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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Agricultural and Veterinary Chemicals
Legislation Amendment Bill 2012**

No. , 2012

(Agriculture, Fisheries and Forestry)

**A Bill for an Act to amend laws relating to
agricultural and veterinary chemicals, and for
related purposes**

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1 **A Bill for an Act to amend laws relating to**
2 **agricultural and veterinary chemicals, and for**
3 **related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Agricultural and Veterinary*
7 *Chemicals Legislation Amendment Act 2012*.

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with
11 column 2 of the table. Any other statement in column 2 has effect
12 according to its terms.
13

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.	
2. Schedules 1 to 6	1 July 2013.	1 July 2013

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

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

7 **3 Schedule(s)**

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9 repealed as set out in the applicable items in the Schedule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

12 **4 Review of operation of amendments**

- 13 (1) The Minister must cause a review to be conducted of:
14 (a) the operation of the amendments made by this Act; and
15 (b) any other related matter that the Minister specifies.
- 16 (2) At least one of the persons conducting the review must be a person
17 who is not otherwise appointed, employed or engaged by the
18 Commonwealth.
- 19 (3) The review must include a request for, and consideration of,
20 submissions from members of the public.
- 21 (4) The Minister must cause a written report of the review to be laid
22 before each House of the Parliament within 15 sitting days of that
23 House after 1 July 2018.
24

1 **Schedule 1—Approvals, registrations, permits**
2 **and licences**
3

4 *Agricultural and Veterinary Chemicals Code Act 1994*

5 **1 Before section 1 of the Code set out in the Schedule**

6 Insert:

7 **Division 1—Object, definitions etc.**

8 **2 After section 1 of the Code set out in the Schedule**

9 Insert:

10 **1A Implementing the Code**

11 (1) This Code recognises that:

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

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

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

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

- 1 (i) holders of approvals, registrations, permits and licences;
2 and
3 (ii) the domestic industry for manufacturing and
4 formulating chemical products and their constituents;
5 and
6 (iii) the users of chemical products;
7 with the risk of the use of the products and constituents to the
8 health and safety of human beings, animals and the
9 environment; and
10 (d) recognises that the use of chemical products that pose
11 unmanageable risks to the health and safety of human beings,
12 animals and the environment is not appropriate in Australia;
13 and
14 (e) promotes community confidence in the regulation of
15 chemical products and their constituents, is open and
16 accountable, and gives opportunity for public involvement
17 and participation; and
18 (f) secures compliance with this Code through appropriate,
19 proportionate, consistent and effective compliance and
20 enforcement measures.

21 **3 Subsection 3(1) of the Code set out in the Schedule**
22 **(definition of *acknowledge*)**

23 Repeal the definition.

24 **4 Subsection 3(1) of the Code set out in the Schedule**
25 **(definition of *adequate*)**

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

28 **5 Subsection 3(1) of the Code set out in the Schedule**

29 Insert:

30 *application* means an application under this Code.

31 **6 Subsection 3(1) of the Code set out in the Schedule**
32 **(definition of *approved person*)**

33 Repeal the definition.

34 **7 Subsection 3(1) of the Code set out in the Schedule**

1 Insert:

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

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

9 **8 Subsection 3(1) of the Code set out in the Schedule**

10 Insert:

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

13 **9 Subsection 3(1) of the Code set out in the Schedule**
14 **(definition of *established standard*)**

15 Repeal the definition, substitute:

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

17 **10 Subsection 3(1) of the Code set out in the Schedule**
18 **(definition of *holder*)**

19 Repeal the definition, substitute:

20 ***holder***:

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

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

3 Repeal the definition.

4 **12 Subsection 3(1) of the Code set out in the Schedule**
5 **(definition of *interested person*)**

6 Repeal the definition.

7 **13 Subsection 3(1) of the Code set out in the Schedule**

8 Insert:

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

10 **14 Subsection 3(1) of the Code set out in the Schedule**
11 **(definition of *listable chemical product*)**

12 Repeal the definition.

13 **15 Subsection 3(1) of the Code set out in the Schedule**

14 Insert:

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

18 **16 Subsection 3(1) of the Code set out in the Schedule**
19 **(definition of *listed registration*)**

20 Repeal the definition.

21 **17 Subsection 3(1) of the Code set out in the Schedule**
22 **(definition of *Listing Schedule*)**

23 Repeal the definition.

24 **18 Subsection 3(1) of the Code set out in the Schedule**

25 Insert:

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

28 *meets the efficacy criteria* has the meaning given by subsection
29 5B(1).

1 *meets the labelling criteria* has the meaning given by subsection
2 5D(1).

3 *meets the safety criteria* has the meaning given by subsection
4 5A(1).

5 *meets the trade criteria* has the meaning given by subsection
6 5C(1).

7 **19 Subsection 3(1) of the Code set out in the Schedule**

8 Insert:

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

12 **20 Subsection 3(1) of the Code set out in the Schedule**

13 Insert:

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

16 **21 Subsection 3(1) of the Code set out in the Schedule**
17 **(definition of *Record of Approved Active Constituents*)**

18 Repeal the definition.

19 **22 Subsection 3(1) of the Code set out in the Schedule**

20 Insert:

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

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

25 Repeal the definition.

26 **24 Subsection 3(1) of the Code set out in the Schedule**
27 **(definition of *registered listed chemical product*)**

28 Repeal the definition.

29 **25 Subsection 3(1) of the Code set out in the Schedule**

1 Insert:

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

4 **26 Subsection 3(1) of the Code set out in the Schedule**
5 **(definition of *relevant particulars*)**

6 Repeal the definition, substitute:

7 *relevant particulars* means:

- 8 (a) in relation to the approval of an active constituent—the
9 distinguishing number, any instructions for use and any other
10 particulars required by paragraph 19(1)(c) to be entered in the
11 Record; and
12 (b) in relation to the registration of a chemical product—the
13 distinguishing number, any instructions for use and any other
14 particulars required by paragraph 20(1)(c) to be entered in the
15 Register; and
16 (c) in relation to the approval of a label—the information
17 required to be recorded in the relevant APVMA file by
18 subparagraphs 21(c)(i) to (iv);
19 and includes particulars of variations of relevant particulars made
20 under section 26, 26C, 29, 29A, 29G, 34A or 34AF.

21 **27 After section 5 of the Code set out in the Schedule**

22 Insert:

23 **5A Definition of *meets the safety criteria***

- 24 (1) An active constituent or chemical product *meets the safety criteria*
25 if use of the constituent or product, in accordance with any
26 instructions approved, or to be approved, by the APVMA for the
27 constituent or product or contained in an established standard:
28 (a) is not, or would not be, an undue hazard to the safety of
29 people exposed to it during its handling or people using
30 anything containing its residues; and
31 (b) is not, or would not be, likely to have an effect that is harmful
32 to human beings; and

- 1 (c) is not, or would not be, likely to have an unintended effect
2 that is harmful to animals, plants or things or to the
3 environment.
- 4 (2) For the purposes of being satisfied as to whether an active
5 constituent meets the safety criteria, the APVMA:
6 (a) must have regard to the following:
7 (i) the toxicity of the constituent and its residues in relation
8 to relevant organisms and ecosystems, including human
9 beings;
10 (ii) the method by which the constituent is, or is proposed to
11 be, manufactured;
12 (iii) the extent to which the constituent will contain
13 impurities;
14 (iv) whether an analysis of the chemical composition of the
15 constituent has been carried out and, if so, the results of
16 the analysis;
17 (v) any conditions to which its approval is, or would be,
18 subject;
19 (vi) any relevant particulars that are, or would be, entered in
20 the Record for the constituent;
21 (vii) any matters prescribed by the regulations; and
22 (b) may have regard to such other matters as it thinks relevant.
- 23 (3) For the purposes of being satisfied as to whether a chemical
24 product meets the safety criteria, the APVMA:
25 (a) must have regard to the following:
26 (i) the toxicity of the product and its residues in relation to
27 relevant organisms and ecosystems, including human
28 beings;
29 (ii) the relevant poison classification of the product under
30 the law in force in this jurisdiction;
31 (iii) how the product is formulated;
32 (iv) the composition and form of the constituents of the
33 product;
34 (v) any conditions to which its registration is, or would be,
35 subject;
36 (vi) any relevant particulars that are, or would be, entered in
37 the Register for the product;
-

- 1 (vii) any matters prescribed by the regulations; and
2 (b) may have regard to one or more of the following:
3 (i) the acceptable daily intake of each constituent contained
4 in the product;
5 (ii) any dietary exposure assessment prepared under
6 subsection 82(4) of the *Food Standards Australia New*
7 *Zealand Act 1991* as a result of any proposed variation
8 notified under subsection 82(3) of that Act in relation to
9 the product, and any comments on the assessment given
10 to the APVMA under subsection 82(4) of that Act;
11 (iii) whether any trials or laboratory experiments have been
12 carried out to determine the residues of the product and,
13 if so, the results of those trials or experiments and
14 whether those results show that the residues of the
15 product will not be greater than limits that the APVMA
16 has approved or approves;
17 (iv) the stability of the product;
18 (v) the specifications for containers for the product;
19 (vi) such other matters as it thinks relevant.

20 **5B Definition of *meets the efficacy criteria***

- 21 (1) A chemical product *meets the efficacy criteria* if use of the
22 product, in accordance with instructions approved, or to be
23 approved, by the APVMA for the product, is, or would be,
24 effective according to criteria determined by the APVMA by
25 legislative instrument or contained in an established standard.
- 26 (2) For the purposes of being satisfied as to whether a chemical
27 product meets the efficacy criteria, the APVMA must have regard
28 to the following:
29 (a) whether any trials or laboratory experiments have been
30 carried out to determine the efficacy of the product and, if so,
31 the results of those trials or experiments;
32 (b) any conditions to which its registration is, or would be,
33 subject;
34 (c) any relevant particulars that are, or would be, entered in the
35 Register for the product;
36 (d) any matters prescribed by the regulations.

- 1 (3) For the purposes of the operation of this Code in relation to a
 2 particular chemical product, the APVMA is required to have regard
 3 to the matters set out in subsections (1) and (2) only:
 4 (a) to the extent prescribed by the regulations; or
 5 (b) if there are no such regulations—to the extent that the
 6 APVMA thinks the matters are relevant.

7 **5C Definition of *meets the trade criteria***

- 8 (1) A chemical product *meets the trade criteria* if use of the product,
 9 in accordance with instructions approved, or to be approved, by the
 10 APVMA or contained in an established standard, does not, or
 11 would not, unduly prejudice trade or commerce between Australia
 12 and places outside Australia.
- 13 (2) For the purposes of being satisfied as to whether a chemical
 14 product meets the trade criteria, the APVMA must have regard to
 15 the following:
 16 (a) any conditions to which its registration is, or would be,
 17 subject;
 18 (b) any relevant particulars that are, or would be, entered in the
 19 Register for the product;
 20 (c) any matters prescribed by the regulations.
- 21 (3) For the purposes of the operation of this Code in relation to a
 22 particular chemical product, the APVMA is required to have regard
 23 to the matters set out in subsections (1) and (2) only:
 24 (a) to the extent prescribed by the regulations; or
 25 (b) if there are no such regulations—to the extent that the
 26 APVMA thinks the matters are relevant.

27 **5D Definition of *meets the labelling criteria***

- 28 (1) A label for containers for a chemical product *meets the labelling*
 29 *criteria* if the label contains adequate instructions relating to such
 30 of the following as are appropriate:
 31 (a) the circumstances in which the product should be used;
 32 (b) how the product should be used;
 33 (c) the times when the product should be used;
 34 (d) the frequency of the use of the product;

- 1 (e) the withholding period after the use of the product;
2 (f) the re-entry period after the use of the product;
3 (g) the disposal of the product when it is no longer required;
4 (h) the disposal of containers of the product;
5 (i) the safe handling of the product and first aid in the event of
6 an accident caused by the handling of the product;
7 (j) any matters prescribed by the regulations.
- 8 (2) For the purposes of being satisfied as to whether a label meets the
9 labelling criteria, the APVMA must have regard to the following:
10 (a) any conditions to which its approval is, or would be, subject;
11 (b) any relevant particulars and instructions that are, or would be,
12 entered in the relevant APVMA file for the label.

13 **28 After section 6 of the Code set out in the Schedule**

14 Insert:

15 **6A APVMA may make guidelines etc.**

- 16 (1) The APVMA may make written guidelines for performing its
17 functions and exercising its powers under this Code.
- 18 (2) The APVMA must have regard to the guidelines.
- 19 (3) The guidelines must include:
20 (a) principles and processes for effective and efficient regulation
21 of chemical products and their constituents; and
22 (b) principles and processes relating to:
23 (i) the approval of active constituents for proposed or
24 existing chemical products; and
25 (ii) the registration of chemical products; and
26 (iii) the approval of labels for containers for chemical
27 products; and
28 (iv) the variation of relevant particulars and conditions; and
29 (v) the issue of permits and licences.
- 30 (4) The guidelines must not be inconsistent with an agvet law.
- 31 (5) The APVMA must publish the guidelines on its website.
- 32 (6) The guidelines are not a legislative instrument.

1 **6B Varying relevant particulars and conditions**

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

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

7 (1) The APVMA may use information obtained by it from any source
8 for the purpose of performing any of its functions or exercising any
9 of its powers under this Code.

10 (2) Subsection (1) has effect subject to this Code.

11 **6D Failure to comply with time limit does not affect validity**

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

14 **29 After section 8A of the Code set out in the Schedule**

15 Insert:

16 **Division 2—General provisions about applications**

17 **8A Definition of *meets the application requirements***

18 An application *meets the application requirements* if:

- 19 (a) the application:
- 20 (i) is in writing in the approved form; and
 - 21 (ii) is signed by the applicant; and
 - 22 (iii) is accompanied by so much of the prescribed fee as is
23 required to be paid when the application is made; and
 - 24 (iv) is lodged with the APVMA; and
 - 25 (v) contains, or is accompanied by, any information
26 specified for the application under section 8B; and
- 27 (b) the constituent, product or label in relation to which the
28 application is made complies, or will comply, with any
29 requirement prescribed by the regulations; and
- 30 (c) any requirement made under section 157 or 159 in relation to
31 the application has been complied with; and
-

- 1 (d) any requirement prescribed by another provision of this Code
2 in relation to the application has been complied with; and
3 (e) any amount (including an amount in respect of a tax or
4 penalty) that is payable by the applicant to the APVMA
5 (including under a law of another jurisdiction or the agvet
6 law), has been paid.

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

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

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

20 **8C Information to be taken into account in determining applications**

- 21 (1) In determining the application, the APVMA:
22 (a) must have regard to:
23 (i) the information in, or accompanying, the application as
24 required under section 8B or any other provision of this
25 Code; and
26 (ii) any information or thing given to the APVMA as
27 required under section 157 or 159 or by section 160A in
28 relation to the application; and
29 (iii) any submission made in response to an invitation given
30 by the APVMA in relation to the application; and
31 (b) may have regard to any other matter that it thinks relevant.
32 (2) However, the APVMA must not take into account any information
33 that:
34 (a) is given by or on behalf of the applicant in connection with
35 the application; but
-

1 (b) is not covered by paragraph (1)(a).

2 (3) This section does not apply in relation to an application under
3 section 122 for a licence.

4 **8D Applications may be withdrawn**

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

8 **Division 3—General provisions about notices**

9 **8E Notice to Food Standards Australia New Zealand**

10 (1) The APVMA must notify Food Standards Australia New Zealand
11 if an approval, registration, variation or permit proposed under this
12 Code (whether by application or on the initiative of the APVMA)
13 would, if it were given, made or issued, be likely to require a
14 variation to the Maximum Residue Limits Standard.

15 (2) The notice must:

16 (a) be in writing; and

17 (b) set out:

18 (i) the relevant particulars, or proposed relevant particulars,
19 of the active constituents and products concerned, other
20 than confidential commercial information; and

21 (ii) any other matters that the APVMA thinks appropriate;
22 and

23 (c) be given to Food Standards Australia New Zealand:

24 (i) for an application, other than an application under
25 section 29D—within 28 days after the APVMA
26 completes a preliminary assessment of the application;
27 or

28 (ii) for a variation under section 26C, 29, 29A, 29G, 34A or
29 34AF—before the variation is made.

30 (3) This section does not apply in relation to an approval, registration,
31 variation or permit proposed by an application that is subject to
32 preliminary assessment before the application has passed
33 preliminary assessment.

1 **8F Notice to holder of approval, registration or variation**

2 (1) The APVMA must give written notice to the holder within 14 days
3 if the APVMA:

- 4 (a) approves (or re-approves) an active constituent; or
- 5 (b) registers (or re-registers) a chemical product; or
- 6 (c) renews the registration of a chemical product; or
- 7 (d) approves a label; or
- 8 (e) varies relevant particulars or conditions (whether on
9 application or on the initiative of the APVMA), other than
10 under section 34A (varying relevant particulars or conditions
11 to allow affirmation).

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

13 (2) The notice must:

- 14 (a) for an approval or registration:
 - 15 (i) state that the constituent, product or label has been
 - 16 approved or registered; and
 - 17 (ii) set out the relevant particulars and conditions of the
 - 18 approval or registration; and
 - 19 (iii) state the date the approval or registration ends; and
- 20 (b) for a registration—state the date (if any) after which the
- 21 registration cannot be renewed under Division 6 of Part 2;
- 22 and
- 23 (c) for the renewal of a registration—state that the registration of
- 24 the chemical product has been renewed; and
- 25 (d) for the variation of relevant particulars or conditions:
 - 26 (i) state that the relevant particulars or conditions have
 - 27 been varied; and
 - 28 (ii) set out the relevant particulars or conditions as varied;
 - 29 and
 - 30 (iii) state the date the approval or registration ends; and
 - 31 (iv) of a registration—state the date (if any) after which the
 - 32 registration cannot be renewed under Division 6 of
 - 33 Part 2; and
- 34 (e) include any information prescribed by the regulations.

1 **8G Notice to applicant of refusal of application**

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

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

- 5 (2) The notice must:

- 6 (a) state that the application has been refused; and
7 (b) set out the reasons for the refusal; and
8 (c) include any information prescribed by the regulations; and
9 (d) specify any amount of fee that is repayable because of the
10 refusal.

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

13 **8H Published notice of approvals and registrations**

- 14 (1) If the APVMA approves an active constituent or registers a
15 chemical product, it must, unless it thinks that in the circumstances
16 it is unnecessary to do so, publish notice of the approval or
17 registration.

- 18 (2) The notice must:

- 19 (a) be published in the *Gazette*, as soon as practicable, and in any
20 other manner that the APVMA thinks appropriate; and
21 (b) state that the constituent has been approved or the product
22 has been registered and the date of the approval or
23 registration as mentioned in section 22; and
24 (c) if the approval or registration is a re-approval or
25 re-registration—state that fact; and
26 (d) contain a brief statement of the conditions of the approval or
27 registration that directly regulate the use of the constituent or
28 product; and
29 (e) include any information prescribed by the regulations.

30 **8J Published notice of variations of approvals and registrations**

- 31 (1) If the APVMA varies any of the relevant particulars or conditions
32 of the approval of an active constituent or the registration of a
33 chemical product, it must, unless it thinks that in the circumstances
34 it is unnecessary to do so, publish notice of the variation.

- 1 (2) The notice must:
2 (a) be published in the *Gazette*, as soon as practicable, and in any
3 other manner that the APVMA thinks appropriate; and
4 (b) state that the relevant particulars or conditions have been
5 varied and the date on which the variation took place; and
6 (c) contain a brief statement of the nature of, and reasons for, the
7 variation; and
8 (d) include any information prescribed by the regulations.

9 **8K Confidential commercial information in notices**

10 Any provision of this Code that requires information (however
11 described) to be given in a notice has effect subject to section 162
12 (disclosure of confidential commercial information).

13 **Division 4—Holders of approvals and registrations and**
14 **nominated agents**

15 **8L Changing the holder**

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

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

1 **8M Nominated agent**

- 2 (1) The holder may, at any time, apply to the APVMA for the person
3 nominated in the application to be the nominated agent for the
4 approval or registration.
- 5 (2) The APVMA must record the person as the nominated agent in the
6 Record, Register or relevant APVMA file, as required, if the
7 APVMA is satisfied that:
- 8 (a) the application meets the application requirements; and
9 (b) the nominated person has consented, by signed writing, to
10 being the nominated agent; and
11 (c) any requirements prescribed by the regulations have been
12 met.
- 13 (3) Otherwise, the APVMA must refuse the application.
- 14 Note: For notice of refusal, see section 8G.
- 15 (4) It is a condition of the approval or registration that the nominated
16 agent is a resident of, or carries on business in, Australia.

17 **8N Overseas holder must have nominated agent**

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

21 **8P Changing the nominated agent**

- 22 (1) The holder may apply to the APVMA to change the nominated
23 agent.
- 24 (2) The APVMA must record the change in the Record, Register or
25 relevant APVMA file, as required, if the APVMA is satisfied that:
- 26 (a) the application meets the application requirements; and
27 (b) the person to be the nominated agent has consented, by
28 signed writing, to being the nominated agent; and
29 (c) any requirements prescribed by the regulations have been
30 met.
- 31 (3) Otherwise, the APVMA must refuse the application.
- 32 Note: For notice of refusal, see section 8G.
-

1 **8Q Nominated agent may withdraw**

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

11 **8R Role of nominated agent**

12 Anything that may, or must, be done under this Code by, or in
13 relation to, the holder, as the holder of the approval or registration,
14 may be done by, or in relation to, either the holder or the
15 nominated agent.

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

17 **Division 5—Notice of certain proposed decisions**

18 **8S Notice of certain proposed decisions**

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

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

- 31 (2) The notice must:
- 32 (a) for notice under paragraph (1)(b)—set out the proposed
33 instructions and relevant particulars; and

- 1 (b) for notice under paragraph (1)(c)—set out the proposed
2 variation; and
- 3 (c) include a draft statement of reasons for the proposed course
4 of action; and
- 5 (d) set out the information on which the reasons are based
6 (including information not given to the APVMA by the
7 applicant); and
- 8 (e) invite written submissions from the applicant within 28 days,
9 or within such further period as is specified in the notice.
- 10 (3) The APVMA is not required to take account of anything given in
11 response to the invitation under paragraph (2)(e) that is not related
12 to information:
- 13 (a) already given to the APVMA by, or on behalf of, the
14 applicant; or
- 15 (b) set out in the notice under paragraph (2)(d).
- 16 (4) The APVMA is not required to comply with this section more than
17 once in relation to a particular application.

18 **Division 6—Listed chemical products and established** 19 **standards**

20 **8T Regulations may include schedule of listed chemical products**

- 21 (1) The regulations may include a schedule specifying chemical
22 products, or classes of chemical products, that are listed chemical
23 products for the purposes of this Code.
- 24 (2) Before the Governor-General makes a regulation that includes, or
25 amends, the schedule referred to in subsection (1), the APVMA
26 must publish in the *Gazette*, and in any other manner that the
27 APVMA thinks appropriate, a notice:
- 28 (a) stating that it proposes to recommend to the Minister that the
29 regulation be made; and
- 30 (b) setting out particulars of the chemical products, or class of
31 chemical products, that would be covered, or otherwise
32 affected, by the regulation; and
- 33 (c) setting out a draft standard the APVMA proposes to make
34 under section 8U in relation to each chemical product that
35 would be covered by the regulation; and

- 1 (d) giving the reasons for the proposed recommendation; and
2 (e) inviting any person, within a period of at least 28 days
3 specified in the notice, to make a written submission to the
4 APVMA as to whether the proposed regulation should be
5 made and stating the grounds on which the submission is
6 based, which must be grounds relating to the matters
7 mentioned in paragraph 8V(a).
- 8 (3) In making a recommendation to the Minister, the APVMA must
9 take into account any submissions made in accordance with the
10 invitation.
- 11 (4) Before the Governor-General makes a regulation that includes, or
12 amends, the schedule referred to in subsection (1):
- 13 (a) the APVMA must have recommended to the Minister that the
14 regulation be made; and
- 15 (b) the APVMA must have given to the Minister:
- 16 (i) its reasons for the recommendation; and
17 (ii) written particulars of the product or class of products
18 that would be covered, or otherwise affected, by the
19 regulation; and
- 20 (iii) a draft of the standard that the APVMA proposes to
21 make under section 8U for the product, or for products
22 in the class, if the product or class is specified in the
23 schedule; and
- 24 (iv) a written explanation as to why the APVMA is satisfied
25 that the product, or class of products, meets the safety
26 criteria, the trade criteria and the efficacy criteria (see
27 section 8V); and
- 28 (v) a written statement identifying the consultations held
29 by, and setting out the advice given to, the APVMA in
30 relation to the proposed regulation.

31 **8U APVMA to prepare standards**

- 32 (1) This section applies in respect of each listed chemical product,
33 whether or not the product is the subject of a monograph in the
34 British Pharmacopoeia or the British Pharmacopoeia (Veterinary)
35 or in a similar publication.

- 1 (2) The APVMA must, by legislative instrument, make a standard for
2 each listed chemical product. A particular standard may relate to a
3 specified chemical product or specified chemical products or to
4 each chemical product in a specified class of chemical products.
- 5 (3) The standard for a listed chemical product must require that the
6 product be labelled in a manner, or kept in containers that comply
7 with requirements, specified in the standard.
- 8 (4) The APVMA may, in a standard, direct that the particulars required
9 by the standard be set out, in a manner specified in the standard,
10 on:
11 (a) chemical products, or a class of chemical products, identified
12 in the standard; or
13 (b) a container containing chemical products, or a class of
14 chemical products, identified in the standard; or
15 (c) a label for containers for chemical products, or a class of
16 chemical products, identified in the standard.
- 17 (5) A standard for a listed chemical product:
18 (a) may be specified by reference to any one or more of the
19 following:
20 (i) the composition and form of the constituents of the
21 product;
22 (ii) the physical and chemical properties of the chemical
23 product;
24 (iii) the quantity of the chemical product when contained in
25 specified containers;
26 (iv) procedures to be carried out in the manufacture of the
27 chemical product;
28 (v) a monograph in the British Pharmacopoeia or the British
29 Pharmacopoeia (Veterinary);
30 (vi) a monograph in another publication approved by the
31 APVMA for the purposes of this subparagraph;
32 (vii) a monograph referred to in subparagraph (v) or (vi) as
33 modified in a manner specified in the standard;
34 (viii) a standard published by Standards Australia;
35 (ix) such other matters as the APVMA thinks fit; and
36 (b) may require that a matter relating to the standard be
37 determined in accordance with a particular test.
-

1 (6) Subsections (4) and (5) do not limit subsection (3).

2 (7) The standard made by the APVMA in relation to a listed chemical
3 product is the *established standard* for the product.

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

6 **8V Matters to be taken into account in preparing a standard**

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

- 10 (a) the product meeting the safety criteria, the trade criteria and
11 the efficacy criteria; and
12 (b) any label for containers for the product meeting the labelling
13 criteria.

14 **30 Section 9 of the Code set out in the Schedule**

15 Repeal the section, substitute:

16 **9 Explanation of Part**

- 17 (1) This Part contains provisions relating to:
18 (a) approval of active constituents for proposed or existing
19 chemical products; and
20 (b) registration of chemical products; and
21 (c) approval of labels for containers for chemical products.
- 22 (2) Division 2 provides for approvals and registrations.
- 23 (3) Division 2A provides for variation of relevant particulars of
24 approvals and registrations if the relevant particulars are of a kind
25 set out in a legislative instrument made under section 26B. Only
26 holders of approvals or registrations may apply under Division 2A.
- 27 (4) Division 3 provides generally for variation of relevant particulars
28 or conditions of approvals and registrations. Holders and other
29 persons may apply under Division 3.
- 30 (5) Division 3A provides for re-approval and re-registration of active
31 constituents and chemical products.

- 1 (6) Division 4 provides for the APVMA to reconsider approvals and
2 registrations in order to decide whether they should remain in
3 force.
- 4 (7) Division 4A limits the use the APVMA can make of certain
5 information given to it in connection with certain applications.
- 6 (8) Division 5 sets out the circumstances in which the APVMA may
7 suspend or cancel approvals and registrations.
- 8 (9) Division 6 states how long approvals and registrations are to
9 continue in force and makes provision for the renewal of
10 registrations.

11 **31 Division 2 of Part 2 of the Code set out in the Schedule**
12 **(heading)**

13 Repeal the heading, substitute:

14 **Division 2—Approving and registering**

15 **32 Sections 10 to 14A of the Code set out in the Schedule**

16 Repeal the sections, substitute:

17 **9A Explanation of Division**

- 18 (1) This Division provides for:
19 (a) approval of active constituents for proposed or existing
20 chemical products; and
21 (b) registration of chemical products; and
22 (c) approval of labels for containers for chemical products.
- 23 (2) Section 10 provides for applications to be made. Applications must
24 meet the application requirements specified in section 8A.
- 25 (3) The APVMA must complete a preliminary assessment of an
26 application. If the application passes preliminary assessment, the
27 APVMA must notify the applicant and publish a summary of the
28 application (section 11).
- 29 (4) Before determining certain applications that have passed
30 preliminary assessment, the APVMA must publish a notice
31 inviting public submissions (sections 12 and 13).

- 1 (5) The APVMA must approve an active constituent or label, or
2 register a chemical product, if specified criteria are met
3 (section 14). Sections 14A to 16 set out special rules about
4 approvals and registrations.
- 5 (6) The APVMA must keep a Record of Approved Active
6 Constituents for Chemical Products and a Register of Agricultural
7 and Veterinary Chemical Products (sections 17 and 18).
- 8 (7) Sections 19 to 21 set out how approvals and registrations take
9 place, and section 22 deals with dates of approval and registration.
- 10 (8) Approvals and registrations may be subject to conditions
11 (section 23).
- 12 (9) Section 26 provides for incorrect relevant particulars and
13 conditions of a kind prescribed by the regulations to be corrected.

14 **10 Applications**

- 15 (1) A person may apply to the APVMA:
16 (a) for approval of an active constituent for a proposed or
17 existing chemical product; or
18 (b) for registration of a chemical product; or
19 (c) for approval of a label for containers for a chemical product.
- 20 (2) The application:
21 (a) must meet the application requirements; and
22 (b) for an active constituent or chemical product—must include
23 proposed instructions for use of the constituent or product.
- 24 Note: For *meets the application requirements*, see section 8A.

25 **11 Preliminary assessment**

- 26 (1) The APVMA must complete a preliminary assessment of the
27 application within 1 month after it is lodged.
- 28 (2) If it appears from the preliminary assessment that the application
29 meets the application requirements, the APVMA must, within 14
30 days:
31 (a) give written notice to the applicant:

- 1 (i) stating that the application has passed preliminary
2 assessment and that it will be determined under
3 section 14; and
4 (ii) setting out any matters prescribed by the regulations;
5 and
6 (b) publish a summary of the application that includes any details
7 prescribed by the regulations.
- 8 (3) Otherwise, the APVMA must refuse the application.
9 Note: For notice of refusal, see section 8G.
- 10 (4) The APVMA may alter the application, after it has passed
11 preliminary assessment, with the written consent of the applicant.

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

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

1 **13 APVMA to publish notice before deciding whether to register**
2 **chemical product containing new active constituent**

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

29 **14 Approval and registration**

- 30 (1) The APVMA must approve the active constituent or label, or
31 register the chemical product, if it is satisfied:
32 (a) that the application meets the application requirements; and
33 (b) for an active constituent—that the constituent meets the
34 safety criteria; and
35 (c) for a chemical product—that the product:

- 1 (i) meets the safety criteria, the trade criteria and the
2 efficacy criteria; or
3 (ii) complies with the established standard for the product;
4 and
5 (d) for a label for a chemical product—that the label:
6 (i) meets the labelling criteria; or
7 (ii) complies with the established standard for the product.

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

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

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

11 **14A Approval of active constituents for which information is not**
12 **readily available**

- 13 (1) The APVMA may approve an active constituent for a proposed or
14 existing chemical product if:
15 (a) either of the following applies:
16 (i) the APVMA considers that information it requires in
17 respect of the constituent is not readily available;
18 (ii) the constituent is, or is part of, a product in respect of
19 which a standard is specified in the European
20 Pharmacopoeia, the British Pharmacopoeia
21 (Veterinary), the United States Pharmacopoeia or any
22 other publication considered by the APVMA to be
23 appropriate; and
24 (b) having regard to information that is readily available, the
25 APVMA is satisfied that the constituent would meet the
26 safety criteria.
- 27 (2) Subsection (1) applies:
28 (a) despite subsection 14(2); and
29 (b) whether or not an application has been made for approval of
30 the constituent.

31 **33 Section 14B of the Code set out in the Schedule (heading)**

32 Repeal the heading, substitute:

1 **14B APVMA not to use information for registration of new chemical**
2 **product to register a similar product after disclosure**

3 **34 Paragraph 14B(1)(a) of the Code set out in the Schedule**

4 Omit “an agricultural”, substitute “a”.

5 **35 Paragraph 14B(1)(b) of the Code set out in the Schedule**

6 Repeal the paragraph, substitute:

7 (b) the information related to the first product or the active
8 constituent and:

9 (i) the safety criteria; or

10 (ii) a matter that is prescribed by the regulations; and

11 **36 Paragraph 14B(1)(e) of the Code set out in the Schedule**

12 Repeal the paragraph, substitute:

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

18 **37 Subsection 14B(2) of the Code set out in the Schedule**

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

20 **38 Subsection 14B(3) of the Code set out in the Schedule**

21 Omit “granting”, substitute “determining”.

22 **39 Subsection 14B(3) of the Code set out in the Schedule**

23 Omit “of the grant or”.

24 **40 Section 15 of the Code set out in the Schedule (heading)**

25 Repeal the heading, substitute:

26 **15 Restriction on power of APVMA to register products and**
27 **approve labels**

28 **41 Paragraphs 15(1)(a) and (b) of the Code set out in the**
29 **Schedule**

1 Repeal the paragraphs, substitute:

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

9 **42 Subsection 16(1) of the Code set out in the Schedule**

10 Omit “for a proposed or existing chemical product”.

11 **43 Sections 19 to 26 of the Code set out in the Schedule**

12 Repeal the sections, substitute:

13 **19 How approval of active constituent takes place**

- 14 (1) Approval of an active constituent takes place when the APVMA
- 15 enters the following in the Record:
- 16 (a) the name of the person who applied for the approval as the
- 17 holder of the approval;
- 18 (b) the name of any nominated agent for the approval;
- 19 (c) the relevant particulars, which are the distinguishing number,
- 20 any instructions for the use of the constituent and any other
- 21 particulars prescribed by the regulations;
- 22 (d) any conditions of the approval imposed by the APVMA;
- 23 (e) the date the approval ends.
- 24 (2) The date the approval ends must:
- 25 (a) be worked out in accordance with the method prescribed by
- 26 the regulations; and
- 27 (b) be the last day of a calendar month at least 7 years but not
- 28 more than 15 years after the approval takes place.
- 29 (3) Despite subsection (2), the APVMA may approve the active
- 30 constituent for a period of less than 7 years to provide for its
- 31 approval to end at the same time as another approval of the active
- 32 constituent.

- 1 (4) Paragraph (2)(b) does not apply if the approval is subject to the
2 condition that it remains in force only for a stated period of not
3 more than 1 year (see subsection 23(2)).

4 **20 How registration of chemical product takes place**

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

24 *Rules about last renewal dates*

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

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

3 (3) However, the last renewal date may be less than 7 years after the
4 registration or variation takes place to provide for the last renewal
5 date to be the same as the last renewal date for another chemical
6 product that contains one or more of the same active constituents.

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

10 **21 How approval of label takes place**

11 Approval of a label takes place when the APVMA:

12 (a) determines the particulars prescribed by the regulations that
13 are appropriate to be contained on the label; and

14 (b) gives a distinguishing number to the label; and

15 (c) records the following information in the relevant APVMA
16 file:

17 (i) the name of the person who applied for the approval as
18 the holder of the approval;

19 (ii) the name of any nominated agent for the approval;

20 (iii) the distinguishing number;

21 (iv) the instructions and any particulars that are to be
22 contained on the label;

23 (v) any conditions of the approval imposed by the APVMA.

24 **22 Date of approval or registration**

25 (1) The date of approval of an active constituent, of registration of a
26 chemical product or of approval of a label is the date on which the
27 relevant particulars are entered in the Record, Register or relevant
28 APVMA file.

29 (2) If:

30 (a) any of the relevant particulars of:

31 (i) an approval of an active constituent; or

32 (ii) a registration of a chemical product; or

33 (iii) an approval of a label; or

1 (b) any of the conditions of such an approval or registration
2 imposed by the APVMA;
3 are varied, then, the date of approval of the constituent, registration
4 of the product, or approval of the label, as varied, or as subject to
5 the varied conditions, is the date on which particulars of the
6 variation are entered in the Record, Register or relevant APVMA
7 file.

8 **23 Conditions of approval or registration**

- 9 (1) The approval of an active constituent, the registration of a chemical
10 product or the approval of a label for containers for a chemical
11 product is subject to:
- 12 (a) the conditions prescribed by the regulations (whether or not
13 the conditions are prescribed at the time the constituent,
14 product or label is approved or registered); and
- 15 (b) any conditions imposed on the approval or registration as the
16 APVMA thinks appropriate.
- 17 (2) An active constituent, chemical product or a label may be approved
18 or registered on the condition that the approval or registration
19 remains in force only for a stated period of not more than 1 year.
- 20 (3) If:
- 21 (a) the approval or registration is subject to a condition referred
22 to in subsection (2); and
- 23 (b) the conditions of approval or registration have not been
24 varied before the end of the period referred to in the
25 condition, or the end of that period as previously extended
26 under this subsection, so as to remove the condition;
- 27 the APVMA may vary the condition so as to extend the period for
28 a further period of not more than 1 year.

29 **26 Incorrect particulars and conditions**

- 30 (1) If:
- 31 (a) the APVMA is satisfied that a relevant particular or condition
32 entered in the Record or Register, or recorded in the relevant
33 APVMA file, is incorrect in a material respect; and
- 34 (b) the relevant particular or condition is of a kind prescribed by
35 the regulations;

1 the APVMA must vary the entry or record accordingly.

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

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

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

9 (3) If the holder of the approval of an active constituent, the
10 registration of a chemical product or the approval of a label for
11 containers for a chemical product has reasonable cause to believe
12 that:

13 (a) a relevant particular or condition entered in the Record or
14 Register, or recorded in the relevant APVMA file, in relation
15 to the constituent, product or label is incorrect in a material
16 respect; and

17 (b) the relevant particular or condition is incorrect because of
18 inaccurate recording;

19 the holder must, within 28 days, give to the APVMA a written
20 notice, signed by the holder, identifying the incorrect particular or
21 condition and informing the APVMA of the correct particular or
22 condition.

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

25 Penalty: 30 penalty units.

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

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

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

30 **44 Divisions 2A and 3 of Part 2 of the Code set out in the**
31 **Schedule**

32 Repeal the Divisions, substitute:

1 **Division 2A—Varying prescribed relevant particulars**

2 **26A Explanation of Division**

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

12 **26B Applications**

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

21 **26C Varying prescribed relevant particulars**

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

- 1 (ii) comply with the established standard for the product;
2 and
3 (d) for a label for a chemical product—that, if the particular were
4 varied in accordance with the application, the label would:
5 (i) meet the labelling criteria; or
6 (ii) comply with the established standard for the product.
7 Note: For notice of variation, see section 8F.
8 (2) Otherwise, the APVMA must refuse the application.
9 Note: For notice of refusal, see section 8G.

