice.
- (4) Despite subsection (1), an individual may refuse or fail to give particular information or produce a particular document in compliance with a substantiation notice on the ground that the

information, or production of the document, might tend to incriminate the individual or to expose the individual to a penalty.

#### 145GB Failure to comply with substantiation notice

- (1) A person contravenes this subsection if:
  - (a) the person is given a notice under section 145G; and
  - (b) the person fails to comply with the notice:
    - (i) within the period specified in the notice; or
    - (ii) if the APVMA has allowed the person further time under subsection 145GA(3)—within such further time.
- (2) Subsection (1) does not apply if:
  - (a) the person is an individual; and
  - (b) the person refuses or fails to give particular information or produce a particular document in compliance with a substantiation notice; and
  - (c) the information, or production of the document, might tend to incriminate the individual or to expose the individual to a penalty.
- (3) A person commits an offence if the person contravenes subsection (1).

Penalty: 50 penalty units.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (4) Subsection (1) is a civil penalty provision.

Note 1: Division 2 provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matter in subsection (2), see section 145CD.

### Division 7—Enforceable directions

#### 145H APVMA may give directions

- (1) This section applies if the APVMA believes, on reasonable grounds, that:
  - (a) a person is not complying with this Code; and

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- (b) it is necessary to exercise powers under this section:
- (i) to protect the health and safety of human beings; or
  - (ii) to protect animals, plants or things, or the environment; or
  - (iii) to prevent significant prejudice to trade or commerce between Australia and places outside Australia.
- (2) The APVMA may, by written notice, give directions to the person requiring the person to take such steps, within the time specified in the notice, as are reasonable in the circumstances for the person to comply with this Code.
- (3) A time specified in a notice must be reasonable having regard to the circumstances.
- (4) A person contravenes this subsection if:
- (a) the person is given a notice under this section; and
  - (b) the person fails to comply with the notice within the time specified in the notice.
- (5) A person commits an offence if the person contravenes subsection (4).
- Penalty:
- (a) in the case of an aggravated offence—120 penalty units; and
  - (b) in any other case—30 penalty units.
- (6) Subsection (4) is a civil penalty provision.
- Note: Division 2 provides for pecuniary penalties for contraventions of civil penalty provisions.
- (7) Section 4K of the *Crimes Act 1914* applies to an offence against subsection (5).
- (8) If the person does not take the steps specified in the notice within the time specified in the notice, the APVMA may arrange for those steps to be taken.
- (9) If the APVMA incurs costs because of arrangements made by the APVMA under subsection (8):
- (a) the person is liable to pay to the APVMA, on behalf of the Commonwealth, an amount equal to the costs incurred; and
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- (b) the amount may be recovered by the APVMA, on behalf of the Commonwealth, as a debt due to the Commonwealth in a court of competent jurisdiction.
- (10) To prove an aggravated offence, the prosecution must prove that the person who committed the offence:
  - (a) intended his or her conduct:
    - (i) to cause significant damage to the health and safety of human beings; or
    - (ii) to cause significant damage to animals, plants or things, or the environment; or
    - (iii) to significantly prejudice trade or commerce between Australia and places outside Australia; or
  - (b) was reckless as to whether that conduct:
    - (i) would cause significant damage to the health and safety of human beings; or
    - (ii) would cause significant damage to animals, plants or things, or the environment; or
    - (iii) would significantly prejudice trade or commerce between Australia and places outside Australia.
- (11) In this section:

***aggravated offence*** means an offence the commission of which:

  - (a) causes significant damage, or is likely to cause significant damage:
    - (i) to the health and safety of human beings; or
    - (ii) to animals, plants or things, or the environment; or
  - (b) would significantly prejudice trade or commerce between Australia and places outside Australia.

## Division 8—Formal warnings

### 145J APVMA may issue a formal warning

- (1) The APVMA may, by written notice, issue a formal warning to a person if the APVMA has reasonable grounds to suspect that the person may have contravened the Agvet Code of this jurisdiction.
- (2) A formal warning under subsection (1) is not a legislative instrument.

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**Division 9—Miscellaneous****309 Sections 146, 147 and 148 of the Code set out in the Schedule**

Repeal the sections, substitute:

**146 False or misleading information or document**

- (1) A person commits an offence if, for the purposes of, or in connection with, the consideration by the APVMA, in the course of the performance of any of its functions or the exercise of any of its powers under this Code, of any matters referred to in section 5A, 5B, 5C or 5D or subsection 123(1), 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.

Penalty: 300 penalty units.

- (2) A person commits an offence if, for the purposes of, or in connection with, the consideration by the APVMA, in the course of the performance of any of its functions or the exercise of any of its powers under this Code, of any matters other than matters referred to in subsection (1), 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.

Penalty: 60 penalty units.

#### 147 Time for bringing proceedings

- (1) Proceedings for an offence against this Code may be brought:
  - (a) within 3 years after the date the offence is alleged to have been committed; or
  - (b) within 2 years after the date evidence of the offence first came to the attention of the APVMA, a member of the staff of the APVMA or an inspector.
- (2) If paragraph (1)(b) is relied on to begin proceedings for an offence, the court attendance notice, summons or application must contain particulars of the date that evidence of the offence first came to the attention of the APVMA, a member of the staff of the APVMA or an inspector, as the case may be. It need not contain particulars of the date on which the offence was committed.
- (3) The date on which evidence of the offence first came to the attention of the APVMA, a member of the staff of the APVMA or an inspector, as the case may be, is the date specified in the court attendance notice, summons or application, unless the contrary is established.
- (4) In this section:  
*evidence*, in relation to an offence, means evidence of any act or omission constituting the offence.

#### 310 After section 149 of the Code set out in the Schedule

Insert:

#### 149A Recovery of costs of investigations

- (1) This section applies if:
  - (a) a person is convicted of an offence against an agvet law or is found to have contravened an agvet penalty provision; and

- (b) the court convicting the person finds that the APVMA has reasonably incurred costs and expenses in taking a sample, or conducting an inspection, test or analysis during the investigation of the offence or agvet penalty provision; and
- (c) the APVMA applies for an order against the person for the payment of the costs and expenses.

- (2) The court may order the person to pay to the APVMA, on behalf of the Commonwealth, the reasonable costs and expenses that it considers just and equitable in the circumstances.

Note: The APVMA may recover certain other expenses. See section 142.

311 Subsection 160A(2) of the Code set out in the Schedule (penalty)

Repeal the penalty.

312 After subsection 160A(2) of the Code set out in the Schedule

Insert:

- (2A) A person commits an offence if the person contravenes subsection (2).

Penalty: 300 penalty units.

- (2B) Subsection (2) is a civil penalty provision.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

313 Subsection 161(1) of the Code set out in the Schedule (penalty)

Repeal the penalty.

314 After subsection 161(1) of the Code set out in the Schedule

Insert:

- (1A) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

- (1B) Subsection (1) is a civil penalty provision.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

315 Subsection 162(11) of the Code set out in the Schedule

Omit “section 52, 53, 54 or 55”, substitute “section 8H or 8J, paragraph 45A(1)(b) or section 47C”.

316 Subsection 170A(1) of the Code set out in the Schedule (penalty)

Repeal the penalty, substitute:

Penalty: 50 penalty units.



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## Schedule 4—Data protection

### Agricultural and Veterinary Chemicals Code Act 1994

- 1 Subsection 3(1) of the Code set out in the Schedule (definition of *companion animal product*)

Repeal the definition.

- 2 Subsection 3(1) of the Code set out in the Schedule

Insert:

***continue***, an approval or registration, has, for the purposes of Part 3, the meaning given by subsection 59(6).

- 3 Subsection 3(1) of the Code set out in the Schedule

Insert:

***limitation period*** has the meanings given by section 34M.

- 4 Subsection 3(1) of the Code set out in the Schedule (definition of *primary applicant*)

Repeal the definition.

- 5 Subsection 3(1) of the Code set out in the Schedule

Insert:

***primary holder*** means:

- (a) in relation to a primary active constituent—the holder by whom, or on whose behalf, protected information was given to the APVMA in respect of the constituent; or
- (b) in relation to a primary chemical product—the holder by whom, or on whose behalf, protected information was given to the APVMA in respect of the product.

- 6 Subsection 3(1) of the Code set out in the Schedule (definition of *protected active constituent*)

Omit “approved”.

7 Subsection 3(1) of the Code set out in the Schedule (definition of *protected active constituent*)

Omit “both”, substitute “each”.

8 Subsection 3(1) of the Code set out in the Schedule (at the end of the definition of *protected active constituent*)

Add:

; (c) the constituent is approved under Part 2.

9 Subsection 3(1) of the Code set out in the Schedule (definition of *protected chemical product*)

Omit “registered”.

10 Subsection 3(1) of the Code set out in the Schedule (definition of *protected chemical product*)

Omit “both”, substitute “each”.

11 Subsection 3(1) of the Code set out in the Schedule (after paragraph (b) of the definition of *protected chemical product*)

Insert:

; (c) the product is registered under Part 2.

12 Subsection 3(1) of the Code set out in the Schedule (definition of *protected chemical product*)

Omit all the words after paragraph (b).

13 Subsection 3(1) of the Code set out in the Schedule (definition of *protected information*)

Repeal the definition, substitute:

***protected information*** means information or results given to the APVMA as required under paragraph 32(1)(b) or 33(1)(a) or (c), or subparagraph 159(1)(d)(i), (ii) or (iii), that:

(a) have been obtained because of a trial or laboratory experiment; and

(b) relate to:

(i) an active constituent that has been approved; or

(ii) a chemical product that has been registered.

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14 Subsection 3(1) of the Code set out in the Schedule (definition of *protection period*)

Repeal the definition, substitute:

***protection period***, in relation to protected information, means the period that:

- (a) begins when the information is first given to the APVMA in relation to a reconsideration; and
- (b) ends 8 years after the APVMA makes its decision on the reconsideration.

15 Subsection 3(1) of the Code set out in the Schedule (definition of *secondary applicant*)

Repeal the definition.

16 Subsection 3(1) of the Code set out in the Schedule

Insert:

***secondary holder***, in relation to a secondary active constituent for a proposed or existing chemical product, means:

- (a) if the APVMA is considering an application for the approval of that constituent—the person who made the application; or
- (b) if the APVMA has reconsidered or is reconsidering the approval of that constituent:
  - (i) the person entered in the Record as the holder of the approval; or
  - (ii) if the holder was an individual who has died or is an individual whose affairs are being lawfully administered by another person—the legal personal representative of the individual or the person administering the individual's affairs; or
  - (iii) if the holder was a body corporate—a successor in law of the body corporate.

17 Subsection 3(1) of the Code set out in the Schedule

Insert:

***secondary holder***, in relation to a secondary chemical product, means:

- (a) if the APVMA is considering an application for the registration of that product—the person who made the application; or
- (b) if the APVMA has reconsidered or is reconsidering the registration of that product:
  - (i) the person entered in the Register as the holder of the registration; or
  - (ii) if the holder was an individual who has died or is an individual whose affairs are being lawfully administered by another person—the legal personal representative of the individual or the person administering the individual's affairs; or
  - (iii) if the holder was a body corporate—a successor in law of the body corporate.

18 Section 34B of the Code set out in the Schedule

Repeal the section, substitute:

34F Explanation of Division

- (1) This Division limits the use the APVMA can make of information given to it:
  - (a) in connection with an application under section 10 or 27; or
  - (b) under section 161.
- (2) Section 34G sets out general rules about the use of information.
- (3) Section 34H provides that a breach of the rules does not affect the validity of the APVMA's actions.
- (4) Sections 34J, 34K and 34L set out exceptions to the general rules.
- (5) Section 34M sets out limitation periods for certain information.