10 **26D How variation takes place**

- 11 (1) Variation of a relevant particular under this Division takes place
12 when the APVMA records in the Record, Register or relevant
13 APVMA file, as required, the relevant particular as varied and the
14 date on which the variation is made.
15 (2) If:
16 (a) the relevant particular is varied in such a way that a listed
17 chemical product or any approved label for the product does
18 not comply with the established standard for the product; and
19 (b) there is no date entered in the Register as the date after which
20 the registration of the product cannot be renewed under
21 Division 6;
22 the APVMA must enter such a date in the Register.
23 Note: See section 20 for rules about the date after which a registration
24 cannot be renewed under Division 6.
25 (3) If:
26 (a) the relevant particular is varied in such a way that a listed
27 chemical product and every approved label for the product
28 comply with the established standard for the product; and
29 (b) there is a date entered in the Register as the date after which
30 the registration of the product cannot be renewed under
31 Division 6;
32 the APVMA must remove the date from the Register.

1 **Division 3—Varying relevant particulars and conditions**

2 **26E Explanation of Division**

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

17 **27 Applications**

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

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

- 25 (2) A person may, with the consent of the holder, apply to the
26 APVMA for variation of the relevant particulars or conditions of:
27 (a) the registration of a chemical product; or
28 (b) the approval of a label for containers for a chemical product.

- 29 (3) An application under subsection (1) or (2) must meet the
30 application requirements.

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

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

4 **28 Preliminary assessment**

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

25 **29 Varying relevant particulars and conditions**

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

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

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

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

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

13 **29A APVMA may vary on its own initiative with holder's consent**

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

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

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

- 20 (2) The APVMA may vary the relevant particulars or conditions only
21 if it is satisfied:

22 (a) for an active constituent—that, if those particulars or
23 conditions were so varied, the constituent would meet the
24 safety criteria; and

25 (b) for a chemical product—that, if those particulars or
26 conditions were so varied, the product would:

27 (i) meet the safety criteria, the trade criteria and the
28 efficacy criteria; or

29 (ii) comply with the established standard for the product;
30 and

31 (c) for a label for a chemical product—that, if those particulars
32 or conditions were so varied, the label would:

33 (i) meet the labelling criteria; or

34 (ii) comply with the established standard for the product.

- 35 (3) No fee is payable in relation to a variation made under this section.
-

- 1 (4) Nothing in this Code requires the APVMA to make a variation
2 under this section.

3 **29B How variation takes place**

- 4 (1) Variation of relevant particulars or conditions under this Division
5 takes place when the APVMA records in the Record, Register or
6 relevant APVMA file, as required, the relevant particulars or
7 conditions as varied and the date on which the variation is made.

- 8 (2) If:

9 (a) the relevant particulars or conditions are varied in such a way
10 that a listed chemical product or any approved label for the
11 product does not comply with the established standard for the
12 product; and

13 (b) there is no date entered in the Register as the date after which
14 the registration of the product cannot be renewed under
15 Division 6;

16 the APVMA must enter such a date in the Register.

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

- 19 (3) If:

20 (a) the relevant particulars or conditions are varied in such a way
21 that a listed chemical product and every approved label for
22 the product comply with the established standard for the
23 product; and

24 (b) there is a date entered in the Register as the date after which
25 the registration of the product cannot be renewed under
26 Division 6;

27 the APVMA must remove the date from the Register.

28 **45 Division 4 of Part 2 of the Code set out in the Schedule**
29 **(heading)**

30 Repeal the heading, substitute:

31 **Division 4—Reconsidering approvals and registrations**

32 **46 Before section 30 of the Code set out in the Schedule**

33 Insert:

1 **29L Explanation of Division**

- 2 (1) This Division provides for reconsideration of approvals and
3 registrations.
- 4 (2) The APVMA may invite proposals for reconsideration
5 (section 30), and the APVMA may reconsider an approval or
6 registration at any time (section 31).
- 7 (3) Before reconsidering an approval or registration, the APVMA must
8 prepare a work plan (section 31), notify the holder and invite the
9 holder to make a written submission on the reconsideration. The
10 holder will also be required to give the APVMA information
11 relevant to the reconsideration (section 32).
- 12 (4) The APVMA may inform any person that the APVMA proposes to
13 reconsider, or is reconsidering, the approval or registration and
14 invite written submissions (section 32).
- 15 (5) The APVMA may require the holder to conduct trials or
16 experiments or provide information or samples for the purposes of
17 the reconsideration (section 33).
- 18 (6) The APVMA must affirm the approval or registration if it is
19 satisfied that the constituent or product concerned meets specified
20 criteria (section 34).
- 21 (7) The APVMA must vary the relevant particulars or conditions of
22 the approval or registration if the APVMA is satisfied that they can
23 be varied in such a way as to allow the approval or registration to
24 be affirmed (section 34A).
- 25 (8) If the APVMA does not affirm the approval or registration, it must
26 suspend or cancel the approval or registration (section 34AA).
- 27 (9) The APVMA must give notice of what it proposes to do before it:
28 (a) varies the relevant particulars or conditions; or
29 (b) suspends or cancels the approval or registration
30 (section 34AB).
- 31 (10) If the APVMA affirms the approval or registration:
32 (a) it must notify the holder and publish a notice in the *Gazette*
33 (section 34AC); and

- 1 (b) if the reconsideration was required by section 29H
2 (reconsideration if APVMA does not re-approve or
3 re-register)—it must re-approve or re-register the constituent
4 or product (section 34AD); and
5 (c) it may vary the duration of the approval or registration
6 (section 34AE).
- 7 (9) The APVMA may reconsider the approval of a label to determine
8 whether the instructions on the label are adequate (section 34AF).

9 **47 Section 30 of the Code set out in the Schedule (heading)**

10 Repeal the heading, substitute:

11 **30 Inviting the public to propose reconsiderations**

12 **48 Subsection 30(1) of the Code set out in the Schedule**

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

14 **49 Subsection 30(1) of the Code set out in the Schedule**

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

17 **50 At the end of section 31 of the Code set out in the
18 Schedule**

19 Add:

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

26 **51 Section 32 of the Code set out in the Schedule (heading)**

27 Repeal the heading, substitute:

1 **32 Notice of reconsideration**

2 **52 Subsections 32(1) to (3A) of the Code set out in the**
3 **Schedule**

4 Repeal the subsections, substitute:

- 5 (1) The APVMA must give written notice to the holder:
- 6 (a) setting out the matters it proposes to deal with in the
7 reconsideration and its reasons for so proposing; and
- 8 (b) requiring the holder, within a period stated in the notice that
9 ends not earlier than 28 days after the day the notice is given,
10 to give to the APVMA either or both of the following:
- 11 (i) any information of a kind stated in the notice of which
12 the holder is aware and which is relevant to the
13 reconsideration;
- 14 (ii) any information of which the holder is aware that is
15 relevant to the reconsideration; and
- 16 (c) inviting the holder, within that period, to make a written
17 submission to the APVMA about the matters referred to in
18 paragraph (a); and
- 19 (d) setting out the work plan.
- 20 (1A) The APVMA may, by written notice given to the holder, extend
21 the period stated in the notice.
- 22 (2) The APVMA may, if it thinks it desirable to do so, inform any
23 person, in any manner that it thinks appropriate, that the APVMA
24 proposes to reconsider, or is reconsidering, the approval or
25 registration.
- 26 (2A) If the APVMA informs a person as mentioned in subsection (2), it
27 must:
- 28 (a) inform the person of:
- 29 (i) the matters that it proposes to reconsider, or is
30 reconsidering; and
- 31 (ii) the work plan; and
- 32 (b) invite any person to make, within a specified period which
33 must not end earlier than 28 days after the invitation is given,
34 a written submission to the APVMA about the matters it
35 proposes to reconsider, or is reconsidering.

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

2 (a) requires the APVMA to deal with a particular matter as part
3 of the reconsideration; or

4 (b) prevents the APVMA from dealing with a particular matter
5 as part of the reconsideration.

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

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

11 **53 Subsection 32(4) of the Code set out in the Schedule**

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

13 **54 Subsection 32(5) of the Code set out in the Schedule**

14 Repeal the subsection, substitute:

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

17 Penalty: 120 penalty units.

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

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

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

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

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

26 **55 Section 33 of the Code set out in the Schedule (heading)**

27 Repeal the heading, substitute:

28 **33 APVMA may require information, reports, results or samples**

29 **56 Subsections 33(1) to (2A) of the Code set out in the**
30 **Schedule**

31 Repeal the subsections, substitute:

- 1 (1) The APVMA may, by written notice given to the holder, require
2 the holder, within a reasonable period stated in the notice or such
3 further period as the APVMA allows, to do one or more of the
4 following for the purposes of the reconsideration:
5 (a) give to the APVMA information of a kind stated in the
6 notice;
7 (b) carry out a search of published literature for information and
8 give a report to the APVMA on the results of that search;
9 (c) conduct, or cause to be conducted, trials or laboratory
10 experiments and give the results of the trials or experiments
11 to the APVMA;
12 (d) give to the APVMA, or to another body specified in the
13 notice, a sample of an active constituent, or of a chemical
14 product or any of its constituents, for the purpose of analysis
15 by an approved analyst.
16 The information, trials, experiments or analysis must be relevant to
17 the reconsideration.
- 18 (1A) The period stated in the notice must be no longer than the period
19 prescribed by the regulations.
- 20 (1B) The APVMA may allow a further period only in the circumstances
21 prescribed by the regulations.
- 22 (1C) The power under subsection (1) includes the power to require the
23 holder to give to the APVMA information, a report, results or a
24 sample in addition to any information, report, results, or sample
25 previously given by the holder to the APVMA under any provision
26 of this Code other than this section.
- 27 (1D) Any information, report, results or sample that the holder has to
28 give to the APVMA or another body under subsection (1) must be
29 given as follows:
30 (a) information, a report or results must be given in writing:
31 (i) signed by the holder; or
32 (ii) attached to a covering letter signed by the holder;
33 (b) a sample must be:
34 (i) labelled with a label signed by the holder; or
35 (ii) attached to a covering letter signed by the holder.
- 36 Note: For giving information electronically, see section 156A.

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

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

6 **57 Subsection 33(3) of the Code set out in the Schedule**

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

8 **58 Subsection 33(4) of the Code set out in the Schedule**

9 Repeal the subsection, substitute:

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

12 Penalty: 120 penalty units.

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

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

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

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

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

21 **59 Sections 34 and 34A of the Code set out in the Schedule**

22 Repeal the sections, substitute:

23 **34 Reconsideration by APVMA**

24 (1) The APVMA must affirm the approval or registration if, and only
25 if, it is satisfied:

26 (a) for an active constituent—that the constituent meets the
27 safety criteria; and

28 (b) for a chemical product—that the product meets the safety
29 criteria, the trade criteria and the efficacy criteria; and

30 (c) for a label—that the label meets the labelling criteria; and

31 (d) that the constituent, product or label complies with any
32 requirement prescribed by the regulations.

- 1 (2) Subsection (1) applies only to the extent that the APVMA decides
2 to reconsider matters covered by the subsection.
- 3 (3) For the purposes of subsection (1), the APVMA:
4 (a) must have regard to:
5 (i) any information given, or submissions made, to the
6 APVMA in response to a notice given under subsection
7 32(1); and
8 (ii) any submissions made to the APVMA in response to an
9 invitation under paragraph 32(2A)(b) or 34AB(2)(f);
10 and
11 (iii) any information given by the holder in response to an
12 invitation given by the APVMA (whether or not under
13 this Code) in relation to the constituent, product or
14 label; and
15 (iv) any information, report, results or sample given to the
16 APVMA in response to a notice given under section 33;
17 and
18 (v) any information given to the APVMA as required by
19 section 161 in relation to the constituent, product or
20 label; and
21 (vi) any other information that it considers necessary to
22 enable it to make a decision on the reconsideration; but
23 (b) must not take into account any submission, information,
24 report, results or sample not covered by paragraph (a).

25 **34A Varying relevant particulars or conditions to allow affirmation**

- 26 (1) If the APVMA:
27 (a) is not satisfied as mentioned in subsection 34(1); but
28 (b) is satisfied that the relevant particulars or conditions of the
29 approval or registration can be varied in such a way as to
30 allow the approval or registration to be affirmed;
31 the APVMA must vary the relevant particulars or conditions.
- 32 Note: The APVMA may only vary relevant particulars or conditions that it
33 has imposed. See section 6B.
- 34 (2) For the purposes of paragraph (1)(b), the APVMA may have
35 regard only to the following:

- 1 (a) submissions, information, reports, results or samples that it
2 had regard to under section 34;
- 3 (b) submissions made to the APVMA in response to the
4 invitation under paragraph 34AB(2)(f).
- 5 (3) If the variation would affect any instructions for the use of an
6 active constituent or chemical product, or any instructions on a
7 label, the APVMA must not make the variation until it has
8 consulted each co-ordinator designated for a jurisdiction and taken
9 into account any recommendations made by the co-ordinators.
- 10 (4) If the APVMA varies the relevant particulars or conditions, it must
11 record in the Record, Register or relevant APVMA file, as
12 required, the relevant particulars or conditions as varied and the
13 date on which the variation is made.
- 14 (5) If:
- 15 (a) the relevant particulars or conditions are varied in such a way
16 that a listed chemical product or any approved label for the
17 product does not comply with the established standard for the
18 product; and
- 19 (b) there is no date entered in the Register as the date after which
20 the registration of the product cannot be renewed under
21 Division 6;
- 22 the APVMA must enter such a date in the Register.
- 23 Note: See section 20 for rules about the date after which a registration
24 cannot be renewed under Division 6.
- 25 (6) If:
- 26 (a) the relevant particulars or conditions are varied in such a way
27 that a listed chemical product and every approved label for
28 the product comply with the established standard for the
29 product; and
- 30 (b) there is a date entered in the Register as the date after which
31 the registration of the product cannot be renewed under
32 Division 6;
- 33 the APVMA must remove the date from the Register.

34 **34AA Suspension or cancellation**

- 35 (1) If the APVMA does not affirm the approval or registration, it must
36 suspend or cancel the approval or registration.
-

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

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

13 **34AB Notice of proposed decision**

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

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

3 **34AC Notice of decision on reconsideration**

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

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

23 **34AD Affirmation leading to re-approval or re-registration**

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

31 **34AE Varying duration of approval or registration**

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

- 1 (a) the date (the *end date*) the approval ends, which, if varied,
2 must be the last day of a calendar month at least 7 years but
3 not more than 15 years after the approval is affirmed; or
4 (b) either or both of the following:
5 (i) the date the registration ends, which must be the last day
6 of a calendar month;
7 (ii) if, before the reconsideration began, there was a date
8 entered in the Register as the date after which the
9 registration cannot be renewed under Division 6—that
10 date (the *last renewal date*).
- 11 (2) If varied, the end date or last renewal date must:
12 (a) be worked out in accordance with the method prescribed by
13 the regulations; and
14 (b) be the last day of a calendar month at least 7 years but not
15 more than 15 years after the approval or registration is
16 affirmed.
- 17 (3) However, the end date or renewal date, as varied, may be less than
18 7 years after the approval or registration is affirmed to provide for
19 the date to be the same as:
20 (a) for an approval—the end date for another approval of the
21 active constituent; or
22 (b) for a registration—the last renewal date for another chemical
23 product that contains one or more of the same active
24 constituents.
- 25 (4) Paragraph (2)(b) does not apply if the approval or registration is
26 subject to the condition that it remains in force only for a stated
27 period of not more than 1 year (see subsection 23(2)).
- 28 (5) Nothing in this Code requires the APVMA to make a variation
29 under this section.
- 30 (6) This section does not apply in relation to a reconsideration required
31 by section 29H (reconsideration if APVMA does not re-approve or
32 re-register).

1 **34AF Reconsideration of approval of label without notice in certain**
2 **circumstances**

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

18 **60 Section 40 of the Code set out in the Schedule**

19 Repeal the section.

20 **61 Subsection 43(2) of the Code set out in the Schedule**

21 After “sections”, insert “29D,”.

22 **62 Division 7 of Part 2 of the Code set out in the Schedule**

23 Repeal the Division.

24 **63 Part 2A of the Code set out in the Schedule**

25 Repeal the Part.

26 **64 Subsection 56ZU(3) of the Code set out in the Schedule**

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

29 **65 Paragraph 56ZU(4)(c) of the Code set out in the Schedule**

30 Repeal the paragraph, substitute:

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

5 **66 Paragraphs 72(2)(a), (b) and (c) of the Code set out in the**
6 **Schedule**

7 Repeal the paragraphs, substitute:

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

15 **67 Subsection 72(4) of the Code set out in the Schedule**

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

17 **68 Subsection 74(5) of the Code set out in the Schedule**

18 Repeal the subsection.

19 **69 Section 75 of the Code set out in the Schedule (heading)**

20 Repeal the heading, substitute:

21 **75 Possession or custody of chemical products, other than registered**
22 **or reserved products, with the intention of supply**

23 **70 Subsection 75(1) of the Code set out in the Schedule**

24 Omit “, a registered listed chemical product”.

25 **71 Subsection 75(3) of the Code set out in the Schedule**

26 Omit “, a registered listed chemical product”.

27 **72 Subsection 75(5) of the Code set out in the Schedule**

28 Repeal the subsection.

29 **73 Subsection 76(5) of the Code set out in the Schedule**

1 Repeal the subsection.

2 **74 Section 78 of the Code set out in the Schedule (heading)**

3 Repeal the heading, substitute:

4 **78 Supply of chemical products that are not registered products or**
5 **reserved products**

6 **75 Subsection 78(1) of the Code set out in the Schedule**

7 Omit “, a registered listed chemical product”.

8 **76 Subparagraph 78(1)(c)(i) of the Code set out in the**
9 **Schedule**

10 Omit “, granted listed registration, or reserved,”, substitute “or
11 reserved”.

12 **77 Subparagraph 78(1)(c)(ii) of the Code set out in the**
13 **Schedule**

14 Omit “, granted listed registration,”.

15 **78 Subparagraph 78(1)(c)(iii) of the Code set out in the**
16 **Schedule**

17 Omit “, granted listed registration,”.

18 **79 Subsection 78(3) of the Code set out in the Schedule**

19 Omit “, a registered listed chemical product”.

20 **80 Subsection 78(5) of the Code set out in the Schedule**

21 Repeal the subsection.

22 **81 Paragraph 83(1)(a) of the Code set out in the Schedule**

23 Omit “of Chemical Products”.

24 **82 Section 83A of the Code set out in the Schedule**

25 Repeal the section.

26 **83 Paragraph 84(1)(a) of the Code set out in the Schedule**

27 Omit “or registered listed chemical product”.

1 **84 Paragraph 84(1)(b) of the Code set out in the Schedule**

2 Omit “or registered listed chemical product”.

3 **85 Subsection 84(1) of the Code set out in the Schedule**

4 Omit “listed” (last 2 occurring).

5 **86 Subsection 87(1) of the Code set out in the Schedule**

6 Repeal the subsection, substitute:

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

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

10 (b) the product is:

11 (i) a listed chemical product; or

12 (ii) prescribed for the purposes of this section.

13 **87 Paragraph 88(2)(b) of the Code set out in the Schedule**

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

16 **88 Paragraph 88(2)(c) of the Code set out in the Schedule**

17 Omit “or listed registration”.

18 **89 Subparagraph 88(2)(d)(i) of the Code set out in the
19 Schedule**

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

22 **90 Paragraph 88(3)(b) of the Code set out in the Schedule**

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

25 **91 Section 89A of the Code set out in the Schedule**

26 Omit “listable”, substitute “listed”.

27 **92 Paragraph 97(4)(b) of the Code set out in the Schedule**

28 Omit “or listed registration”.

29 **93 Section 99 of the Code set out in the Schedule (heading)**

1 Repeal the heading, substitute:

2 **99 Analysis of chemical products and active constituents**

3 **94 Subsection 99(1) of the Code set out in the Schedule**

4 Omit “If”, substitute “This section applies if”.

5 **95 Subsection 99(1) of the Code set out in the Schedule**

6 Omit “, the following provisions apply”.

7 **96 Subsection 99(2) of the Code set out in the Schedule**

8 Omit “, or has been granted listed registration under Division 4 of
9 Part 2A,”.

10 **97 Paragraphs 99(2)(a), (b) and (c) of the Code set out in the
11 Schedule**

12 Omit “of Chemical Products”.

13 **98 Subsection 99(6) of the Code set out in the Schedule**

14 Omit “cause to be published”, substitute “publish”.

15 **99 Subparagraph 99(6)(a)(ii) of the Code set out in the
16 Schedule**

17 Omit “interested person in relation to the product—the interested
18 person”, substitute “holder of the registration—the holder”.

19 **100 Subsection 99(8) of the Code set out in the Schedule**

20 Repeal the subsection.

21 **101 Section 101 of the Code set out in the Schedule
22 (heading)**

23 Repeal the heading, substitute:

24 **101 Recall of products that are not registered or whose registration
25 is being reconsidered**

26 **102 Paragraph 101(1)(a) of the Code set out in the Schedule**

27 Omit “, and has not been granted listed registration,”.

1 **103 Paragraph 101(1)(b) of the Code set out in the Schedule**

2 Repeal the paragraph, substitute:

3 (b) the APVMA is reconsidering the registration of a chemical
4 product under Division 4 of Part 2 of that Code;

5 **104 Paragraph 101(2)(c) of the Code set out in the Schedule**

6 Omit “and has not been granted listed registration”.

7 **105 Subsection 101(3) of the Code set out in the Schedule**

8 Repeal the subsection.

9 **106 Paragraphs 102(1)(a) and (aa) of the Code set out in the
10 Schedule**

11 Repeal the paragraphs, substitute:

12 (a) a chemical product may not meet the safety criteria, the trade
13 criteria or the efficacy criteria; or

14 **107 Paragraph 102(1)(b) of the Code set out in the Schedule**

15 Omit “of Chemical Products”.

16 **108 Paragraph 102(1)(ba) of the Code set out in the Schedule**

17 Repeal the paragraph.

18 **109 Paragraph 102(1)(c) of the Code set out in the Schedule**

19 Omit “of Chemical Products”.

20 **110 Paragraph 102(1)(ca) of the Code set out in the Schedule**

21 Repeal the paragraph.

22 **111 Paragraph 102(1)(d) of the Code set out in the Schedule**

23 Omit “of Chemical Products”.

24 **112 Paragraph 102(1)(e) of the Code set out in the Schedule**

25 Repeal the paragraph.

26 **113 Subsection 102(3) of the Code set out in the Schedule**

27 Repeal the subsection.

1 **114 Subsection 103(1) of the Code set out in the Schedule**

2 Repeal the subsection, substitute:

- 3 (1) If it appears to the APVMA that labels attached to the containers:
4 (a) of stocks of a registered chemical product; or
5 (b) of a particular batch of a registered chemical product;
6 differ from the approved label for the product or the label required
7 by the established standard for the product, the APVMA may give
8 written notice to any person (the *notified person*) who has, or has
9 had, possession or custody of any of those stocks or of that batch in
10 this jurisdiction requiring the person to do any one or more of the
11 things mentioned in subsection (2).

12 **115 Subsection 103(3) of the Code set out in the Schedule**

13 Repeal the subsection.

14 **116 Subsection 104(1) of the Code set out in the Schedule**

15 Repeal the subsection, substitute:

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

19 **117 Paragraph 108(2)(a) of the Code set out in the Schedule**

20 Omit “, a registered listed chemical product”.

21 **118 Paragraph 108(2)(a) of the Code set out in the Schedule**

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

23 **119 Paragraph 108(2)(b) of the Code set out in the Schedule**

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

25 **120 Paragraph 108(2)(c) of the Code set out in the Schedule**

26 Repeal the paragraph.

27 **121 Section 110 of the Code set out in the Schedule**
28 **(heading)**

29 Repeal the heading, substitute:

1 **110 Applications**

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

4 Repeal the subsections, substitute:

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

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

7 **123 After section 110 of the Code set out in the Schedule**

8 Insert:

9 **110A Preliminary assessment**

10 (1) The APVMA must complete a preliminary assessment of the
11 application within 1 month after it is lodged.

12 (2) If it appears from the preliminary assessment that the application
13 meets the application requirements, the APVMA must, within 14
14 days, give written notice to the applicant:

15 (a) stating that the application has passed preliminary assessment
16 and that it will be determined under section 112; and

17 (b) setting out any matters prescribed by the regulations.

18 (3) If it appears from the preliminary assessment that the application
19 does not meet the application requirements but that the defects in
20 the application can reasonably be rectified, the APVMA must,
21 within 14 days, give written notice to the applicant:

22 (a) stating that the application does not meet the application
23 requirements; and

24 (b) giving particulars of the defects in the application; and

25 (c) requiring the defects to be rectified within 1 month.

26 (4) The APVMA must refuse the application if:

27 (a) the APVMA is not satisfied that defects in the application
28 can reasonably be rectified; or

29 (b) the defects are not rectified to the satisfaction of the APVMA
30 within the period mentioned in paragraph (3)(c).

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

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

3 **124 Paragraph 111(1)(c) of the Code set out in the Schedule**

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

6 **125 Section 112 of the Code set out in the Schedule**
7 **(heading)**

- 8 Repeal the heading, substitute:

9 **112 Issuing permits**

10 **126 Subsections 112(2) to (5) of the Code set out in the**
11 **Schedule**

- 12 Repeal the subsections, substitute:

- 13 (2) The APVMA must issue the permit if it is satisfied:
14 (a) that the application meets the application requirements; and
15 (b) that the applicant has complied with any requirement made
16 by the APVMA under subparagraph 111(1)(b)(iii); and
17 (c) for an active constituent—that the constituent would meet the
18 safety criteria; and
19 (d) for a chemical product—that the product would meet the
20 safety criteria, the trade criteria and the efficacy criteria; and
21 (e) that any requirements prescribed by the regulations in
22 relation to the issue of a permit under this section have been
23 complied with; and
24 (f) if an application has not been made for approval of the
25 constituent or registration of the product or such an
26 application has not been determined—that there are
27 reasonable grounds for the application not having been made
28 or for issuing the permit pending determination of the
29 application; and
30 (g) if the application is for a permit to do, or omit to do, any
31 thing which would, apart from the permit, be an offence
32 against subsection 121(4A) or (5A) or a contravention of the
33 civil penalty provision set out in subsection 121(4) or (5)—

1 that there are exceptional circumstances that justify issuing
2 the permit.

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

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

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

6 (4) Despite subsection (2), the APVMA must also refuse the
7 application if it is satisfied that:

8 (a) the applicant will be unable to comply with the conditions of
9 the permit; or

10 (b) at least one of the following persons:

11 (i) the applicant;

12 (ii) any other person who makes, or participates in making,
13 decisions that affect the whole, or a substantial part, of
14 the applicant's affairs;

15 (iii) if the applicant is a body corporate—a major interest
16 holder of the body corporate;

17 has, within the 10 years immediately before the application:

18 (iv) been convicted of an offence against an agvet law; or

19 (v) been convicted of an offence against a law of this or
20 another jurisdiction relating to chemical products; or

21 (vi) been convicted of an offence against a law of the
22 Commonwealth or a law of a State or Territory
23 involving fraud or dishonesty; or

24 (vii) been ordered to pay a pecuniary penalty for the
25 contravention of an agvet penalty provision; or

26 (viii) been ordered to pay a pecuniary penalty for the
27 contravention of another law of this or another
28 jurisdiction relating to chemical products; or

29 (ix) been ordered to pay a pecuniary penalty for the
30 contravention of a civil penalty provision of a law of the
31 Commonwealth or a law of a State or Territory
32 involving fraud or dishonesty; or

33 (x) held a permit that was cancelled under subsection
34 119(2) or section 119B of this Code or under a
35 corresponding provision of the Agvet Code of another
36 jurisdiction; or

1 (xi) been a manager, or a major interest holder, of a body
2 corporate in respect of which subparagraph (iv), (v),
3 (vi), (vii), (viii), (ix) or (x) applies in that 10 year
4 period, if the conduct resulting in that subparagraph
5 applying occurred when the person was a manager or
6 major interest holder of the body corporate.

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

10 (a) section 19B of the *Crimes Act 1914*; or

11 (b) a corresponding provision of a law of a State or Territory.

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

15 (6) However, the APVMA may issue the permit despite subsection (4)
16 if, in the opinion of the APVMA, special circumstances make it
17 appropriate to do so.

18 (7) If the APVMA refuses the application, it must give written notice
19 of the refusal to each co-ordinator to whom a copy of the
20 application was given.

21 **127 After section 112 of the Code set out in the Schedule**

22 Insert:

23 **112A APVMA may issue permit on its own initiative**

24 (1) The APVMA may, on its own initiative and in accordance with this
25 section, issue a permit to a person in respect of an active
26 constituent for a proposed or existing chemical product or in
27 respect of a chemical product.

28 (2) The APVMA may issue the permit if it is satisfied of the
29 following:

30 (a) that the active constituent or chemical product in respect of
31 which the permit is to be issued meets the safety criteria, the
32 trade criteria and the efficacy criteria;

33 (b) that any requirements prescribed by the regulations in
34 relation to the issue of a permit under this section have been
35 complied with;

- 1 (c) if an application has not been made for approval of the
2 constituent or registration of the product or such an
3 application has not been determined—that there are
4 reasonable grounds for the application not having been made
5 or for issuing the permit pending determination of the
6 application, as the case may be;
- 7 (d) if the permit would authorise a person to do, or omit to do,
8 any thing which would, apart from the permit, be an offence
9 against subsection 121(4A) or (5A) or a contravention of the
10 civil penalty provision set out in subsection 121(4) or (5)—
11 that there are exceptional circumstances that justify issuing
12 the permit.

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

- 14 (3) However, the APVMA must not issue the permit to a person (the
15 **proposed permit holder**) if it is satisfied that:
- 16 (a) the proposed permit holder will be unable to comply with the
17 conditions of the permit; or
- 18 (b) at least one of the following persons:
- 19 (i) the proposed permit holder;
- 20 (ii) any other person who makes, or participates in making,
21 decisions that affect the whole, or a substantial part, of
22 the proposed permit holder's affairs;
- 23 (iii) if the proposed permit holder is a body corporate—a
24 major interest holder of the body corporate;
25 has, within the previous 10 years:
- 26 (iv) been convicted of an offence against an agvet law; or
- 27 (v) been convicted of an offence against a law of this or
28 another jurisdiction relating to chemical products; or
- 29 (vi) been convicted of an offence against a law of the
30 Commonwealth or a law of a State or Territory
31 involving fraud or dishonesty; or
- 32 (vii) been ordered to pay a pecuniary penalty for the
33 contravention of an agvet penalty provision; or
- 34 (viii) been ordered to pay a pecuniary penalty for the
35 contravention of another law of this or another
36 jurisdiction relating to chemical products; or
- 37 (ix) been ordered to pay a pecuniary penalty for the
38 contravention of a civil penalty provision of a law of the

- 1 Commonwealth or a law of a State or Territory
2 involving fraud or dishonesty; or
3 (x) held a permit that was cancelled under subsection
4 119(2) or section 119B of this Code or under a
5 corresponding provision of the Agvet Code of another
6 jurisdiction; or
7 (xi) been a manager, or a major interest holder, of a body
8 corporate in respect of which subparagraph (iv), (v),
9 (vi), (vii), (viii), (ix) or (x) applies, if the conduct
10 resulting in that subparagraph applying occurred when
11 the person was a manager or major interest holder of the
12 body corporate.
- 13 (4) A reference in paragraph (3)(b) to a person convicted of an offence
14 includes a reference to a person in respect of whom an order has
15 been made relating to the offence under:
16 (a) section 19B of the *Crimes Act 1914*; or
17 (b) a corresponding provision of a law of a State or Territory.
- 18 Note: Section 19B of the *Crimes Act 1914* empowers a court that has found
19 a person to have committed an offence to take action without
20 proceeding to record a conviction.
- 21 (5) However, the APVMA may issue the permit despite subsection (3)
22 if, in the opinion of the APVMA, special circumstances make it
23 appropriate to do so.
- 24 (6) If the active constituent or chemical product in respect of which the
25 permit is to be issued is approved or registered, the APVMA:
26 (a) must, before issuing the permit, give written notice of its
27 intention to do so to the holder of the approval or registration;
28 and
29 (b) must not issue the permit before the end of 28 days after the
30 day on which the notice is given.
- 31 (7) However, subsection (6) does not apply to the extent that, in the
32 opinion of the APVMA, special circumstances make it appropriate
33 to:
34 (a) issue the permit without giving written notice to the holder of
35 the approval or registration; or
36 (b) issue the permit before the end of the 28 days.

1 **128 Section 114 of the Code set out in the Schedule**
2 **(heading)**

3 Repeal the heading, substitute:

4 **114 How permits are issued**

5 **129 Subsections 114(1) and (1A) of the Code set out in the**
6 **Schedule**

7 Repeal the subsections.

8 **130 Subsection 114(5) of the Code set out in the Schedule**

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

10 **131 Subsection 115(3) of the Code set out in the Schedule**

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

12 **132 After subsection 115(3) of the Code set out in the**
13 **Schedule**

14 Insert:

15 (3A) The APVMA may extend the permit for a further period that it
16 thinks appropriate if it is satisfied that:

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

20 (3B) If the APVMA does not extend the permit, it must refuse the
21 application.

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

23 **133 At the end of subsection 115(5) of the Code set out in the**
24 **Schedule**

25 Add:

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

27 **134 Subsection 115(6) of the Code set out in the Schedule**

28 Repeal the subsection.

29 **135 Subsection 117(1) of the Code set out in the Schedule**

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

2 **136 Subsection 117(3) of the Code set out in the Schedule**

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

4 **137 Subsection 118(8) of the Code set out in the Schedule**

5 Repeal the subsection.

6 **138 Subsection 118(10) of the Code set out in the Schedule**

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

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

9 Repeal the subsection.

10 **140 Subsection 119(11) of the Schedule**

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

12 **141 Section 120A of the Code set out in the Schedule**

13 Omit “listable”, substitute “listed”.

14 **142 Paragraphs 122(1)(a) to (e) of the Code set out in the**
15 **Schedule**

16 Repeal the paragraphs, substitute:

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

24 **143 Subsection 122(2) of the Code set out in the Schedule**

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

28 **144 Subsection 123(1) of the Code set out in the Schedule**

29 Repeal the subsection, substitute:

- 1 (1) If an application is made for a licence to carry out steps in the
2 manufacture of chemical products (other than prohibited chemical
3 products) at particular premises, the APVMA must issue the
4 licence to the applicant unless the APVMA is satisfied that:
- 5 (a) the applicant has not complied with subsection 122(1) or any
6 requirement under subsection 122(2); or
 - 7 (b) any requirement prescribed by the regulations in relation to
8 the application or the issue of the licence has not been
9 complied with; or
 - 10 (c) the applicant will be unable to comply with the conditions of
11 the licence; or
 - 12 (d) the applicant will be unable to comply with the
13 manufacturing principles; or
 - 14 (e) at least one of the following persons:
 - 15 (i) the applicant;
 - 16 (ii) any other person who makes, or participates in making,
17 decisions that affect the whole, or a substantial part, of
18 the applicant's affairs;
 - 19 (iii) if the applicant is a body corporate—a major interest
20 holder of the body corporate;
21 has, within the 10 years immediately before the application:
 - 22 (iv) been convicted of an offence against an agvet law; or
 - 23 (v) been convicted of an offence against a law of this or
24 another jurisdiction relating to chemical products; or
 - 25 (vi) been convicted of an offence against a law of the
26 Commonwealth or a law of a State or Territory
27 involving fraud or dishonesty; or
 - 28 (vii) been ordered to pay a pecuniary penalty for the
29 contravention of an agvet penalty provision; or
 - 30 (viii) been ordered to pay a pecuniary penalty for the
31 contravention of another law of this or another
32 jurisdiction relating to chemical products; or
 - 33 (ix) been ordered to pay a pecuniary penalty for the
34 contravention of a civil penalty provision of a law of the
35 Commonwealth or a law of a State or Territory
36 involving fraud or dishonesty; or
 - 37 (x) contravened a condition of a manufacturing licence
38 issued under an agvet law; or

- 1 (xi) held a manufacturing licence or permit that was
2 cancelled under an agvet law, other than paragraph
3 127(1)(d) or (e) of this Code or a corresponding
4 provision of the Agvet Code of another jurisdiction; or
5 (xii) been a manager, or a major interest holder, of a body
6 corporate in respect of which subparagraph (iv), (v),
7 (vi), (vii), (viii), (ix), (x) or (xi) applies in that 10 year
8 period, if the conduct resulting in that subparagraph
9 applying occurred when the person was a manager or
10 major interest holder of the body corporate; or
11 (f) at least one of the following persons:
12 (i) the applicant;
13 (ii) any other person who makes, or participates in making,
14 decisions that affect the whole, or a substantial part, of
15 the applicant's affairs;
16 (iii) if the applicant is a body corporate—a major interest
17 holder of the body corporate;
18 has, within the 5 years immediately before the application,
19 failed to comply with a manufacturing principle in
20 connection with the manufacture of chemical products.

21 (1A) If the APVMA does not issue the licence, it must refuse the
22 application.

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

24 (1B) A reference in paragraph (1)(e) to a person convicted of an offence
25 includes a reference to a person in respect of whom an order has
26 been made relating to the offence under:

27 (a) section 19B of the *Crimes Act 1914*; or

28 (b) a corresponding provision of a law of a State or Territory.

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

32 (1C) Paragraph (1)(f) does not apply to the extent that the APVMA
33 thinks the failure to comply with the manufacturing principle is not
34 relevant.

35 **145 Subsection 123(2) of the Code set out in the Schedule**

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

1 **146 Subsection 123(5) of the Code set out in the Schedule**

2 Omit “cause”, substitute “publish”.

3 **147 Subsection 123(5) of the Code set out in the Schedule**

4 Omit “to be published”.

5 **148 Section 124 of the Code set out in the Schedule**

6 Repeal the section.

7 **149 Paragraphs 126(3)(a) and (b) of the Code set out in the**
8 **Schedule**

9 Repeal the paragraphs, substitute:

10 (a) on the day on which the notice is given to the holder, but
11 only if the notice states that the action is necessary to prevent
12 one or more of the following:

13 (i) an imminent risk to persons of death, serious injury or
14 serious illness;

15 (ii) an imminent risk of unintended harm to animals, plants
16 or things, or to the environment;

17 (iii) an imminent risk of impact on trade or commerce
18 between Australia and places outside Australia; or

19 (b) otherwise—on a day stated for the purpose in the notice that,
20 unless the APVMA and the holder agree, is not earlier than
21 28 days after the notice is given to the holder.

22 **150 Subsection 126(5) of the Code set out in the Schedule**

23 Repeal the subsection.

24 **151 Subsection 127(1) of the Code set out in the Schedule**

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

27 **152 Paragraph 127(2)(a) of the Code set out in the Schedule**

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

29 **153 Subsection 127(6) of the Code set out in the Schedule**

30 Repeal the subsection.

1 **154 Paragraph 149(3)(b) of the Code set out in the Schedule**

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

4 **155 Paragraph 152(2)(a) of the Code set out in the Schedule**

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

6 **156 Paragraph 152(2)(a) of the Code set out in the Schedule**

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

10 **157 Paragraph 152(2)(b) of the Code set out in the Schedule**

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

12 **158 Subsection 152(2) of the Code set out in the Schedule**

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

17 **159 Subsection 152(2) of the Code set out in the Schedule**

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

19 **160 Subsection 152(2) of the Code set out in the Schedule**

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

22 **161 After section 156 of the Code set out in the Schedule**

23 Insert:

24 **156A Giving information electronically**

25 (1) If, under this Code, a person is required or permitted to give the
26 APVMA information (including an application) in writing, that
27 requirement is taken to have been met if:

28 (a) the APVMA consents to the information being given
29 electronically; and

- 1 (b) the person gives the information electronically in accordance
2 with any requirements mentioned in subsection (3); and
3 (c) in a case where this Code requires the signature of an
4 applicant or holder—the information includes the electronic
5 signature of the applicant or holder.
- 6 (2) If, under this Code, a person is required or permitted to give the
7 APVMA information in writing, the regulations may, despite any
8 other provision of this Code, require that the information be given
9 only electronically and in accordance with any requirements
10 mentioned in subsection (3).
- 11 (3) For the purposes of subsections (1) and (2), the APVMA may
12 require that the information be given, in accordance with particular
13 information technology requirements, by means of a particular
14 kind of electronic communication.
- 15 (4) If, under this Code, the APVMA is required or permitted to give a
16 person information in writing, that requirement is taken to have
17 been met if:
18 (a) the person consents to the information being given
19 electronically; and
20 (b) the APVMA gives the information electronically; and
21 (c) where applicable, the information includes the Chief
22 Executive Officer’s electronic signature; and
23 (d) in a case where a person’s failure to do, or not do, a thing set
24 out in the information is an offence against this Code or the
25 contravention of a civil penalty provision—the APVMA has
26 adequate systems for proving the person received the
27 information.
- 28 (5) This section applies to a requirement or permission to give
29 information, whether the expression “give”, “lodge”, “send” or
30 “serve”, or any other expression, is used.
- 31 (6) For the purposes of this section, giving information includes, but is
32 not limited to, the following:
33 (a) making or withdrawing an application;
34 (b) making or lodging a claim;
35 (c) giving, sending or serving a notification;
36 (d) giving a report;
-

- 1 (e) making a request;
2 (f) making a declaration;
3 (g) lodging or issuing a certificate;
4 (h) giving a statement of reasons.

5 **162 Subsection 157(1) of the Code set out in the Schedule**

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

9 **163 Paragraphs 159(1)(a) and (b) of the Code set out in the
10 Schedule**

11 Before “an application”, insert “determining”.

12 **164 Paragraph 159(1)(c) of the Code set out in the Schedule**

13 Repeal the paragraph.

14 **165 Subparagraph 159(1)(d)(iv) of the Code set out in the
15 Schedule**

16 Repeal the subparagraph.

17 **166 Subsection 159(1) of the Code set out in the Schedule**

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

22 **167 Paragraph 159(1)(e) of the Code set out in the Schedule**

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

25 **168 After subsection 159(1) of the Code set out in the
26 Schedule**

27 Insert:

28 (1AA) The period stated in the notice must be no longer than the period
29 prescribed by the regulations.

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

3 **169 Subsection 159(2) of the Code set out in the Schedule**

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

5 **170 Subsection 159(2) of the Code set out in the Schedule**

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

7 **171 At the end of subsection 159(2) of the Code set out in the**
8 **Schedule**

9 Add:

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

11 **172 Subsection 159(3) of the Code set out in the Schedule**

12 Omit all the words after “APVMA”, substitute “must refuse the
13 application”.

14 **173 At the end of subsection 159(3) of the Code set out in the**
15 **Schedule**

16 Add:

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

18 **174 Subsections 159(4) and (5) of the Code set out in the**
19 **Schedule**

20 Repeal the subsections.

21 **175 Section 160 of the Code set out in the Schedule**
22 **(heading)**

23 Repeal the heading, substitute:

24 **160 Overseas trials and experiments etc.**

25 **176 Section 160 of the Code set out in the Schedule**

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

27 **177 Paragraph 160(a) of the Code set out in the Schedule**

28 Before “an application”, insert “determining”.

1 **178 Paragraph 160(b) of the Code set out in the Schedule**

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

3 **179 Paragraph 160(c) of the Code set out in the Schedule**

4 Omit “registration or listed”.

5 **180 Paragraph 160(d) of the Code set out in the Schedule**

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

7 **181 Section 160 of the Code set out in the Schedule**

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

9 **182 At the end of section 160 of the Code set out in the**
10 **Schedule**

11 Add:

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

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

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

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

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

25 (3) The matters are:

26 (a) any significant differences in the proposed use of the
27 constituent, or of the product, in Australia and in that foreign
28 country; or

29 (b) any different environmental factors affecting the use of the
30 constituent, or of the product, in Australia and in that foreign
31 country; or

32 (c) any significant additional information relating to the
33 properties of the constituent, or of the product or of any of its

1 constituents, that has become available since the conduct of
2 those trials or experiments; or
3 (d) any significant differences in the way decisions or
4 evaluations are made in Australia and by the national
5 regulatory authority in that foreign country.

6 **183 Subparagraph 160A(1)(a)(iii) of the Code set out in the**
7 **Schedule**

8 Repeal the subparagraph.

9 **184 Paragraph 160A(1)(c) of the Code set out in the Schedule**

10 Omit “an appropriate person”, substitute “the applicant”.

11 **185 Subsection 160A(2) of the Code set out in the Schedule**

12 Omit “appropriate person”, substitute “applicant”.

13 **186 Subsection 160A(2) of the Code set out in the Schedule**

14 Omit “practicable after the person”, substitute “the applicant”.

15 **187 Subsection 160A(3) of the Code set out in the Schedule**

16 Repeal the subsection.

17 **188 Paragraphs 160A(4)(a) to (d) of the Code set out in the**
18 **Schedule**

19 Repeal the paragraphs, substitute:

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

27 **189 Subsection 160A(7) of the Code set out in the Schedule**

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

29 **190 Subsection 160A(7) of the Code set out in the Schedule**

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

1 **191 At the end of subsection 160A(7) of the Code set out in**
2 **the Schedule**

3 Add:

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

5 **192 Paragraph 161(1)(a) of the Code set out in the Schedule**

6 Repeal the paragraph, substitute:

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

10 **193 Subsection 161(1) of the Code set out in the Schedule**

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

13 **194 Paragraphs 161(2)(a) to (d) of the Code set out in the**
14 **Schedule**

15 Repeal the paragraphs, substitute:

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

20 **195 Subsection 161(3) of the Code set out in the Schedule**

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

22 **196 Subsection 161(3) of the Code set out in the Schedule**

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

24 **197 At the end of subsection 161(3) of the Code set out in the**
25 **Schedule**

26 Add:

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

28 **198 Subparagraph 162(3)(a)(i) of the Code set out in the**
29 **Schedule**

30 Omit “assessment”, substitute “evaluation”.

1 **199 Subparagraph 162(3)(b)(i) of the Code set out in the**
2 **Schedule**

3 Omit “or listed registration”.

4 **200 Subparagraph 162(3)(b)(i) of the Code set out in the**
5 **Schedule**

6 Omit “assessment”, substitute “evaluation”.

7 **201 Subparagraph 162(3)(b)(ii) of the Code set out in the**
8 **Schedule**

9 Omit “or of the listed registration of the product under Division 6 of
10 Part 2A”.

11 **202 Subparagraph 162(3)(c)(ii) of the Code set out in the**
12 **Schedule**

13 Omit “interested person in relation to the constituent or product”,
14 substitute “applicant or holder concerned”.

15 **203 Paragraph 162(3)(d) of the Code set out in the Schedule**

16 Omit “interested person in relation to the constituent or product”,
17 substitute “applicant or holder concerned”.

18 **204 Subsection 162(4) of the Code set out in the Schedule**

19 Omit “interested person” (first occurring), substitute “applicant or
20 holder concerned”.

21 **205 Paragraph 162(4)(a) of the Code set out in the Schedule**

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

23 **206 Subsection 162(5) of the Code set out in the Schedule**

24 Repeal the subsection.

25 **207 Section 163 of the Code set out in the Schedule**
26 **(heading)**

27 Repeal the heading, substitute:

1 **163 Notice to the applicant or holder of proposed disclosure of**
2 **information that is claimed to be confidential commercial**
3 **information**

4 **208 Subsection 163(1) of the Code set out in the Schedule**
5 Omit “(1)”.

6 **209 Paragraph 163(1)(b) of the Code set out in the Schedule**
7 Omit “interested person in relation to the constituent, product or label”,
8 substitute “applicant or holder concerned”.

9 **210 Paragraph 163(1)(d) of the Code set out in the Schedule**
10 Omit “interested person”, substitute “applicant or holder”.

11 **211 Subsection 163(2) of the Code set out in the Schedule**
12 Repeal the subsection.

13 **212 Subsection 164(10) of the Code set out in the Schedule**
14 Repeal the subsection.

15 **213 Paragraph 165(2)(a) of the Code set out in the Schedule**
16 Repeal the paragraph, substitute:
17 (a) if the application is for re-approval of an active constituent or
18 re-registration of a chemical product:
19 (i) any period beginning on the day when the APVMA
20 makes a requirement of the applicant in connection with
21 the application and ending on the day when the
22 requirement is complied with; or
23 (ii) any period during which the approval or registration
24 concerned is being reconsidered as required by
25 subsection 29H(1); and

26 **214 Paragraph 165(2)(b) of the Code set out in the Schedule**
27 Omit “caused to be”.

28 **215 Paragraph 165(2)(c) of the Code set out in the Schedule**
29 Omit “caused such a notice to be published”, substitute “published such
30 a notice”.

1 **216 At the end of subsection 165(2) of the Code set out in the**
2 **Schedule**

3 Add:

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

8 **217 At the end of section 165 of the Code set out in the**
9 **Schedule**

10 Add:

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

25 **218 After section 165 of the Code set out in the Schedule**

26 Insert:

27 **165A Period within which APVMA is to conclude reconsiderations**
28 **under Division 4 of Part 2**

- 29 (1) If the APVMA reconsiders an approval or registration under
30 Division 4 of Part 2, the APVMA must conclude the
31 reconsideration within a period stated in, or determined in
32 accordance with, the regulations.

- 1 (2) The APVMA may make a legislative instrument setting out criteria
2 for working out which period stated in, or determined in
3 accordance with, the regulations applies in a particular case.
- 4 (3) In working out the period within which the reconsideration is to be
5 concluded, no regard is to be had to:
- 6 (a) the period, stated in the notice given to the holder under
7 subsection 32(1), within which information must be given
8 and submissions may be made; and
- 9 (b) if the APVMA has given written notice to the holder under
10 subsection 33(1)—the period stated in the notice within
11 which any information, report, results or sample must be
12 given to the APVMA.

13 **219 Section 166 of the Code set out in the Schedule**
14 **(heading)**

15 Repeal the heading, substitute:

16 **166 Internal review of decisions**

17 **220 Paragraph 166(1)(a) of the Code set out in the Schedule**

18 Omit “other than this section”.

19 **221 Paragraph 166(1)(b) of the Code set out in the Schedule**

20 Repeal the paragraph, substitute:

- 21 (b) the original decision is:
- 22 (i) a decision that is reviewable by the Administrative
23 Appeals Tribunal (see section 167), other than a
24 decision under subsection 29G(1), 34A(1) or 34AA(1)
25 or (2); or
- 26 (ii) a decision under subsection 14(2), 26C(2), 29(2) or
27 29E(3) based only on requirements set out in paragraph
28 8A(a) or (b); or
- 29 (iii) a decision under subsection 112(3) based only on
30 requirements set out in paragraph 8A(a) or (b) or a
31 requirement made by the APVMA under subparagraph
32 111(1)(b)(iii).

33 **222 Subsection 166(3) of the Code set out in the Schedule**

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

3 **223 Subsection 166(6) of the Code set out in the Schedule**

4 Repeal the subsection.

5 **224 Section 167 of the Code set out in the Schedule**
6 **(heading)**

7 Repeal the heading, substitute:

8 **167 Review of decisions by Administrative Appeals Tribunal**

9 **225 Paragraphs 167(1)(aa) to (e) of the Code set out in the**
10 **Schedule**

11 Repeal the paragraphs, substitute:

- 12 (a) a decision under subsection 14(1) to approve or register a
13 constituent, product or label:
- 14 (i) with an instruction or relevant particular other than an
15 instruction or particular set out in the application for the
16 approval or registration; or
17 (ii) subject to particular conditions;
- 18 (b) a decision under subsection 14(2) to refuse an application for
19 approval or registration, other than a decision based only on
20 requirements set out in paragraph 8A(a) or (b);
- 21 (c) a decision under subsection 26C(2) to refuse an application to
22 vary relevant particulars, other than a decision based only on
23 requirements set out in paragraph 8A(a) or (b);
- 24 (d) a decision under subsection 29(2) to refuse an application to
25 vary relevant particulars or conditions, other than a decision
26 based only on requirements set out in paragraph 8A(a) or (b);
- 27 (da) a decision under subsection 29D(3) to refuse to accept a late
28 application;
- 29 (db) a decision under subsection 29G(1) to vary relevant
30 particulars or conditions;
- 31 (e) a decision under subsection 34A(1) or 34AF(3) to vary
32 relevant particulars or conditions;

33 **226 Paragraph 167(1)(ea) of the Code set out in the Schedule**

34 Omit “34D(3)”, substitute “34J(3)”.

1 **227 Paragraph 167(1)(ea) of the Code set out in the Schedule**

2 Omit “34C”, substitute “34G”.

3 **228 Paragraph 167(1)(ea) of the Code set out in the Schedule**

4 Omit all the words from and including “*substantive decision*”,
5 substitute “*substantive decision*”;

6 **229 Paragraph 167(1)(f) of the Code set out in the Schedule**

7 After “under”, insert “section 34AA or”.

8 **230 Paragraphs 167(1)(fa) to (ff) of the Code set out in the**
9 **Schedule**

10 Repeal the paragraphs.

11 **231 Paragraph 167(1)(g) of the Code set out in the Schedule**

12 Omit “or 56ZL(3)”.

13 **232 At the end of paragraph 167(1)(l) of the Code set out in**
14 **the Schedule**

15 Add “, other than a decision based only on requirements set out in
16 paragraph 8A(a) or (b) or a requirement made by the APVMA under
17 subparagraph 111(1)(b)(iii)”.

18 **233 Paragraphs 167(1)(o) and (p) of the Code set out in the**
19 **Schedule**

20 Repeal the paragraphs, substitute:

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

23 **234 Paragraph 167(1)(u) of the Code set out in the Schedule**

24 Repeal the paragraph.

25 **235 Paragraph 167(1)(v) of the Code set out in the Schedule**

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

27 **236 Subsection 167(2) of the Code set out in the Schedule**

28 Repeal the subsection.

1 **237 Subsection 167(2A) of the Code set out in the Schedule**

2 Omit “34E”, substitute “34K”.

3 **238 Subsection 167(2A) of the Code set out in the Schedule**

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

6 **239 Subparagraph 178(1)(a)(ii) of the Code set out in the
7 Schedule**

8 Omit “of Chemical Products”.

9 **240 Paragraphs 180(c) and (ca) of the Code set out in the
10 Schedule**

11 Omit “32(2)”, substitute “32(1)”.

12 **241 Paragraph 184(a) of the Code set out in the Schedule**

13 Repeal the paragraph.

14 **242 After paragraph 184(b) of the Code set out in the
15 Schedule**

16 Insert:

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

19 **243 Section 184 of the Code set out in the Schedule**

20 Omit “and the person had not complied with the notice before that
21 commencement,”.
22

1 **Schedule 2—Re-approvals and**
2 **re-registrations**
3

4 *Agricultural and Veterinary Chemicals Code Act 1994*

5 **1 Subsection 3(1) of the Code set out in the Schedule**
6 **(definition of *approval*)**

7 Repeal the definition, substitute:

8 *approval* means approval under Part 2 of:

9 (a) an active constituent for a proposed or existing chemical
10 product; or

11 (b) a label for containers for a chemical product;

12 and, in relation to an active constituent, other than in Division 2 of
13 Part 2 and Part 3, includes re-approval.

14 **2 Subsection 3(1) of the Code set out in the Schedule**

15 Insert:

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

18 **3 Subsection 3(1) of the Code set out in the Schedule**
19 **(definition of *registration*)**

20 Repeal the definition, substitute:

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

24 **4 Subsection 3(1) of the Code set out in the Schedule**

25 Insert:

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

28 **5 After Division 3 of Part 2 of the Code set out in the**
29 **Schedule**

30 Insert:

1 **Division 3A—Re-approving and re-registering**

2 **29C Explanation of Division**

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

21 **29D Applications**

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

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

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

- 6 (3) In circumstances prescribed by the regulations and upon payment
7 of the prescribed fee (if any), the APVMA may accept a late
8 application if the application is made on or before:

- 9 (a) for re-approval—the day the approval ends; or
10 (b) for re-registration—the day after which the registration
11 cannot be renewed under Division 6.

- 12 (4) Subsection (1) has effect subject to any condition imposed on the
13 approval or registration under subsection 23(2).

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

16 **29E Preliminary assessment**

- 17 (1) The APVMA must complete a preliminary assessment of the
18 application within 2 months after it is lodged.

- 19 (2) If it appears from the preliminary assessment that the application
20 meets the application requirements, the APVMA must, within 14
21 days, give written notice to the applicant:

- 22 (a) stating that the application has passed preliminary assessment
23 and that it will be determined under section 29F; and
24 (b) setting out any matters prescribed by the regulations.

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

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

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

29 **29F Re-approval or re-registration**

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

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

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

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

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

14 **29G Varying relevant particulars and conditions to allow**
15 **re-approval or re-registration**

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

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

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

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

3 **29H Reconsideration if APVMA does not re-approve or re-register**

- 4 (1) If the APVMA does not re-approve or re-register the active
5 constituent or chemical product it must:
- 6 (a) reconsider the existing approval or registration under
7 Division 4; and
 - 8 (b) give written notice of the reconsideration to the holder within
9 14 days.
- 10 (2) The notice must:
- 11 (a) set out the reasons for the reconsideration; and
 - 12 (b) state that:
 - 13 (i) for an approval—the approval will not end until the
14 reconsideration has been concluded; or
 - 15 (ii) for a registration—the date after which the registration
16 cannot be renewed under Division 6 will be the day on
17 which the reconsideration is concluded; and
 - 18 (c) state that, if the approval or registration is affirmed on
19 reconsideration, the active constituent or chemical product
20 will be re-approved or re-registered.
- 21 (3) The notice may be included with the notice in relation to the
22 reconsideration given under subsection 32(1).

23 **29J How re-approval takes place**

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

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

8 **29K How re-registration takes place**

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

32 **6 Division 6 of Part 2 of the Code set out in the Schedule**
33 **(heading)**

34 Repeal the heading, substitute:

1 **Division 6—Duration of approvals and registrations and**
2 **renewal of registrations**

3 **7 Section 47 of the Code set out in the Schedule**

4 Repeal the section, substitute:

5 **Subdivision A—Preliminary**

6 **46A Explanation of Division**

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

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

8 **Subdivision B—Period of approval or registration**

9 **47 Period of approval or registration**

- 10 (1) The approval of an active constituent ends on the later of the
11 following days:
- 12 (a) the day entered in the Record as the date the approval ends;
- 13 (b) if an application is made for re-approval of the active
14 constituent but is not determined by the day entered in the
15 Record—the day on which the application is determined.
- 16 (2) The registration of a chemical product ends on the later of the
17 following days:
- 18 (a) the day entered in the Register as the date the registration
19 ends;
- 20 (b) if an application is made for renewal of the registration but is
21 not determined by the day entered in the Register—the day
22 on which the application is determined.
- 23 (3) The registration of a chemical product also ends if the approval of
24 an active constituent for the product ends.
- 25 (4) The approval of a label for containers for a chemical product ends
26 when the registration of the product ends.
- 27 (5) If:
- 28 (a) the registration of a chemical product ends; but
- 29 (b) a person is taken under section 47D to have been issued with
30 a permit to possess, have custody of or use the product;
- 31 the approval of a label for containers for the product continues in
32 force until the permit ceases to have effect.

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

3 **47A Varying duration—decisions of foreign regulators**

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

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

13 Subdivision C—Notifying end of approvals and registrations

14 47B Advance notice of end of approval or registration

- 15 (1) The APVMA must publish in the *Gazette* at least 12 months’
16 notice of the following:
17 (a) the end of the approval of an active constituent;
18 (b) the date after which the registration of a chemical product
19 cannot be renewed under this Division.
- 20 (2) The notice must:
21 (a) invite submissions about whether or not:
22 (i) the constituent should be re-approved; or
23 (ii) the product should be re-registered; and
24 (b) specify the time by which the submissions must be given to
25 the APVMA, which must be no later than 6 months before
26 the existing approval or registration ends.
- 27 (3) The APVMA must give the holder at least 12 months’ notice of:
28 (a) the end of the approval of an active constituent; and
29 (b) the date after which the registration of a chemical product
30 cannot be renewed under this Division.
- 31 (4) The notice must:
32 (a) set out the relevant particulars and conditions of the approval
33 or registration; and

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

11 **47C Notice of end of approval or registration**

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

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

9 **47D Permit taken to have been issued**

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

25 **47E Possession or custody with intention of supply**

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

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

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

5 Penalty: 300 penalty units.

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

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

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

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

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

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

17 **Subdivision D—Renewing registrations**

18 **8 Section 48 of the Code set out in the Schedule (heading)**

19 Repeal the heading, substitute:

20 **48 Applications**

21 **9 Subsection 48(1) of the Code set out in the Schedule**

22 Omit “interested person”, substitute “holder”.

23 **10 Subsection 48(2) of the Code set out in the Schedule**

24 Repeal the subsection, substitute:

25 (2) The application (the *renewal application*) must be made:

26 (a) subject to subsection (3), not later than one month, or a
27 shorter period that the APVMA permits, before the
28 registration ends; and

29 (b) before the day entered in the Register as the day after which
30 the registration cannot be renewed under this Division.

1 **11 At the end of section 48 of the Code set out in the**
2 **Schedule**

3 Add:

4 (4) If an application (the *re-registration application*):

5 (a) has been made for re-registration of the chemical product; but

6 (b) has not been determined before the day by which the renewal
7 application must be made;

8 the day entered in the Register as the day after which the
9 registration cannot be renewed under this Division is taken to be
10 the day on which the re-registration application is determined.

11 (5) The APVMA may alter the renewal application with the written
12 consent of the holder.

13 (6) Subsection (1) has effect subject to any condition imposed on the
14 registration under subsection 23(2).

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

17 **12 Sections 49 and 50 of the Code set out in the Schedule**

18 Repeal the sections, substitute:

19 **49 Renewal of registration**

20 (1) If the APVMA is satisfied that the renewal application meets the
21 application requirements, the APVMA must renew the registration:

22 (a) if the application was made in accordance with subsection
23 48(2)—before the day entered in the Register as the day the
24 registration ends; or

25 (b) if the application was made in accordance with subsection
26 48(3)—within 1 month after the application was made.

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

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

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

30 **50 How renewal takes place**

31 Renewal of the registration of a chemical product takes place when
32 the APVMA enters in the Register a statement that the registration

1 has been renewed and the date on which the registration (as
2 renewed) ends, which must be the last day of a calendar month not
3 more than 12 months after the renewal takes place.
4

1 **Schedule 3—Enforcement**
2

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

5 **1 Subsection 3(1)**

6 Insert:

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

9 **2 Subsection 3(1)**

10 Insert:

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

13 **3 Subsection 3(1) (definition of *occupier*)**

14 Repeal the definition.

15 **4 Subsection 3(1) (definition of *premises*)**

16 Repeal the definition.

17 **5 Subsection 15(2) (penalty)**

18 Repeal the penalty.

19 **6 After subsection 15(2)**

20 Insert:

21 (2AA) A person commits an offence of strict liability if the person
22 contravenes subsection (2).

23 Penalty: 50 penalty units.

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

25 **7 Subsection 15(2A)**

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

27 **8 Subsection 15(2B)**

1 Repeal the subsection, substitute:

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

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

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

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

13 **9 Subsection 20(3) (penalty)**

14 Repeal the penalty.

15 **10 After subsection 20(3)**

16 Insert:

17 (3A) A person commits an offence of strict liability if the person
18 contravenes subsection (3).

19 Penalty: 50 penalty units.

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

21 **11 Subsection 20(4)**

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

23 **12 Subsection 20(5)**

24 Repeal the subsection, substitute:

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

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

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

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

1 **13 Sections 21 to 32**

2 Repeal the sections.

3 **14 Section 34**

4 Repeal the section, substitute:

5 **34 Self-incrimination etc.**

6 (1) A person is not excused from:

7 (a) giving information; or

8 (b) producing a document or thing; or

9 (c) answering a question asked by an inspector;

10 under this Act on the ground that doing so might tend to
11 incriminate the person or expose the person to a penalty.

12 (2) However, in the case of an individual, none of the following:

13 (a) the information or answer given;

14 (b) the document or thing produced;

15 (c) the giving of the information or the answer, or the producing
16 of the document or thing;

17 (d) any information, document or thing obtained as a direct or
18 indirect consequence of giving the information or answer, or
19 producing the document or thing;

20 is admissible in evidence against the individual in:

21 (e) criminal proceedings, other than:

22 (i) proceedings for an offence against section 137.1 or
23 137.2 of the *Criminal Code* (which deal with false or
24 misleading information or documents) that relates to
25 this Act; or

26 (ii) proceedings for an offence against section 149.1 of the
27 *Criminal Code* (which deals with obstruction of
28 Commonwealth public officials) that relates to this Act;
29 or

30 (f) civil proceedings for a contravention of a civil penalty
31 provision.

32 **15 Section 35**

33 Repeal the section.

1 **16 Subsection 36(1) (penalty)**

2 Repeal the penalty.

3 **17 Subsection 36(2)**

4 Repeal the subsection, substitute:

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

7 Penalty: 50 penalty units.

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

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

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

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

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

20 ***Agricultural and Veterinary Chemicals (Administration) Act***
21 ***1992***

22 **18 Section 4**

23 Insert:

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

25 **19 Section 4**

26 Insert:

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

29 **20 Section 4**

30 Insert:

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

3 **21 Section 4**

4 Insert:

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

8 **22 Section 4**

9 Insert:

10 *copy*, in relation to a warrant issued under section 69EH or 69EHA
11 (or a form of warrant completed under subsection 69EHB(6)),
12 includes:
13 (a) a copy sent by fax or other electronic means; or
14 (b) a copy of a copy so sent.

15 **23 Section 4**

16 Insert:

17 *damage* has the same meaning as in the Code set out in the
18 Schedule to the *Agricultural and Veterinary Chemicals Code Act*
19 *1994*.

20 **24 Section 4**

21 Insert:

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

24 **25 Section 4**

25 Insert:

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

29 **26 Section 4**

30 Insert:

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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:

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

1 **31 Section 4**

2 Insert:

3 *monitoring warrant* means:

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

8 **32 Section 4**

9 Insert:

10 *occupier* has the same meaning as in the Code set out in the
11 Schedule to the *Agricultural and Veterinary Chemicals Code Act*
12 1994.

13 **33 Section 4**

14 Insert:

15 *person assisting* an inspector:

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

20 **34 Section 4**

21 Insert:

22 *premises* has the same meaning as in the Code set out in the
23 Schedule to the *Agricultural and Veterinary Chemicals Code Act*
24 1994.

25 **35 Section 4**

26 Insert:

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

29 **36 Section 4**

30 Insert:

- 1 *relevant data* means information relevant to determining whether:
2 (a) this Act, or the Collection Act, has been, or is being,
3 complied with; or
4 (b) information provided under this Act, or the Collection Act, is
5 correct; or
6 (c) levy is payable under the Collection Act.

7 **37 Section 4**

8 Insert:

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

10 **38 After subsection 11(1)**

11 Insert:

12 (1A) The APVMA may only delegate its powers under section 130 or
13 section 131AA of the Code set out in the Schedule to the
14 *Agricultural and Veterinary Chemicals Code Act 1994* to a
15 member of staff who is an SES, or acting SES, employee.

16 **39 After paragraph 59(c)**

17 Insert:

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

20 **40 After paragraph 61(2)(c)**

21 Insert:

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

25 **41 Subsection 69A(1)**

26 Omit “(1)”.

27 **42 Subsection 69A(2)**

28 Repeal the subsection.

29 **43 Before section 69B**

30 Insert:

1 **Subdivision A—Importation**

2 **44 Subsection 69B(1) (penalty)**

3 Repeal the penalty.

4 **45 After subsection 69B(1)**

5 Insert:

6 (1AA) A person commits an offence if the person contravenes
7 subsection (1).

8 Penalty: 300 penalty units.

9 **46 Subsections 69B(1A) and (1B)**

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

11 **47 Subsection 69B(1C)**

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

16 **48 Subsection 69B(1D)**

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

21 **49 After subsection 69B(1D)**

22 Insert:

23 (1E) Subsection (1) is a civil penalty provision.

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

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

28 **50 After subsection 69B(3)**

29 Insert:

1 (3A) A consent given under subsection (1B) may be subject to any
2 conditions that the APVMA thinks appropriate.

3 (3B) The APVMA may impose a condition, by writing, on a consent at
4 any time while the consent is in force.

5 **51 Before section 69CA**

6 Insert:

7 **Subdivision B—Provision of information**

8 **52 Section 69CD (heading)**

9 Repeal the heading, substitute:

10 **69CD Contraventions relating to providing information under**
11 **sections 69CA and 69CB**

12 **53 After subsection 69CD(2)**

13 Insert:

14 *Civil penalty provision*

15 (2A) A person contravenes this subsection if:

16 (a) the person is required to provide information under
17 section 69CA or 69CB; and

18 (b) the person fails to provide the information under that section.

19 (2B) Subsection (2A) is a civil penalty provision.

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

22 **54 Before section 69C**

23 Insert:

24 **Subdivision C—Chemical products etc. subject to international**
25 **agreements**

26 **55 Before section 69D**

27 Insert:

1 **Subdivision D—Exportation**

2 **56 Paragraph 69D(1A)(b)**

3 Omit “brief particulars of”.

4 **57 After section 69D**

5 Insert:

6 **Subdivision E—Miscellaneous**

7 **58 Subsection 69E(1) (penalty)**

8 Repeal the penalty.

9 **59 Subsection 69E(2A)**

10 Repeal the subsection, substitute:

11 (2A) A person commits an offence of strict liability if the person
12 contravenes subsection (1).

13 Penalty: 50 penalty units.

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

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

17 (2B) Subsection (1) is a civil penalty provision.

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

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

22 **60 Subsection 69EA(1) (penalty)**

23 Repeal the penalty.

24 **61 After subsection 69EA(1)**

25 Insert:

26 (1AA) A person commits an offence of strict liability if the person
27 contravenes subsection (1).

28 Penalty: 50 penalty units.

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

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

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

5 **62 Subsection 69EA(1A) (penalty)**

6 Repeal the penalty.

7 **63 Subsection 69EA(2)**

8 Repeal the subsection, substitute:

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

11 Penalty: 50 penalty units.

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

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

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

16 **64 Division 3 of Part 7A**

17 Repeal the Division, substitute:

18 **Part 7AA—Investigative powers**

19 **Division 1—Monitoring**

20 **Subdivision A—Monitoring powers etc.**

21 **69EAB Powers available to inspectors for monitoring compliance**

22 (1) Subject to subsections (2) and (3), for the purpose of finding out
23 whether this Act or the Collection Act has been, or is being,
24 complied with, or of assessing the correctness of information
25 provided under this Act or the Collection Act, or of finding out
26 whether levy is payable under the Collection Act, an inspector
27 may:

28 (a) enter any premises; and

29 (b) exercise the monitoring powers.

- 1 (2) If premises mentioned in paragraph (1)(a) are a residence, an
2 inspector may only enter the premises if:
3 (a) the premises are used for commercial purposes in relation to
4 active constituents or chemical products, in addition to
5 residential purposes; and
6 (b) paragraph (3)(a) or (b) is satisfied.
- 7 (3) An inspector is not authorised to enter premises under
8 subsection (1) unless:
9 (a) the occupier of the premises has consented to the entry and
10 the inspector has shown his or her identity card if required by
11 the occupier; or
12 (b) the entry is made under a monitoring warrant.
- 13 Note: If entry to the premises is with the occupier's consent, the inspector
14 must leave the premises if the consent ceases to have effect. See
15 section 69ED.

16 **69EAC Monitoring powers—with consent or with warrant**

- 17 (1) The following are the *monitoring powers* that an inspector may
18 exercise in relation to premises:
19 (a) the power to search the premises and any thing on the
20 premises;
21 (b) the power to examine or observe any activity conducted on
22 the premises;
23 (c) the power to inspect, examine, take measurements of or
24 conduct tests on any thing on the premises;
25 (d) the power to make any still or moving image or any
26 recording of the premises or any thing on the premises;
27 (e) the power to inspect any document on the premises;
28 (f) the power to take extracts from, or make copies of, any such
29 document;
30 (g) the power to take and keep samples of any thing on the
31 premises;
32 (h) the power to open any container at the premises for the
33 purpose of inspecting, or taking a sample of, its contents
34 provided that the container is resealed after the inspection is
35 made or the sample is taken;

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- 1 (i) the power to give directions for dealing with a container, or a
2 label on a container, that has been opened or sampled in
3 accordance with paragraph (h);
4 (j) the power to destroy or make harmless, or give directions for
5 the destruction or making harmless of, a chemical product at
6 the premises;
7 (k) the power to take onto the premises such equipment and
8 materials as the inspector requires for the purpose of
9 exercising powers in relation to the premises;
10 (l) the powers set out in subsections 69EAD(1) and (3) and
11 69EAE(1).
- 12 (2) A person who is given a direction under subsection (1) must
13 comply with the direction.
- 14 (3) A person commits an offence of strict liability if the person
15 contravenes subsection (2).
- 16 Penalty: 30 penalty units.
- 17 Note: For strict liability, see section 6.1 of the *Criminal Code*.
- 18 (4) Subsection (2) is a civil penalty provision.
- 19 Note: Part 7AB provides for pecuniary penalties for contraventions of civil
20 penalty provisions.

21 **69EAD Operating electronic equipment**

- 22 (1) The *monitoring powers* include the power to:
23 (a) operate electronic equipment on the premises; and
24 (b) use a disk, tape or other storage device that:
25 (i) is on the premises; and
26 (ii) can be used with the equipment or is associated with it.
- 27 (2) The monitoring powers include the powers mentioned in
28 subsection (3) if relevant data is found in the exercise of the power
29 under subsection (1).
- 30 (3) The powers are as follows:
31 (a) the power to operate electronic equipment on the premises to
32 put the relevant data in documentary form and remove the
33 documents so produced from the premises;

- 1 (b) the power to operate electronic equipment on the premises to
2 transfer the relevant data to a disk, tape or other storage
3 device that:
4 (i) is brought to the premises for the exercise of the power;
5 or
6 (ii) is on the premises and the use of which for that purpose
7 has been agreed in writing by the occupier of the
8 premises;
9 and remove the disk, tape or other storage device from the
10 premises.

- 11 (4) An inspector may operate electronic equipment as mentioned in
12 subsection (1) or (3) only if the inspector believes on reasonable
13 grounds that the operation of the equipment can be carried out
14 without damage to the equipment.

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

17 **69EAE Securing evidence of the contravention of a related provision**

- 18 (1) The *monitoring powers* include the power to secure a thing for a
19 period not exceeding 7 days if:
20 (a) the thing is found during the exercise of monitoring powers
21 on the premises; and
22 (b) an inspector believes on reasonable grounds that the thing
23 affords evidence of one or more of the following:
24 (i) the commission of an offence against this Act or the
25 Collection Act;
26 (ii) the contravention of a civil penalty provision;
27 (iii) an offence against the *Crimes Act 1914* or the *Criminal*
28 *Code* that relates to this Act or the Collection Act; and
29 (c) the inspector believes on reasonable grounds that:
30 (i) it is necessary to secure the thing in order to prevent it
31 from being concealed, lost or destroyed before a warrant
32 to seize the thing is obtained; and
33 (ii) it is necessary to secure the thing without a warrant
34 because the circumstances are serious and urgent.
35 The thing may be secured by locking it up, placing a guard or any
36 other means.

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- 1 (2) If an inspector believes on reasonable grounds that the thing needs
2 to be secured for more than 7 days, the inspector may apply to a
3 magistrate for an extension of that period.
- 4 (3) The inspector must give notice to the occupier of the premises, or
5 another person who apparently represents the occupier, of his or
6 her intention to apply for an extension. The occupier or other
7 person is entitled to be heard in relation to that application.
- 8 (4) The provisions of this Part relating to the issue of monitoring
9 warrants apply, with such modifications as are necessary, to the
10 issue of an extension.
- 11 (5) The 7 day period may be extended more than once.

12 **69EAF Persons assisting inspectors**

13 *Inspectors may be assisted by other persons*

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

19 *Powers, functions and duties of a person assisting the inspector*

- 20 (2) A person assisting the inspector:
- 21 (a) may enter the premises; and
- 22 (b) may exercise powers and perform functions and duties under
23 this Part for the purposes of assisting the inspector to
24 determine whether:
- 25 (i) this Act, or the Collection Act, has been, or is being,
26 complied with; or
- 27 (ii) information provided under this Act, or the Collection
28 Act, is correct; or
- 29 (iii) levy is payable under the Collection Act; and
- 30 (c) must do so in accordance with a direction given to the person
31 assisting by the inspector.

- 1 (3) A power exercised by a person assisting the inspector as mentioned
2 in subsection (2) is taken for all purposes to have been exercised by
3 the inspector.
- 4 (4) A function or duty performed by a person assisting the inspector as
5 mentioned in subsection (2) is taken for all purposes to have been
6 performed by the inspector.
- 7 (5) If a direction is given under paragraph (2)(c) in writing, the
8 direction is not a legislative instrument.

9 **69EAG Use of force in executing a monitoring warrant**

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

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

15 **69EAH Inspector may ask questions and seek production of**
16 **documents**

- 17 (1) This section applies if an inspector enters premises for the purposes
18 of determining whether:
19 (a) this Act, or the Collection Act, has been, or is being,
20 complied with; or
21 (b) information provided under this Act, or the Collection Act, is
22 correct; or
23 (c) levy is payable under the Collection Act.
- 24 (2) If the entry is authorised because the occupier of the premises
25 consented to the entry, the inspector may ask the occupier to
26 answer any questions, and produce any document, relating to:
27 (a) the operation of this Act or the Collection Act; or
28 (b) the information.
- 29 (3) If the entry is authorised by a monitoring warrant, the inspector
30 may require any person on the premises to answer any questions,
31 and produce any document, relating to:
32 (a) the operation of this Act or the Collection Act; or

1 (b) the information.

2 *Offence*

3 (4) A person commits an offence if:

4 (a) the person is subject to a requirement under subsection (3);
5 and

6 (b) the person fails to comply with the requirement.

7 Penalty for contravention of this subsection: 50 penalty units.

8 **69EAJ Copying of documents**

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

12 **Division 2—Investigation**

13 **Subdivision A—Investigation powers**

14 **69EB Powers available to inspectors to investigate potential**
15 **breaches of this Act and the Collection Act**

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

19 (a) enter the premises; and

20 (b) exercise the investigation powers.

21 (2) If premises mentioned in paragraph (1)(a) are a residence, an
22 inspector may only enter the premises if:

23 (a) the premises are used for commercial purposes in relation to
24 active constituents or chemical products, in addition to
25 residential purposes; and

26 (b) paragraph (3)(a) or (b) is satisfied.

27 (3) An inspector is not authorised to enter the premises unless:

28 (a) the occupier of the premises has consented to the entry and
29 the inspector has shown his or her identity card if required by
30 the occupier; or

1 (b) the entry is made under an investigation warrant.