19 Subdivision B of Division 4A of Part 2 of the Code set out in the Schedule (heading)

Repeal the heading, substitute:

Subdivision B—General rules

20 Section 34C of the Code set out in the Schedule (heading)

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Repeal the heading, substitute:

**34G General rules**

**21 Subsection 34C(1) of the Code set out in the Schedule**

Repeal the subsection, substitute:

- (1) The APVMA must not use the following information to assess or make a decision on an application made under section 10 or 27:
  - (a) information given to the APVMA in connection with another application made under section 10 or 27 by the applicant for the other application;
  - (b) information given under section 161.
- (1A) The APVMA must not use the following information to vary relevant particulars or conditions under section 26C, 29A or 29G or reconsider an approval or registration under Division 4 of Part 2:
  - (a) information given to the APVMA in connection with an application made under section 10 or 27 by the applicant for the application;
  - (b) information given under section 161.
- (1B) For the purposes of subsections (1) and (1A), the use of information includes the following:
  - (a) applying a decision made, or a conclusion reached, based on the information;
  - (b) the use of knowledge or understanding gained from the information.

**22 After subsection 34C(2) of the Code set out in the Schedule**

Insert:

- (3) A person or body consulted under section 8 or 8A of the *Agricultural and Veterinary Chemicals (Administration) Act 1992* must not, for the purposes of providing information or advice in relation to an application or reconsideration, use information that the APVMA must not use in determining the application or reconsidering the approval or registration.

**23 Before subsection 34C(3) of the Code set out in the Schedule**

Insert:

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34H Contraventions of general rules

24 Subsection 34C(3) of the Code set out in the Schedule

Renumber as subsection (1).

25 Subsection 34C(3) of the Code set out in the Schedule

Omit all the words after “contravention of”, substitute “section 34G to determine an application, reconsider an approval or registration or vary relevant particulars or conditions does not affect the validity of the determination, the decision on the reconsideration or the relevant particulars or conditions”.

26 Subsection 34C(4) of the Code set out in the Schedule

Renumber as subsection (2).

27 Subsection 34C(4) of the Code set out in the Schedule

Omit “subsection (1)”, substitute “section 34G”.

28 Subparagraph 34C(4)(c)(i) of the Code set out in the Schedule

Repeal the subparagraph.

29 Subdivisions C, D and E of Division 4A of Part 2 of the Code set out in the Schedule

Repeal the Subdivisions, substitute:

Subdivision C—Exceptions

34J Consent, public interest etc.

- (1) Section 34G does not prevent the APVMA from using information if a condition in this section is met.

Consent to use

- (2) One condition is that the authorising party gives written consent to the use of the information. This condition is met even if the authorising party:
  - (a) later states that it has not consented; or
  - (b) withdraws the consent (whether before or after the APVMA is given the consent).

---

Note: Chapter 7 of the *Criminal Code* creates offences relating to false and misleading statements and forgery.

Use in the public interest

- (3) Another condition is that the APVMA is satisfied, having regard to the criteria (if any) prescribed by the regulations, that the use of the information is in the public interest.

Note: Section 34K sets out other rules that are relevant to the exception based on this condition.

Information does not favour the applicant or holder

- (4) Another condition is that:
- (a) the information relates to:
    - (i) a proposed or existing approval of an active constituent for a proposed or existing chemical product; or
    - (ii) a proposed or existing registration of a proposed or existing chemical product; and
  - (b) the information shows that the constituent or product may not meet the safety criteria, the trade criteria or the efficacy criteria.

Information given again

- (5) Another condition is that the information:
- (a) is given to the APVMA in connection with an application and is used to assess or make a decision on the application; or
  - (b) is given to the APVMA in connection with the reconsideration, under Division 4 of Part 2, of an approval or registration and is used to reconsider the approval or registration.

Protected information whose protection period has expired

- (5A) Another condition is that the information is protected information whose protection period has expired.

Note: For *protected information* and *protection period*, see subsection 3(1) and Part 3.

Information is publicly available

- (5B) Another condition is that the information is publicly available.
-

Information given to APVMA in connection with certain applications

- (6) Another condition is that the information was given in connection with:
  - (a) an application for approval, as an active constituent for a chemical product, of a substance that was a previously endorsed active constituent on the commencement of this Division; or
  - (b) an application for the variation of the relevant particulars or conditions of the approval of an active constituent for a chemical product.

#### 34K Further rules about public interest exception

- (1) This section applies if the APVMA is satisfied under subsection 34J(3) that it is in the public interest to use information.
- (2) The APVMA must, as soon as practicable, give written notice of its satisfaction to:
  - (a) the applicant for the application in connection with which the information was given; and
  - (b) if the applicant is not the authorising party for the information—the person whom the APVMA believes is the authorising party.
- (3) The APVMA must not use the information before the end of 28 days after the day on which the notice is given.
- (4) However, subsection (3) does not apply if:
  - (a) the APVMA believes it is necessary to use the information before the end of 28 days after the notice is given, to prevent imminent risk to persons of death, serious injury or serious illness; and
  - (b) states that belief in the notice.

#### 34L Information with limitation periods

Section 34G does not prevent the APVMA from using information to which a limitation period applies:

- (a) after the limitation period has ended; or



- (b) to reconsider an approval or registration under Division 4 of Part 2 if the decision on the reconsideration is made after the limitation period has ended.

Note: Information given in connection with an application made under section 10 or 27 has a limitation period only if the information was relied on to:

- (a) approve or register the constituent, product or label concerned; or
- (b) vary the relevant particulars or conditions concerned.

Information that does not have a limitation period is protected indefinitely.

### 34M Limitation periods

- (1) The table below sets out *limitation periods* for certain information given in connection with an application made under section 10 or 27:

<b>Limitation periods for certain information given in connection with an application made under section 10 or 27</b>			
	<b>The limitation period for:</b>	<b>ends:</b>	<b>after:</b>
1	information: (a) given in connection with an application under section 10 for approval of an active constituent (for a proposed or existing chemical product) that was not a previously endorsed active constituent on the commencement of this Division; and (b) relied on to approve the active constituent	10 years	the constituent is approved.
2	information: (a) given in connection with an application made under section 10 for: (i) registration of a chemical product at least one of whose active constituents was not a previously endorsed active constituent when the application passed preliminary assessment; or (ii) approval of a label for a container for a chemical product at least one of whose active constituents was not a previously endorsed active	10 years	the product or label, as required, is registered or approved.