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

5 **69EBA Investigation powers**

6 (1) The following are the *investigation powers* that an inspector may
7 exercise in relation to premises under section 69EB:

- 8 (a) if entry to the premises is with the occupier's consent—the
9 power to search the premises and any thing on the premises
10 for the evidential material the inspector has reasonable
11 grounds for suspecting may be on the premises;
- 12 (b) if entry to the premises is under an investigation warrant:
13 (i) the power to search the premises and any thing on the
14 premises for the kind of evidential material specified in
15 the warrant; and
16 (ii) the power to seize evidential material of that kind if the
17 inspector finds it on the premises;
- 18 (c) the power to inspect, examine, take measurements of, and
19 conduct tests on evidential material referred to in
20 paragraph (a) or (b);
- 21 (d) the power to make any still or moving image or any
22 recording of the premises or evidential material referred to in
23 paragraph (a) or (b);
- 24 (e) the power to inspect any document on the premises;
- 25 (f) the power to take extracts from, or make copies of, any such
26 document;
- 27 (g) the power to take and keep samples of any thing on the
28 premises;
- 29 (h) the power to open any container at the premises for the
30 purpose of inspecting, or taking a sample of, its contents
31 provided that the container is resealed after the inspection is
32 made or the sample is taken;
- 33 (i) the power to give directions for dealing with a container, or a
34 label on a container, that has been opened or sampled in
35 accordance with paragraph (h);
- 36 (j) the power to destroy or make harmless, or give directions for
37 the destruction or making harmless of, a chemical product at
38 the premises;

-
- 1 (k) the power to take onto the premises such equipment and
2 materials as the inspector requires for the purpose of
3 exercising powers in relation to the premises;
4 (l) the powers set out in subsections 69EBB(1) and (2) and
5 subsections 69EBC(2) and (3).
- 6 (2) A person who is given a direction under subsection (1) must
7 comply with the direction.
- 8 (3) A person commits an offence of strict liability if the person
9 contravenes subsection (2).
- 10 Penalty: 30 penalty units.
- 11 Note: For strict liability, see section 6.1 of the *Criminal Code*.
- 12 (4) Subsection (2) is a civil penalty provision.
- 13 Note: Part 7AB provides for pecuniary penalties for contraventions of civil
14 penalty provisions.

15 **69EBB Operating electronic equipment**

- 16 (1) The *investigation powers* include the power to:
17 (a) operate electronic equipment on the premises; and
18 (b) use a disk, tape or other storage device that:
19 (i) is on the premises; and
20 (ii) can be used with the equipment or is associated with it;
21 if an inspector has reasonable grounds for suspecting that the
22 electronic equipment, disk, tape or other storage device is or
23 contains evidential material.
- 24 (2) The *investigation powers* include the following powers in relation
25 to evidential material found in the exercise of the power under
26 subsection (1):
27 (a) if entry to the premises is under an investigation warrant—
28 the power to seize the equipment and the disk, tape or other
29 storage device referred to in that subsection;
30 (b) the power to operate electronic equipment on the premises to
31 put the evidential material in documentary form and remove
32 the documents so produced from the premises;

1 (c) the power to operate electronic equipment on the premises to
2 transfer the evidential material to a disk, tape or other storage
3 device that:
4 (i) is brought to the premises for the exercise of the power;
5 or
6 (ii) is on the premises and the use of which for that purpose
7 has been agreed in writing by the occupier of the
8 premises;
9 and remove the disk, tape or other storage device from the
10 premises.

11 (3) An inspector may operate electronic equipment as mentioned in
12 subsection (1) or (2) only if the inspector believes on reasonable
13 grounds that the operation of the equipment can be carried out
14 without damage to the equipment.

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

17 (4) An inspector may seize equipment or a disk, tape or other storage
18 device as mentioned in paragraph (2)(a) only if:
19 (a) it is not practicable to put the evidential material in
20 documentary form as mentioned in paragraph (2)(b) or to
21 transfer the evidential material as mentioned in
22 paragraph (2)(c); or
23 (b) possession of the equipment or the disk, tape or other storage
24 device by the occupier could constitute an offence against a
25 law of the Commonwealth.

26 **69EBC Seizing evidence of related offences and civil penalty**
27 **provisions**

28 (1) This section applies if an inspector enters premises under an
29 investigation warrant to search for evidential material.
30 (2) The *investigation powers* include seizing a thing that is not
31 evidential material of the kind specified in the warrant if:
32 (a) in the course of searching for the kind of evidential material
33 specified in the warrant, the inspector finds the thing; and
34 (b) the inspector believes on reasonable grounds that the thing
35 affords evidence of one or more of the following:

- 1 (i) the commission of an offence against this Act or the
2 Collection Act;
- 3 (ii) the contravention of a civil penalty provision;
- 4 (iii) an offence against the *Crimes Act 1914* or the *Criminal*
5 *Code* that relates to this Act or the Collection Act; and
- 6 (c) the inspector believes on reasonable grounds that it is
7 necessary to seize the thing in order to prevent its
8 concealment, loss or destruction or to protect the health of the
9 public or of any person.
- 10 (3) If an inspector seizes a thing as mentioned in subsection (2), the
11 **investigation powers** include:
- 12 (a) the power to direct the occupier of the premises or the owner
13 of the thing to keep it at the premises, or at other premises
14 under the control of the occupier or owner that will, in the
15 opinion of the inspector, cause least danger to the health of
16 the public or of any person; and
- 17 (b) the power to give any other directions for, or with respect to,
18 the detention of the thing.
- 19 (4) A person who is given a direction under subsection (3) must
20 comply with the direction.
- 21 (5) A person commits an offence of strict liability if the person
22 contravenes subsection (4).
- 23 Penalty: 30 penalty units.
- 24 Note: For strict liability, see section 6.1 of the *Criminal Code*.
- 25 (6) Subsection (4) is a civil penalty provision.
- 26 Note: Part 7AB provides for pecuniary penalties for contraventions of civil
27 penalty provisions.

28 **69EBD Persons assisting inspectors**

29 *Inspectors may be assisted by other persons*

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

1 *Powers, functions and duties of a person assisting the inspector*

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

16 **69EBE Use of force in executing an investigation warrant**

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

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

22 **69EC Inspector may ask questions and seek production of
23 documents**

- 24 (1) This section applies if an inspector enters premises to search for
25 evidential material.
- 26 (2) If the entry is authorised because the occupier of the premises
27 consented to the entry, the inspector may ask the occupier to
28 answer any questions, and produce any document, relating to
29 evidential material.
- 30 (3) If the entry is authorised by an investigation warrant, the inspector
31 may require any person on the premises to answer any questions,

1 and produce any document, relating to evidential material of the
2 kind specified in the warrant.

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

7 Penalty for contravention of this subsection: 50 penalty units.

8 **69ECA Copying of documents**

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

12 **Division 3—Obligations and incidental powers of** 13 **inspectors**

14 **69ED Consent**

- 15 (1) Before obtaining the consent of an occupier of premises for the
16 purposes of paragraph 69EAB(3)(a) or 69EB(3)(a), an inspector
17 must inform the occupier that the occupier may refuse consent.
- 18 (2) A consent has no effect unless the consent is voluntary.
- 19 (3) A consent may be expressed to be limited to entry during a
20 particular period. If so, the consent has effect for that period unless
21 the consent is withdrawn before the end of that period.
- 22 (4) A consent that is not limited as mentioned in subsection (3) has
23 effect until the consent is withdrawn.
- 24 (5) If an inspector entered premises because of the consent of the
25 occupier of the premises, the inspector, and any person assisting
26 the inspector, must leave the premises if the consent ceases to have
27 effect.

28 **69EDA Announcement before entry under warrant**

- 29 (1) Before entering premises under a warrant, an inspector must:
30 (a) announce that:
-

- 1 (i) he or she is authorised to enter the premises; and
2 (ii) any person assisting the inspector is authorised to enter
3 the premises; and
4 (b) show his or her identity card to the occupier of the premises,
5 or to another person who apparently represents the occupier,
6 if the occupier or other person is present at the premises; and
7 (c) give any person at the premises an opportunity to allow entry
8 to the premises.
- 9 (2) However, an inspector is not required to comply with
10 subsection (1) if the inspector believes on reasonable grounds that
11 immediate entry to the premises is required:
12 (a) to ensure the safety of a person; or
13 (b) to ensure that the effective execution of the warrant is not
14 frustrated.
- 15 (3) If:
16 (a) an inspector does not comply with subsection (1) because of
17 subsection (2); and
18 (b) the occupier of the premises, or another person who
19 apparently represents the occupier, is present at the premises;
20 the inspector must, as soon as practicable after entering the
21 premises, show his or her identity card to the occupier or other
22 person.

23 **69EDB Inspector to be in possession of warrant**

- 24 An inspector executing a warrant must be in possession of:
25 (a) the warrant issued by the magistrate under section 69EH or
26 69EHA, or a copy of the warrant as so issued; or
27 (b) the form of warrant completed under subsection 69EHB(6),
28 or a copy of the form as so completed.

29 **69EDC Details of warrant etc. to be given to occupier**

- 30 (1) An inspector must comply with subsection (2) if:
31 (a) a warrant is being executed in relation to premises; and
32 (b) the occupier of the premises, or another person who
33 apparently represents the occupier, is present at the premises.
- 34 (2) The inspector executing the warrant must, as soon as practicable:
-

- 1 (a) do one of the following:
 - 2 (i) if the warrant was issued under section 69EH or
 - 3 69EHA—make a copy of the warrant available to the
 - 4 occupier or other person (which need not include the
 - 5 signature of the magistrate who issued it);
 - 6 (ii) if the warrant was signed by a magistrate under
 - 7 section 69EHB—make a copy of the form of warrant
 - 8 completed under subsection 69EHB(6) available to the
 - 9 occupier or other person; and
- 10 (b) inform the occupier or other person of the rights and
- 11 responsibilities of the occupier or other person under
- 12 Division 5 of this Part.

13 **69EDD Expert assistance to operate electronic equipment**

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

16 *Securing equipment*

- 17 (2) An inspector may do whatever is necessary to secure any electronic
- 18 equipment that is on the premises if the inspector believes on
- 19 reasonable grounds that:
 - 20 (a) in the case of a monitoring warrant:
 - 21 (i) there is relevant data on the premises; and
 - 22 (ii) the relevant data may be accessible by operating the
 - 23 equipment; and
 - 24 (iii) expert assistance is required to operate the equipment;
 - 25 and
 - 26 (iv) the relevant data may be destroyed, altered or otherwise
 - 27 interfered with, if the inspector does not take action
 - 28 under this subsection; and
 - 29 (b) in the case of an investigation warrant:
 - 30 (i) there is evidential material of the kind specified in the
 - 31 warrant on the premises; and
 - 32 (ii) the evidential material may be accessible by operating
 - 33 the electronic equipment; and
 - 34 (iii) expert assistance is required to operate the equipment;
 - 35 and

- 1 (iv) the evidential material may be destroyed, altered or
2 otherwise interfered with, if the inspector does not take
3 action under this subsection.

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

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

11 *Period equipment may be secured*

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

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

18 *Extensions*

- 19 (5) The inspector may apply to a magistrate for an extension of the
20 72-hour period, if the inspector believes on reasonable grounds that
21 the equipment needs to be secured for a longer period.
- 22 (6) Before making the application, the inspector must give notice to
23 the occupier of the premises, or another person who apparently
24 represents the occupier, of the inspector's intention to apply for an
25 extension. The occupier or other person is entitled to be heard in
26 relation to that application.
- 27 (7) The provisions of this Part relating to the issue of a warrant apply,
28 with such modifications as are necessary, to the issue of an
29 extension.
- 30 (8) The 72-hour period may be extended more than once.

31 **69EDE Compensation for damage to electronic equipment**

- 32 (1) This section applies if:
-

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

25 **Division 4—Execution of an investigation warrant** 26 **interrupted**

27 **69EE Completing execution of an investigation warrant after** 28 **temporary cessation**

- 29 (1) This section applies if an inspector, and all persons assisting, who
30 are executing an investigation warrant in relation to premises
31 temporarily cease its execution and leave the premises.
- 32 (2) The inspector, and persons assisting, may complete the execution
33 of the warrant if:
34 (a) the warrant is still in force; and

- 1 (b) the inspector and persons assisting are absent from the
2 premises:
3 (i) for not more than 1 hour; or
4 (ii) if there is an emergency situation, for not more than 12
5 hours or such longer period as allowed by a magistrate
6 under subsection (5); or
7 (iii) for a longer period if the occupier of the premises
8 consents in writing.

9 *Application for extension in emergency situation*

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

20 *Extension in emergency situation*

- 21 (5) A magistrate may extend the period during which the inspector and
22 persons assisting may be away from the premises if:
23 (a) an application is made under subsection (3); and
24 (b) the magistrate is satisfied, by information on oath or
25 affirmation, that there are exceptional circumstances that
26 justify the extension; and
27 (c) the extension would not result in the period ending after the
28 warrant ceases to be in force.

29 **69EEA Completing execution of an investigation warrant stopped**
30 **by court order**

- 31 An inspector, and any persons assisting, may complete the
32 execution of an investigation warrant that has been stopped by an
33 order of a court if:
34 (a) the order is later revoked or reversed on appeal; and
-

- 1 (b) the warrant is still in force when the order is revoked or
2 reversed.

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

4 **69EF Occupier entitled to observe execution of warrant**

- 5 (1) The occupier of premises to which a warrant relates, or another
6 person who apparently represents the occupier, is entitled to
7 observe the execution of the warrant if the occupier or other person
8 is present at the premises while the warrant is being executed.
- 9 (2) The right to observe the execution of the warrant ceases if the
10 occupier or other person impedes that execution.
- 11 (3) This section does not prevent the execution of the warrant in 2 or
12 more areas of the premises at the same time.

13 **69EFA Occupier to provide inspector with facilities and assistance**

- 14 (1) The occupier of premises to which a warrant relates, or another
15 person who apparently represents the occupier, must provide:
16 (a) an inspector executing the warrant; and
17 (b) any person assisting;
18 with all reasonable facilities and assistance for the effective
19 exercise of their powers.
- 20 (2) A person commits an offence if:
21 (a) the person is subject to subsection (1); and
22 (b) the person fails to comply with that subsection.

23 Penalty for contravention of this subsection: 30 penalty units.

24 **Division 6—General provisions relating to seizure**

25 **69EG Copies of seized things to be provided**

- 26 (1) Subject to subsection (2), if an inspector who has entered premises
27 under an investigation warrant seizes:
28 (a) a document, film, computer file or other thing that can be
29 readily copied; or

- 1 (b) a storage device the information in which can be readily
2 copied;
3 the inspector must, if asked to do so by the occupier of the
4 premises or another person who apparently represents the occupier
5 and is present when the seizure takes place, give a copy of the
6 thing or the information to the occupier or other person as soon as
7 practicable after the seizure.
- 8 (2) However, the inspector is not required to comply with the request
9 if possession of the document, film, computer file, thing or
10 information by the occupier or other person could constitute an
11 offence against a law of the Commonwealth.

12 **69EGA Receipts for seized things**

- 13 (1) An inspector must provide a receipt for a thing that is seized under
14 an investigation warrant.
- 15 (2) One receipt may cover 2 or more things seized.

16 **69EGB Return of seized things**

- 17 (1) An inspector must take reasonable steps to return a thing seized
18 under an investigation warrant when the earliest of the following
19 happens:
20 (a) the reason for the thing's seizure no longer exists;
21 (b) it is decided that the thing is not to be used in evidence;
22 (c) the period of 60 days after the thing's seizure ends.

23 *Exceptions*

- 24 (2) Subsection (1):
25 (a) is subject to any contrary order of a court; and
26 (b) does not apply if the thing:
27 (i) is forfeited or forfeitable to the Commonwealth (see
28 section 69ET); or
29 (ii) is the subject of a dispute as to ownership.
- 30 (3) The inspector is not required to take reasonable steps to return a
31 thing because of paragraph (1)(c) if:

-
- 1 (a) proceedings in which the thing may be used in evidence were
2 begun before the end of the 60 days and have not been
3 completed (including an appeal to a court in relation to those
4 proceedings); or
5 (b) the inspector may keep the thing because of an order under
6 section 69EGC; or
7 (c) the inspector is authorised by this Part or by an order of a
8 court to keep, destroy or dispose of the thing.

9 **69EGC Magistrate may permit a thing to be kept**

- 10 (1) If:
- 11 (a) before the end of 60 days after an inspector seizes a thing
12 under an investigation warrant; or
13 (b) before the end of a period previously stated in an order under
14 this section in respect of a thing seized by an inspector as
15 mentioned in paragraph (a);
16 proceedings in which the thing may be used in evidence have not
17 been brought, the inspector may apply to a magistrate for an order
18 that he or she may keep the thing for a further period.
- 19 (2) Before making the application, the inspector must:
- 20 (a) take reasonable steps to discover who has an interest in the
21 retention of the thing; and
22 (b) if it is practicable to do so, notify each person who the
23 inspector believes has such an interest of the proposed
24 application.

25 *Order to retain thing*

- 26 (3) A magistrate may order that the thing may continue to be retained
27 for a period specified in the order if the magistrate is satisfied that
28 it is necessary for the thing to continue to be retained:
- 29 (a) for the purposes of an investigation as to whether:
- 30 (i) an offence against this Act or the Collection Act has
31 been committed; or
32 (ii) a civil penalty provision has been contravened; or
33 (b) for the purposes of an investigation as to whether an offence
34 against the *Crimes Act 1914* or the *Criminal Code* that relates
35 to this Act or the Collection Act has been committed; or

- 1 (c) to enable evidence of:
2 (i) an offence mentioned in paragraph (a) or (b) to be
3 secured for the purposes of a prosecution; or
4 (ii) a contravention mentioned in paragraph (a) to be
5 secured for the purposes of proceedings for a civil
6 penalty order.
- 7 (4) The period specified must not exceed 3 years.

8 **69EGD Disposal of things**

- 9 (1) The APVMA may dispose of a thing seized under an investigation
10 warrant if:
11 (a) an inspector has taken reasonable steps to return the thing to
12 a person; and
13 (b) either:
14 (i) the inspector has been unable to locate the person; or
15 (ii) the person has refused to take possession of the thing.
- 16 (2) The APVMA may dispose of the thing in such manner as it
17 considers appropriate.

18 **Division 7—Applying for warrants etc.**

19 **69EH Monitoring warrants**

20 *Application for warrant*

- 21 (1) An inspector may apply to a magistrate for a monitoring warrant
22 under this section in relation to premises.

23 *Issue of warrant*

- 24 (2) The magistrate may issue the warrant if the magistrate is satisfied,
25 by information on oath or affirmation, that it is reasonably
26 necessary that one or more inspectors should have access to the
27 premises for the purpose of determining whether:
28 (a) this Act, or the Collection Act, has been, or is being,
29 complied with; or
30 (b) information provided under this Act, or the Collection Act, is
31 correct; or

1 (c) levy is payable under the Collection Act.

2 (3) However, the magistrate must not issue the warrant unless the
3 inspector or some other person has given to the magistrate, either
4 orally or by affidavit, such further information (if any) as the
5 magistrate requires concerning the grounds on which the issue of
6 the monitoring warrant is being sought.

7 *Content of warrant*

- 8 (4) The monitoring warrant must:
- 9 (a) describe the premises to which the warrant relates; and
 - 10 (b) state that the warrant is issued under this section; and
 - 11 (c) state the purpose for which the warrant is issued; and
 - 12 (d) authorise one or more inspectors (whether or not named in
13 the warrant) from time to time while the warrant remains in
14 force:
 - 15 (i) to enter the premises; and
 - 16 (ii) to exercise the monitoring powers in relation to the
17 premises; and
 - 18 (e) state whether entry is authorised to be made at any time of
19 the day or during specified hours of the day; and
 - 20 (f) specify the day (not more than 6 months after the issue of the
21 warrant) the warrant ceases to be in force.
- 22 (5) If the application for the warrant is made under section 69EHB,
23 this section applies as if paragraph (4)(f) required the warrant to
24 specify the period for which the warrant is to remain in force,
25 which must not be more than 48 hours.

26 **69EHA Investigation warrants**

27 *Application for warrant*

- 28 (1) An inspector may apply to a magistrate for an investigation warrant
29 under this section in relation to premises.

30 *Issue of warrant*

- 31 (2) The magistrate may issue the investigation warrant if the
32 magistrate is satisfied, by information on oath or affirmation, that
33 there are reasonable grounds for suspecting that there is, or there

1 may be within the next 72 hours, evidential material on the
2 premises.

3 (3) However, the magistrate must not issue the investigation warrant
4 unless the inspector or some other person has given to the
5 magistrate, either orally or by affidavit, such further information (if
6 any) as the magistrate requires concerning the grounds on which
7 the issue of the warrant is being sought.

8 *Content of warrant*

9 (4) The investigation warrant must:
10 (a) state the offence or offences, or civil penalty provision or
11 civil penalty provisions, to which the warrant relates; and
12 (b) describe the premises to which the warrant relates; and
13 (c) state that the warrant is issued under this section; and
14 (d) specify the kinds of evidential material that are to be
15 searched for under the warrant; and
16 (e) state that the evidential material specified may be seized
17 under the warrant; and
18 (f) state that any thing found in the course of executing the
19 warrant that the person executing the warrant believes on
20 reasonable grounds to be evidence of one or more of the
21 following:
22 (i) the commission of an offence against this Act or the
23 Collection Act;
24 (ii) the contravention of a civil penalty provision;
25 (iii) an offence against the *Crimes Act 1914* or the *Criminal*
26 *Code* that relates to this Act or the Collection Act;
27 may be seized under the warrant; and
28 (g) name one or more inspectors; and
29 (h) authorise the inspectors named in the warrant:
30 (i) to enter the premises; and
31 (ii) to exercise the powers set out in Divisions 2, 3 and 4 of
32 this Part in relation to the premises; and
33 (i) state whether entry is authorised to be made at any time of
34 the day or during specified hours of the day; and
35 (j) specify the day (not more than 1 week after the issue of the
36 warrant) the warrant ceases to be in force.

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- 1 (5) If the application for the warrant is made under section 69EHB,
2 this section applies as if:
3 (a) subsection (2) referred to 48 hours rather than 72 hours; and
4 (b) paragraph (4)(j) required the warrant to specify the period for
5 which the warrant is to remain in force, which must not be
6 more than 48 hours.

7 **69EHB Warrants by telephone, fax etc.**

8 *Application for warrant*

- 9 (1) An inspector may apply to a magistrate by telephone, fax or other
10 electronic means for a warrant in relation to premises:
11 (a) in an urgent case; or
12 (b) if the delay that would occur if an application were made in
13 person would frustrate the effective execution of the warrant.
- 14 (2) The magistrate may require communication by voice to the extent
15 that it is practicable in the circumstances.
- 16 (3) Before applying for a warrant, the inspector must:
17 (a) in the case of a monitoring warrant—prepare an information
18 of the kind mentioned in subsection 69EH(2); and
19 (b) in the case of an investigation warrant—prepare an
20 information of the kind mentioned in subsection 69EHA(2);
21 in relation to the premises that sets out the grounds on which the
22 warrant is sought. If it is necessary to do so, the inspector may
23 apply for the warrant before the information is sworn or affirmed.

24 *Magistrate may complete and sign warrant*

- 25 (4) The magistrate may complete and sign the same warrant that would
26 have been issued under section 69EH or 69EHA if the magistrate is
27 satisfied that there are reasonable grounds for doing so:
28 (a) after considering the terms of the information; and
29 (b) after receiving such further information (if any) as the
30 magistrate requires concerning the grounds on which the
31 issue of the warrant is being sought.

- 1 (5) After completing and signing the warrant, the magistrate must
2 inform the inspector, by telephone, fax or other electronic means,
3 of:
4 (a) the terms of the warrant; and
5 (b) the day and time the warrant was signed.

6 *Obligations on inspector*

- 7 (6) The inspector must then do the following:
8 (a) complete and sign a form of warrant in the same terms as the
9 warrant completed and signed by the magistrate;
10 (b) state on the form the following:
11 (i) the name of the magistrate;
12 (ii) the day and time the warrant was signed by the
13 magistrate;
14 (c) send the following to the magistrate:
15 (i) the form of warrant completed by the inspector;
16 (ii) the information referred to in subsection (3), which
17 must have been duly sworn or affirmed.
- 18 (7) The inspector must comply with paragraph (6)(c) by the end of the
19 day after the earlier of the following:
20 (a) the day the warrant ceases to be in force;
21 (b) the day the warrant is executed.

22 *Magistrate to attach documents together*

- 23 (8) The magistrate must attach the documents provided under
24 paragraph (6)(c) to the warrant signed by the magistrate.

25 **69EHC Authority of warrant**

- 26 (1) A form of warrant duly completed under subsection 69EHB(6) is
27 authority for the same powers as are authorised by the warrant
28 signed by the magistrate under subsection 69EHB(4).
- 29 (2) In any proceedings, a court is to assume (unless the contrary is
30 proved) that an exercise of power was not authorised by a warrant
31 under section 69EHB if:

- 1 (a) it is material, in those proceedings, for the court to be
2 satisfied that the exercise of power was authorised by that
3 section; and
4 (b) the warrant signed by the inspector authorising the exercise
5 of the power is not produced in evidence.

6 **69EHD Offence relating to warrants by telephone, fax etc.**

7 An inspector must not:

- 8 (a) state in a document that purports to be a form of warrant
9 under section 69EHB the name of a magistrate unless that
10 magistrate signed the warrant; or
11 (b) state on a form of warrant under that section a matter that, to
12 the inspector's knowledge, departs in a material particular
13 from the terms of the warrant signed by the magistrate under
14 that section; or
15 (c) purport to execute, or present to another person, a document
16 that purports to be a form of warrant under that section that
17 the inspector knows departs in a material particular from the
18 terms of a warrant signed by a magistrate under that section;
19 or
20 (d) purport to execute, or present to another person, a document
21 that purports to be a form of warrant under that section where
22 the inspector knows that no warrant in the terms of the form
23 of warrant has been completed and signed by a magistrate; or
24 (e) give to a magistrate a form of warrant under that section that
25 is not the form of warrant that the inspector purported to
26 execute.

27 Penalty: Imprisonment for 2 years.

28 **Division 8—Powers of magistrates**

29 **69EI Powers of issuing officers**

30 *Powers conferred personally*

- 31 (1) A power conferred on a magistrate by this Part is conferred on the
32 magistrate:
33 (a) in a personal capacity; and
34 (b) not as a court or a member of a court.

1 *Powers need not be accepted*

2 (2) The magistrate need not accept the power conferred.

3 *Protection and immunity*

4 (3) A magistrate exercising a power conferred by this Part has the
5 same protection and immunity as if the magistrate were exercising
6 the power:

7 (a) as the court of which the magistrate is a member; or

8 (b) as a member of the court of which the magistrate is a
9 member.

10 **65 Division 4 of Part 7A (heading)**

11 Repeal the heading.

12 **66 Before section 69EP**

13 Insert:

14 **Part 7AB—Enforcement**

15 **Division 1—Civil penalty orders**

16 **Subdivision A—Obtaining a civil penalty order**

17 **69EJ Civil penalty orders**

18 *Application for order*

19 (1) The APVMA may, on behalf of the Commonwealth, apply to a
20 court of competent jurisdiction for an order that a person, who is
21 alleged to have contravened a civil penalty provision, pay the
22 Commonwealth a pecuniary penalty.

23 (2) The APVMA must make the application within 6 years of the
24 alleged contravention.

25 *Court may order person to pay pecuniary penalty*

26 (3) If the court is satisfied that the person has contravened the civil
27 penalty provision, the court may order the person to pay to the

1 Commonwealth such pecuniary penalty for the contravention as the
2 court determines to be appropriate.

3 Note: Section 69EJA sets out the maximum penalty that the court may order
4 the person to pay.

5 (4) An order under subsection (3) is a *civil penalty order*.

6 *Determining pecuniary penalty*

7 (5) In determining the pecuniary penalty, the court may take into
8 account all relevant matters, including:

- 9 (a) the nature and extent of the contravention; and
10 (b) the nature and extent of any loss or damage suffered because
11 of the contravention; and
12 (c) the circumstances in which the contravention took place; and
13 (d) whether the person has previously been found by a court to
14 have engaged in any similar conduct; and
15 (e) the extent to which the person has cooperated with the
16 authorities; and
17 (f) if the person is a body corporate:
18 (i) the level of the employees, officers or agents of the
19 body corporate involved in the contravention; and
20 (ii) whether the body corporate exercised due diligence to
21 avoid the contravention; and
22 (iii) whether the body corporate had a corporate culture
23 conducive to compliance.

24 **69EJA Maximum penalties for contravention of civil penalty**
25 **provisions**

26 *Penalty for body corporate*

27 (1) The pecuniary penalty for a contravention of a civil penalty
28 provision by a body corporate must not exceed 5 times the amount
29 of the maximum monetary penalty that could be imposed by a
30 court if the body corporate were convicted of an offence
31 constituted by conduct that is the same as the conduct constituting
32 the contravention.

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Penalty for individuals

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- (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.

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Penalty for contravention of subsection 69EJR(1)

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- (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.

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69EJB Civil enforcement of penalty

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- (1) A pecuniary penalty is a debt payable to the Commonwealth.

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- (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.

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69EJC Conduct contravening more than one civil penalty provision

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- (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.

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- (2) However, the person is not liable to more than one pecuniary penalty under this Division in relation to the same conduct.

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69EJD Multiple contraventions

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- (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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- 1 (2) The proceedings for the order (the *civil proceedings*) may be
2 resumed if the person is not convicted of the offence. Otherwise,
3 the civil proceedings are dismissed.

4 **69EJJ Criminal proceedings after civil proceedings**

5 Criminal proceedings may be commenced against a person for
6 conduct that is the same, or substantially the same, as conduct that
7 would constitute a contravention of a civil penalty provision
8 regardless of whether a civil penalty order has been made against
9 the person in relation to the contravention.

10 **69EJK Evidence given in civil proceedings not admissible in**
11 **criminal proceedings**

- 12 (1) Evidence of information given, or evidence of production of
13 documents, by an individual is not admissible in criminal
14 proceedings against the individual for an offence if:
15 (a) the individual previously gave the evidence or produced the
16 documents in proceedings for a civil penalty order against the
17 individual for an alleged contravention of a civil penalty
18 provision (whether or not the order was made); and
19 (b) the conduct alleged to constitute the offence is the same, or
20 substantially the same, as the conduct alleged to constitute
21 the contravention.
- 22 (2) However, subsection (1) does not apply to criminal proceedings in
23 relation to the falsity of the evidence given by the individual in the
24 proceedings for the civil penalty order.

25 **Subdivision C—Miscellaneous**

26 **69EJL Continuing contraventions of civil penalty provisions**

- 27 (1) If an act or thing is required under a civil penalty provision to be
28 done:
29 (a) within a particular period; or
30 (b) before a particular time;
31 then the obligation to do that act or thing continues until the act or
32 thing is done (even if the period has expired or the time has
33 passed).

-
- 1 (2) A person who contravenes a civil penalty provision that requires an
2 act or thing to be done:
3 (a) within a particular period; or
4 (b) before a particular time;
5 commits a separate contravention of that provision in respect of
6 each day during which the contravention occurs (including the day
7 the relevant civil penalty order is made or any later day).

8 **69EJM Ancillary contravention of civil penalty provisions**

- 9 (1) A person must not:
10 (a) attempt to contravene a civil penalty provision; or
11 (b) aid, abet, counsel or procure a contravention of a civil
12 penalty provision; or
13 (c) induce (by threats, promises or otherwise) a contravention of
14 a civil penalty provision; or
15 (d) be in any way, directly or indirectly, knowingly concerned in,
16 or party to, a contravention of a civil penalty provision; or
17 (e) conspire with others to effect a contravention of a civil
18 penalty provision.

19 *Civil penalty*

- 20 (2) A person who contravenes subsection (1) in relation to a civil
21 penalty provision is taken to have contravened the provision.

22 Note: Section 69EJO (which provides that a person's state of mind does not
23 need to be proven in relation to a civil penalty provision) does not
24 apply to the extent that proceedings relate to the contravention of
25 subsection (1).

26 **69EJN Mistake of fact**

- 27 (1) A person is not liable to have a civil penalty order made against the
28 person for a contravention of a civil penalty provision if:
29 (a) at or before the time of the conduct constituting the
30 contravention, the person:
31 (i) considered whether or not facts existed; and
32 (ii) was under a mistaken but reasonable belief about those
33 facts; and
34 (b) had those facts existed, the conduct would not have
35 constituted a contravention of the civil penalty provision.

- 1 (2) For the purposes of subsection (1), a person may be regarded as
2 having considered whether or not facts existed if:
3 (a) the person had considered, on a previous occasion, whether
4 those facts existed in the circumstances surrounding that
5 occasion; and
6 (b) the person honestly and reasonably believed that the
7 circumstances surrounding the present occasion were the
8 same, or substantially the same, as those surrounding the
9 previous occasion.
- 10 (3) A person who wishes to rely on subsection (1) or (2) in
11 proceedings for a civil penalty order bears an evidential burden in
12 relation to that matter.

13 **69EJO State of mind**

- 14 (1) In proceedings for a civil penalty order against a person for a
15 contravention of a civil penalty provision, it is not necessary to
16 prove:
17 (a) the person's intention; or
18 (b) the person's knowledge; or
19 (c) the person's recklessness; or
20 (d) the person's negligence; or
21 (e) any other state of mind of the person.
- 22 (2) Subsection (1) does not apply to the extent that the proceedings
23 relate to a contravention of subsection 69EJM(1) (which is about
24 ancillary contraventions of civil penalty provisions).
- 25 (3) Subsection (1) does not affect the operation of section 69EJN
26 (which is about mistake of fact).
- 27 (4) Subsection (1) does not apply to the extent that the civil penalty
28 provision, or a provision that relates to the civil penalty provision,
29 expressly provides otherwise.

30 **69EJP Evidential burden for exceptions**

31 In proceedings for a civil penalty order, a person who wishes to
32 rely on any exception, exemption, excuse, qualification or
33 justification in relation to a civil penalty provision bears an
34 evidential burden in relation to that matter.

1 **69EJQ Liability of body corporate for actions by employees, agents**
2 **or officers**

3 If an element of a civil penalty provision is done by an employee,
4 agent or officer of a body corporate acting within the actual or
5 apparent scope of his or her employment, or within his or her
6 actual or apparent authority, the element must also be attributed to
7 the body corporate.

8 **69EJR Liability of executive officers**

- 9 (1) An executive officer of a body corporate contravenes this
10 subsection if:
11 (a) the body corporate contravenes a civil penalty provision; and
12 (b) the officer knew that the contravention would occur; and
13 (c) the officer was in a position to influence the conduct of the
14 body in relation to the contravention; and
15 (d) the officer failed to take all reasonable steps to prevent the
16 contravention.

- 17 (2) Subsection (1) is a civil penalty provision.

18 Note: Subdivision A of this Division provides for pecuniary penalties for
19 contraventions of civil penalty provisions.

20 **69EJS Establishing whether an executive officer took reasonable**
21 **steps to prevent the contravention of a civil penalty**
22 **provision**

- 23 (1) For the purposes of section 69EJR, in determining whether an
24 executive officer of a body corporate failed to take all reasonable
25 steps to prevent the contravention of a civil penalty provision, a
26 court is to have regard to:
27 (a) what action (if any) the officer took towards ensuring that the
28 body's employees, agents and contractors have a reasonable
29 knowledge and understanding of the requirements to comply
30 with this Act or the Collection Act, in so far as those
31 requirements affect the employees, agents or contractors
32 concerned; and
33 (b) what action (if any) the officer took when he or she became
34 aware that the body was contravening this Act or the
35 Collection Act.
-

- 1 (2) This section does not, by implication, limit the generality of
2 section 69EJR.

3 **Division 2—Infringement notices**

4 **69EK When an infringement notice may be given**

- 5 (1) If an inspector has reasonable grounds to believe that a person has
6 contravened a prescribed civil penalty provision, the inspector may
7 give the person an infringement notice for the alleged
8 contravention.
- 9 (2) The infringement notice must be given within 12 months after the
10 day the contravention is alleged to have taken place.
- 11 (3) A single infringement notice must relate only to a single
12 contravention of a single prescribed civil penalty provision.

13 **69EKA Matters to be included in an infringement notice**

- 14 (1) An infringement notice must:
15 (a) be identified by a unique number; and
16 (b) state the day it is given; and
17 (c) state the name of the person to whom the notice is given; and
18 (d) state the name of the person who gave the notice; and
19 (e) give brief details of the alleged contravention, including:
20 (i) the provision that was allegedly contravened; and
21 (ii) the maximum penalty that a court could impose for the
22 contravention; and
23 (iii) the time (if known) and day of, and the place of, the
24 alleged contravention; and
25 (f) state the amount that is payable under the notice; and
26 (g) give an explanation of how payment of the amount is to be
27 made; and
28 (h) state that, if the person to whom the notice is given pays the
29 amount within 28 days after the day the notice is given, then
30 (unless the notice is withdrawn) proceedings seeking a civil
31 penalty order will not be brought in relation to the alleged
32 contravention; and

- 1 (i) state that payment of the amount is not an admission of
- 2 liability; and
- 3 (j) state that the person may apply to the APVMA to have the
- 4 period in which to pay the amount extended; and
- 5 (k) state that the person may choose not to pay the amount and, if
- 6 the person does so, proceedings seeking a civil penalty order
- 7 may be brought in relation to the alleged contravention; and
- 8 (l) set out how the notice can be withdrawn; and
- 9 (m) state that if the notice is withdrawn proceedings seeking a
- 10 civil penalty order may be brought in relation to the alleged
- 11 contravention; and
- 12 (n) state that the person may make written representations to the
- 13 APVMA seeking the withdrawal of the notice.
- 14 (2) For the purposes of paragraph (1)(f), the amount to be stated in the
- 15 notice for the alleged contravention of the provision must not
- 16 exceed one-fifth of the maximum penalty that a court could impose
- 17 on the person for that contravention.
- 18 (3) The regulations may, subject to subsection (2), provide for a scale
- 19 of amounts that may apply for an alleged contravention.

20 **69EKB Extension of time to pay amount**

- 21 (1) A person to whom an infringement notice has been given may
- 22 apply to the APVMA for an extension of the period referred to in
- 23 paragraph 69EKA(1)(h).
- 24 (2) If the application is made before the end of that period, the
- 25 APVMA may, in writing, extend that period. The APVMA may do
- 26 so before or after the end of that period.
- 27 (3) If the APVMA extends that period, a reference in this Division to
- 28 the period referred to in paragraph 69EKA(1)(h) is taken to be a
- 29 reference to that period so extended.
- 30 (4) If the APVMA does not extend that period, a reference in this
- 31 Division to the period referred to in paragraph 69EKA(1)(h) is
- 32 taken to be a reference to the period that ends on the later of the
- 33 following days:
- 34 (a) the day that is the last day of the period referred to in
- 35 paragraph 69EKA(1)(h);

1 (b) the day that is 7 days after the day the person was given
2 notice of the APVMA's decision not to extend.

3 (5) The APVMA may extend the period more than once under
4 subsection (2).

5 **69EKC Withdrawal of an infringement notice**

6 *Representations seeking withdrawal of notice*

7 (1) A person to whom an infringement notice has been given may
8 make written representations to the APVMA seeking the
9 withdrawal of the notice.

10 *Withdrawal of notice*

11 (2) The APVMA may withdraw an infringement notice given to a
12 person (whether or not the person has made written representations
13 seeking the withdrawal).

14 (3) When deciding whether or not to withdraw an infringement notice
15 (the *relevant infringement notice*), the APVMA:

16 (a) must take into account any written representations seeking
17 the withdrawal that were given by the person to the APVMA;
18 and

19 (b) may take into account the following:

20 (i) whether a court has previously imposed a penalty on the
21 person for a contravention of a prescribed civil penalty
22 provision if the contravention is constituted by conduct
23 that is the same, or substantially the same, as the
24 conduct alleged to constitute the contravention in the
25 relevant infringement notice;

26 (ii) the circumstances of the alleged contravention;

27 (iii) whether the person has paid an amount, stated in an
28 earlier infringement notice, for a contravention of a
29 prescribed civil penalty provision if the contravention is
30 constituted by conduct that is the same, or substantially
31 the same, as the conduct alleged to constitute the
32 contravention in the relevant infringement notice;

33 (iv) any other matter the APVMA considers relevant.

Notice of withdrawal

- 1
- 2 (4) Notice of the withdrawal of the infringement notice must be given
- 3 to the person. The withdrawal notice must state:
- 4 (a) the person's name and address; and
- 5 (b) the day the infringement notice was given; and
- 6 (c) the identifying number of the infringement notice; and
- 7 (d) that the infringement notice is withdrawn; and
- 8 (e) that proceedings seeking a civil penalty order may be brought
- 9 in relation to the alleged contravention.

Refund of amount if infringement notice withdrawn

- 10
- 11 (5) If:
- 12 (a) the APVMA withdraws the infringement notice; and
- 13 (b) the person has already paid the amount stated in the notice;
- 14 the Commonwealth must refund to the person an amount equal to
- 15 the amount paid.

69EKD Effect of payment of amount

- 16
- 17 (1) If the person to whom an infringement notice for an alleged
- 18 contravention of a provision is given pays the amount stated in the
- 19 notice before the end of the period referred to in paragraph
- 20 69EKA(1)(h):
- 21 (a) any liability of the person for the alleged contravention is
- 22 discharged; and
- 23 (b) proceedings seeking a civil penalty order may not be brought
- 24 against the person in relation to the alleged contravention;
- 25 and
- 26 (c) the person is not regarded as having admitted liability for the
- 27 alleged contravention.
- 28 (2) Subsection (1) does not apply if the notice has been withdrawn.

69EKE Effect of this Division

This Division does not:

- 29
- 30
- 31 (a) require an infringement notice to be given to a person for an
- 32 alleged contravention of a prescribed civil penalty provision;
- 33 or

- 1 (b) affect the liability of a person for an alleged contravention of
2 a prescribed civil penalty provision if:
3 (i) the person does not comply with an infringement notice
4 given to the person for the contravention; or
5 (ii) an infringement notice is not given to the person for the
6 contravention; or
7 (iii) an infringement notice is given to the person for the
8 contravention and is subsequently withdrawn; or
9 (c) prevent the giving of 2 or more infringement notices to a
10 person for an alleged contravention of a prescribed civil
11 penalty provision; or
12 (d) limit a court's discretion to determine the amount of a
13 penalty to be imposed on a person who is found to have
14 contravened a prescribed civil penalty provision.

15 **Division 3—Enforceable undertakings**

16 **69EL Acceptance of undertakings**

- 17 (1) The APVMA may accept any of the following undertakings:
18 (a) a written undertaking given by a person that the person will,
19 in order to comply with a provision of this Act or the
20 Collection Act, take specified action;
21 (b) a written undertaking given by a person that the person will,
22 in order to comply with a provision of this Act or the
23 Collection Act, refrain from taking specified action;
24 (c) a written undertaking given by a person that the person will
25 take specified action directed towards ensuring one or more
26 of the following:
27 (i) that the person does not commit an offence against this
28 Act or the Collection Act;
29 (ii) that the person does not contravene a civil penalty
30 provision;
31 (iii) that the person is unlikely to commit an offence against
32 this Act or the Collection Act, or to contravene a civil
33 penalty provision, in the future.
34 (2) The undertaking must be expressed to be an undertaking under this
35 section.

-
- 1 (3) The person may withdraw or vary the undertaking at any time, but
2 only with the written consent of the APVMA.
- 3 (4) The APVMA's consent is not a legislative instrument.
- 4 (5) The APVMA may, by written notice given to the person, cancel
5 the undertaking.
- 6 (6) The APVMA must publish the undertaking on the APVMA's
7 website.
- 8 (7) However, the APVMA is not required to publish so much of the
9 undertaking that the APVMA is satisfied:
- 10 (a) is confidential commercial information; or
11 (b) is personal information (within the meaning of the *Privacy*
12 *Act 1988*); or
13 (c) should not be disclosed because it would be against the
14 public interest to do so.

15 **69ELA Enforcement of undertakings**

- 16 (1) If:
- 17 (a) a person has given an undertaking under section 69EL; and
18 (b) the undertaking has not been withdrawn or cancelled; and
19 (c) the APVMA considers that the person has breached the
20 undertaking;
- 21 the APVMA may, on behalf of the Commonwealth, apply to a
22 court of competent jurisdiction for an order under subsection (2).
- 23 (2) If the court is satisfied that the person has breached the
24 undertaking, the court may make any or all of the following orders:
- 25 (a) an order directing the person to comply with the undertaking;
26 (b) an order directing the person to pay to the Commonwealth an
27 amount up to the amount of any financial benefit that the
28 person has obtained directly or indirectly and that is
29 reasonably attributable to the breach;
- 30 (c) any order that the court considers appropriate directing the
31 person to compensate any other person who has suffered loss
32 or damage as a result of the breach;
- 33 (d) any other order that the court considers appropriate.

1 **Division 4—Injunctions**

2 **69EM Grant of injunctions**

3 *Restraining injunctions*

4 (1) If a person has engaged, is engaging or is proposing to engage, in
5 conduct that constitutes an offence against this Act or the
6 Collection Act or a contravention of a civil penalty provision, a
7 court of competent jurisdiction may, on application by any person,
8 grant an injunction:

- 9 (a) restraining the first-mentioned person from engaging in the
10 conduct; and
11 (b) if, in the court’s opinion, it is desirable to do so—requiring
12 the first-mentioned person to do a thing.

13 *Performance injunctions*

14 (2) If:
15 (a) a person has refused or failed, or is refusing or failing, or is
16 proposing to refuse or fail, to do a thing; and
17 (b) the refusal or failure was, is or would be, an offence against
18 this Act or the Collection Act or a contravention of a civil
19 penalty provision;
20 the court may, on application by any person, grant an injunction
21 requiring the first-mentioned person to do that thing.

22 *Grant of interim injunctions*

23 (3) Before deciding an application for an injunction under this section,
24 the court may grant an interim injunction:
25 (a) restraining a person from engaging in conduct; or
26 (b) requiring a person to do a thing.

27 **69EMA Discharging or varying injunctions**

28 A court may discharge or vary an injunction granted by that court
29 under this Division.

1 **69EMB Certain limits on granting injunctions not to apply**

2 *Restraining injunctions*

- 3 (1) The power of a court under this Division to grant an injunction
4 restraining a person from engaging in conduct may be exercised:
- 5 (a) whether or not it appears to the court that the person intends
6 to engage again, or to continue to engage, in conduct of that
7 kind; and
 - 8 (b) whether or not the person has previously engaged in conduct
9 of that kind; and
 - 10 (c) whether or not the conduct involves a serious and immediate
11 risk of:
 - 12 (i) an effect that is harmful to human beings; or
 - 13 (ii) an unintended effect that is harmful to animals, plants or
14 things, or to the environment.

15 *Performance injunctions*

- 16 (2) The power of a court under this Division to grant an injunction
17 requiring a person to do a thing may be exercised:
- 18 (a) whether or not it appears to the court that the person intends
19 to refuse or fail again, or to continue to refuse or fail, to do
20 that thing; and
 - 21 (b) whether or not the person has previously refused or failed to
22 do that thing; and
 - 23 (c) whether or not the conduct involves a serious and immediate
24 risk of:
 - 25 (i) an effect that is harmful to human beings; or
 - 26 (ii) an unintended effect that is harmful to animals, plants or
27 things, or to the environment.

28 **69EMC Other powers of a court unaffected**

29 The powers conferred on a court under this Division are in addition
30 to, and not instead of, any other powers of the court, whether
31 conferred by this Act or otherwise.

1 **Division 5—Substantiation notices**

2 **69EN APVMA may require claims to be substantiated etc.**

- 3 (1) This section applies if a person has made a claim or representation
4 in relation to:
- 5 (a) the import, or possible import, of a chemical product by the
6 person or another person; or
 - 7 (b) the export of a chemical product by the person or another
8 person.
- 9 (2) The APVMA may give the person who made the claim or
10 representation a written notice that requires the person to do either
11 or both of the following:
- 12 (a) give information or produce documents to the APVMA that
13 could be capable of substantiating or supporting the claim or
14 representation;
 - 15 (b) give information or produce documents to the APVMA that
16 are of a kind specified in the notice;
- 17 within 21 days after the notice is given to the person who made the
18 claim or representation.
- 19 (3) Any kind of information or documents that the APVMA specifies
20 under paragraph (2)(b) must be a kind that the APVMA is satisfied
21 is relevant to substantiating or supporting the claim or
22 representation.
- 23 (4) The notice must:
- 24 (a) name the person to whom it is given; and
 - 25 (b) specify the claim or representation to which it relates; and
 - 26 (c) explain the effect of sections 69ENA and 69ENB.
- 27 (5) The notice may relate to more than one claim or representation that
28 the person has made.
- 29 (6) This section does not apply to a person who made the claim or
30 representation if the person:
- 31 (a) made the claim or representation by publishing it on behalf of
32 another person in the course of carrying on a business of
33 providing information; and

-
- 1 (b) does not have a commercial relationship with the other
2 person other than for the purpose of:
3 (i) publishing claims or representations promoting, or
4 apparently intended to promote, the other person’s
5 business or other activities; or
6 (ii) the other person supplying goods or services.

7 **69ENA Compliance with substantiation notices**

- 8 (1) A person given a substantiation notice under section 69EN must
9 comply with the notice:
10 (a) within the period specified in the notice; or
11 (b) within such further time as the APVMA allows under
12 subsection (3).
- 13 (2) A person given a substantiation notice under section 69EN may
14 apply to the APVMA for further time to comply with the notice.
15 An application must be in writing and made within 21 days after
16 the notice is given to the person.
- 17 (3) The APVMA may, by written notice given to the person, extend
18 the period within which the person must comply with the notice.
- 19 (4) Despite subsection (1), an individual may refuse or fail to give
20 particular information or produce a particular document in
21 compliance with a substantiation notice on the ground that the
22 information, or production of the document, might tend to
23 incriminate the individual or to expose the individual to a penalty.

24 **69ENB Failure to comply with substantiation notice**

- 25 (1) A person contravenes this section if:
26 (a) the person is given a notice under section 69EN; and
27 (b) the person fails to comply with the notice:
28 (i) within the period specified in the notice; or
29 (ii) if the APVMA has allowed the person further time
30 under subsection 69ENA(3)—within such further time.
- 31 (2) Subsection (1) does not apply if:
32 (a) the person is an individual; and

- 1 (b) the person refuses or fails to give particular information or
2 produce a particular document in compliance with a
3 substantiation notice; and
4 (c) the information, or production of the document, might tend to
5 incriminate the individual or to expose the individual to a
6 penalty.

- 7 (3) A person commits an offence if the person contravenes
8 subsection (1).

9 Penalty: 50 penalty units.

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

- 12 (4) Subsection (1) is a civil penalty provision.

13 Note 1: Division 1 of this Part provides for pecuniary penalties for
14 contraventions of civil penalty provisions.

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

17 **Division 6—Formal warnings**

18 **69EO APVMA may issue a formal warning**

- 19 (1) The APVMA may, by written notice, issue a formal warning to a
20 person if the APVMA has reasonable grounds to suspect that the
21 person may have contravened this Act or the Collection Act.
22 (2) A formal warning under subsection (1) is not a legislative
23 instrument.

24 **Division 7—Miscellaneous**

25 **67 Subsections 69EP(6) and 69EP(7) (penalties)**

26 Repeal the penalties, substitute:

27 Penalty: 50 penalty units.

28 **68 Section 69EQ**

29 Before “this Part”, insert “Part 7A, 7AA or”.

30 **69 Section 69ER**

1 Repeal the section, substitute:

2 **69ER False or misleading information or document**

- 3 (1) A person commits an offence if, for the purposes of, or in
4 connection with, the making of a decision by the APVMA as to
5 whether it should give a consent under section 69B, the person:
6 (a) gives information (whether orally or in writing) that the
7 person knows to be false or misleading in a material
8 particular; or
9 (b) produces a document that the person knows to be false or
10 misleading in a material particular without:
11 (i) indicating to the person to whom the document is
12 produced that it is false or misleading and the respect in
13 which it is false or misleading; and
14 (ii) providing correct information to that person if the
15 person producing the document is in possession of, or
16 can reasonably acquire, the correct information.

17 Penalty: 300 penalty units.

- 18 (2) A person commits an offence if, in compliance or purported
19 compliance with a requirement made by an inspector under
20 Part 7A, Part 7AA or this Part or for the purposes of, or in
21 connection with, any provision of Part 7A (other than section 69B),
22 Part 7AA or this Part, the person:
23 (a) gives information (whether orally or in writing) that the
24 person knows to be false or misleading in a material
25 particular; or
26 (b) produces a document that the person knows to be false or
27 misleading in a material particular without:
28 (i) indicating to the person to whom the document is
29 produced that it is false or misleading and the respect in
30 which it is false or misleading; and
31 (ii) providing correct information to that person if the
32 person producing the document is in possession of, or
33 can reasonably acquire, the correct information.

34 Penalty: 60 penalty units.

35 **70 Subsections 69ET(1), 69EU(1) and 69EU(3)**

1 Before “this Part”, insert “Part 7A, 7AA or”.

2 **71 Paragraph 69EU(5)(a)**

3 Before “this Part”, insert “Part 7A, 7AA or”.

4 **72 Subsection 69F(2)**

5 Omit “particular”.

6 **73 Subsection 69F(5)**

7 Omit “who has ceased to be an inspector must, as soon as practicable,”,
8 substitute “must, within 14 days of ceasing to be an inspector,”.

9 **74 After section 69H**

10 Insert:

11 **69HA Protection of inspectors etc.**

12 An inspector, a person assisting an inspector, or other member of
13 the staff of the APVMA, is not liable to any proceedings relating to
14 an act done, or omitted to be done, in good faith in the performance
15 or purported performance of a function, or in the exercise or
16 purported exercise of a power, conferred on the inspector, person
17 or member by this Act or the Code set out in the Schedule to the
18 *Agricultural and Veterinary Chemicals Code Act 1994*.

19 ***Agricultural and Veterinary Chemicals Code Act 1994***

20 **75 Paragraph 6(2)(i)**

21 Repeal the paragraph, substitute:

- 22 (i) prescribing penalties of not more than 50 penalty units for
23 offences against the regulations; or
24 (j) declaring provisions of the regulations to be civil penalty
25 provisions.

26 **76 Subsection 3(1) of the Code set out in the Schedule**

27 Insert:

28 ***agvet law*** means:

- 29 (a) the Agvet Code of this, or another, jurisdiction; or

-
- 1 (b) the *Agricultural and Veterinary Chemical Products*
2 *(Collection of Levy) Act 1994*; or
3 (c) the *Agricultural and Veterinary Chemicals (Administration)*
4 *Act 1992*.

5 **77 Subsection 3(1) of the Code set out in the Schedule**

6 Insert:

7 *agvet penalty provision* means:

- 8 (a) a civil penalty provision of the Agvet Code of this, or
9 another, jurisdiction; or
10 (b) a civil penalty provision of the *Agricultural and Veterinary*
11 *Chemical Products (Collection of Levy) Act 1994*; or
12 (c) a civil penalty provision of the *Agricultural and Veterinary*
13 *Chemicals (Administration) Act 1992*.

14 **78 Subsection 3(1) of the Code set out in the Schedule**

15 Insert:

16 *approved active constituent* means an active constituent that
17 complies with the relevant particulars set out in the Record for the
18 constituent.

19 **79 Subsection 3(1) of the Code set out in the Schedule**

20 Insert:

21 *civil penalty order* has the meaning given by section 145A.

22 **80 Subsection 3(1) of the Code set out in the Schedule**

23 Insert:

24 *civil penalty provision* means a provision declared by this Code to
25 be a civil penalty provision.

26 **81 Subsection 3(1) of the Code set out in the Schedule**
27 **(definition of *continued use*)**

28 Repeal the definition.

29 **82 Subsection 3(1) of the Code set out in the Schedule**

30 Insert:

- 1 *copy*, in relation to a warrant issued under section 143 or 143A (or
2 a form of warrant completed under subsection 143B(6)), includes:
3 (a) a copy sent by fax or other electronic means; or
4 (b) a copy of a copy so sent.

5 **83 Subsection 3(1) of the Code set out in the Schedule**

6 Insert:

- 7 *damage*, in relation to data, includes damage by erasure of data or
8 addition of other data.

9 **84 Subsection 3(1) of the Code set out in the Schedule**

10 Insert:

- 11 *data* includes:
12 (a) information in any form; and
13 (b) any program (or part of a program).

14 **85 Subsection 3(1) of the Code set out in the Schedule**

15 Insert:

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

19 **86 Subsection 3(1) of the Code set out in the Schedule**

20 Insert:

- 21 *evidential material* means any of the following:
22 (a) a thing with respect to which an offence against an agvet law
23 has been committed or is suspected, on reasonable grounds,
24 to have been committed;
25 (b) a thing with respect to which an agvet penalty provision has
26 been contravened or is suspected, on reasonable grounds, to
27 have been contravened;
28 (c) a thing that there are reasonable grounds for suspecting will
29 afford evidence as to the commission of such an offence or
30 contravention of such an agvet penalty provision;

- 1 (d) a thing that there are reasonable grounds for suspecting is
2 intended to be used for the purpose of committing such an
3 offence or contravening such an agvet penalty provision.

4 **87 Subsection 3(1) of the Code set out in the Schedule**

5 Insert:

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

9 **88 Subsection 3(1) of the Code set out in the Schedule**

10 Insert:

11 *investigation powers* has the meaning given by sections 132A,
12 132B and 132C.

13 **89 Subsection 3(1) of the Code set out in the Schedule**

14 Insert:

15 *investigation warrant* means:

- 16 (a) a warrant issued under section 143A; or
17 (b) a warrant signed by a magistrate under section 143B, being a
18 warrant of the same kind as would have been issued under
19 section 143A.

20 **90 Subsection 3(1) of the Code set out in the Schedule**

21 Insert:

22 *manufacture*, in relation to a chemical product, means:

- 23 (a) to produce the chemical product; or
24 (b) to engage in any part of the process of producing the
25 chemical product, or any component or ingredient of the
26 chemical product as part of that process, or of bringing the
27 chemical product to its final state, including by formulating,
28 processing, assembling, packaging, labelling, storing,
29 sterilising, testing, supplying or releasing for supply.

30 **91 Subsection 3(1) of the Code set out in the Schedule**

31 Insert:

1 *monitoring powers* has the meaning given by sections 131A, 131B
2 and 131C.

3 **92 Subsection 3(1) of the Code set out in the Schedule**

4 Insert:

5 *monitoring warrant* means:

- 6 (a) a warrant issued under section 143; or
7 (b) a warrant signed by a magistrate under section 143B, being a
8 warrant of the same kind as would have been issued under
9 section 143.

10 **93 Subsection 3(1) of the Code set out in the Schedule**

11 Insert:

12 *person assisting* an inspector:

- 13 (a) in relation to the exercise of monitoring powers—has the
14 meaning given by section 131D; and
15 (b) in relation to the exercise of investigation powers—has the
16 meaning given by section 132E.

17 **94 Subsection 3(1) of the Code set out in the Schedule**

18 Insert:

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

21 **95 Subsection 3(1) of the Code set out in the Schedule**

22 Repeal the definition, substitute:

23 *registered chemical product* means a chemical product that
24 complies with the relevant particulars set out in the Register for the
25 product.

26 **96 Subsection 3(1) of the Code set out in the Schedule**

27 Insert:

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

- 29 (a) an agvet law has been, or is being, complied with; or
30 (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

Re-number 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

- 1 (b) if a condition of the approval or registration is contravened
2 (section 36); or
3 (c) if the holder does not comply with a requirement under
4 section 32, 33, 159, 160A or 161 to give the APVMA
5 information, a report or a sample (section 38); or
6 (d) if the holder has given information that is false or misleading
7 (section 38A); or
8 (e) if primary and secondary holders cannot agree on
9 compensation during the course of arbitration (section 39); or
10 (f) if it appears to the APVMA that the criteria for approval or
11 registration are not, or are no longer, satisfied (section 41); or
12 (g) at the request of the holder if the APVMA agrees with the
13 reasons for the request (section 42).
- 14 (5) A suspension must be for a stated period, and does not prevent
15 cancellation (section 43).
- 16 (6) Section 44 deals with inter-related suspensions and cancellations.
- 17 (7) Suspensions and cancellations are done by entries in the Record,
18 the Register and the relevant APVMA file (section 45).
- 19 (8) Notice of suspension and cancellation must be given to certain
20 persons and must be published in the *Gazette* (section 45A).
- 21 (9) If the APVMA suspends or cancels the approval of a constituent or
22 the registration of a product, then:
23 (a) certain persons are taken to have a permit to possess, have
24 custody of or use of the constituent or product for a limited
25 period (section 45B); and
26 (b) such persons may only supply the constituent or product in
27 accordance with instructions contained in the notice provided
28 by the APVMA under section 45A (section 45C).
- 29 (10) Section 46 sets out how suspensions and cancellations are revoked.

30 **34P Notice of proposed suspension or cancellation to be given to**
31 **holder**

- 32 (1) The APVMA must not suspend or cancel an approval or
33 registration unless it has given the holder a written notice that:

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- 1 (a) states that the APVMA proposes to suspend or cancel the
2 approval, or suspend or cancel the registration, as the case
3 may be; and
4 (b) sets out the reasons for the proposed suspension or
5 cancellation; and
6 (c) invites the holder to make, within a reasonable period
7 specified in the notice, submissions to the APVMA in
8 relation to the proposed suspension or cancellation.
- 9 (2) The APVMA must not make a decision relating to the proposed
10 suspension or cancellation, as the case may be, until it has had
11 regard to any submission made by the person in response to an
12 invitation under paragraph (1)(c).
- 13 (3) A written notice under subsection (1) must specify the period of
14 the suspension.
- 15 (4) Subsection (1) does not apply to a suspension or cancellation under
16 section 34AA, 35A, 39 or 42.

17 **102 Section 35 of the Code set out in the Schedule**

18 Before “The APVMA”, insert “(1)”.

19 **103 Section 35 of the Code set out in the Schedule**

20 Omit “The APVMA”, substitute “Subject to subsection (2), the
21 APVMA”.

22 **104 At the end of section 35 of the Code set out in the
23 Schedule**

24 Add:

- 25 (2) Subsection (1) does not apply to a suspension or cancellation under
26 section 35A.

27 **105 After section 35 of the Code set out in the Schedule**

28 Insert:

1 **35A Suspension or cancellation of registration if imminent risk to**
2 **persons of death, serious injury or serious illness**

- 3 (1) The APVMA may suspend or cancel the registration of a chemical
4 product if the APVMA considers that doing so is necessary to
5 prevent imminent risk to persons of death, serious injury or serious
6 illness.

7 Note: Section 43 deals with the effect of suspension of registration.

- 8 (2) The APVMA may suspend or cancel the registration of the product
9 under subsection (1) whether or not the product is being used in
10 accordance with instructions for its use that the APVMA has
11 approved.

12 Note: Sections 34P and 35 do not apply to a suspension or cancellation
13 under this section.

14 **106 Section 37 of the Code set out in the Schedule**

15 Repeal the section.

16 **107 Section 38 of the Code set out in the Schedule (heading)**

17 Repeal the heading, substitute:

18 **38 Suspension of approval or registration for failing to give**
19 **information, results, report or sample to APVMA**

20 **108 Subsection 38(1) of the Code set out in the Schedule**

21 Repeal the subsection, substitute:

- 22 (1) If the holder of an approval or registration fails, without reasonable
23 excuse, to comply with a requirement contained in a notice under
24 subsection 32(1) or section 33 or 159, or to comply with
25 section 160A or 161, the APVMA may suspend the approval or
26 registration.

27 **109 Subsections 38(2) and (3) of the Code set out in the**
28 **Schedule**

29 After “information,” insert “results,”.

30 **110 After section 38 of the Code set out in the Schedule**

31 Insert:

1 **38A Suspension or cancellation of approval or registration for**
2 **providing false or misleading information**

- 3 (1) The APVMA may suspend or cancel the approval of an active
4 constituent for a proposed or existing chemical product if:
5 (a) the holder has given information:
6 (i) in or in connection with an application for approval of
7 the constituent; or
8 (ii) in response to a notice under section 33 or 159; or
9 (iii) as required by section 160A or 161; and
10 (b) the information was false or misleading in a material
11 particular.
- 12 (2) The APVMA may suspend or cancel the registration of a chemical
13 product if:
14 (a) the holder has given information:
15 (i) in or in connection with an application for registration
16 of the product; or
17 (ii) in response to a notice under section 33 or 159; or
18 (iii) as required by section 160A or 161; and
19 (b) the information was false or misleading in a material
20 particular.

21 **111 Paragraphs 39(1)(a) and (2)(a) of the Code set out in the**
22 **Schedule**

23 Omit “applicant” (wherever occurring), substitute “holder”.

24 **112 At the end of section 39 of the Code set out in the**
25 **Schedule**

26 Add:

27 Note: Section 34P does not apply to a suspension or cancellation under this
28 section.

29 **113 Section 41 of the Code set out in the Schedule**

30 Repeal the section, substitute:

1 **41 Suspension or cancellation of approval or registration for**
2 **non-compliance with criteria for approval or registration**
3 **or prescribed requirements**

- 4 (1) The APVMA may suspend or cancel the approval of an active
5 constituent for a proposed or existing chemical product, or the
6 registration of a chemical product, if it appears to the APVMA:
7 (a) for an active constituent—that the constituent may not meet
8 the safety criteria; or
9 (b) for a chemical product—that the product may not meet the
10 safety criteria, the trade criteria or the efficacy criteria; or
11 (c) that the constituent or product may not comply with any
12 requirement prescribed by the regulations.
- 13 (2) The APVMA may suspend or cancel the approval of a label for
14 containers for a chemical product if it appears to the APVMA that
15 the label may not meet the labelling criteria or may not comply
16 with any requirement prescribed by the regulations.

17 **114 Section 42 of the Code set out in the Schedule (heading)**

18 Repeal the heading, substitute:

19 **42 Cancellation of approval or registration at request of holder**

20 **115 Paragraph 42(1)(a) of the Code set out in the Schedule**

21 Omit “interested person in relation to an approval or registration or an
22 approved person”, substitute “holder”.

23 **116 At the end of section 42 of the Code set out in the**
24 **Schedule**

25 Add:

26 Note: Section 34P does not apply to a suspension or cancellation under this
27 section.

28 **117 Subsection 44(1) of the Code set out in the Schedule**

29 Omit “only approval, or all the approvals,”, substitute “approval”.

30 **118 Subsection 45(1) of the Code set out in the Schedule**

31 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.

- 1 (3) If the reason, or one of the reasons, for the suspension or
2 cancellation was:
3 (a) for an active constituent—that the constituent may not meet
4 the safety criteria; or
5 (b) for a chemical product—that the product may not meet the
6 safety criteria, the trade criteria or the efficacy criteria; or
7 (c) for a label—that the label may not meet the labelling criteria;
8 the notice published in the *Gazette* must contain a statement to that
9 effect and must include the matters mentioned in
10 subparagraphs (2)(b)(ii), (iii) and (iv).
- 11 (4) Subsection (1) does not require notice of the cancellation under
12 section 42 of an approval or registration to be given to the holder
13 who requested the cancellation.

14 **45B Permit taken to have been issued**

15 *Holder and certain persons taken to have permit*

- 16 (1) If notice of the suspension or cancellation is given to a holder or
17 other person under paragraph 45A(1)(a), the holder or person is
18 taken to have been issued with a permit to possess, have custody of
19 or use the constituent or product, or the product as labelled, in
20 accordance with the instructions contained in the notice.
- 21 (2) A permit that is taken to have been issued under subsection (1)
22 remains in force until:
23 (a) 1 year after the day of the suspension or cancellation; or
24 (b) the APVMA revokes the suspension or cancellation; or
25 (c) the APVMA, by notice published in the *Gazette*, declares that
26 this subsection ceases to apply in respect of the constituent or
27 product;
28 whichever first occurs.

29 *Certain persons who possess etc. constituent or product taken to*
30 *have permit*

- 31 (3) If notice of the suspension or cancellation is published under
32 paragraph 45A(1)(b), a person who possesses, has custody of or
33 uses the constituent or product, or the product as labelled, in
34 accordance with the instructions contained in the notice, is taken to

1 have been issued with a permit to possess, have custody of or use
2 the constituent or product, or product as labelled, in accordance
3 with those instructions.

4 (4) A permit that is taken to have been issued under subsection (3)
5 remains in force until whichever of the events mentioned in
6 paragraph (2)(a), (b) or (c) first occurs.

7 *Deemed permit does not authorise manufacture or import*

8 (5) A permit that is taken to have been issued to a holder or other
9 person under subsection (1) or (3) does not authorise the holder or
10 person to manufacture or import the constituent or product.

11 **45C Possession or custody with intention of supply**

12 (1) This section applies if a person has possession or custody of the
13 constituent or product with the intention of supplying it.

14 (2) If notice of the suspension or cancellation is:

15 (a) given to the person under paragraph 45A(1)(a); or

16 (b) published under paragraph 45A(1)(b);

17 the person may only possess, have custody of or otherwise deal
18 with the constituent or product if the possession, custody or dealing
19 is in accordance with the instructions contained in the notice.

20 (3) Subsection (2) does not apply to a possession, custody or dealing if
21 the constituent was an approved active constituent or the product
22 was a registered chemical product or a reserved chemical product
23 when the possession, custody or use took place because of its
24 having been approved or registered or having become reserved
25 after its previous approval or registration had been cancelled.

26 (4) Subsection (2) does not apply to a person (other than a person to
27 whom a notice is given under paragraph 45A(1)(a)) if the person
28 proves that, when the person possessed, had custody of or
29 otherwise dealt with the constituent or product, the person did not
30 know, and could not reasonably be expected to have known, of the
31 existence of the notice published in the *Gazette* or that the
32 possession, custody or dealing was not in accordance with the
33 instructions contained in the *Gazette* notice.

1 (5) A person commits an offence if the person contravenes
2 subsection (2).

3 Penalty: 300 penalty units.

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

6 Note 2: A defendant bears a legal burden in relation to the matter in
7 subsection (4). See section 13.4 of the *Criminal Code*.

8 (6) For the purposes of subsection (5), strict liability applies to the
9 physical elements of circumstance:

10 (a) in paragraph (2)(a), that the notice is a notice given to the
11 person under paragraph 45A(1)(a); and

12 (b) in paragraph (2)(b), that the publishing of the notice was
13 under paragraph 45A(1)(b).

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

15 (7) Subsection (2) is a civil penalty provision.

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

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

20 **121 Subsection 46(1) of the Code set out in the Schedule**

21 Omit “relevant Record or Register”, substitute “Record or Register (as
22 appropriate)”.

23 **122 Subsection 46(2) of the Code set out in the Schedule**

24 Repeal the subsection, substitute:

25 (2) If the APVMA revokes the suspension or cancellation of an
26 approval or registration, it must, within 14 days:

27 (a) give written notice of the revocation to the holder and to any
28 other person to whom, in its opinion, such a notice should be
29 given; and

30 (b) publish in the *Gazette*, and in any other manner that it thinks
31 appropriate, notice of the revocation containing any
32 information that it thinks relevant.

33 **123 Subsection 74(1) of the Code set out in the Schedule** 34 **(penalty)**

1 Repeal the penalty.

2 **124 Subsection 74(1) of the Code set out in the Schedule**
3 **(note)**

4 Repeal the note.

5 **125 After subsection 74(2) of the Code set out in the**
6 **Schedule**

7 Insert:

8 (2A) A person commits an offence if the person contravenes
9 subsection (1).

10 Penalty: 200 penalty units.

11 Note: A defendant bears an evidential burden in relation to the matters in
12 paragraphs (1)(a) to (d). See subsection 13.3(3) of the *Criminal Code*.

13 **126 Subsection 74(3) of the Code set out in the Schedule**

14 Omit “subsection (1)”, substitute “subsection (2A)”.

15 **127 After subsection 74(3) of the Code set out in the**
16 **Schedule**

17 Insert:

18 (3A) Subsection (1) is a civil penalty provision.

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

21 Note 2: For the evidential burden in civil penalty proceedings in relation to the
22 matters in paragraphs (1)(a) to (d), see section 145CD.

23 **128 Subsection 75(1) of the Code set out in the Schedule**
24 **(penalty)**

25 Repeal the penalty.

26 **129 Subsection 75(1) of the Code set out in the Schedule**
27 **(note)**

28 Repeal the note.

29 **130 After subsection 75(2) of the Code set out in the**
30 **Schedule**

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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.

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*.

1 **136 Subsection 76(3) of the Code set out in the Schedule**

2 Omit “subsection (1)”, substitute “subsection (2A)”.

3 **137 After subsection 76(3) of the Code set out in the**
4 **Schedule**

5 Insert:

6 (3A) Subsection (1) is a civil penalty provision.

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

9 Note 2: For the evidential burden in civil penalty proceedings in relation to the
10 matters in paragraphs (1)(a) to (c), see section 145CD.

11 **138 Subsection 77(1) of the Code set out in the Schedule**
12 **(penalty)**

13 Repeal the penalty.

14 **139 Subsection 77(1) of the Code set out in the Schedule**
15 **(note)**

16 Repeal the note.

17 **140 After subsection 77(1) of the Code set out in the**
18 **Schedule**

19 Insert:

20 (1A) A person commits an offence if the person contravenes
21 subsection (1).

22 Penalty: 300 penalty units.

23 Note: The defendant bears an evidential burden in relation to establishing
24 that the supply is in accordance with the conditions or is authorised by
25 a permit. See subsection 13.3(3) of the *Criminal Code*.

26 **141 Subsection 77(2) of the Code set out in the Schedule**

27 Omit “subsection (1)”, substitute “subsection (1A)”.

28 **142 At the end of section 77 of the Code set out in the**
29 **Schedule**

30 Add:

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

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

4 Note 2: For the evidential burden in civil penalty proceedings in relation to
5 establishing that the supply is in accordance with the conditions or is
6 authorised by a permit, see section 145CD.

7 **143 Subsection 78(1) of the Code set out in the Schedule**
8 **(penalty)**

9 Repeal the penalty.

10 **144 Subsection 78(1) of the Code set out in the Schedule**
11 **(note)**

12 Repeal the note.

13 **145 After subsection 78(2) of the Code set out in the**
14 **Schedule**

15 Insert:

16 (2A) A person commits an offence if the person contravenes
17 subsection (1).

18 Penalty: 300 penalty units.

19 Note: A defendant bears an evidential burden in relation to the matters in
20 paragraphs (1)(a) to (c). See subsection 13.3(3) of the *Criminal Code*.

21 **146 Subsection 78(3) of the Code set out in the Schedule**

22 Omit “subsection (1)”, substitute “subsection (2A)”.

23 **147 After subsection 78(3) of the Code set out in the**
24 **Schedule**

25 Insert:

26 (3A) Subsection (1) is a civil penalty provision.

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

29 Note 2: For the evidential burden in civil penalty proceedings in relation to the
30 matters in paragraphs (1)(a) to (c), see section 145CD.

31 **148 Subsection 79(1) of the Code set out in the Schedule**
32 **(penalty)**

1 Repeal the penalty.

2 **149 Subsection 79(1) of the Code set out in the Schedule**
3 **(note)**

4 Repeal the note.

5 **150 After subsection 79(1) of the Code set out in the**
6 **Schedule**

7 Insert:

8 (1A) A person commits an offence if the person contravenes
9 subsection (1).

10 Penalty: 300 penalty units.

11 Note: The defendant bears an evidential burden in relation to establishing
12 that the supply is in accordance with the conditions or is authorised by
13 a permit. See subsection 13.3(3) of the *Criminal Code*.

14 **151 Subsection 79(2) of the Code set out in the Schedule**

15 Omit “subsection (1)”, substitute “subsection (1A)”.

16 **152 At the end of section 79 of the Code set out in the**
17 **Schedule**

18 Add:

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

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

22 Note 2: For the evidential burden in civil penalty proceedings in relation to
23 establishing that the supply is in accordance with the conditions or is
24 authorised by a permit, see section 145CD.

25 **153 Section 79A of the Code set out in the Schedule**

26 Repeal the section.

27 **154 Subsection 79B(1) of the Code set out in the Schedule**
28 **(penalty)**

29 Repeal the penalty.

30 **155 After subsection 79B(1) of the Code set out in the**
31 **Schedule**

1 Insert:

2 (1A) A person commits an offence if the person contravenes
3 subsection (1).

4 Penalty: 300 penalty units.

5 **156 At the end of section 79B of the Code set out in the**
6 **Schedule**

7 Add:

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

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

11 **157 Subsection 80(1) of the Code set out in the Schedule**
12 **(penalty)**

13 Repeal the penalty.

14 **158 Subsection 80(1) of the Code set out in the Schedule**
15 **(note)**

16 Repeal the note.

17 **159 After subsection 80(1) of the Code set out in the**
18 **Schedule**

19 Insert:

20 (1A) A person commits an offence if the person contravenes
21 subsection (1).

22 Penalty: 300 penalty units.

23 Note: A defendant bears an evidential burden in relation to establishing that
24 the supply is authorised by a permit. See subsection 13.3(3) of the
25 *Criminal Code*.

26 **160 Subsection 80(2) of the Code set out in the Schedule**

27 Omit “subsection (1)”, substitute “subsection (1A)”.

28 **161 At the end of section 80 of the Code set out in the**
29 **Schedule**

30 Add:

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

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

4 Note 2: For the evidential burden in civil penalty proceedings in relation
5 establishing that the supply is authorised by a permit, see
6 section 145CD.

7 **162 Subsection 81(1) of the Code set out in the Schedule**
8 **(penalty)**

9 Repeal the penalty.

10 **163 After subsection 81(1) of the Code set out in the**
11 **Schedule**

12 Insert:

13 (1A) A person commits an offence if the person contravenes
14 subsection (1).

15 Penalty: 300 penalty units.

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

18 **164 Subsection 81(2) of the Code set out in the Schedule**

19 Omit “subsection (1)”, substitute “subsection (1A)”.

20 **165 At the end of section 81 of the Code set out in the**
21 **Schedule**

22 Add:

23 (4) Subsection (1) is a civil penalty provision.

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

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

28 **166 Section 82 of the Code set out in the Schedule**

29 Repeal the section.

30 **167 Subsection 83(1) of the Code set out in the Schedule**
31 **(penalty)**

1 Repeal the penalty.

2 **168 After subsection 83(1) of the Code set out in the**
3 **Schedule**

4 Insert:

5 (1A) A person commits an offence if the person contravenes
6 subsection (1).