---

**Limitation periods for certain information given in connection with an application made under section 10 or 27**


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	<b>The limitation period for:</b>	<b>ends:</b>	<b>after:</b>
	constituent when the application passed preliminary assessment; and (b) relied on to register the product or approve the label		
3	information: (a) given in connection with an application (except one covered by item 2) made under section 10 for: (i) registration of an agricultural chemical product; or (ii) approval of a label for a container for an agricultural chemical product; and (b) relied on to register the product or approve the label	5 years	the product or label, as required, is registered or approved.
4	information: (a) given in connection with an application (except one covered by item 2) made under section 10 for: (i) registration of a veterinary chemical product; or (ii) approval of a label for a container for a veterinary chemical product; and (b) relied on to register the product or approve the label	3 years	the product or label, as required, is registered or approved.
5	information: (a) given in connection with an application made under section 27 for variation of the relevant particulars or conditions of: (i) the registration of an agricultural chemical product; or (ii) the approval of a label for a container for an agricultural chemical product; and (b) relied on to vary the relevant particulars or conditions	5 years	the relevant particulars or conditions are varied.
6	information:	3 years	the relevant

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**Limitation periods for certain information given in connection with an application made under section 10 or 27**


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<b>The limitation period for:</b>	<b>ends:</b>	<b>after:</b>
(a) given in connection with an application made under section 27 for variation of the relevant particulars or conditions of: <ul style="list-style-type: none"> <li>(i) the registration of a veterinary chemical product; or</li> <li>(ii) the approval of a label for a container for a veterinary chemical product; and</li> </ul>		particulars or conditions are varied.
(b) relied on to vary the relevant particulars or conditions		

---

(2) The table below sets out *limitation periods* for information given under section 161:

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**Limitation periods for information given under section 161**


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	<b>The limitation period for:</b>	<b>ends:</b>	<b>after:</b>
1	information given under section 161 in connection with an agricultural chemical product	5 years	the information is given.
2	information given under section 161 in connection with a veterinary chemical product	3 years	the information is given.

---

**30 Paragraph 57(2)(b) of the Code set out in the Schedule**

Repeal the paragraph, substitute:

- (b) the information was obtained because of a trial or laboratory experiment and any of the following apply:
    - (i) the information is of a kind mentioned in paragraph 32(1)(b) and was given to the APVMA in response to a notice under that section;
    - (ii) the trial or laboratory experiment was conducted in response to a notice under section 33;
    - (iii) the information was given to the APVMA in response to a notice under subsection 159(1) for the purposes of subparagraph 159(1)(d)(i), (ii) or (iii).
-

31 Subsection 57(2) of the Code set out in the Schedule

Omit all the words after paragraph (b).

32 Subsection 57(3) of the Code set out in the Schedule

Repeal the subsection.

33 Section 58 of the Code set out in the Schedule

Repeal the section.

34 Subsection 59(1) of the Code set out in the Schedule

Omit all the words from and including “Subject to subsections (1A) and (2)” to and including “protected information”, substitute “If protected information”.

35 Paragraph 59(1)(c) of the Code set out in the Schedule

Renumber as paragraph (a).

36 Paragraph 59(1)(d) of the Code set out in the Schedule

Renumber as paragraph (b).

37 At the end of subsection 59(1) of the Code set out in the Schedule

Add:

Note: In this Part:

(a) **approve** does not include re-approve; and

(b) **register** does not include re-register.

See the definitions of **approve** and **register** in subsection 3(1).

38 Subsection 59(1A) of the Code set out in the Schedule

Repeal the subsection.

39 Subsection 59(2) of the Code set out in the Schedule

Omit “applicant” (wherever occurring), substitute “holder”.

40 At the end of subsection 59(2) of the Code set out in the Schedule

Add:

; or (e) the information was previously given to the APVMA other than as protected information and neither of the following applies:

- 
- (i) the information was given only in response to an invitation under paragraph 8S(2)(e) in relation to an application for re-approval of the primary active constituent or re-registration of the primary chemical product;
  - (ii) Division 4A of Part 2 limits the use of the information; or
  - (f) the information shows that the secondary active constituent or secondary chemical product may not meet the safety criteria, the trade criteria or the efficacy criteria; or
  - (g) the information is publicly available.

41 Paragraph 59(3)(a) of the Code set out in the Schedule

Omit “applicant” (wherever occurring), substitute “holder”.

42 Subsection 59(4) of the Code set out in the Schedule

Repeal the subsection.

43 Paragraph 59(5)(a) of the Code set out in the Schedule

Omit “applicant”, substitute “holder”.

44 At the end of section 59 of the Code set out in the Schedule

Add:

(6) In this Part, *continue* an approval or registration means:

- (a) vary the relevant particulars or conditions of the approval or registration, other than under Division 3A of Part 2 (re-approving and re-registering); or
- (b) affirm the approval or registration under Division 4 of Part 2 (reconsidering approvals and registrations).

45 Section 60 of the Code set out in the Schedule (heading)

Repeal the heading, substitute:

60 APVMA to notify holders

45A Paragraph 60(1)(b)

Omit “paragraph 59(2)(c)”, substitute “subsection 59(2)”.

46 Subsection 60(2) of the Code set out in the Schedule

Omit “secondary applicant” (first occurring), substitute “primary holder or each primary holder and to the secondary holder”.

47 Paragraph 60(2)(b) of the Code set out in the Schedule

Omit “, (b) or (d)”, substitute “or (b)”.

48 Paragraph 60(2)(c) of the Code set out in the Schedule

Repeal the paragraph, substitute:

- (c) requesting the notice recipient to tell the APVMA, before the day stated in the notice, which must be within 60 days after the notice is given, whether the notice recipient wants the APVMA to take further action in respect of the information under this section.

49 Subsection 60(3) of the Code set out in the Schedule

Omit “the secondary applicant” (first occurring), substitute “a notice recipient”.

50 Subsection 60(3) of the Code set out in the Schedule

After “the APVMA must”, insert “, within 14 days,”.

51 Subsection 60(3) of the Code set out in the Schedule

Omit “primary applicant” (first and second occurring), substitute “primary holder”.

52 Subsection 60(3) of the Code set out in the Schedule

Omit “secondary applicant” (second occurring), substitute “secondary holder”.

53 Paragraph 60(3)(a) of the Code set out in the Schedule

Omit “applicant” (wherever occurring), substitute “holder”.