7 Penalty: 300 penalty units.

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

10 **169 Subsection 83(2) of the Code set out in the Schedule**

11 Omit “Subsection (1)”, substitute “Subsection (1A)”.

12 **170 At the end of section 83 of the Code set out in the**
13 **Schedule**

14 Add:

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

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

18 **171 Subsection 84(1) of the Code set out in the Schedule**
19 **(penalty)**

20 Repeal the penalty.

21 **172 Paragraph 84(2)(b) of the Code set out in the Schedule**

22 Omit “section 55”, substitute “paragraph 45A(1)(b)”.

23 **173 After subsection 84(3) of the Code set out in the**
24 **Schedule**

25 Insert:

26 (3A) A person commits an offence if the person contravenes
27 subsection (1).

28 Penalty: 300 penalty units.

29 **174 Subsection 84(4) of the Code set out in the Schedule**

1 Omit “Subsection (1)”, substitute “Subsection (3A)”.

2 **175 At the end of section 84 of the Code set out in the**
3 **Schedule**

4 Add:

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

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

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

10 **176 Subsection 85(1) of the Code set out in the Schedule**
11 **(penalty)**

12 Repeal the penalty.

13 **177 Subsection 85(2) of the Code set out in the Schedule**

14 Omit “section 55”, substitute “paragraph 45A(1)(b)”.

15 **178 After subsection 85(3) of the Code set out in the**
16 **Schedule**

17 Insert:

18 (3A) A person commits an offence if the person contravenes
19 subsection (1).

20 Penalty: 300 penalty units.

21 **179 Subsection 85(4) of the Code set out in the Schedule**

22 Omit “Subsection (1)”, substitute “Subsection (3A)”.

23 **180 At the end of section 85 of the Code set out in the**
24 **Schedule**

25 Add:

26 (6) Subsection (1) is a civil penalty provision.

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

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

1 **181 Subsection 86(1) of the Code set out in the Schedule**

2 Omit “commits an offence”, substitute “contravenes this subsection”.

3 **182 Subsection 86(1) of the Code set out in the Schedule**
4 **(penalty)**

5 Repeal the penalty.

6 **183 After subsection 86(1) of the Code set out in the**
7 **Schedule**

8 Insert:

9 (1A) A person commits an offence if the person contravenes
10 subsection (1).

11 Penalty: 300 penalty units.

12 **184 Subsection 86(2) of the Code set out in the Schedule**

13 Omit “commits an offence”, substitute “contravenes this subsection”.

14 **185 Subsection 86(2) of the Code set out in the Schedule**
15 **(penalty)**

16 Repeal the penalty.

17 **186 After subsection 86(2) of the Code set out in the**
18 **Schedule**

19 Insert:

20 (2A) A person commits an offence if the person contravenes
21 subsection (2).

22 Penalty: 300 penalty units.

23 **187 After subsection 86(3) of the Code set out in the**
24 **Schedule**

25 Insert:

26 (3A) Subsections (1) and (2) do not apply:

27 (a) if a person acts in accordance with a direction given to the
28 person under:

29 (i) subsection 131A(1) or 132A(1) of this Code; or

- 1 (ii) subsection 69EAC(1) or 69EBA(1) of the *Agricultural*
2 *and Veterinary Chemicals (Administration) Act 1992*; or
3 (b) to the extent that the person is authorised by a permit to
4 engage in the conduct concerned.

5 **188 Subsection 86(4) of the Code set out in the Schedule**

6 Omit “Subsection (1) and (2)”, substitute “Subsections (1A) and (2A)”.

7 **189 Subsection 86(4) of the Code set out in the Schedule**
8 **(note)**

9 Omit “matter in subsection (4)”, substitute “matters in subsections (3),
10 (3A) and (4)”.

11 **190 At the end of section 86 of the Code set out in the**
12 **Schedule**

13 Add:

14 (5) Subsections (1) and (2) are civil penalty provisions.

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

17 Note 2: For the evidential burden in civil penalty proceedings in relation to the
18 matters in subsections (3) and (3A), see section 145CD.

19 **191 Subsection 87(2) of the Code set out in the Schedule**
20 **(penalty)**

21 Repeal the penalty.

22 **192 After subsection 87(3) of the Code set out in the**
23 **Schedule**

24 Insert:

25 (3A) A person commits an offence if the person contravenes
26 subsection (2).

27 Penalty: 300 penalty units.

28 **193 Subsection 87(4) of the Code set out in the Schedule**

29 Omit “Subsection (2)”, substitute “Subsection (3A)”.

1 **194 At the end of section 87 of the Code set out in the**
2 **Schedule**

3 Add:

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

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

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

9 **195 Section 87A of the Code set out in the Schedule**

10 Repeal the section.

11 **196 Subsection 88(2) of the Code set out in the Schedule**
12 **(penalty)**

13 Repeal the penalty.

14 **197 Subsection 88(2) of the Code set out in the Schedule**
15 **(note)**

16 Repeal the note.

17 **198 After subsection 88(2) of the Code set out in the**
18 **Schedule**

19 Insert:

20 (2A) A person commits an offence if the person contravenes
21 subsection (2).

22 Penalty: 50 penalty units.

23 Note: A defendant bears an evidential burden in relation to the matters in
24 paragraphs (2)(c) and (d). See subsection 13.3(3) of the *Criminal*
25 *Code*.

26 **199 Subsection 88(3) of the Code set out in the Schedule**

27 Omit “subsection (2)”, substitute “subsection (2A)”.

28 **200 At the end of section 88 of the Code set out in the**
29 **Schedule**

30 Add:

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

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

4 Note 2: For the evidential burden in civil penalty proceedings in relation to the
5 matters in paragraphs (2)(c) and (d), see section 145CD.

6 **201 Subsection 89(1) of the Code set out in the Schedule**
7 **(penalty)**

8 Repeal the penalty.

9 **202 After subsection 89(5) of the Code set out in the**
10 **Schedule**

11 Insert:

12 (5A) A person commits an offence if the person contravenes
13 subsection (1).

14 Penalty: 50 penalty units.

15 **203 Subsection 89(6) of the Code set out in the Schedule**

16 Omit “Subsection (1)”, substitute “Subsection (5A)”.

17 **204 At the end of section 89 of the Code set out in the**
18 **Schedule**

19 Add:

20 (8) Subsection (1) is a civil penalty provision.

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

23 **205 Paragraph 90(1)(a) of the Code set out in the Schedule**

24 Omit “as soon as practicable make a record in or to the effect of”,
25 substitute “within 28 days make a record in”.

26 **206 Subsection 90(1) of the Code set out in the Schedule**
27 **(penalty)**

28 Repeal the penalty.

29 **207 After subsection 90(1) of the Code set out in the**
30 **Schedule**

1 Insert:

2 (1A) A person commits an offence if the person contravenes
3 subsection (1).

4 Penalty: 120 penalty units.

5 **208 Subsection 90(2) of the Code set out in the Schedule**

6 Omit “Subsection (1)”, substitute “Subsection (1A)”.

7 **209 At the end of section 90 of the Code set out in the**
8 **Schedule**

9 Add:

10 (4) Subsection (1) is a civil penalty provision.

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

13 **210 After subsection 91(1A) of the Code set out in the**
14 **Schedule**

15 Insert:

16 (1AA) A person commits an offence if the person contravenes
17 subsection (1).

18 Penalty: 120 penalty units.

19 **211 Subsection 91(1B) of the Code set out in the Schedule**

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

21 **212 Subsection 91(1C) of the Code set out in the Schedule**

22 Omit “In subsection (1)”, substitute “For the purposes of
23 subsection (1AA)”.

24 **213 After subsection 91(1C) of the Code set out in the**
25 **Schedule**

26 Insert:

27 (1D) Subsection (1) is a civil penalty provision.

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

1 Note 2: For the evidential burden in civil penalty proceedings in relation to the
2 matters in subsection (1A), see section 145CD.

3 **214 Subsection 91(2) of the Code set out in the Schedule**
4 **(penalty)**

5 Repeal the penalty.

6 **215 After subsection 91(2) of the Code set out in the**
7 **Schedule**

8 Insert:

9 (2A) A person commits an offence if the person contravenes
10 subsection (1).

11 Penalty: 120 penalty units.

12 Note: The defendant bears an evidential burden in relation to the matters in
13 paragraphs (2)(a) and (b). See subsection 13.3(3) of the *Criminal*
14 *Code*.

15 **216 Subsection 91(3) of the Code set out in the Schedule**

16 Omit “Subsection (2)”, substitute “Subsection (2A)”.

17 **217 At the end of section 91 of the Code set out in the**
18 **Schedule**

19 Add:

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

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

23 Note 2: For the evidential burden in civil penalty proceedings in relation to the
24 matters in paragraphs (2)(a) and (b), see section 145CD.

25 **218 Subsection 92(2) of the Code set out in the Schedule**
26 **(penalty)**

27 Repeal the penalty.

28 **219 After subsection 92(2) of the Code set out in the**
29 **Schedule**

30 Insert:

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

3 Penalty: 120 penalty units.

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

6 **220 Subsection 92(3) of the Code set out in the Schedule**

7 Omit “Subsection (1)”, substitute “Subsection (2A)”.

8 **221 At the end of section 92 of the Code set out in the**
9 **Schedule**

10 Add:

11 (4) Subsection (1) is a civil penalty provision.

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

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

16 **222 Subsection 94(1) of the Code set out in the Schedule**
17 **(penalty)**

18 Repeal the penalty.

19 **223 After subsection 94(1) of the Code set out in the**
20 **Schedule**

21 Insert:

22 (1A) A person commits an offence if the person contravenes
23 subsection (1).

24 Penalty: 120 penalty units.

25 **224 Subsection 94(2) of the Code set out in the Schedule**

26 Omit “Subsection (1)”, substitute “Subsection (1A)”.

27 **225 At the end of section 94 of the Code set out in the**
28 **Schedule**

29 Add:

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

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

3 **226 Subsection 95(1) of the Code set out in the Schedule**
4 **(penalty)**

5 Repeal the penalty.

6 **227 After subsection 95(1) of the Code set out in the**
7 **Schedule**

8 Insert:

9 (1A) A person commits an offence if the person contravenes
10 subsection (1).

11 Penalty: 120 penalty units.

12 **228 Subsection 95(2) of the Code set out in the Schedule**

13 Omit “Subsection (1)”, substitute “Subsection (1A)”.

14 **229 At the end of section 95 of the Code set out in the**
15 **Schedule**

16 Insert:

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

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

20 **230 Subsection 97(1) of the Code set out in the Schedule**

21 Omit “paragraph 131(1)(c) or 132(1)(d)”, substitute “section 131A or
22 132A”.

23 **231 Subsection 97(2) of the Code set out in the Schedule**

24 Omit “or to the effect of”.

25 **232 Subsection 97(7) of the Code set out in the Schedule**

26 Omit “section 131 or 132”, substitute “an investigation warrant”.

27 **233 Subsection 97(7) of the Code set out in the Schedule**

28 Omit “paragraph 131(1)(c) or 132(1)(d)”, substitute “section 131A or
29 132A”.

1 **234 Subsection 98(1) of the Code set out in the Schedule**

2 Omit “or to the effect of”.

3 **235 Subsection 98(6) of the Code set out in the Schedule**

4 Omit “section 131 or 132”, substitute “an investigation warrant”.

5 **236 Subsection 98(6) of the Code set out in the Schedule**

6 Omit “paragraph 131(1)(c) or 132(1)(d)”, substitute “section 131A or
7 132A”.

8 **237 After subsection 99(3) of the Code set out in the**
9 **Schedule**

10 Insert:

11 (3A) This section also applies if a person has possession or custody of a
12 substance or mixture of substances that is intended for supply as an
13 active constituent, under a particular name, for a proposed or
14 existing chemical product.

15 (3B) If an active constituent having that name is approved under
16 Division 2 of Part 2 and the APVMA, on the advice of an
17 inspector, reasonably suspects that:

18 (a) the constituents of the substance or mixture differ by more
19 than the prescribed extent from the constituents stated in
20 relation to the active constituent in the Record; or

21 (b) the concentration of the constituents of the substance or
22 mixture differs by more than the prescribed extent from the
23 concentration of the constituents stated in relation to the
24 active constituent in the Record; or

25 (c) the composition or purity of a constituent of the substance or
26 mixture differs by more than the prescribed extent from the
27 composition or purity of that constituent stated in relation to
28 the active constituent in the Record;

29 the APVMA may, by written notice given to the person, require the
30 person to have the substance or mixture analysed to find out its
31 constituents, their concentration and the composition and purity of
32 each of them.

33 **238 Subsection 99(4) of the Code set out in the Schedule**

1 Omit “subsections (2) and (3), a notice given to a person under either”,
2 substitute “subsections (2), (3) and (3B), a notice given to a person
3 under any”.

4 **239 Subsection 99(5) of the Code set out in the Schedule**

5 Omit “subsection (2) or (3)”, substitute “subsection (2), (3) or (3B)”.

6 **240 Subsection 99(5) of the Code set out in the Schedule**
7 **(penalty)**

8 Repeal the penalty.

9 **241 After subsection 99(5) of the Code set out in the**
10 **Schedule**

11 Insert:

12 (5AA) A person commits an offence of strict liability if the person
13 contravenes subsection (5).

14 Penalty: 120 penalty units.

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

16 **242 Subsection 99(5A) of the Code set out in the Schedule**

17 Omit “Subsection (5)”, substitute “Subsection (5AA)”.

18 **243 Subsection 99(5B) of the Code set out in the Schedule**

19 Repeal the subsection, substitute:

20 (5B) Subsection (5) is a civil penalty provision.

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

23 **244 Subsection 105(1) of the Code set out in the Schedule**
24 **(penalty)**

25 Repeal the penalty.

26 **245 After subsection 105(1) of the Code set out in the**
27 **Schedule**

28 Insert:

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

3 Penalty: 120 penalty units.

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

5 **246 Subsection 105(2) of the Code set out in the Schedule**

6 Omit “Subsection (1)”, substitute “Subsection (1A)”.

7 **247 Subsection 105(3) of the Code set out in the Schedule**

8 Repeal the subsection, substitute:

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

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

12 **248 Section 109 of the Code set out in the Schedule**
13 **(paragraph (a) of the definition of *permit*)**

14 Repeal the paragraph, substitute:

15 (a) an offence against section 74, 75, 76, 77, 78, 79, 79B, 80, 81,
16 84, 85, 86, 87 or 91 or subsection 121(4A) or (5A); or

17 **249 At the end of section 109 of the Code set out in the**
18 **Schedule**

19 Add:

20 ; or (c) a contravention of a civil penalty provision mentioned in
21 section 74, 75, 76, 77, 78, 79, 79A, 79B, 80, 81, 84, 85, 86,
22 87 or 91 or a contravention of the civil penalty provision set
23 out in subsection 121(4) or (5).

24 **250 Subsection 115(1) of the Code set out in the Schedule**

25 After “section 119”, insert “, 119A or 119B”.

26 **251 Section 116 of the Code set out in the Schedule**
27 **(heading)**

28 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.

1 (4) Subsection (1) does not apply to a suspension or cancellation under
2 section 119A.

3 **254 Section 118 of the Code set out in the Schedule**
4 **(heading)**

5 Repeal the heading, substitute:

6 **118 Suspension of permit—general grounds**

7 **255 Subsection 118(1) of the Code set out in the Schedule**

8 Repeal the subsection, substitute:

- 9 (1) The APVMA may, by written notice given to the holder of a
10 permit, suspend the permit if it appears to the APVMA:
- 11 (a) for an active constituent—that the constituent may not meet
12 the safety criteria; or
 - 13 (b) for a chemical product—that the product may not meet the
14 safety criteria, the trade criteria or the efficacy criteria; or
 - 15 (c) that the use of the active constituent or chemical product in
16 accordance with the permit is inappropriate for any other
17 reason; or
 - 18 (d) that the holder has contravened a condition of the permit.

19 **256 Subsection 118(7) of the Code set out in the Schedule**

20 Omit “brief particulars of”.

21 **257 Section 119 of the Code set out in the Schedule**
22 **(heading)**

23 Repeal the heading, substitute:

24 **119 Cancellation of permit—general grounds**

25 **258 Subsection 119(1) of the Code set out in the Schedule**

26 Repeal the subsection, substitute:

- 27 (1) The APVMA, by written notice given to the holder of a permit,
28 may cancel the permit if it appears to the APVMA:
- 29 (a) for an active constituent—that the constituent may not meet
30 the safety criteria; or

- 1 (b) for a chemical product—that the product may not meet the
2 safety criteria, the trade criteria or the efficacy criteria; or
3 (c) that the use of the active constituent or chemical product in
4 accordance with the permit is inappropriate for any other
5 reason.

6 **259 Subsection 119(4) of the Code set out in the Schedule**

7 Repeal the subsection, substitute:

- 8 (4) The APVMA may, by written notice given to the holder of a
9 permit, cancel the permit if the APVMA is satisfied that:
10 (a) the holder has contravened a condition of the permit; or
11 (b) at least one of the following persons:
12 (i) the holder;
13 (ii) any other person who makes, or participates in making,
14 decisions that affect the whole, or a substantial part, of
15 the holder's affairs;
16 (iii) if the holder is a body corporate—a major interest
17 holder of the body corporate;
18 has, within the 10 years immediately before the notice is
19 given:
20 (iv) been convicted of an offence against an agvet law of
21 this or another jurisdiction; or
22 (v) been convicted of an offence against a law of this or
23 another jurisdiction relating to chemical products; or
24 (vi) been convicted of an offence against a law of the
25 Commonwealth or a law of a State or Territory
26 involving fraud or dishonesty; or
27 (vii) been ordered to pay a pecuniary penalty for the
28 contravention of an agvet penalty provision; or
29 (viii) been ordered to pay a pecuniary penalty for the
30 contravention of another law of this or another
31 jurisdiction relating to chemical products; or
32 (ix) been ordered to pay a pecuniary penalty for the
33 contravention of a civil penalty provision of a law of the
34 Commonwealth or a law of a State or Territory
35 involving fraud or dishonesty; or
36 (x) held a permit that was cancelled under subsection
37 119(2) or section 119B of this Code or under a

1 corresponding provision of the Agvet Code of another
2 jurisdiction; or
3 (xi) been a manager, or a major interest holder, of a body
4 corporate in respect of which subparagraph (iv), (v),
5 (vi), (vii), (viii), (ix) or (x) applies, if the conduct
6 resulting in that subparagraph applying occurred when
7 the person was a manager or major interest holder of the
8 body corporate.

9 (4A) A reference in paragraph (4)(b) to a person convicted of an offence
10 includes a reference to a person in respect of whom an order has
11 been made relating to the offence under:

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

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

17 **260 Subsection 119(7) of the Code set out in the Schedule**

18 Omit “brief particulars of”.

19 **261 After section 119 of the Code set out in the Schedule**

20 Insert:

21 **119A Suspension or cancellation of permit—imminent risk to**
22 **persons of death, serious injury or serious illness**

23 (1) The APVMA may, by written notice to the holder of a permit,
24 suspend or cancel the permit if the APVMA considers that doing
25 so is necessary to prevent imminent risk to persons of death,
26 serious injury or serious illness.

27 (2) The APVMA may suspend or cancel the permit whether or not the
28 conditions of the permit have been, or are being, complied with.

29 (3) A notice under subsection (1) must specify the period of the
30 suspension.

31 Note: Section 117A does not apply to a suspension or cancellation under this
32 section.

1 **119B Suspension or cancellation of permit—providing false or**
2 **misleading information**

3 The APVMA may suspend or cancel a permit if:

- 4 (a) the holder of the permit has given information:
5 (i) in or in connection with an application for the permit; or
6 (ii) in response to a notice under section 159; or
7 (iii) as required by section 160A or 161; and
8 (b) the information was false or misleading in a material
9 particular.

10 **262 Subsection 120(3) of the Code set out in the Schedule**

11 Repeal the subsection, substitute:

- 12 (3) A licensee is required to comply with conditions imposed on a
13 licence by the APVMA in relation to the manufacture of chemical
14 products. A licence is also subject to various statutory conditions.

15 **263 Subsection 121(2) of the Code set out in the Schedule**

16 Repeal the subsection.

17 **264 Subsection 121(3) of the Code set out in the Schedule**
18 **(penalty)**

19 Repeal the penalty.

20 **265 After subsection 121(3) of the Code set out in the**
21 **Schedule**

22 Insert:

- 23 (3A) A person commits an offence of strict liability if the person
24 contravenes subsection (3).

25 Penalty: 240 penalty units.

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

27 **266 Paragraph 121(4)(c) of the Code set out in the Schedule**

28 Repeal the paragraph, substitute:

- 29 (c) the person holds a permit that authorises the carrying out of
30 that step in relation to the product at those premises.

1 **267 Subsection 121(4) of the Code set out in the Schedule**
2 **(penalty)**

3 Repeal the penalty.

4 **268 After subsection 121(4) of the Code set out in the**
5 **Schedule**

6 Insert:

7 (4A) A person commits an offence of strict liability if the person
8 contravenes subsection (4).

9 Penalty: 240 penalty units.

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

11 **269 At the end of subsection 121(5) of the Code set out in the**
12 **Schedule**

13 Add “unless the person holds a permit that authorises the conduct that
14 would contravene the condition of the licence”.

15 **270 Subsection 121(5) of the Code set out in the Schedule**
16 **(penalty)**

17 Repeal the penalty.

18 **271 After subsection 121(5) of the Code set out in the**
19 **Schedule**

20 Insert:

21 (5A) A person commits an offence of strict liability if the person
22 contravenes subsection (5).

23 Penalty: 120 penalty units.

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

25 **272 Subsection 121(6) of the Code set out in the Schedule**

26 Omit “Subsections (3), (4) and (5)”, substitute “Subsections (3A), (4A)
27 and (5A)”.

28 **273 Subsection 121(7) of the Code set out in the Schedule**

29 Repeal the subsection, substitute:

1 (7) Subsections (3), (4) and (5) are civil penalty provisions.

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

4 **274 After paragraph 126(4)(a) of the Code set out in the**
5 **Schedule**

6 Insert:

7 (aa) allow an inspector to enter premises at which the chemical
8 products are manufactured and to exercise the monitoring
9 powers under section 131A in relation to premises; and

10 **275 Paragraphs 127(1)(a), (b) and (c) of the Code set out in**
11 **the Schedule**

12 Repeal the paragraphs, substitute:

13 (a) the APVMA is satisfied that at least one of the following
14 persons:

15 (i) the holder of the licence;

16 (ii) any other person who makes, or participates in making,
17 decisions that affect the whole, or a substantial part, of
18 the holder's affairs;

19 (iii) if the holder is a body corporate—a major interest
20 holder of the body corporate;

21 has, within the 10 years immediately before the notice is
22 given:

23 (iv) given information to the APVMA in connection with an
24 application for a licence, in response to a notice under
25 section 159, or as required by section 160A or 161, and
26 the information was false or misleading in a material
27 particular; or

28 (v) been convicted of an offence against an agvet law; or

29 (vi) been convicted of an offence against a law of this or
30 another jurisdiction relating to chemical products; or

31 (vii) been convicted of an offence against a law of the
32 Commonwealth or a law of a State or Territory
33 involving fraud or dishonesty; or

34 (viii) been ordered to pay a pecuniary penalty for the
35 contravention of an agvet penalty provision; or

- 1 (ix) been ordered to pay a pecuniary penalty for the
2 contravention of another law of this or another
3 jurisdiction relating to chemical products; or
4 (x) been ordered to pay a pecuniary penalty for the
5 contravention of a civil penalty provision of a law of the
6 Commonwealth or a law of a State or Territory
7 involving fraud or dishonesty; or
8 (xi) contravened a condition of a manufacturing licence
9 issued under an agvet law; or
10 (b) the APVMA is satisfied that the holder failed, within the 5
11 years immediately before the notice was given, to comply
12 with a manufacturing principle in connection with the
13 manufacture of chemical products; or
14 (c) any other circumstances prescribed by the regulations for the
15 purposes of this paragraph exist; or

16 **276 Subsection 127(2) of the Code set out in the Schedule**

17 Omit “it thinks that failure to suspend or cancel the licence immediately
18 would create an imminent risk to public health or occupational health or
19 safety, or an imminent risk of impact on trade or commerce between
20 Australia and places outside Australia”, substitute “subsection (2A)
21 applies”.

22 **277 After subsection 127(2) of the Code set out in the**
23 **Schedule**

24 Insert:

- 25 (2A) This subsection applies if the APVMA thinks that a failure to
26 suspend or cancel the licence immediately would result in:
27 (a) imminent risk to persons of death, serious injury or serious
28 illness; or
29 (b) imminent risk of unintended harm to animals, plants or
30 things, or to the environment; or
31 (c) imminent risk of impact on trade or commerce between
32 Australia and places outside Australia.

33 **278 Subsection 127(3) of the Code set out in the Schedule**

34 Omit “is not to”, substitute “must not”.

35 **279 Subsection 127(5) of the Code set out in the Schedule**

1 Omit “brief particulars of”.

2 **280 Subsection 127(8) of the Code set out in the Schedule**

3 Omit “must cause particulars of the suspension, cancellation or
4 revocation to be published”, substitute “must publish particulars of the
5 suspension, cancellation or revocation”.

6 **281 Part 9 of the Code set out in the Schedule (heading)**

7 Repeal the heading, substitute:

8 **Part 9—Investigative powers**

9 **282 Section 129 of the Code set out in the Schedule**

10 Repeal the section, substitute:

11 **129 Explanation of Part**

- 12 (1) This Part contains powers:
- 13 (a) to gather information; and
- 14 (b) to search premises with or, in some cases, without a warrant
15 to find out whether either or both of the following apply:
- 16 (i) an offence against an agvet law has been committed;
- 17 (ii) an agvet penalty provision has been contravened.
- 18 (2) It also contains various ancillary provisions.

19 **283 Division 2 of Part 9 of the Code set out in the Schedule**

20 Repeal the Division, substitute:

21 **Division 2—Requiring people to attend, give information
22 and produce documents or things**

23 **Subdivision A—Notices by the APVMA**

24 **130 Notice to produce or attend**

- 25 (1) The APVMA may give a notice to a person under subsection (2) if
26 the APVMA has reason to believe that the person has information,

- 1 a document or thing that is relevant to the administration or
2 enforcement of this Code.
- 3 (2) The APVMA may, by notice in writing, given to the person,
4 require the person to do one or more of the following:
5 (a) give any such information as is specified in the notice to a
6 specified inspector;
7 (b) produce any such document or thing as is specified in the
8 notice to a specified inspector;
9 (c) appear before a specified inspector to answer questions.
- 10 (3) The APVMA may require that information to be provided under
11 paragraph (2)(a) is to be provided in writing or verified on oath or
12 affirmation.
- 13 (4) The inspector may require that answers under paragraph (2)(c) be
14 given on oath or affirmation, and for that purpose the inspector
15 may administer an oath or affirmation.
- 16 (5) The notice must:
17 (a) be served on the person; and
18 (b) be signed by the Chief Executive Officer; and
19 (c) if paragraph (2)(a) or (b) applies—specify the period within
20 which the person must comply with the notice; and
21 (d) if paragraph (2)(c) applies—both:
22 (i) specify the time and place at which the person must
23 appear; and
24 (ii) state that the person may be accompanied by a lawyer;
25 and
26 (e) set out the effect of sections 130B and 130C.
- 27 (6) The period specified under paragraph (5)(c) must be at least 14
28 days after the notice is served on the person.
- 29 (7) The person must comply with the notice within the time specified
30 in the notice, or within such further time as the APVMA allows.
- 31 Note: Failure to comply with a notice is an offence, see section 130B.

1 **130A APVMA may retain documents and things**

- 2 (1) If a document or thing is produced to the APVMA in accordance
3 with a notice served under section 130, the APVMA:
4 (a) may take possession of, and may make copies of, the
5 document or thing, or take extracts from the document; and
6 (b) may retain possession of the document or thing for such
7 period as is necessary:
8 (i) for the purposes of this Code; or
9 (ii) for the purposes of an investigation to which the
10 document or thing relates; or
11 (iii) to enable evidence to be secured for the purposes of a
12 prosecution or proceedings for a civil penalty order.
- 13 (2) While the APVMA retains the document or thing, it must allow a
14 person who would otherwise be entitled to inspect the document or
15 view the thing to do so at the times that the person would
16 ordinarily be able to do so.

17 **Subdivision B—Offence and related provisions**

18 **130B Failure to comply with notice etc.**

- 19 (1) A person commits an offence if:
20 (a) the person is served with a notice under section 130; and
21 (b) the notice requires the person to:
22 (i) give information; or
23 (ii) produce documents or things;
24 specified in the notice; and
25 (c) the person fails to comply with the notice:
26 (i) within the period specified in the notice; or
27 (ii) if the APVMA has allowed the person further time
28 under subsection 130(7)—within such further time.
- 29 Penalty: 30 penalty units or imprisonment for 6 months, or both.
- 30 (2) A person commits an offence if:
31 (a) the person is served with a notice under section 130; and
32 (b) the notice requires the person to appear before an inspector to
33 answer questions put by the inspector; and

1 (c) the person fails to comply with the notice.

2 Penalty: 30 penalty units or imprisonment for 6 months, or both.

3 (3) A person commits an offence if:

4 (a) the person is required to take an oath; and

5 (b) the person refuses or fails to comply with the requirement.

6 Penalty: 30 penalty units or imprisonment for 6 months, or both.

7 (4) A person commits an offence if:

8 (a) the person is served with a notice under section 130; and

9 (b) the notice requires the person to appear before an inspector to
10 answer questions put by the inspector; and

11 (c) the person refuses or fails to answer a question put by the
12 inspector.

13 Penalty: 30 penalty units or imprisonment for 6 months, or both.

14 **130C Self-incrimination etc.**

15 (1) A person is not excused from:

16 (a) giving information; or

17 (b) producing a document or thing; or

18 (c) answering a question;

19 in relation to a notice under section 130 on the ground that doing
20 so might tend to incriminate the person or expose the person to a
21 penalty.

22 (2) However, in the case of an individual, none of the following:

23 (a) the information or answer given;

24 (b) the document or thing produced;

25 (c) the giving of the information or the answer, or the producing
26 of the document or thing;

27 (d) any information, document or thing obtained as a direct or
28 indirect consequence of giving the information or answer, or
29 producing the document or thing;

30 is admissible in evidence against the individual in:

31 (e) criminal proceedings, other than:

32 (i) proceedings for an offence against section 130B or 146;
33 or

-
- 1 (ii) proceedings for an offence against section 137.1 or
2 137.2 of the *Criminal Code* (which deal with false or
3 misleading information or documents) that relates to
4 this Code; or
5 (iii) proceedings for an offence against section 149.1 of the
6 *Criminal Code* (which deals with obstruction of
7 Commonwealth public officials) that relates to this
8 Code; or
9 (f) civil proceedings for a contravention of a civil penalty
10 provision.

11 **284 Division 3 of Part 9 of the Code set out in the Schedule**
12 **(heading)**

13 Repeal the heading, substitute:

14 **Division 3—Monitoring**

15 **Subdivision A—Monitoring powers etc.**

16 **285 Sections 131 to 133 of the Code set out in the Schedule**

17 Repeal the sections, substitute:

18 **131 Powers available to inspectors for monitoring compliance**

- 19 (1) Subject to subsections (2) and (3), for the purpose of finding out
20 whether an agvet law has been, or is being, complied with or of
21 assessing the correctness of information provided under an agvet
22 law, an inspector may do both of the following:
23 (a) enter any premises;
24 (b) exercise the monitoring powers.
- 25 (2) If premises mentioned in subsection (1) are a residence, an
26 inspector may only enter the premises if:
27 (a) the premises are used for commercial purposes in relation to
28 active constituents or chemical products, in addition to
29 residential purposes; and
30 (b) paragraph (3)(a), (b) or (c) is satisfied.
- 31 (3) An inspector is not authorised to enter premises under
32 subsection (1) unless:

- 1 (a) the occupier of the premises has consented to the entry and
2 the inspector has shown his or her identity card if required by
3 the occupier; or
4 (b) if the premises are covered by a licence under section 123—
5 both the following apply:
6 (i) it is a condition of the licence under subsection 126(4)
7 that the holder of the licence will allow an inspector to
8 enter the premises and exercise monitoring powers
9 under section 131A in relation to the premises;
10 (ii) the inspector has shown his or her identity card if
11 required by the occupier; or
12 (c) the entry is made under a monitoring warrant.

13 Note: If entry to the premises is with the occupier's consent, the inspector
14 must leave the premises if the consent ceases to have effect, see
15 section 133.

16 **131AA Monitoring powers to prevent imminent risk to persons of**
17 **death, serious injury or serious illness**

- 18 (1) Subject to subsection (3), this section applies if an inspector has
19 reasonable grounds for suspecting that it is necessary to exercise
20 monitoring powers under section 131A in relation to premises to
21 prevent imminent risk to persons of death, serious injury or serious
22 illness.
- 23 (2) The inspector may, to the extent that it is reasonably necessary for
24 the purpose of preventing imminent risk to persons of death,
25 serious injury or serious illness, enter the premises and exercise
26 monitoring powers under section 131A.
- 27 (3) An inspector is not entitled to exercise monitoring powers in
28 accordance with subsection (2) in relation to premises if:
29 (a) the occupier of the premises has required the inspector to
30 produce his or her identity card for inspection by the
31 occupier; and
32 (b) the inspector fails to comply with the requirement.
- 33 (4) An inspector is not entitled to exercise monitoring powers in
34 accordance with subsection (2) unless the inspector has been
35 authorised in writing by the APVMA for the purposes of this
36 section.

1 **131A Monitoring powers—with consent or with warrant**

- 2 (1) The following are the *monitoring powers* that an inspector may
3 exercise in relation to premises:
- 4 (a) the power to search the premises and any thing on the
5 premises;
 - 6 (b) the power to examine or observe any activity conducted on
7 the premises;
 - 8 (c) the power to inspect, examine, take measurements of or
9 conduct tests on any thing on the premises;
 - 10 (d) the power to make any still or moving image or any
11 recording of the premises or any thing on the premises;
 - 12 (e) the power to inspect any document on the premises;
 - 13 (f) the power to take extracts from, or make copies of, any such
14 document;
 - 15 (g) the power to take and keep samples of any thing on the
16 premises;
 - 17 (h) the power to open any container at the premises for the
18 purpose of inspecting, or taking a sample of, its contents
19 provided that the container is resealed after the inspection is
20 made or the sample is taken;
 - 21 (i) the power to give directions for dealing with a container, or a
22 label on a container, that has been opened or sampled in
23 accordance with paragraph (h);
 - 24 (j) the power to destroy or make harmless, or give directions for
25 the destruction or making harmless of, a chemical product at
26 the premises;
 - 27 (k) the power to take onto the premises such equipment and
28 materials as the inspector requires for the purpose of
29 exercising powers in relation to the premises;
 - 30 (l) the powers set out in subsections 131B(1) and (3) and
31 131C(1).

32 (2) A person who is given a direction under subsection (1) must
33 comply with the direction.

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

36 Penalty: 30 penalty units.

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

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

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

5 **131B Operating electronic equipment**

6 (1) The *monitoring powers* include the power to:

7 (a) operate electronic equipment on the premises; and

8 (b) use a disk, tape or other storage device that:

9 (i) is on the premises; and

10 (ii) can be used with the equipment or is associated with it.

11 (2) The *monitoring powers* include the powers mentioned in
12 subsection (3) if relevant data is found in the exercise of the power
13 under subsection (1).

14 (3) The powers are as follows:

15 (a) the power to operate electronic equipment on the premises to
16 put the relevant data in documentary form and remove the
17 documents so produced from the premises;

18 (b) the power to operate electronic equipment on the premises to
19 transfer the relevant data to a disk, tape or other storage
20 device that:

21 (i) is brought to the premises for the exercise of the power;
22 or

23 (ii) is on the premises and the use of which for that purpose
24 has been agreed in writing by the occupier of the
25 premises;

26 and remove the disk, tape or other storage device from the
27 premises.

28 (4) An inspector may operate electronic equipment as mentioned in
29 subsection (1) or (3) only if the inspector believes on reasonable
30 grounds that the operation of the equipment can be carried out
31 without damage to the equipment.

32 Note: For compensation for damage to electronic equipment, see
33 section 138.

131C Securing evidence of the contravention of a related provision

- 1
- 2 (1) The *monitoring powers* include the power to secure a thing for a
- 3 period not exceeding 7 days if:
- 4 (a) the thing is found during the exercise of monitoring powers
- 5 on the premises; and
- 6 (b) an inspector believes on reasonable grounds that the thing
- 7 affords evidence of:
- 8 (i) the commission of an offence against an agvet law or
- 9 the contravention of an agvet penalty provision or both;
- 10 or
- 11 (ii) an offence against the *Crimes Act 1914* or the *Criminal*
- 12 *Code* that relates to an agvet law; and
- 13 (c) the inspector believes on reasonable grounds that:
- 14 (i) it is necessary to secure the thing in order to prevent it
- 15 from being concealed, lost or destroyed before a warrant
- 16 to seize the thing is obtained; and
- 17 (ii) it is necessary to secure the thing without a warrant
- 18 because the circumstances are serious and urgent.
- 19 The thing may be secured by locking it up, placing a guard or any
- 20 other means.
- 21 (2) If an inspector believes on reasonable grounds that the thing needs
- 22 to be secured for more than 7 days, the inspector may apply to a
- 23 magistrate for an extension of that period.
- 24 (3) The inspector must give notice to the occupier of the premises, or
- 25 another person who apparently represents the occupier, of his or
- 26 her intention to apply for an extension. The occupier or other
- 27 person is entitled to be heard in relation to that application.
- 28 (4) The provisions of this Part relating to the issue of monitoring
- 29 warrants apply, with such modifications as are necessary, to the
- 30 issue of an extension.
- 31 (5) The 7 day period may be extended more than once.

1 **131D Persons assisting inspectors**

2 *Inspectors may be assisted by other persons*

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

8 *Powers, functions and duties of a person assisting the inspector*

- 9 (2) A person assisting the inspector:
- 10 (a) may enter premises; and
- 11 (b) may exercise powers and perform functions and duties under
12 this Part for the purposes of assisting the inspector to
13 determine whether:
- 14 (i) an agvet law has been, or is being, complied with; or
- 15 (ii) information provided under an agvet law is correct; and
- 16 (c) must do so in accordance with a direction given to the person
17 assisting by the inspector.
- 18 (3) A power exercised by a person assisting the inspector as mentioned
19 in subsection (2) is taken for all purposes to have been exercised by
20 the inspector.
- 21 (4) A function or duty performed by a person assisting the inspector as
22 mentioned in subsection (2) is taken for all purposes to have been
23 performed by the inspector.
- 24 (5) If a direction is given under paragraph (2)(c) in writing, the
25 direction is not a legislative instrument.

26 **131E Use of force in executing a monitoring warrant**

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

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

3 **131F Inspector may ask questions and seek production of**
4 **documents**

- 5 (1) This section applies if an inspector enters premises for the purposes
6 of determining whether:
7 (a) an agvet law has been, or is being, complied with; or
8 (b) information provided under an agvet law is correct.
- 9 (2) If the entry is authorised because the occupier of the premises
10 consented to the entry, the inspector may ask the occupier to
11 answer any questions, and produce any document, relating to:
12 (a) the operation of an agvet law; or
13 (b) the information.
- 14 (3) If the entry is authorised by a monitoring warrant, the inspector
15 may require any person on the premises to answer any questions,
16 and produce any document, relating to:
17 (a) the operation of an agvet law; or
18 (b) the information.

19 *Offence*

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

24 Penalty for contravention of this subsection: 50 penalty units.

25 **131G Copying of documents**

26 If a person produces a document to an inspector in accordance with
27 a requirement under section 131G, the inspector may make copies
28 of, or take extracts from, the document.

1 **Division 4—Investigation**

2 **Subdivision A—Investigation powers**

3 **132 Powers available to inspectors to investigate potential breaches**
4 **of an agvet law**

- 5 (1) Subject to subsections (2) and (3), if an inspector has reasonable
6 grounds for suspecting that there may be evidential material on any
7 premises, the inspector may:
8 (a) enter the premises; and
9 (b) exercise the investigation powers; and
10 (c) do one or more of the things mentioned in subsection
11 132D(2).
- 12 (2) If the premises are a residence, an inspector may only enter the
13 premises if:
14 (a) the premises are used for commercial purposes in relation to
15 active constituents or chemical products, in addition to
16 residential purposes; and
17 (b) paragraph (3)(a) or (b) is satisfied.
- 18 (3) An inspector is not authorised to enter the premises unless:
19 (a) the occupier of the premises has consented to the entry and
20 the inspector has shown his or her identity card if required by
21 the occupier; or
22 (b) the entry is made under an investigation warrant.

23 Note: If entry to the premises is with the occupier's consent, the inspector
24 must leave the premises if the consent ceases to have effect, see
25 section 133.

26 **132A Investigation powers**

- 27 (1) The following are the *investigation powers* that an inspector may
28 exercise in relation to premises under section 132:
29 (a) if entry to the premises is with the occupier's consent—the
30 power to search the premises and any thing on the premises
31 for the evidential material the inspector has reasonable
32 grounds for suspecting may be on the premises;
33 (b) if entry to the premises is under an investigation warrant:

- 1 (i) the power to search the premises and any thing on the
- 2 premises for the kind of evidential material specified in
- 3 the warrant; and
- 4 (ii) the power to seize evidential material of that kind if the
- 5 inspector finds it on the premises;
- 6 (c) the power to inspect, examine, take measurements of, and
- 7 conduct tests on evidential material referred to in
- 8 paragraph (a) or (b);
- 9 (d) the power to make any still or moving image or any
- 10 recording of the premises or evidential material referred to in
- 11 paragraph (a) or (b);
- 12 (e) the power to inspect any document on the premises;
- 13 (f) the power to take extracts from, or make copies of, any such
- 14 document;
- 15 (g) the power to take and keep samples of any thing on the
- 16 premises;
- 17 (h) the power to open any container at the premises for the
- 18 purpose of inspecting, or taking a sample of, its contents
- 19 provided that the container is resealed after the inspection is
- 20 made or the sample is taken;
- 21 (i) the power to give directions for dealing with a container, or a
- 22 label on a container, that has been opened or sampled in
- 23 accordance with paragraph (h);
- 24 (j) the power to destroy or make harmless, or give directions for
- 25 the destruction or making harmless of, a chemical product at
- 26 the premises;
- 27 (k) the power to take onto the premises such equipment and
- 28 materials as the inspector requires for the purpose of
- 29 exercising powers in relation to the premises;
- 30 (l) the powers set out in subsections 132B(1) and (2) and
- 31 section 132C.

32 (2) A person who is given a direction under subsection (1) must
33 comply with the direction.

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

36 Penalty: 30 penalty units.

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

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

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

4 **132B Operating electronic equipment**

5 (1) The *investigation powers* include the power to:
6 (a) operate electronic equipment on the premises; and
7 (b) use a disk, tape or other storage device that:
8 (i) is on the premises; and
9 (ii) can be used with the equipment or is associated with it;
10 if an inspector has reasonable grounds for suspecting that the
11 electronic equipment, disk, tape or other storage device is or
12 contains evidential material.

13 (2) The *investigation powers* include the following powers in relation
14 to evidential material found in the exercise of the power under
15 subsection (1):
16 (a) if entry to the premises is under an investigation warrant—
17 the power to seize the equipment and the disk, tape or other
18 storage device referred to in that subsection;
19 (b) the power to operate electronic equipment on the premises to
20 put the evidential material in documentary form and remove
21 the documents so produced from the premises;
22 (c) the power to operate electronic equipment on the premises to
23 transfer the evidential material to a disk, tape or other storage
24 device that:
25 (i) is brought to the premises for the exercise of the power;
26 or
27 (ii) is on the premises and the use of which for that purpose
28 has been agreed in writing by the occupier of the
29 premises;
30 and remove the disk, tape or other storage device from the
31 premises.

32 (3) An inspector may operate electronic equipment as mentioned in
33 subsection (1) or (2) only if the inspector believes on reasonable
34 grounds that the operation of the equipment can be carried out
35 without damage to the equipment.

1 Note: For compensation for damage to electronic equipment, see
2 section 138.

- 3 (4) An inspector may seize equipment or a disk, tape or other storage
4 device as mentioned in paragraph (2)(a) only if:
- 5 (a) it is not practicable to put the evidential material in
6 documentary form as mentioned in paragraph (2)(b) or to
7 transfer the evidential material as mentioned in
8 paragraph (2)(c); or
 - 9 (b) possession of the equipment or the disk, tape or other storage
10 device by the occupier could constitute an offence against a
11 law of this jurisdiction.

12 **132C Seizing evidence of related offences and civil penalty**
13 **provisions**

- 14 (1) This section applies if an inspector enters premises under an
15 investigation warrant to search for evidential material.
- 16 (2) The *investigation powers* include seizing a thing that is not
17 evidential material of the kind specified in the warrant if:
- 18 (a) in the course of searching for the kind of evidential material
19 specified in the warrant, the inspector finds the thing; and
 - 20 (b) the inspector believes on reasonable grounds that the thing
21 affords evidence of:
 - 22 (i) the commission of an offence against an agvet law or
23 the contravention of an agvet penalty provision or both;
24 or
 - 25 (ii) an offence against the *Crimes Act 1914* or the *Criminal*
26 *Code* that relates to an agvet law; and
 - 27 (c) the inspector believes on reasonable grounds that it is
28 necessary to seize the thing in order to prevent its
29 concealment, loss or destruction or to protect the health of the
30 public or of any person.
- 31 (3) If an inspector seizes a thing as mentioned in subsection (2), the
32 *investigation powers* include:
- 33 (a) the power to direct the occupier of the premises or the owner
34 of the thing to keep it at the premises, or at other premises
35 under the control of the occupier or owner that will, in the
36 opinion of the inspector, cause least danger to the health of
37 the public or of any person;
-

1 (b) the power to give any other directions for, or with respect to,
2 the detention of the thing.

3 (4) A person who is given a direction under subsection (3) must
4 comply with the direction.

5 (5) A person commits an offence of strict liability if the person
6 contravenes subsection (4).

7 Penalty: 30 penalty units.

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

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

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

12 **132D Supervisory powers of seized things**

13 (1) If:

- 14 (a) an inspector seizes a thing under section 132A or 132C; and
15 (b) the inspector is authorised by the APVMA to exercise powers
16 under this section;
17 the inspector may do one or more of the things mentioned in
18 subsection (2).

19 (2) The things are:

- 20 (a) if the seizure related to a substance and the inspector suspects
21 that this Code has not been complied with in respect of any
22 of its constituents, or in respect of the concentration,
23 composition or purity of any of its active constituents—
24 supervise the reformulation of the substance so as to ensure
25 compliance with this Code; and
26 (b) if the seizure related to a substance and its container and the
27 inspector suspects that this Code has not been complied with
28 in respect of the container—supervise the placing of the
29 substance in a container so that there is compliance with this
30 Code; and
31 (c) if the seizure related to a substance and its container and the
32 inspector suspects that this Code has not been complied with
33 in respect of the label attached to the container—supervise
34 the attaching to the container of a label so that there is
35 compliance with this Code.
-

1 **132E Persons assisting inspectors**

2 *Inspectors may be assisted by other persons*

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

8 *Powers, functions and duties of a person assisting the inspector*

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

23 **132F Use of force in executing an investigation warrant**

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

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

3 **132G Inspector may ask questions and seek production of**
4 **documents**

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

19 Penalty for contravention of this subsection: 50 penalty units.

20 **132H Copying of documents**

21 If a person produces a document to an inspector in accordance with
22 a requirement under section 132G, the inspector may make copies
23 of, or take extracts from, the document.

24 **Division 5—Obligations and incidental powers of**
25 **inspectors**

26 **133 Consent**

- 27 (1) Before obtaining the consent of an occupier of premises for the
28 purposes of paragraph 131(3)(a) or 132(3)(a), an inspector must
29 inform the occupier that the occupier may refuse consent.
- 30 (2) A consent has no effect unless the consent is voluntary.

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

10 **286 Subsection 134(1) of the Code set out in the Schedule**

11 Repeal the subsection, substitute:

- 12 (1) Before entering premises under a warrant, an inspector must:
13 (a) announce that:
14 (i) he or she is authorised to enter the premises; and
15 (ii) any person assisting the inspector is authorised to enter
16 the premises; and
17 (b) show his or her identity card to the occupier of the premises,
18 or to another person who apparently represents the occupier,
19 if the occupier or other person is present at the premises; and
20 (c) give any person at the premises an opportunity to allow entry
21 to the premises.

22 **287 Subsection 134(2) of the Code set out in the Schedule**

23 Omit “or a person helping the inspector”.

24 **288 Paragraph 134(2)(a) of the Code set out in the Schedule**

25 Omit “person helping the inspector”, substitute “person assisting”.

26 **289 At the end of section 134 of the Code set out in the**
27 **Schedule**

28 Add:

- 29 (3) If:
30 (a) an inspector does not comply with subsection (1) because of
31 subsection (2); and

- 1 (b) the occupier of the premises, or another person who
2 apparently represents the occupier, is present at the premises;
3 the inspector must show his or her identity card to the occupier or
4 other person as soon as practicable after entering the premises.

5 **290 Sections 135 to 138 of the Code set out in the Schedule**

6 Repeal the sections, substitute:

7 **135 Inspector to be in possession of warrant**

8 An inspector executing a warrant must be in possession of:

- 9 (a) the warrant issued by the magistrate under section 143 or
10 143A or a copy of the warrant as so issued; or
11 (b) the form of warrant completed under subsection 143B(6) or a
12 copy of the form as so completed.

13 **136 Details of warrant etc. to be given to occupier**

- 14 (1) An inspector must comply with subsection (2) if:
15 (a) a warrant is being executed in relation to premises; and
16 (b) the occupier of the premises, or another person who
17 apparently represents the occupier, is present at the premises.
- 18 (2) The inspector must, as soon as practicable:
19 (a) do one of the following:
20 (i) if the warrant was issued under section 143 or 143A—
21 make a copy of the warrant available to the occupier or
22 other person (which need not include the signature of
23 the magistrate who issued it);
24 (ii) if the warrant was signed by a magistrate under
25 section 143B—make a copy of the form of warrant
26 completed under subsection 143B(6) available to the
27 occupier or other person; and
28 (b) inform the occupier or other person of the rights and
29 responsibilities of the occupier or other person under
30 Division 7 of this Part.

137 Expert assistance to operate electronic equipment

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

4 *Securing equipment*

- 5 (2) An inspector may do whatever is necessary to secure any electronic
6 equipment that is on the premises if the inspector believes on
7 reasonable grounds that:

8 (a) in the case of a monitoring warrant:

- 9 (i) there is relevant data on the premises; and
10 (ii) the relevant data may be accessible by operating the
11 equipment; and
12 (iii) expert assistance is required to operate the equipment;
13 and
14 (iv) the relevant data may be destroyed, altered or otherwise
15 interfered with, if the inspector does not take action
16 under this subsection; and

17 (b) in the case of an investigation warrant:

- 18 (i) there is evidential material of the kind specified in the
19 warrant on the premises; and
20 (ii) the evidential material may be accessible by operating
21 the electronic equipment; and
22 (iii) expert assistance is required to operate the equipment;
23 and
24 (iv) the evidential material may be destroyed, altered or
25 otherwise interfered with, if the inspector does not take
26 action under this subsection.

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

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

1 *Period equipment may be secured*

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

6 Note: For compensation for damage to electronic equipment, see
7 section 138.

8 *Extensions*

- 9 (5) The inspector may apply to a magistrate for an extension of the
10 72-hour period, if the inspector believes on reasonable grounds that
11 the equipment needs to be secured for a longer period.
- 12 (6) Before making the application, the inspector must give notice to
13 the occupier of the premises, or another person who apparently
14 represents the occupier, of the inspector's intention to apply for an
15 extension. The occupier or other person is entitled to be heard in
16 relation to that application.
- 17 (7) The provisions of this Part relating to the issue of a warrant apply,
18 with such modifications as are necessary, to the issue of an
19 extension.
- 20 (8) The 72-hour period may be extended more than once.

21 **138 Compensation for damage to electronic equipment**

- 22 (1) This section applies if:
23 (a) as a result of electronic equipment being operated as
24 mentioned in this Part:
25 (i) damage is caused to the equipment; or
26 (ii) the data recorded on the equipment is damaged; or
27 (iii) programs associated with the use of the equipment, or
28 with the use of the data, are damaged or corrupted; and
29 (b) the damage or corruption occurs because:
30 (i) insufficient care was exercised in selecting the person
31 who was to operate the equipment; or
32 (ii) insufficient care was exercised by the person operating
33 the equipment.

-
- 1 (2) The APVMA must pay the owner of the equipment, or the user of
2 the data or programs, such reasonable compensation for the
3 damage or corruption as the APVMA and the owner or user agree
4 on.
- 5 (3) However, if the owner or user and the APVMA fail to agree, the
6 owner or user may institute proceedings in a court of competent
7 jurisdiction for such reasonable amount of compensation as the
8 court determines.
- 9 (4) In determining the amount of compensation payable, regard is to
10 be had to whether the occupier of the premises, or the occupier's
11 employees or agents, if they were available at the time, provided
12 any appropriate warning or guidance on the operation of the
13 equipment.

14 **Division 6—Execution of an investigation warrant** 15 **interrupted**

16 **138A Completing execution of an investigation warrant after** 17 **temporary cessation**

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

1 *Application for extension in emergency situation*

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

12 *Extension in emergency situation*

- 13 (5) A magistrate may extend the period during which the inspector and
14 persons assisting may be away from the premises if:
15 (a) an application is made under subsection (3); and
16 (b) the magistrate is satisfied, by information on oath or
17 affirmation, that there are exceptional circumstances that
18 justify the extension; and
19 (c) the extension would not result in the period ending after the
20 warrant ceases to be in force.

21 **138B Completing execution of an investigation warrant stopped by**
22 **court order**

- 23 An inspector, and any persons assisting, may complete the
24 execution of an investigation warrant that has been stopped by an
25 order of a court if:
26 (a) the order is later revoked or reversed on appeal; and
27 (b) the warrant is still in force when the order is revoked or
28 reversed.

29 **Division 7—Occupier’s rights and responsibilities**

30 **138C Occupier entitled to observe execution of warrant**

- 31 (1) The occupier of premises to which a warrant relates, or another
32 person who apparently represents the occupier, is entitled to

- 1 observe the execution of the warrant if the occupier or other person
2 is present at the premises while the warrant is being executed.
- 3 (2) The right to observe the execution of the warrant ceases if the
4 occupier or other person impedes that execution.
- 5 (3) This section does not prevent the execution of the warrant in 2 or
6 more areas of the premises at the same time.

7 **138D Occupier to provide inspector with facilities and assistance**

- 8 (1) The occupier of premises to which a warrant relates, or another
9 person who apparently represents the occupier, must provide:
10 (a) an inspector executing the warrant; and
11 (b) any person assisting;
12 with all reasonable facilities and assistance for the effective
13 exercise of their powers.
- 14 (2) A person commits an offence if:
15 (a) the person is subject to subsection (1); and
16 (b) the person fails to comply with that subsection.

17 Penalty for contravention of this subsection: 30 penalty units.

18 **Division 8—General provisions relating to seizure**

19 **291 Subsection 139(1) of the Code set out in the Schedule**

20 Omit “section 131 or 132”, substitute “an investigation warrant”.

21 **292 Subsection 139(2) of the Code set out in the Schedule**

22 Repeal the subsection, substitute:

- 23 (2) However, the inspector is not required to comply with the request
24 if possession of the document, film, computer file, thing or
25 information by the occupier or other person could constitute an
26 offence against a law of this jurisdiction.

27 **293 After section 139 of the Code set out in the Schedule**

28 Insert:

1 **139A Receipts for seized things**

2 (1) An inspector must provide a receipt for a thing that is seized under
3 an investigation warrant.

4 (2) One receipt may cover 2 or more things seized.

5 **294 Subsection 140(1) of the Code set out in the Schedule**

6 Repeal the subsection, substitute:

7 (1) An inspector must take reasonable steps to return a thing seized
8 under an investigation warrant when the earliest of the following
9 happens:

10 (a) the reason for the thing's seizure no longer exists;

11 (b) it is decided that the thing is not to be used in evidence;

12 (c) the period of 60 days after the thing's seizure ends.

13 *Exception*

14 (1A) Subsection (1):

15 (a) is subject to any contrary order of a court; and

16 (b) does not apply if the thing:

17 (i) is forfeited or forfeitable to the Commonwealth (see
18 section 150); or

19 (ii) is the subject of a dispute as to ownership.

20 **295 Subsection 140(2) of the Code set out in the Schedule**

21 Omit all the words before paragraph (a), substitute "The inspector is not
22 required to take reasonable steps to return a thing because of
23 paragraph (1)(c) if".

24 **296 Subsections 140(4) and (5) of the Code set out in the
25 Schedule**

26 Repeal the subsections.

27 **297 Section 141 of the Code set out in the Schedule
28 (heading)**

29 Repeal the heading, substitute:

1 **141 Magistrate may permit a thing to be kept**

2 **298 Paragraph 141(1)(a) of the Code set out in the Schedule**

3 Omit “section 131 or 132”, substitute “an investigation warrant”.

4 **299 Paragraph 141(1)(b) of the Code set out in the Schedule**

5 Omit “of a court”.

6 **300 Subsection 141(1) of the Code set out in the Schedule**

7 Omit “court of summary jurisdiction”, substitute “magistrate”.

8 **301 Subsections 141(2) and (3) of the Code set out in the**
9 **Schedule**

10 Repeal the subsections, substitute:

11 (2) Before making the application, the inspector must:

- 12 (a) take reasonable steps to discover who has an interest in the
13 retention of the thing; and
14 (b) if it is practicable to do so, notify each person who the
15 inspector believes has such an interest of the proposed
16 application.

17 *Order to retain thing*

18 (3) A magistrate may order that the thing may continue to be retained
19 for a period specified in the order if the magistrate is satisfied that
20 it is necessary for the thing to continue to be retained:

- 21 (a) for the purposes of an investigation as to whether an offence
22 against an agvet law has been committed or an agvet penalty
23 provision has been contravened; or
24 (b) for the purposes of an investigation as to whether an offence
25 against the *Crimes Act 1914* or the *Criminal Code* that relates
26 to an agvet law has been committed; or
27 (c) to enable evidence of:
28 (i) an offence mentioned in paragraph (a) or (b) to be
29 secured for the purposes of a prosecution; or
30 (ii) a contravention mentioned in paragraph (a) to be
31 secured for the purposes of proceedings for a civil
32 penalty order.
-

1 (4) The period specified must not exceed 3 years.

2 **302 After section 141 of the Code set out in the Schedule**

3 Insert:

4 **141A Disposal of things**

5 (1) The APVMA may dispose of a thing seized under an investigation
6 warrant if:

7 (a) an inspector has taken reasonable steps to return the thing to
8 a person; and

9 (b) either:

10 (i) the inspector has been unable to locate the person; or

11 (ii) the person has refused to take possession of the thing.

12 (2) The APVMA may dispose of the thing in such manner as it
13 considers appropriate.

14 **303 Subsection 142(1) of the Code set out in the Schedule**

15 Omit “paragraph 131(1)(i)”, substitute “paragraph 131A(1)(j) or
16 132A(1)(j)”.

17 **304 Subsection 142(2) of the Code set out in the Schedule**

18 Omit “subsection 132(3)”, substitute “subsection 132D(2)”.

19 **305 After subsection 142(4) of the Code set out in the
20 Schedule**

21 Insert:

22 (4A) Any expense incurred by the APVMA under section 141A in
23 disposing of a thing is a debt due to the APVMA by the owner of
24 the thing.

25 **306 Sections 143 to 145 of the Code set out in the Schedule**

26 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.

- 1 (5) If the application for the warrant is made under section 143B, this
2 section applies as if paragraph (4)(f) required the warrant to specify
3 the period for which the warrant is to remain in force, which must
4 not be more than 48 hours.

5 **143A Investigation warrants**

6 *Application for warrant*

- 7 (1) An inspector may apply to a magistrate for an investigation warrant
8 under this section in relation to premises.

9 *Issue of warrant*

- 10 (2) The magistrate may issue the investigation warrant if the
11 magistrate is satisfied, by information on oath or affirmation, that
12 there are reasonable grounds for suspecting that there is, or there
13 may be within the next 72 hours, evidential material on the
14 premises.
- 15 (3) However, the magistrate must not issue the investigation warrant
16 unless the inspector or some other person has given to the
17 magistrate, either orally or by affidavit, such further information (if
18 any) as the magistrate requires concerning the grounds on which
19 the issue of the warrant is being sought.

20 *Content of warrant*

- 21 (4) The investigation warrant must:
- 22 (a) state the offence or offences, or civil penalty provision or
23 civil penalty provisions, to which the warrant relates; and
- 24 (b) describe the premises to which the warrant relates; and
- 25 (c) state that the warrant is issued under this section; and
- 26 (d) specify the kinds of evidential material that are to be
27 searched for under the warrant; and
- 28 (e) state that the evidential material specified may be seized
29 under the warrant; and
- 30 (f) state that any thing found in the course of executing the
31 warrant that the person executing the warrant believes on
32 reasonable grounds to be evidence of:

- 1 (i) the commission of an offence against an agvet law or
 - 2 the contravention of an agvet penalty provision or both;
 - 3 or
 - 4 (ii) an offence against the *Crimes Act 1914* or the *Criminal*
 - 5 *Code* that relates to an agvet law;
 - 6 may be seized under the warrant; and
 - 7 (g) name one or more inspectors; and
 - 8 (h) authorise the inspectors named in the warrant:
 - 9 (i) to enter the premises; and
 - 10 (ii) to exercise the powers set out in Divisions 4, 5 and 6 of
 - 11 this Part in relation to the premises; and
 - 12 (i) state whether entry is authorised to be made at any time of
 - 13 the day or during specified hours of the day; and
 - 14 (j) specify the day (not more than 1 week after the issue of the
 - 15 warrant) the warrant ceases to be in force.
- 16 (5) If the application for the warrant is made under section 143B, this
- 17 section applies as if:
- 18 (a) subsection (2) referred to 48 hours rather than 72 hours; and
 - 19 (b) paragraph (4)(j) required the warrant to specify the period for
 - 20 which the warrant is to remain in force, which must not be
 - 21 more than 48 hours.

22 **143B Warrants by telephone, fax etc.**

23 *Application for warrant*

- 24 (1) An inspector may apply to a magistrate by telephone, fax or other
 - 25 electronic means for a warrant in relation to premises:
 - 26 (a) in an urgent case; or
 - 27 (b) if the delay that would occur if an application were made in
 - 28 person would frustrate the effective execution of the warrant.
- 29 (2) The magistrate may require communication by voice to the extent
- 30 that it is practicable in the circumstances.
- 31 (3) Before applying for a warrant, the inspector must:
- 32 (a) in the case of a monitoring warrant—prepare an information
 - 33 of the kind mentioned in subsection 143(2); and

1 (b) in the case of an investigation warrant—prepare an
2 information of the kind mentioned in subsection 143A(2);
3 in relation to the premises that sets out the grounds on which the
4 warrant is sought. If it is necessary to do so, the inspector may
5 apply for the warrant before the information is sworn or affirmed.

6 *Magistrate may complete and sign warrant*

- 7 (4) The magistrate may complete and sign the same warrant that would
8 have been issued under section 143 or 143A if the magistrate is
9 satisfied that there are reasonable grounds for doing so:
10 (a) after considering the terms of the information; and
11 (b) after receiving such further information (if any) as the
12 magistrate requires concerning the grounds on which the
13 issue of the warrant is being sought.
- 14 (5) After completing and signing the warrant, the magistrate must
15 inform the inspector, by telephone, fax or other electronic means,
16 of:
17 (a) the terms of the warrant; and
18 (b) the day and time the warrant was signed.

19 *Obligations on inspector*

- 20 (6) The inspector must then do the following:
21 (a) complete and sign a form of warrant in the same terms as the
22 warrant completed and signed by the magistrate;
23 (b) state on the form the following:
24 (i) the name of the magistrate;
25 (ii) the day and time the warrant was signed by the
26 magistrate;
27 (c) send the following to the magistrate:
28 (i) the form of warrant completed by the inspector;
29 (ii) the information referred to in subsection (3), which
30 must have been duly sworn or affirmed.
- 31 (7) The inspector must comply with paragraph (6)(c) by the end of the
32 day after the earlier of the following:
33 (a) the day the warrant ceases to be in force;
34 (b) the day the warrant is executed.

1 *Magistrate to attach documents together*

- 2 (8) The magistrate must attach the documents provided under
3 paragraph (6)(c) to the warrant signed by the magistrate.

4 **143C Authority of warrant**

- 5 (1) A form of warrant duly completed under subsection 143B(6) is
6 authority for the same powers as are authorised by the warrant
7 signed by the magistrate under subsection 143B(4).
- 8 (2) In any proceedings, a court is to assume (unless the contrary is
9 proved) that an exercise of power was not authorised by a warrant
10 under section 143B if:
- 11 (a) it is material, in those proceedings, for the court to be
12 satisfied that the exercise of power was authorised by that
13 section; and
- 14 (b) the warrant signed by the inspector authorising the exercise
15 of the power is not produced in evidence.

16 **143D Offence relating to warrants by telephone, fax etc.**

17 An inspector must not:

- 18 (a) state in a document that purports to be a form of warrant
19 under section 143B the name of a magistrate unless that
20 magistrate signed the warrant; or
- 21 (b) state on a form of warrant under that section a matter that, to
22 the inspector's knowledge, departs in a material particular
23 from the terms of the warrant signed by the magistrate under
24 that section; or
- 25 (c) purport to execute, or present to another person, a document
26 that purports to be a form of warrant under that section that
27 the inspector knows departs in a material particular from the
28 terms of a warrant signed by a magistrate under that section;
29 or
- 30 (d) purport to execute, or present to another person, a document
31 that purports to be a form of warrant under that section where
32 the inspector knows that no warrant in the terms of the form
33 of warrant has been completed and signed by a magistrate; or

1 (e) give to a magistrate a form of warrant under that section that
2 is not the form of warrant that the inspector purported to
3 execute.

4 Penalty: Imprisonment for 2 years.

5 **143E Effect of warrant**

6 If a warrant is issued under the Agvet Code of a jurisdiction other
7 than this jurisdiction, the warrant has effect and may be executed in
8 this jurisdiction as if the warrant had been issued under this Code.

9 **Division 10—Powers of magistrates**

10 **143F Powers of magistrates**

11 *Powers conferred personally*

12 (1) A power conferred on a magistrate by this Part is conferred on the
13 magistrate:

- 14 (a) in a personal capacity; and
15 (b) not as a court or a member of a court.

16 *Powers need not be accepted*

17 (2) The magistrate need not accept the power conferred.

18 *Protection and immunity*

19 (3) A magistrate exercising a power conferred by this Part has the
20 same protection and immunity as if the magistrate were exercising
21 the power:

- 22 (a) as the court of which the magistrate is a member; or
23 (b) as a member of the court of which the magistrate is a
24 member.

25 **307 Division 4 of Part 9 of the Code set out in the Schedule**
26 **(heading)**

27 Repeal the heading.

28 **308 Before section 146 of the Code set out in the Schedule**

1 Insert:

2 **Part 9A—Enforcement**

3 **Division 1—Preliminary**

4 **145 Explanation of Part**

5 This Part contains provisions for the enforcement of this Code,
6 including provisions relating to the following:

- 7 (a) the use of civil penalties to enforce civil penalty provisions;
- 8 (b) the use of infringement notices to enforce certain civil
9 penalty provisions;
- 10 (c) the acceptance and enforcement of undertakings to comply
11 with provisions;
- 12 (d) the use of injunctions in the enforcement of provisions;
- 13 (e) the issue of substantiation notices in relation to certain claims
14 and representations;
- 15 (f) the giving of enforceable directions in relation to suspected
16 contraventions;
- 17 (g) the issue of formal warnings in relation to suspected
18 contraventions;
- 19 (h) other ancillary matters.

20 **Division 2—Civil penalty orders**

21 **Subdivision A—Obtaining a civil penalty order**

22 **145A Civil penalty orders**

23 *Application for order*

- 24 (1) The APVMA may, on behalf of the Commonwealth, apply to a
25 court of competent jurisdiction for an order that a person, who is
26 alleged to have contravened a civil penalty provision, pay the
27 Commonwealth a pecuniary penalty.
- 28 (2) The APVMA must make the application within 6 years of the
29 alleged contravention.

1 *Court may order person to pay pecuniary penalty*

2 (3) If the court is satisfied that the person has contravened the civil
3 penalty provision, the court may order the person to pay to the
4 Commonwealth such pecuniary penalty for the contravention as the
5 court determines to be appropriate.

6 Note: Section 145AA sets out the maximum penalty that the court may order
7 the person to pay.

8 (4) An order under subsection (3) is a *civil penalty order*.

9 *Determining pecuniary penalty*

- 10 (5) In determining the pecuniary penalty, the court may take into
11 account all relevant matters, including:
- 12 (a) the nature and extent of the contravention; and
 - 13 (b) the nature and extent of any loss or damage suffered because
14 of the contravention; and
 - 15 (c) the circumstances in which the contravention took place; and
 - 16 (d) whether the person has previously been found by a court to
17 have engaged in any similar conduct; and
 - 18 (e) the extent to which the person has cooperated with the
19 authorities; and
 - 20 (f) if the person is a body corporate:
 - 21 (i) the level of the employees, officers or agents of the
22 body corporate involved in the contravention; and
 - 23 (ii) whether the body corporate exercised due diligence to
24 avoid the contravention; and
 - 25 (iii) whether the body corporate had a corporate culture
26 conducive to compliance.

27 **145AA Maximum penalties for contravention of civil penalty**
28 **provisions**

29 *Penalty for body corporate*

30 (1) The pecuniary penalty for a contravention of a civil penalty
31 provision by a body corporate must not exceed 5 times the amount
32 of the maximum monetary penalty that could be imposed by a
33 court if the body corporate were convicted of an offence

1 constituted by conduct that is the same as the conduct constituting
2 the contravention.

3 *Penalty for individuals*

4 (2) The pecuniary penalty for a contravention of a civil penalty
5 provision by an individual must not exceed 3 times the amount of
6 the maximum monetary penalty that could be imposed by a court if
7 the person were convicted of an offence constituted by conduct that
8 is the same as the conduct constituting the contravention.

9 *Penalty for contravention of subsection 145CF(1)*

10 (3) The pecuniary penalty for a contravention, by an executive officer
11 of a body corporate, of subsection 145CF(1) in relation to the
12 contravention by the body corporate of a civil penalty provision
13 must not exceed 12% of the amount of the maximum monetary
14 penalty that could be imposed on the body corporate for the
15 contravention.

16 **145AB Civil enforcement of penalty**

17 (1) A pecuniary penalty is a debt payable to the Commonwealth.
18 (2) The Commonwealth may enforce a civil penalty order as if it were
19 an order made in civil proceedings against a person to recover a
20 debt due by the person. The debt arising from the order is taken to
21 be a judgement debt.

22 **145AC Conduct contravening more than one civil penalty provision**

23 (1) If conduct constitutes a contravention of 2 or more civil penalty
24 provisions, proceedings may be instituted under this Division
25 against a person in relation to the contravention of any one or more
26 of those provisions.
27 (2) However, the person is not liable to more than one pecuniary
28 penalty under this Division in relation to the same conduct.

29 **145AD Multiple contraventions**

30 (1) A court may make a single civil penalty order against a person for
31 multiple contraventions of a civil penalty provision if proceedings

1 for the contraventions are founded on the same facts, or if the
2 contraventions form, or are part of, a series of contraventions of the
3 same or a similar character.

4 Note: For continuing contraventions of civil penalty provisions, see
5 section 145C.

6 (2) However, the penalty must not exceed the sum of the maximum
7 penalties that could be ordered if a separate penalty were ordered
8 for each of the contraventions.

9 **145AE Proceedings may be heard together**

10 A court may direct that 2 or more proceedings for civil penalty
11 orders be heard together.

12 **145AF Civil evidence and procedure rules for civil penalty orders**

13 A court must apply the rules of evidence and procedure for civil
14 matters when hearing and determining an application for a civil
15 penalty order.

16 **145AG Contravening a civil penalty provision is not an offence**

17 A contravention of a civil penalty provision is not an offence.

18 **Subdivision B—Civil proceedings and criminal proceedings**

19 **145B Civil proceedings after criminal proceedings**

20 A court may not make a civil penalty order against a person for a
21 contravention of a civil penalty provision if the person has been
22 convicted of an offence constituted by conduct that is the same, or
23 substantially the same, as the conduct constituting the
24 contravention.

25 **145BA Criminal proceedings during civil proceedings**

26 (1) Proceedings for a civil penalty order against a person for a
27 contravention of a civil penalty provision are stayed if:
28 (a) criminal proceedings are commenced or have already been
29 commenced against the person for an offence; and

1 (b) the offence is constituted by conduct that is the same, or
2 substantially the same, as the conduct alleged to constitute
3 the contravention.

4 (2) The proceedings for the order (the *civil proceedings*) may be
5 resumed if the person is not convicted of the offence. Otherwise,
6 the civil proceedings are dismissed.

7 **145BB Criminal proceedings after civil proceedings**

8 Criminal proceedings may be commenced against a person for
9 conduct that is the same, or substantially the same, as conduct that
10 would constitute a contravention of a civil penalty provision
11 regardless of whether a civil penalty order has been made against
12 the person in relation to the contravention.

13 **145BC Evidence given in civil proceedings not admissible in** 14 **criminal proceedings**

15 (1) Evidence of information given, or evidence of production of
16 documents, by an individual is not admissible in criminal
17 proceedings against the individual for an offence if:

- 18 (a) the individual previously gave the evidence or produced the
19 documents in proceedings for a civil penalty order against the
20 individual for an alleged contravention of a civil penalty
21 provision (whether or not the order was made); and
22 (b) the conduct alleged to constitute the offence is the same, or
23 substantially the same, as the conduct alleged to constitute
24 the contravention.

25 (2) However, subsection (1) does not apply to criminal proceedings in
26 relation to the falsity of the evidence given by the individual in the
27 proceedings for the civil penalty order.

28 **Subdivision C—Miscellaneous**

29 **145C Continuing contraventions of civil penalty provisions**

- 30 (1) If an act or thing is required under a civil penalty provision to be
31 done:
32 (a) within a particular period; or
33 (b) before a particular time;

1 then the obligation to do that act or thing continues until the act or
2 thing is done (even if the period has expired or the time has
3 passed).

- 4 (2) A person who contravenes a civil penalty provision that requires an
5 act or thing to be done:
6 (a) within a particular period; or
7 (b) before a particular time;
8 commits a separate contravention of that provision in respect of
9 each day during which the contravention occurs (including the day
10 the relevant civil penalty order is made or any later day).

11 **145CA Ancillary contravention of civil penalty provisions**

- 12 (1) A person must not:
13 (a) attempt to contravene a civil penalty provision; or
14 (b) aid, abet, counsel or procure a contravention of a civil
15 penalty provision; or
16 (c) induce (by threats, promises or otherwise) a contravention of
17 a civil penalty provision; or
18 (d) be in any way, directly or indirectly, knowingly concerned in,
19 or party to, a contravention of a civil penalty provision; or
20 (e) conspire with others to effect a contravention of a civil
21 penalty provision.

22 *Civil penalty*

- 23 (2) A person who contravenes subsection (1) in relation to a civil
24 penalty provision is taken to have contravened the provision.

25 Note: Section 145CC (which provides that a person's state of mind does not
26 need to be proven in relation to a civil penalty provision) does not
27 apply to the extent that proceedings relate to the contravention of
28 subsection (1).

29 **145CB Mistake of fact**

- 30 (1) A person is not liable to have a civil penalty order made against the
31 person for a contravention of a civil penalty provision if:
32 (a) at or before the time of the conduct constituting the
33 contravention, the person:
34 (i) considered whether or not facts existed; and

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- 1 (ii) was under a mistaken but reasonable belief about those
2 facts; and
- 3 (b) had those facts existed, the conduct would not have
4 constituted a contravention of the civil penalty provision.
- 5 (2) For the purposes of subsection (1), a person may be regarded as
6 having considered whether or not facts existed if:
- 7 (a) the person had considered, on a previous occasion, whether
8 those facts existed in the circumstances surrounding that
9 occasion; and
- 10 (b) the person honestly and reasonably believed that the
11 circumstances surrounding the present occasion were the
12 same, or substantially the same, as those surrounding the
13 previous occasion.
- 14 (3) A person who wishes to rely on subsection (1) or (2) in
15 proceedings for a civil penalty order bears an evidential burden in
16 relation to that matter.

17 **145CC State of mind**

- 18 (1) In proceedings for a civil penalty order against a person for a
19 contravention of a civil penalty provision (other than subsection
20 145CA(1)), it is not necessary to prove:
- 21 (a) the person's intention; or
22 (b) the person's knowledge; or
23 (c) the person's recklessness; or
24 (d) the person's negligence; or
25 (e) any other state of mind of the person.
- 26 (2) Subsection (1) does not apply to the extent that the proceedings
27 relate to a contravention of subsection 145CA(1) (which is about
28 ancillary contraventions of civil penalty provisions).
- 29 (3) Subsection (1) does not affect the operation of section 145CB
30 (which is about mistake of fact).
- 31 (4) Subsection (1) does not apply to the extent that the civil penalty
32 provision, or a provision that relates to the civil penalty provision,
33 expressly provides otherwise.

1 **145CD Evidential burden for exceptions**

2 In proceedings for a civil penalty order, a person who wishes to
3 rely on any exception, excuse, qualification or justification in
4 relation to a civil penalty provision bears an evidential burden in
5 relation to that matter.

6 **145CE Liability of body corporate for actions by employees, agents
7 or officers**

8 If an element of a civil penalty provision is done by an employee,
9 agent or officer of a body corporate acting within the actual or
10 apparent scope of his or her employment, or within his or her
11 actual or apparent authority, the element must also be attributed to
12 the body corporate.

13 **145CF Liability of executive officers**

- 14 (1) An executive officer of a body corporate contravenes this
15 subsection if:
16 (a) the body corporate contravenes a civil penalty provision; and
17 (b) the officer knew that the contravention would occur; and
18 (c) the officer was in a position to influence the conduct of the
19 body in relation to the contravention; and
20 (d) the officer failed to take all reasonable steps to prevent the
21 contravention.

- 22 (2) Subsection (1) is a civil penalty provision.

23 Note: Subdivision A of this Division provides for pecuniary penalties for
24 contraventions of civil penalty provisions.

25 **145CG Establishing whether an executive officer took reasonable
26 steps to prevent the contravention of a civil penalty
27 provision**

- 28 (1) For the purposes of section 145CF, in determining whether an
29 executive officer of a body corporate failed to take all reasonable
30 steps to prevent the contravention of a civil penalty provision, a
31 court is to have regard to:
32 (a) what action (if any) the officer took towards ensuring that the
33 body's employees, agents and contractors have a reasonable

- 1 knowledge and understanding of the requirements to comply
2 with this Code, in so far as those requirements affect the
3 employees, agents or contractors concerned; and
4 (b) what action (if any) the officer took when he or she became
5 aware that the body was contravening this Code.
- 6 (2) This section does not, by implication, limit the generality of
7 section 145CF.