54 Paragraph 60(3)(b) of the Code set out in the Schedule

Omit “applicant”, substitute “holder”.

55 Paragraph 60(3)(b) of the Code set out in the Schedule

Omit “, (b) or (d)”, substitute “or (b)”.

- 
- 56 Paragraphs 60(3)(c) and (e) of the Code set out in the Schedule  
Omit “applicant” (wherever occurring), substitute “holder”.
- 57 Section 61 of the Code set out in the Schedule (heading)  
Repeal the heading, substitute:
- 61 Primary holder to notify secondary holder
- 58 Subsection 61(1) of the Code set out in the Schedule  
Omit “As soon as practicable”, substitute “Within 28 days”.
- 59 Subsection 61(1) of the Code set out in the Schedule  
Omit “applicant” (wherever occurring), substitute “holder”.
- 60 Subsection 61(1) of the Code set out in the Schedule  
Omit “section 60”, substitute “subsection 60(3)”.
- 61 Section 62 of the Code set out in the Schedule  
Omit “applicant” (wherever occurring), substitute “holder”.
- 62 Paragraph 62(1)(b) of the Code set out in the Schedule  
Omit “applicants”, substitute “holders”.
- 63 Subsection 62(1) of the Code set out in the Schedule  
Omit “and the secondary”, substitute “and any”.
- 64 Section 69 of the Code set out in the Schedule  
Omit “applicant” (wherever occurring), substitute “holder”.
- 65 Section 70 of the Code set out in the Schedule  
Omit “applicant” (wherever occurring), substitute “holder”.
- 66 Subsection 70(1) of the Code set out in the Schedule  
Omit “applicants”, substitute “holders”.
- 67 Subsection 71(1) of the Code set out in the Schedule  
Omit “section”, substitute “Division”.
-

68 Section 169 of the Code set out in the Schedule

Before “When”, insert “(1)”.

69 At the end of section 169 of the Code set out in the Schedule

Add:

(2) Subsection (1) is not limited by section 14B, Division 4A of Part 2 or Part 3.



## Schedule 5—Arrangements for collecting levy

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

#### 1 Subsection 3(1)

Insert:

**Agency** has the same meaning as in the *Financial Management and Accountability Act 1997*.

#### 2 Subsection 3(1)

Insert:

**collecting agency** means:

- (a) if an Agency is specified by instrument under section 3A to be the collecting agency—the Agency; or
- (b) if paragraph (a) does not apply—the APVMA.

#### 3 Subsection 3(1) (definition of *notional wholesale value*)

Omit “APVMA”, substitute “collecting agency”.

#### 4 After section 3

Insert:

#### 3A Minister may specify collecting agency

- (1) The Minister may, by written instrument, specify an Agency to be the collecting agency.
- (2) Before making an instrument specifying an Agency, the Minister must get the written agreement of the Minister responsible for the Agency.
- (3) An instrument under subsection (1) is not a legislative instrument.

#### 5 Section 6 (heading)

Repeal the heading, substitute:

6 Power of collecting agency to make certain determinations

6 Subsection 6(1)

Omit “APVMA”, substitute “collecting agency”.

7 Subsection 14(2)

Omit “APVMA”, substitute “collecting agency”.

8 Paragraph 14A(1)(a)

Omit “APVMA”, substitute “collecting agency”.

9 Subsection 14A(3)

Omit “APVMA”, substitute “collecting agency”.

10 Subsection 15(1)

Omit “APVMA” (wherever occurring), substitute “collecting agency”.

11 Subsection 15(3)

Omit “APVMA” (wherever occurring), substitute “collecting agency”.

12 Subsections 15(4), (5) and (6)

Omit “APVMA”, substitute “collecting agency”.

13 Section 16 (heading)

Repeal the heading, substitute:

16 Assessment of levy by collecting agency

14 Subsection 16(1)

Omit “APVMA”, substitute “collecting agency”.

15 Subsection 16(4)

After “APVMA”, insert “or, if an Agency is specified by instrument under section 3A, the Agency”.

16 Subsections 16(5) and (6)

Omit “APVMA”, substitute “collecting agency”.

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17 Subsection 16(12)

Omit “APVMA by the Chief Executive Officer of the APVMA”, substitute “collecting agency by the Chief Executive Officer of the Agency”.

18 Subsection 17(1)

Omit “APVMA” (wherever occurring), substitute “collecting agency”.

19 Paragraph 17(2)(a)

Omit “or to an inspector”, substitute “, an Agency specified by instrument under section 3A or an inspector”.

20 Subsection 18(1)

Omit “APVMA” (wherever occurring), substitute “collecting agency”.

21 Subsections 18(3), (4), (5), (7) and (8)

Omit “APVMA”, substitute “collecting agency”.

22 At the end of Part 3

Add:

18A Reporting obligations of collecting agency

- (1) This section applies if an Agency is specified by instrument under section 3A to be the collecting agency.
- (2) In relation to a particular period, the Agency must notify the APVMA, in writing, of the following:
  - (a) the leviable disposals of a chemical product that took place during the period;
  - (b) the total leviable value (if any) in respect of the product for that period and the amount of the levy (if any) that was payable;
  - (c) any assessment made by the Agency as to whether any levy was payable in respect of leviable disposals of the chemical product during the period;
  - (d) the amounts of levy, late payment penalty or understatement penalty collected by the Agency during the period;

- (e) if the prescribed date for payment of levy falls within the period—the amounts of levy that have not been paid on or before the prescribed date;
  - (f) if late payment penalty or understatement penalty is payable during the period—any amounts of late payment penalty or understatement penalty that have not been paid;
  - (g) if the amounts of any levy, late payment penalty or understatement penalty overpaid by a person have been credited during the period against a liability of the person to pay another such amount under the Act—the amount credited and the person in relation to whom the amount was credited;
  - (h) if the whole or part of the liability to pay an amount of levy, late payment penalty or understatement penalty has been waived during the period—the amount that has been waived and the person in relation to whom the amount was waived;
  - (i) if the total amount of levy, late payment penalty or understatement penalty was rounded during the period—the amount of levy, late payment penalty or understatement penalty payable, the amount as rounded and the person in relation to whom the amount was rounded.
- (3) The Agency must notify the APVMA in such form, and by such time after the end of the period, as the APVMA requires.

18B APVMA may request information from collecting agency

- (1) This section applies if an Agency is specified by instrument under section 3A to be the collecting agency.
- (2) The APVMA may request the collecting agency to provide any information it has acquired under this Act if the APVMA considers that the information is or may be required to enable:
  - (a) the APVMA to perform functions, or exercise powers, under the *Agricultural and Veterinary Chemicals (Administration) Act 1992* or the Agvet Code of a State or of the participating Territories; or
  - (b) the Chief Executive Officer of the APVMA to perform his or her functions, or exercise his or her powers, under the *Agricultural and Veterinary Chemicals (Administration) Act 1992* or the Agvet Code of a State or of the participating Territories.

- 
- (3) The Agency must respond to the APVMA in such form, and by such time, as the APVMA requires.

23 Section 20 (heading)

Repeal the heading, substitute:

20 APVMA or collecting agency may require information about disposals of chemical products

24 Subsection 20(1)

After “the APVMA may”, insert “or, if a collecting agency is specified by instrument under section 3A to be the collecting agency, the collecting agency may”.

25 Subsection 20(1)

After “give to the APVMA”, insert “or the collecting agency, as the case may be”.

26 Subsection 20(2)

Repeal the subsection, substitute:

- (2) To avoid doubt, the APVMA may give a written notice under subsection (1) even if an Agency is specified by instrument under section 3A to be the collecting agency.

27 Section 33 (heading)

Repeal the heading, substitute:

33 Administrative Appeals Tribunal may review certain decisions by collecting agency

28 Paragraphs 33(b), (c) and (d)

Omit “APVMA”, substitute “collecting agency”.

29 Section 38

Omit “delegate of the APVMA”, substitute “delegate of the APVMA or of any other Agency”.

30 Subsection 38A(1)

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Omit “APVMA”, substitute “collecting agency”.

**31 Section 38B**

Omit “APVMA”, substitute “collecting agency”.

**32 Section 38B (note)**

Omit “APVMA”, substitute “collecting agency”.

**33 Section 38C**

Omit “APVMA”, substitute “collecting agency”.

**34 After section 38C**

Insert:

**38D Costs and expenses of collecting agency**

If an Agency is specified by instrument under section 3A to be the collecting agency, the APVMA:

- (a) must pay the Agency for the costs and expenses incurred by the Agency in relation to collecting levy, late payment penalty or understatement penalty under this Act; and
- (b) may debit the Australian Pesticides and Veterinary Medicines Special Account for this purpose.

**38E Delegation**

The Chief Executive Officer of an Agency may, by writing, delegate his or her power under subsection 16(12) to:

- (a) if the Agency is the APVMA—an SES employee or acting SES employee in the APVMA; or
- (b) if the Agency is specified by instrument under section 3A to be the collecting agency—an SES employee or acting SES employee in the Agency.

**35 Subsection 39(1)**

After “APVMA”, insert “or, if a collecting agency is specified by instrument under section 3A to be the collecting agency, the collecting agency, or both,”.

**36 Validation of delegations**

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- (1) If, before this item commenced:
- (a) a member of the staff of the APVMA signed a notice of assessment on behalf of the APVMA; and
  - (b) the member purported to do so as a delegate of the Chief Executive Officer under subsection 16(12) of the *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994*;
- the member is taken to have done so as a delegate of the Chief Executive Officer under that subsection.
- (2) This item does not affect rights or liabilities arising between parties to proceedings heard and finally determined by a court before the day this item commenced.

## Schedule 6—Miscellaneous

### Part 1—Miscellaneous amendments

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

1 Subsection 3(1) (definition of *prescribed date for payment*)

Repeal the definition, substitute:

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

- (a) if levy is payable because of an assessment that has been made—the date stated in the notice of assessment to be the date by which the levy is to be paid; or
- (b) in any other case—the next 31 December following the end of the relevant financial year.

Note: As the levy is paid in arrears, levy might be payable in respect of a chemical product whose registration has ceased.

2 Subsection 3(1) (definition of *rate of levy*)

Repeal the definition, substitute:

***rate of levy*** has the meaning given by section 12C.

3 Subsection 3(1) (definition of *registered*)

Repeal the definition, substitute:

***registered***, in relation to a jurisdiction, means registered under a registration law of the jurisdiction.

4 Subsection 3(1) (paragraph (a) of the definition of *registration law*)

Omit “or 2A”.

5 Subsection 3(1) (definition of *relevant calendar year*)

Repeal the definition.

6 Division 1 of Part 2



Repeal the Division.

7 Subsection 12C(1)

Omit “(1)”.

8 Subsections 12C(2) and (3)

Repeal the subsections.

9 Subsection 20(1)

Omit “(other than section 9)”.

10 Section 36 (heading)

Repeal the heading, substitute:

36 Records to be kept by applicants for registration of, and persons who  
import or manufacture, chemical products

11 Subsection 36(1)

Omit “or the renewal of registration,”, substitute “renewal of  
registration or re-registration”.

12 Subsection 39(2)

Omit “11, 12 or”.

**Agricultural and Veterinary Chemicals Act 1994**

13 Subsection 7(4)

Repeal the subsection.

14 After section 8

Insert:

8A Application of legislative instruments in the participating Territories

Legislative instruments in force for the time being under the  
*Agricultural and Veterinary Chemicals Code Act 1994* apply as  
legislative instruments in force for the purposes of the Agvet Code  
of the participating Territories.

15 Subsection 23(1)

Omit “may determine”, substitute “may, by legislative instrument, determine”.

16 Subsection 23(1)

Omit “written”.

17 Subsection 23(3)

Repeal the subsection, substitute:

- (3) Despite subsection 44(1) of the *Legislative Instruments Act 2003*, section 42 (disallowance) of that Act applies to a legislative instrument made under subsection (1) of this section.

**Agricultural and Veterinary Chemicals (Administration) Act  
1992**

18 Paragraph 7(1A)(b)

Omit “registered listed chemical products,”.

19 Subsection 8(1)

Omit “persons, bodies or Governments”, substitute “persons or bodies”.

20 After paragraph 8(1)(b)

Insert:

- (ba) a national regulatory authority of a foreign country that has national responsibility relating to the evaluation, registration or control of agricultural or veterinary chemical products; and

21 Subsection 8(1A)

Omit “person, body or Government”, substitute “person or body”.

22 Subsection 8A(2)

Omit “or listed registration” (wherever occurring).

23 Paragraph 55(2)(a)

Omit “goals”, substitute “objectives”.

24 At the end of subsection 55(2)

Add:

; and (c) include such other information (if any) as is prescribed by the regulations.

25 Paragraph 61(2)(c)

Repeal the paragraph, substitute:

(c) an evaluation of its overall performance during that year against:

(i) the performance indicators set out in the corporate plan applicable to the period and the annual operational plan; and

(ii) the performance indicators (if any) prescribed by the regulations for the purposes of this subparagraph;

26 Subparagraph 69B(1)(a)(ii)

Omit “a registered listed chemical product,”.

27 Section 69EZB

Omit “subsection 58(1)”, insert “subsection 6C(1)”.

28 Paragraph 69H(1)(b)

Omit “, a registered listed chemical product”.

29 Paragraph 69H(1)(e)

Omit “listed registration,” (wherever occurring).

30 Paragraph 69H(2)(ba)

Repeal the paragraph.

31 Subsection 69H(2)

Omit “granted listed registration to the product,”.

32 Subparagraph 70(1)(b)(iii)

Omit “, a registered listed chemical product”.

33 After section 71

Insert:

72 Review of Agvet Scheme every 10 years

- (1) The Minister must ensure that, at least every 10 years, there is a review of the operation of the following Acts, and any instruments made under those Acts:
  - (a) the *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994*;
  - (b) the *Agricultural and Veterinary Chemical Products Levy Imposition (Customs) Act 1994*;
  - (c) the *Agricultural and Veterinary Chemical Products Levy Imposition (Excise) Act 1994*;
  - (d) the *Agricultural and Veterinary Chemical Products Levy Imposition (General) Act 1994*;
  - (e) the *Agricultural and Veterinary Chemicals Act 1994*;
  - (f) the *Agricultural and Veterinary Chemicals (Administration) Act 1992*;
  - (g) the *Agricultural and Veterinary Chemicals Code Act 1994*.
- (2) The Minister may include any related matter in the review.
- (3) At least one of the persons conducting the review must not be otherwise appointed, employed or engaged by the Commonwealth.
- (4) The review must include a request for, and consideration of, submissions from members of the public.
- (5) The Minister must cause a written report of the review to be laid before each House of the Parliament within 15 sitting days of the House after:
  - (a) for the first review under this section—the tenth anniversary of the commencement of this section; and
  - (b) for later reviews—the tenth anniversary of the day on which the written report of the immediately preceding review was laid before each House of the Parliament.

34 Section 77

Repeal the section.

Agricultural and Veterinary Chemicals Code Act 1994

34A Paragraph 6(2)(a)

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Omit all the words after “approval of standards”, substitute:  
for:

- (i) constituents for chemical products; and
- (ii) chemical products; and
- (iii) labels for containers for chemical products; or

35 Subsection 7(1)

Omit “signed writing”, substitute “legislative instrument”.

36 Subsections 7(3) to (5)

Repeal the subsections, substitute:

- (3) Despite subsection 44(1) of the *Legislative Instruments Act 2003*, section 42 of that Act applies to a legislative instrument made under subsection (1) of this section.

37 Paragraph 7(6)(b)

Repeal the paragraph, substitute:

- (b) the fact that section 42 of the *Legislative Instruments Act 2003* would apply in relation to the order because of subsection (3) of this section.

38 Section 9

Repeal the section.

39 Schedule (table of contents)

Repeal the table of contents.

40 Schedule (list of terms defined by section 3)

Repeal the list.

41 Subsection 3(1) of the Code set out in the Schedule

Omit “(1)”.

42 Subsection 3(1) of the Code set out in the Schedule (definition of *material safety data sheet*)

Repeal the definition.

43 Subsection 3(2) of the Code set out in the Schedule

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Repeal the subsection.

44 After section 163 of the Code set out in the Schedule

Insert:

163A Legislative instruments to be disallowable

- (1) Despite subsection 44(1) of the *Legislative Instruments Act 2003* but subject to subsection (2) of this section, section 42 of that Act applies to a legislative instrument made under this Code.
- (2) However, subsection (1) does not apply to a legislative instrument made under section 5B or 8B of this Code.

163B Certain provisions to have effect as part of this Code

If a law amends this Code, any provision of that law, or of any other instrument made under that law, has effect, to the extent that it deals with matters of a transitional, application or savings nature relating to the amendment, as if it were part of this Code.

45 Sections 173, 175, 177, 179 and 182 of the Code set out in the Schedule

Repeal the sections.

## Part 2—Transitional, application and savings provisions

### 46 Definitions

In this Part:

**agvet law** means:

- (a) the Agvet Code of this, or another, jurisdiction; or
- (b) the *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994*; or
- (c) the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

**commencement time** means the time when item 1 of Schedule 1 to this Act commences.

**new Code** means the following as in force on and after the commencement of this Schedule:

- (a) the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*;
- (b) the regulations made under the Code;
- (c) any instruments made under the Code or the regulations.

**old Code** means the following as in force immediately before the commencement of this Schedule:

- (a) the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*;
- (b) the regulations made under the Code;
- (c) any instruments made under the Code or the regulations.

### 47 Applications made and reconsiderations commenced

- (1) For the first 12 months after the commencement time, the old Code continues to apply for the purposes of:
  - (a) determining an application lodged with the APVMA before the commencement time; and
  - (b) completing a reconsideration begun under Division 4 of Part 2 before the commencement time.
- (2) Paragraph (1)(a) does not apply in relation to an application made under section 10 or 27 of the old Code if notice under section 11A of that

Code in relation to the application has not been given to an approved person before the commencement time.

- (3) For the purposes of paragraph (1)(b), a reconsideration begins when the period within which a submission in relation to the reconsideration must be given to the APVMA under paragraph 32(1)(b) or 32(2)(c) of the old Code ends.

#### 48 Saving of regulations and other instruments

- (1) If:

- (a) regulations (the *existing regulations*) were made under a provision of the old Code; and
- (b) a provision (the *corresponding provision*) of the new Code provides for regulations to be made for the same, or substantially the same, purpose;

the existing regulations have effect, to the extent that they could have been made under the corresponding provision, as if they were so made.

- (2) If:

- (a) an instrument other than a regulation (the *existing instrument*) was made under a provision of the old Code; and
- (b) a provision (the *corresponding provision*) of the new Code provides for an instrument to be made for the same, or substantially the same, purpose;

the existing instrument has effect, to the extent that it could have been made under the corresponding provision, as if it were so made.

#### 49 Saving of approvals, registrations, permits and licences

- (1) Despite the amendments made by this Act, an approval, registration, permit or licence that was in force under the old Code immediately before the commencement time continues in force on and after that time as if it had been given, made or issued under the new Code.
- (2) This item does not prevent:
- (a) the suspension or cancellation of an approval, registration, permit or licence; or
  - (b) the variation of the relevant particulars or conditions of an approval or registration; or
  - (c) the variation of the conditions of a licence or permit.



50 Existing conditions continue to apply

To avoid doubt, the amendments made by this Act do not remove or invalidate a condition of an approval, registration, permit or licence that was imposed by the APVMA under the old Code.

51 Existing approvals and registrations must be given end date etc.

- (1) This item applies to the approval of an active constituent or the registration of a chemical product (other than a listed registration), if the approval or registration:
  - (a) was in force under the old Code immediately before the commencement time; or
  - (b) comes into force under the old Code, because of the operation of item 47, during the first 12 months after the commencement time.
- (2) Within 2 years after this item commences, the APVMA must give written notice to the holder:
  - (a) for an approval—of the date (the **end date**) the approval ends; or
  - (b) for a registration—of the date (the **last renewal date**) after which the registration cannot be renewed under Division 6 of the new Code.
- (3) The end date or last renewal date, as required, must:
  - (a) be worked out in accordance with the method prescribed by the regulations (if any); and
  - (b) be the last day of a calendar month:
    - (i) at least 7 years after the constituent or product was approved or registered; and
    - (ii) not earlier than 6 months, or later than 15 years, after the commencement time; and
  - (c) be entered in the Record, Register or relevant APVMA file, as required.
- (4) Despite subparagraph (3)(b)(i), the end date for an approval may be less than 7 years after the commencement time if the APVMA believes that it is necessary to provide for the approval to end at the same time as another approval of the active constituent.

- (5) Despite subparagraph (3)(b)(i), the last renewal date for a registration may be less than 7 years after the commencement time if the APVMA believes that it is necessary to provide for the date to be the same as the last renewal date for the registration of another chemical product that contains one or more of the same active constituents.
- (6) Paragraph (3)(b) does not apply if the approval or registration is subject to the condition that it remains in force only for a stated period of not more than 1 year (see subsection 23(2) of the old Code).

**52 Saving protection for information given under Division 4A of Part 2 of the old Code**

- (1) Despite the amendments made by this Act, Division 4A of Part 2 of the old Code continues to apply, after the commencement time, in relation to the following information given as mentioned in section 34C of the old Code:
  - (a) information given, whether before or after the commencement time, in connection with an application lodged before the commencement time;
  - (b) any other information given before the commencement time.
- (2) Paragraph (1)(a) does not apply in relation to an application made under section 10 or 27 of the old Code if notice under section 11A of that Code in relation to the application has not been given to an approved person before the commencement time.
- (3) For the purposes of its operation after the commencement time, Division 4A of Part 2 of the old Code applies with such modifications as are necessary to provide for its operation to be equivalent to its operation immediately before the commencement time.

**53 Saving protection for information given under Part 3 of the old Code**

- (1) Despite the amendments made by this Act, Part 3 of the old Code continues to apply after the commencement time in relation to information given before the commencement time as mentioned in subsection 59(1) of the old Code.
- (2) For the purposes of its operation after the commencement time, Part 3 of the old Code applies with such modifications as are necessary to provide for its operation to be equivalent to its operation immediately before the commencement time.

54 Cancellation of permits and licences for convictions etc.

Paragraphs 119(4)(b) and 127(1)(a) of the new Code apply only in relation to a permit or licence that is issued on or after the commencement time.

55 Time for bringing proceedings

Section 147 of the new Code applies only in relation to acts or omissions that occur on or after the commencement time.

56 Recovery of costs

Section 149A of the new Code applies only in relation to acts or omissions that occur on or after the commencement time.

57 Regulations for this Part

The Governor-General may make regulations prescribing matters:

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

58 Regulations may deal with transitional, application and savings matters

- (1) The regulations may deal with matters of a transitional, application or savings nature relating to the amendments made by this Act.
- (2) Regulations made for the purposes of subitem (1) have effect despite anything else in this Part.
- (3) Despite subsection 12(2) of the *Legislative Instruments Act 2003* but subject to subitem (4), regulations made for the purposes of subitem (1) may be expressed to take effect from a date before the regulations are registered under that Act.
- (4) If:
  - (a) regulations are expressed to take effect from a date (the **registration date**) before the regulations are registered under the *Legislative Instruments Act 2003*; and
  - (b) a person engaged in conduct before the registration date; and
  - (c) but for the retrospective effect of the regulations, the conduct would not have contravened a provision of the agvet law;

then a court must not convict the person of an offence, or order the person to pay a pecuniary penalty, in relation to the conduct on the grounds that it contravened that provision.

**59 Regulations may end reconsiderations**

- (1) The regulations may provide for one or more reconsiderations begun under Division 4 of Part 2 of the old Code to end 12 months after the commencement time if they have not already done so.
  - (2) A regulation under subitem (1) must not be made after that period of 12 months.
  - (3) If a reconsideration ends by force of a regulation made under subitem (1), the decision on the reconsideration is taken to be a decision to affirm the approval or registration concerned.
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*[Minister's second reading speech made in—  
House of Representatives on 28 November 2012  
Senate on 16 May 2013]*

(220/12)