8 **Division 3—Infringement notices**

9 **145DA When an infringement notice may be given**

- 10 (1) If an inspector has reasonable grounds to believe that a person has
11 contravened a prescribed civil penalty provision, the inspector may
12 give the person an infringement notice for the alleged
13 contravention.
- 14 (2) The infringement notice must be given within 12 months after the
15 day the contravention is alleged to have taken place.
- 16 (3) A single infringement notice must relate only to a single
17 contravention of a single prescribed civil penalty provision.

18 **145DB Matters to be included in an infringement notice**

- 19 (1) An infringement notice must:
20 (a) be identified by a unique number; and
21 (b) state the day it is given; and
22 (c) state the name of the person to whom the notice is given; and
23 (d) state the name of the person who gave the notice; and
24 (e) give brief details of the alleged contravention, including:
25 (i) the provision that was allegedly contravened; and
26 (ii) the maximum penalty that a court could impose for the
27 contravention; and
28 (iii) the time (if known) and day of, and the place of, the
29 alleged contravention; and
30 (f) state the amount that is payable under the notice, and that the
31 amount is payable to the Commonwealth; and
32 (g) give an explanation of how payment of the amount is to be
33 made; and
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- 1 (h) state that, if the person to whom the notice is given pays the
2 amount within 28 days after the day the notice is given, then
3 (unless the notice is withdrawn) proceedings seeking a civil
4 penalty order will not be brought in relation to the alleged
5 contravention; and
6 (i) state that payment of the amount is not an admission of
7 liability; and
8 (j) state that the person may apply to the APVMA to have the
9 period in which to pay the amount extended; and
10 (k) state that the person may choose not to pay the amount and, if
11 the person does so, proceedings seeking a civil penalty order
12 may be brought in relation to the alleged contravention; and
13 (l) set out how the notice can be withdrawn; and
14 (m) state that if the notice is withdrawn proceedings seeking a
15 civil penalty order may be brought in relation to the alleged
16 contravention; and
17 (n) state that the person may make written representations to the
18 APVMA seeking the withdrawal of the notice.
- 19 (2) For the purposes of paragraph (1)(f), the amount to be stated in the
20 notice for the alleged contravention of the provision must not
21 exceed one-fifth of the maximum penalty that a court could impose
22 on the person for that contravention.
- 23 (3) The regulations may, subject to subsection (2), provide for a scale
24 of amounts that may apply for an alleged contravention.

25 **145DC Extension of time to pay amount**

- 26 (1) A person to whom an infringement notice has been given may
27 apply to the APVMA for an extension of the period referred to in
28 paragraph 145DB(1)(h).
- 29 (2) If the application is made before the end of that period, the
30 APVMA may, in writing, extend that period. The APVMA may do
31 so before or after the end of that period.
- 32 (3) If the APVMA extends that period, a reference in this Division to
33 the period referred to in paragraph 145DB(1)(h) is taken to be a
34 reference to that period so extended.

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- 1 (4) If the APVMA does not extend that period, a reference in this
2 Division to the period referred to in paragraph 145DB(1)(h) is
3 taken to be a reference to the period that ends on the later of the
4 following days:
5 (a) the day that is the last day of the period referred to in
6 paragraph 145DB(1)(h);
7 (b) the day that is 7 days after the day the person was given
8 notice of the APVMA's decision not to extend.
- 9 (5) The APVMA may extend the period more than once under
10 subsection (2).

11 **145DD Withdrawal of an infringement notice**

12 *Representations seeking withdrawal of notice*

- 13 (1) A person to whom an infringement notice has been given may
14 make written representations to the APVMA seeking the
15 withdrawal of the notice.

16 *Withdrawal of notice*

- 17 (2) The APVMA may withdraw an infringement notice given to a
18 person (whether or not the person has made written representations
19 seeking the withdrawal).
- 20 (3) When deciding whether or not to withdraw an infringement notice
21 (the **relevant infringement notice**), the APVMA:
22 (a) must take into account any written representations seeking
23 the withdrawal that were given by the person to the APVMA;
24 and
25 (b) may take into account the following:
26 (i) whether a court has previously imposed a penalty on the
27 person for a contravention of a prescribed civil penalty
28 provision if the contravention is constituted by conduct
29 that is the same, or substantially the same, as the
30 conduct alleged to constitute the contravention in the
31 relevant infringement notice;
32 (ii) the circumstances of the alleged contravention;
33 (iii) whether the person has paid an amount, stated in an
34 earlier infringement notice, for a contravention of a

- 1 prescribed civil penalty provision if the contravention is
2 constituted by conduct that is the same, or substantially
3 the same, as the conduct alleged to constitute the
4 contravention in the relevant infringement notice;
5 (iv) any other matter the APVMA considers relevant.

6 *Notice of withdrawal*

- 7 (4) Notice of the withdrawal of the infringement notice must be given
8 to the person. The withdrawal notice must state:
9 (a) the person's name and address; and
10 (b) the day the infringement notice was given; and
11 (c) the identifying number of the infringement notice; and
12 (d) that the infringement notice is withdrawn; and
13 (e) that proceedings seeking a civil penalty order may be brought
14 in relation to the alleged contravention.

15 *Refund of amount if infringement notice withdrawn*

- 16 (5) If:
17 (a) the APVMA withdraws the infringement notice; and
18 (b) the person has already paid the amount stated in the notice;
19 the Commonwealth must refund to the person an amount equal to
20 the amount paid.

21 **145DE Effect of payment of amount**

- 22 (1) If the person to whom an infringement notice for an alleged
23 contravention of a provision is given pays the amount stated in the
24 notice before the end of the period referred to in paragraph
25 145DB(1)(h):
26 (a) any liability of the person for the alleged contravention is
27 discharged; and
28 (b) proceedings seeking a civil penalty order may not be brought
29 against the person in relation to the alleged contravention;
30 and
31 (c) the person is not regarded as having admitted liability for the
32 alleged contravention.
33 (2) Subsection (1) does not apply if the notice has been withdrawn.

1 **145DF Effect of this Division**

2 This Division does not:

- 3 (a) require an infringement notice to be given to a person for an
4 alleged contravention of a prescribed civil penalty provision;
5 or
- 6 (b) affect the liability of a person for an alleged contravention of
7 a prescribed civil penalty provision if:
 - 8 (i) the person does not comply with an infringement notice
9 given to the person for the contravention; or
 - 10 (ii) an infringement notice is not given to the person for the
11 contravention; or
 - 12 (iii) an infringement notice is given to the person for the
13 contravention and is subsequently withdrawn; or
- 14 (c) prevent the giving of 2 or more infringement notices to a
15 person for an alleged contravention of a prescribed civil
16 penalty provision; or
- 17 (d) limit a court’s discretion to determine the amount of a
18 penalty to be imposed on a person who is found to have
19 contravened a prescribed civil penalty provision.

20 **Division 4—Enforceable undertakings**

21 **145E Acceptance of undertakings**

- 22 (1) The APVMA may accept any of the following undertakings:
 - 23 (a) a written undertaking given by a person that the person will,
24 in order to comply with a provision of this Code, take
25 specified action;
 - 26 (b) a written undertaking given by a person that the person will,
27 in order to comply with a provision of this Code, refrain from
28 taking specified action;
 - 29 (c) a written undertaking given by a person that the person will
30 take specified action directed towards ensuring that the
31 person does not commit an offence against this Code or
32 contravene a civil penalty provision, or is unlikely to do so,
33 in the future.
- 34 (2) The undertaking must be expressed to be an undertaking under this
35 section.

- 1 (3) The person may withdraw or vary the undertaking at any time, but
2 only with the written consent of the APVMA.
- 3 (4) The APVMA's consent is not a legislative instrument.
- 4 (5) The APVMA may, by written notice given to the person, cancel
5 the undertaking.
- 6 (6) The APVMA must publish the undertaking on the APVMA's
7 website.
- 8 (7) However, the APVMA is not required to publish so much of the
9 undertaking that the APVMA is satisfied:
- 10 (a) is confidential commercial information; or
11 (b) is personal information (within the meaning of the *Privacy*
12 *Act 1988*); or
13 (c) should not be disclosed because it would be against the
14 public interest to do so.

15 **145EA Enforcement of undertakings**

- 16 (1) If:
- 17 (a) a person has given an undertaking under section 145E; and
18 (b) the undertaking has not been withdrawn or cancelled; and
19 (c) the APVMA considers that the person has breached the
20 undertaking;
- 21 the APVMA may, on behalf of the Commonwealth, apply to a
22 court of competent jurisdiction for an order under subsection (2).
- 23 (2) If the court is satisfied that the person has breached the
24 undertaking, the court may make any or all of the following orders:
- 25 (a) an order directing the person to comply with the undertaking;
26 (b) an order directing the person to pay to the Commonwealth an
27 amount up to the amount of any financial benefit that the
28 person has obtained directly or indirectly and that is
29 reasonably attributable to the breach;
- 30 (c) any order that the court considers appropriate directing the
31 person to compensate any other person who has suffered loss
32 or damage as a result of the breach;
- 33 (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.

1 **145FB Certain limits on granting injunctions not to apply**

2 *Restraining injunctions*

- 3 (1) The power of a court under this Division to grant an injunction
4 restraining a person from engaging in conduct may be exercised:
- 5 (a) whether or not it appears to the court that the person intends
6 to engage again, or to continue to engage, in conduct of that
7 kind; and
 - 8 (b) whether or not the person has previously engaged in conduct
9 of that kind; and
 - 10 (c) whether or not the conduct involves a serious and immediate
11 risk of:
 - 12 (i) an effect that is harmful to human beings; or
 - 13 (ii) an unintended effect that is harmful to animals, plants or
14 things, or to the environment.

15 *Performance injunctions*

- 16 (2) The power of a court under this Division to grant an injunction
17 requiring a person to do a thing may be exercised:
- 18 (a) whether or not it appears to the court that the person intends
19 to refuse or fail again, or to continue to refuse or fail, to do
20 that thing; and
 - 21 (b) whether or not the person has previously refused or failed to
22 do that thing; and
 - 23 (c) whether or not the conduct involves a serious and immediate
24 risk of:
 - 25 (i) an effect that is harmful to human beings; or
 - 26 (ii) an unintended effect that is harmful to animals, plants or
27 things, or to the environment.

28 **145FC Other powers of a court unaffected**

29 The powers conferred on a court under this Division are in addition
30 to, and not instead of, any other powers of the court, whether
31 conferred by this Code or otherwise.

1 **Division 6—Substantiation notices**

2 **145G APVMA may require claims to be substantiated etc.**

3 (1) This section applies if a person has made a claim or representation
4 in relation to:

- 5 (a) a supply, or possible supply, of a chemical product by the
6 person or another person; or
7 (b) the manufacture of a chemical product by the person or
8 another person; or
9 (c) the safety or efficacy of a chemical product.

10 (2) The APVMA may give the person who made the claim or
11 representation a written notice that requires the person to do one or
12 more of the following:

- 13 (a) give information or produce documents to the APVMA that
14 could be capable of substantiating or supporting the claim or
15 representation;
16 (b) if the claim or representation relates to a supply, or possible
17 supply, of chemical products by the person or another
18 person—give information or produce documents to the
19 APVMA that could be capable of substantiating:
20 (i) the quantities in which; and
21 (ii) the place in which; and
22 (iii) the period for which;
23 the person or other person is or will be able to make such a
24 supply (whether or not the claim or representation relates to
25 those quantities, that place or that period);
26 (c) give information or produce documents to the APVMA that
27 are of a kind specified in the notice;

28 within 21 days after the notice is given to the person who made the
29 claim or representation.

30 (3) Any kind of information or documents that the APVMA specifies
31 under paragraph (2)(c) must be a kind that the APVMA is satisfied
32 is relevant to:

- 33 (a) substantiating or supporting the claim or representation; or
34 (b) if the claim or representation relates to a supply, or possible
35 supply, of chemical products by the person or another
36 person—substantiating the quantities in which, the place in
-

1 which, or the period for which, the person or other person is
2 or will be able to make such a supply.

3 (4) The notice must:

- 4 (a) name the person to whom it is given; and
- 5 (b) specify the claim or representation to which it relates; and
- 6 (c) explain the effect of sections 145GA and 145GB.

7 (5) The notice may relate to more than one claim or representation that
8 the person has made.

9 (6) This section does not apply to a person who made the claim or
10 representation if the person:

- 11 (a) made the claim or representation by publishing it on behalf of
12 another person in the course of carrying on a business of
13 providing information; and
- 14 (b) does not have a commercial relationship with the other
15 person other than for the purpose of:
 - 16 (i) publishing claims or representations promoting, or
17 apparently intended to promote, the other person's
18 business or other activities; or
 - 19 (ii) the other person supplying goods or services.

20 **145GA Compliance with substantiation notices**

21 (1) A person given a substantiation notice under section 145G must
22 comply with the notice:

- 23 (a) within the period specified in the notice; or
- 24 (b) within such further time as the APVMA allows under
25 subsection (3).

26 (2) A person given a substantiation notice under section 145G may
27 apply to the APVMA for further time to comply with the notice.
28 An application must be in writing and made within 21 days after
29 the notice is given to the person.

30 (3) The APVMA may, by written notice given to the person, extend
31 the period within which the person must comply with the notice.

32 (4) Despite subsection (1), an individual may refuse or fail to give
33 particular information or produce a particular document in
34 compliance with a substantiation notice on the ground that the

1 information, or production of the document, might tend to
2 incriminate the individual or to expose the individual to a penalty.

3 **145GB Failure to comply with substantiation notice**

- 4 (1) A person contravenes this subsection if:
5 (a) the person is given a notice under section 145G; and
6 (b) the person fails to comply with the notice:
7 (i) within the period specified in the notice; or
8 (ii) if the APVMA has allowed the person further time
9 under subsection 145GA(3)—within such further time.

- 10 (2) Subsection (1) does not apply if:
11 (a) the person is an individual; and
12 (b) the person refuses or fails to give particular information or
13 produce a particular document in compliance with a
14 substantiation notice; and
15 (c) the information, or production of the document, might tend to
16 incriminate the individual or to expose the individual to a
17 penalty.

- 18 (3) A person commits an offence if the person contravenes
19 subsection (1).

20 Penalty: 50 penalty units.

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

- 23 (4) Subsection (1) is a civil penalty provision.

24 Note 1: Division 2 provides for pecuniary penalties for contraventions of civil
25 penalty provisions.

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

28 **Division 7—Enforceable directions**

29 **145H APVMA may give directions**

- 30 (1) This section applies if the APVMA believes, on reasonable
31 grounds, that:
32 (a) a person is not complying with this Code; and

- 1 (b) it is necessary to exercise powers under this section:
2 (i) to protect the health and safety of human beings; or
3 (ii) to protect animals, plants or things, or the environment;
4 or
5 (iii) to prevent significant prejudice to trade or commerce
6 between Australia and places outside Australia.
- 7 (2) The APVMA may, by written notice, give directions to the person
8 requiring the person to take such steps, within the time specified in
9 the notice, as are reasonable in the circumstances for the person to
10 comply with this Code.
- 11 (3) A time specified in a notice must be reasonable having regard to
12 the circumstances.
- 13 (4) A person contravenes this subsection if:
14 (a) the person is given a notice under this section; and
15 (b) the person fails to comply with the notice within the time
16 specified in the notice.
- 17 (5) A person commits an offence if the person contravenes
18 subsection (4).
- 19 Penalty:
20 (a) in the case of an aggravated offence—120 penalty units; and
21 (b) in any other case—30 penalty units.
- 22 (6) Subsection (4) is a civil penalty provision.
- 23 Note: Division 2 provides for pecuniary penalties for contraventions of civil
24 penalty provisions.
- 25 (7) Section 4K of the *Crimes Act 1914* applies to an offence against
26 subsection (5).
- 27 (8) If the person does not take the steps specified in the notice within
28 the time specified in the notice, the APVMA may arrange for those
29 steps to be taken.
- 30 (9) If the APVMA incurs costs because of arrangements made by the
31 APVMA under subsection (8):
32 (a) the person is liable to pay to the APVMA, on behalf of the
33 Commonwealth, an amount equal to the costs incurred; and

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- 1 (b) the amount may be recovered by the APVMA, on behalf of
2 the Commonwealth, as a debt due to the Commonwealth in a
3 court of competent jurisdiction.
- 4 (10) To prove an aggravated offence, the prosecution must prove that
5 the person who committed the offence:
- 6 (a) intended his or her conduct:
- 7 (i) to cause significant damage to the health and safety of
8 human beings; or
- 9 (ii) to cause significant damage to animals, plants or things,
10 or the environment; or
- 11 (iii) to significantly prejudice trade or commerce between
12 Australia and places outside Australia; or
- 13 (b) was reckless as to whether that conduct:
- 14 (i) would cause significant damage to the health and safety
15 of human beings; or
- 16 (ii) would cause significant damage to animals, plants or
17 things, or the environment; or
- 18 (iii) would significantly prejudice trade or commerce
19 between Australia and places outside Australia.
- 20 (11) In this section:
- 21 *aggravated offence* means an offence the commission of which:
- 22 (a) causes significant damage, or is likely to cause significant
23 damage:
- 24 (i) to the health and safety of human beings; or
- 25 (ii) to animals, plants or things, or the environment; or
- 26 (b) would significantly prejudice trade or commerce between
27 Australia and places outside Australia.

28 **Division 8—Formal warnings**

29 **145J APVMA may issue a formal warning**

- 30 (1) The APVMA may, by written notice, issue a formal warning to a
31 person if the APVMA has reasonable grounds to suspect that the
32 person may have contravened the Agvet Code of this jurisdiction.
- 33 (2) A formal warning under subsection (1) is not a legislative
34 instrument.

1 **Division 9—Miscellaneous**

2 **309 Sections 146, 147 and 148 of the Code set out in the**
3 **Schedule**

4 Repeal the sections, substitute:

5 **146 False or misleading information or document**

6 (1) A person commits an offence if, for the purposes of, or in
7 connection with, the consideration by the APVMA, in the course of
8 the performance of any of its functions or the exercise of any of its
9 powers under this Code, of any matters referred to in section 5A,
10 5B, 5C or 5D or subsection 123(1), the person:

- 11 (a) gives information (whether orally or in writing) that the
12 person knows to be false or misleading in a material
13 particular; or
14 (b) produces a document that the person knows to be false or
15 misleading in a material particular without:
16 (i) indicating to the person to whom the document is
17 produced that it is false or misleading and the respect in
18 which it is false or misleading; and
19 (ii) providing correct information to that person if the
20 person producing the document is in possession of, or
21 can reasonably acquire, the correct information.

22 Penalty: 300 penalty units.

23 (2) A person commits an offence if, for the purposes of, or in
24 connection with, the consideration by the APVMA, in the course of
25 the performance of any of its functions or the exercise of any of its
26 powers under this Code, of any matters other than matters referred
27 to in subsection (1), the person:

- 28 (a) gives information (whether orally or in writing) that the
29 person knows to be false or misleading in a material
30 particular; or
31 (b) produces a document that the person knows to be false or
32 misleading in a material particular without:
33 (i) indicating to the person to whom the document is
34 produced that it is false or misleading and the respect in
35 which it is false or misleading; and

-
- 1 (ii) providing correct information to that person if the
2 person producing the document is in possession of, or
3 can reasonably acquire, the correct information.

4 Penalty: 60 penalty units.

5 **147 Time for bringing proceedings**

- 6 (1) Proceedings for an offence against this Code may be brought:
7 (a) within 3 years after the date the offence is alleged to have
8 been committed; or
9 (b) within 2 years after the date evidence of the offence first
10 came to the attention of the APVMA, a member of the staff
11 of the APVMA or an inspector.
- 12 (2) If paragraph (1)(b) is relied on to begin proceedings for an offence,
13 the court attendance notice, summons or application must contain
14 particulars of the date that evidence of the offence first came to the
15 attention of the APVMA, a member of the staff of the APVMA or
16 an inspector, as the case may be. It need not contain particulars of
17 the date on which the offence was committed.
- 18 (3) The date on which evidence of the offence first came to the
19 attention of the APVMA, a member of the staff of the APVMA or
20 an inspector, as the case may be, is the date specified in the court
21 attendance notice, summons or application, unless the contrary is
22 established.
- 23 (4) In this section:
24 *evidence*, in relation to an offence, means evidence of any act or
25 omission constituting the offence.

26 **310 After section 149 of the Code set out in the Schedule**

27 Insert:

28 **149A Recovery of costs of investigations**

- 29 (1) This section applies if:
30 (a) a person is convicted of an offence against an agvet law or is
31 found to have contravened an agvet penalty provision; and

- 1 (b) the court convicting the person finds that the APVMA has
2 reasonably incurred costs and expenses in taking a sample, or
3 conducting an inspection, test or analysis during the
4 investigation of the offence or agvet penalty provision; and
5 (c) the APVMA applies for an order against the person for the
6 payment of the costs and expenses.

- 7 (2) The court may order the person to pay to the APVMA, on behalf of
8 the Commonwealth, the reasonable costs and expenses that it
9 considers just and equitable in the circumstances.

10 Note: The APVMA may recover certain other expenses. See section 142.

11 **311 Subsection 160A(2) of the Code set out in the Schedule**
12 **(penalty)**

13 Repeal the penalty.

14 **312 After subsection 160A(2) of the Code set out in the**
15 **Schedule**

16 Insert:

- 17 (2A) A person commits an offence if the person contravenes
18 subsection (2).

19 Penalty: 300 penalty units.

- 20 (2B) Subsection (2) is a civil penalty provision.

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

23 **313 Subsection 161(1) of the Code set out in the Schedule**
24 **(penalty)**

25 Repeal the penalty.

26 **314 After subsection 161(1) of the Code set out in the**
27 **Schedule**

28 Insert:

- 29 (1A) A person commits an offence if the person contravenes
30 subsection (1).

31 Penalty: 300 penalty units.

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

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

4 **315 Subsection 162(11) of the Code set out in the Schedule**

5 Omit “section 52, 53, 54 or 55”, substitute “section 8H or 8J, paragraph
6 45A(1)(b) or section 47C”.

7 **316 Subsection 170A(1) of the Code set out in the Schedule**
8 **(penalty)**

9 Repeal the penalty, substitute:

10 Penalty: 50 penalty units.

11

1
2

Schedule 4—Data protection

3

Agricultural and Veterinary Chemicals Code Act 1994

4

1 Subsection 3(1) of the Code set out in the Schedule (definition of *companion animal product*)

5

6 Repeal the definition.

6

7

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

8

Insert:

9

continue, an approval or registration, has, for the purposes of
10 Part 3, the meaning given by subsection 59(6).

10

11

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

12

Insert:

13

limitation period has the meanings given by section 34M.

14

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

15

16 Repeal the definition.

16

17

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

18

Insert:

19

primary holder means:

20

(a) in relation to a primary active constituent—the holder by
21 whom, or on whose behalf, protected information was given
22 to the APVMA in respect of the constituent; or

22

23

(b) in relation to a primary chemical product—the holder by
24 whom, or on whose behalf, protected information was given
25 to the APVMA in respect of the product.

25

26

6 Subsection 3(1) of the Code set out in the Schedule (definition of *protected active constituent*)

27

28 Omit “approved”.

28

1 **7 Subsection 3(1) of the Code set out in the Schedule**
2 **(definition of *protected active constituent*)**

3 Omit “both”, substitute “each”.

4 **8 Subsection 3(1) of the Code set out in the Schedule (at the**
5 **end of the definition of *protected active constituent*)**

6 Add:

7 ; (c) the constituent is approved under Part 2.

8 **9 Subsection 3(1) of the Code set out in the Schedule**
9 **(definition of *protected chemical product*)**

10 Omit “registered”.

11 **10 Subsection 3(1) of the Code set out in the Schedule**
12 **(definition of *protected chemical product*)**

13 Omit “both”, substitute “each”.

14 **11 Subsection 3(1) of the Code set out in the Schedule (after**
15 **paragraph (b) of the definition of *protected chemical***
16 ***product*)**

17 Insert:

18 ; (c) the product is registered under Part 2.

19 **12 Subsection 3(1) of the Code set out in the Schedule**
20 **(definition of *protected chemical product*)**

21 Omit all the words after paragraph (b).

22 **13 Subsection 3(1) of the Code set out in the Schedule**
23 **(definition of *protected information*)**

24 Repeal the definition, substitute:

25 *protected information* means information or results given to the
26 APVMA as required under paragraph 32(1)(b) or 33(1)(a) or (c), or
27 subparagraph 159(1)(d)(i), (ii) or (iii), that:

28 (a) have been obtained because of a trial or laboratory
29 experiment; and

30 (b) relate to:

31 (i) an active constituent that has been approved; or

1 (ii) a chemical product that has been registered.

2 **14 Subsection 3(1) of the Code set out in the Schedule**
3 **(definition of *protection period*)**

4 Repeal the definition, substitute:

5 *protection period*, in relation to protected information, means the
6 period that:

- 7 (a) begins when the information is first given to the APVMA in
8 relation to a reconsideration; and
9 (b) ends 8 years after the APVMA makes its decision on the
10 reconsideration.

11 **15 Subsection 3(1) of the Code set out in the Schedule**
12 **(definition of *secondary applicant*)**

13 Repeal the definition.

14 **16 Subsection 3(1) of the Code set out in the Schedule**

15 Insert:

16 *secondary holder*, in relation to a secondary active constituent for
17 a proposed or existing chemical product, means:

- 18 (a) if the APVMA is considering an application for the approval
19 of that constituent—the person who made the application; or
20 (b) if the APVMA has reconsidered or is reconsidering the
21 approval of that constituent:
22 (i) the person entered in the Record as the holder of the
23 approval; or
24 (ii) if the holder was an individual who has died or is an
25 individual whose affairs are being lawfully administered
26 by another person—the legal personal representative of
27 the individual or the person administering the
28 individual's affairs; or
29 (iii) if the holder was a body corporate—a successor in law
30 of the body corporate.

31 **17 Subsection 3(1) of the Code set out in the Schedule**

32 Insert:

1 **secondary holder**, in relation to a secondary chemical product,
2 means:

- 3 (a) if the APVMA is considering an application for the
4 registration of that product—the person who made the
5 application; or
6 (b) if the APVMA has reconsidered or is reconsidering the
7 registration of that product:
8 (i) the person entered in the Register as the holder of the
9 registration; or
10 (ii) if the holder was an individual who has died or is an
11 individual whose affairs are being lawfully administered
12 by another person—the legal personal representative of
13 the individual or the person administering the
14 individual’s affairs; or
15 (iii) if the holder was a body corporate—a successor in law
16 of the body corporate.

17 **18 Section 34B of the Code set out in the Schedule**

18 Repeal the section, substitute:

19 **34F Explanation of Division**

- 20 (1) This Division limits the use the APVMA can make of information
21 given to it:
22 (a) in connection with an application under section 10 or 27; or
23 (b) under section 161.
24 (2) Section 34G sets out general rules about the use of information.
25 (3) Section 34H provides that a breach of the rules does not affect the
26 validity of the APVMA’s actions.
27 (4) Sections 34J, 34K and 34L set out exceptions to the general rules.
28 (5) Section 34M sets out limitation periods for certain information.

29 **19 Subdivision B of Division 4A of Part 2 of the Code set out
30 in the Schedule (heading)**

31 Repeal the heading, substitute:

1 **Subdivision B—General rules**

2 **20 Section 34C of the Code set out in the Schedule (heading)**

3 Repeal the heading, substitute:

4 **34G General rules**

5 **21 Subsection 34C(1) of the Code set out in the Schedule**

6 Repeal the subsection, substitute:

- 7 (1) The APVMA must not use the following information to assess or
8 make a decision on an application made under section 10 or 27:
9 (a) information given to the APVMA in connection with another
10 application made under section 10 or 27 by the applicant for
11 the other application;
12 (b) information given under section 161.

- 13 (1A) The APVMA must not use the following information to vary
14 relevant particulars or conditions under section 26C, 29A or 29G
15 or reconsider an approval or registration under Division 4 of Part 2:
16 (a) information given to the APVMA in connection with an
17 application made under section 10 or 27 by the applicant for
18 the application;
19 (b) information given under section 161.

- 20 (1B) For the purposes of subsections (1) and (1A), the use of
21 information includes the following:
22 (a) applying a decision made, or a conclusion reached, based on
23 the information;
24 (b) the use of knowledge or understanding gained from the
25 information.

26 **22 After subsection 34C(2) of the Code set out in the**
27 **Schedule**

28 Insert:

- 29 (3) A person or body consulted under section 8 or 8A of the
30 *Agricultural and Veterinary Chemicals (Administration) Act 1992*
31 must not, for the purposes of providing information or advice in
32 relation to an application or reconsideration, use information that

1 the APVMA must not use in determining the application or
2 reconsidering the approval or registration.

3 **23 Before subsection 34C(3) of the Code set out in the**
4 **Schedule**

5 Insert:

6 **34H Contraventions of general rules**

7 **24 Subsection 34C(3) of the Code set out in the Schedule**

8 Renumber as subsection (1).

9 **25 Subsection 34C(3) of the Code set out in the Schedule**

10 Omit all the words after “contravention of”, substitute “section 34G to
11 determine an application, reconsider an approval or registration or vary
12 relevant particulars or conditions does not affect the validity of the
13 determination, the decision on the reconsideration or the relevant
14 particulars or conditions”.

15 **26 Subsection 34C(4) of the Code set out in the Schedule**

16 Renumber as subsection (2).

17 **27 Subsection 34C(4) of the Code set out in the Schedule**

18 Omit “subsection (1)”, substitute “section 34G”.

19 **28 Subparagraph 34C(4)(c)(i) of the Code set out in the**
20 **Schedule**

21 Repeal the subparagraph.

22 **29 Subdivisions C, D and E of Division 4A of Part 2 of the**
23 **Code set out in the Schedule**

24 Repeal the Subdivisions, substitute:

25 **Subdivision C—Exceptions**

26 **34J Consent, public interest etc.**

27 (1) Section 34G does not prevent the APVMA from using information
28 if a condition in this section is met.

1 *Consent to use*

2 (2) One condition is that the authorising party gives written consent to
3 the use of the information. This condition is met even if the
4 authorising party:

- 5 (a) later states that it has not consented; or
6 (b) withdraws the consent (whether before or after the APVMA
7 is given the consent).

8 Note: Chapter 7 of the *Criminal Code* creates offences relating to false and
9 misleading statements and forgery.

10 *Use in the public interest*

11 (3) Another condition is that the APVMA is satisfied, having regard to
12 the criteria (if any) prescribed by the regulations, that the use of the
13 information is in the public interest.

14 Note: Section 34K sets out other rules that are relevant to the exception
15 based on this condition.

16 *Information does not favour the applicant or holder*

17 (4) Another condition is that:

- 18 (a) the information relates to:
19 (i) a proposed or existing approval of an active constituent
20 for a proposed or existing chemical product; or
21 (ii) a proposed or existing registration of a proposed or
22 existing chemical product; and
23 (b) the information shows that the constituent or product may not
24 meet the safety criteria, the trade criteria or the efficacy
25 criteria.

26 *Information given again*

27 (5) Another condition is that the information:

- 28 (a) is given to the APVMA in connection with an application
29 and is used to assess or make a decision on the application; or
30 (b) is given to the APVMA in connection with the
31 reconsideration, under Division 4 of Part 2, of an approval or
32 registration and is used to reconsider the approval or
33 registration.

Protected information whose protection period has expired

- 1
2 (5A) Another condition is that the information is protected information
3 whose protection period has expired.

4 Note: For *protected information* and *protection period*, see subsection 3(1)
5 and Part 3.

6 *Information is publicly available*

- 7 (5B) Another condition is that the information is publicly available.

8 *Information given to APVMA in connection with certain*
9 *applications*

- 10 (6) Another condition is that the information was given in connection
11 with:

- 12 (a) an application for approval, as an active constituent for a
13 chemical product, of a substance that was a previously
14 endorsed active constituent on the commencement of this
15 Division; or
16 (b) an application for the variation of the relevant particulars or
17 conditions of the approval of an active constituent for a
18 chemical product.

19 **34K Further rules about public interest exception**

- 20 (1) This section applies if the APVMA is satisfied under subsection
21 34J(3) that it is in the public interest to use information.
- 22 (2) The APVMA must, as soon as practicable, give written notice of
23 its satisfaction to:
- 24 (a) the applicant for the application in connection with which the
25 information was given; and
26 (b) if the applicant is not the authorising party for the
27 information—the person whom the APVMA believes is the
28 authorising party.
- 29 (3) The APVMA must not use the information before the end of 28
30 days after the day on which the notice is given.
- 31 (4) However, subsection (3) does not apply if:
- 32 (a) the APVMA believes it is necessary to use the information
33 before the end of 28 days after the notice is given, to prevent

- 1 imminent risk to persons of death, serious injury or serious
 2 illness; and
 3 (b) states that belief in the notice.

4 **34L Information with limitation periods**

5 Section 34G does not prevent the APVMA from using information
 6 to which a limitation period applies:

- 7 (a) after the limitation period has ended; or
 8 (b) to reconsider an approval or registration under Division 4 of
 9 Part 2 if the decision on the reconsideration is made after the
 10 limitation period has ended.

11 Note: Information given in connection with an application made under
 12 section 10 or 27 has a limitation period only if the information was
 13 relied on to:
 14 (a) approve or register the constituent, product or label concerned; or
 15 (b) vary the relevant particulars or conditions concerned.
 16 Information that does not have a limitation period is protected
 17 indefinitely.

18 **34M Limitation periods**

- 19 (1) The table below sets out *limitation periods* for certain information
 20 given in connection with an application made under section 10 or
 21 27:
 22

Limitation periods for certain information given in connection with an application made under section 10 or 27

	The limitation period for:	ends:	after:
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:	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

	The limitation period for:	ends:	after:
	(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 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	5 years	the relevant particulars or

Limitation periods for certain information given in connection with an application made under section 10 or 27

	The limitation period for:	ends:	after:
	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		conditions are varied.
6	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 a veterinary chemical product; or (ii) the approval of a label for a container for a veterinary chemical product; and (b) relied on to vary the relevant particulars or conditions	3 years	the relevant particulars or conditions are varied.

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(2) The table below sets out *limitation periods* for information given under section 161:

Limitation periods for information given under section 161

	The limitation period for:	ends:	after:
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.

5

6

7

30 Paragraph 57(2)(b) of the Code set out in the Schedule

Repeal the paragraph, substitute:

-
- 1 (b) the information was obtained because of a trial or laboratory
2 experiment and any of the following apply:
- 3 (i) the information is of a kind mentioned in paragraph
4 32(1)(b) and was given to the APVMA in response to a
5 notice under that section;
- 6 (ii) the trial or laboratory experiment was conducted in
7 response to a notice under section 33;
- 8 (iii) the information was given to the APVMA in response to
9 a notice under subsection 159(1) for the purposes of
10 subparagraph 159(1)(d)(i), (ii) or (iii).

11 **31 Subsection 57(2) of the Code set out in the Schedule**

12 Omit all the words after paragraph (b).

13 **32 Subsection 57(3) of the Code set out in the Schedule**

14 Repeal the subsection.

15 **33 Section 58 of the Code set out in the Schedule**

16 Repeal the section.

17 **34 Subsection 59(1) of the Code set out in the Schedule**

18 Omit all the words from and including “Subject to subsections (1A) and
19 (2)” to and including “protected information”, substitute “If protected
20 information”.

21 **35 Paragraph 59(1)(c) of the Code set out in the Schedule**

22 Renumber as paragraph (a).

23 **36 Paragraph 59(1)(d) of the Code set out in the Schedule**

24 Renumber as paragraph (b).

25 **37 At the end of subsection 59(1) of the Code set out in the
26 Schedule**

27 Add:

- 28 Note: In this Part:
- 29 (a) *approve* does not include re-approve; and
- 30 (b) *register* does not include re-register.
- 31 See the definitions of *approve* and *register* in subsection 3(1).

1 **38 Subsection 59(1A) of the Code set out in the Schedule**

2 Repeal the subsection.

3 **39 Subsection 59(2) of the Code set out in the Schedule**

4 Omit “applicant” (wherever occurring), substitute “holder”.

5 **40 At the end of subsection 59(2) of the Code set out in the**
6 **Schedule**

7 Add:

8 ; or (e) the information was previously given to the APVMA other
9 than as protected information and neither of the following
10 applies:

- 11 (i) the information was given only in response to an
12 invitation under paragraph 8S(2)(e) in relation to an
13 application for re-approval of the primary active
14 constituent or re-registration of the primary chemical
15 product;
- 16 (ii) Division 4A of Part 2 limits the use of the information;
17 or
- 18 (f) the information shows that the secondary active constituent
19 or secondary chemical product may not meet the safety
20 criteria, the trade criteria or the efficacy criteria; or
- 21 (g) the information is publicly available.

22 **41 Paragraph 59(3)(a) of the Code set out in the Schedule**

23 Omit “applicant” (wherever occurring), substitute “holder”.

24 **42 Subsection 59(4) of the Code set out in the Schedule**

25 Repeal the subsection.

26 **43 Paragraph 59(5)(a) of the Code set out in the Schedule**

27 Omit “applicant”, substitute “holder”.

28 **44 At the end of section 59 of the Code set out in the**
29 **Schedule**

30 Add:

31 (6) In this Part, *continue* an approval or registration means:

- 1 (a) vary the relevant particulars or conditions of the approval or
2 registration, other than under Division 3A of Part 2
3 (re-approving and re-registering); or
4 (b) affirm the approval or registration under Division 4 of Part 2
5 (reconsidering approvals and registrations).

6 **45 Section 60 of the Code set out in the Schedule (heading)**

7 Repeal the heading, substitute:

8 **60 APVMA to notify holders**

9 **46 Subsection 60(2) of the Code set out in the Schedule**

10 Omit “secondary applicant” (first occurring), substitute “primary holder
11 or each primary holder and to the secondary holder”.

12 **47 Paragraph 60(2)(b) of the Code set out in the Schedule**

13 Omit “, (b) or (d)”, substitute “or (b)”.

14 **48 Paragraph 60(2)(c) of the Code set out in the Schedule**

15 Repeal the paragraph, substitute:

- 16 (c) requesting the notice recipient to tell the APVMA, before the
17 day stated in the notice, which must be within 60 days after
18 the notice is given, whether the notice recipient wants the
19 APVMA to take further action in respect of the information
20 under this section.

21 **49 Subsection 60(3) of the Code set out in the Schedule**

22 Omit “the secondary applicant” (first occurring), substitute “a notice
23 recipient”.

24 **50 Subsection 60(3) of the Code set out in the Schedule**

25 After “the APVMA must”, insert “, within 14 days,”.

26 **51 Subsection 60(3) of the Code set out in the Schedule**

27 Omit “primary applicant” (first and second occurring), substitute
28 “primary holder”.

29 **52 Subsection 60(3) of the Code set out in the Schedule**

1 Omit “secondary applicant” (second occurring), substitute “secondary
2 holder”.

3 **53 Paragraph 60(3)(a) of the Code set out in the Schedule**

4 Omit “applicant” (wherever occurring), substitute “holder”.

5 **54 Paragraph 60(3)(b) of the Code set out in the Schedule**

6 Omit “applicant”, substitute “holder”.

7 **55 Paragraph 60(3)(b) of the Code set out in the Schedule**

8 Omit “, (b) or (d)”, substitute “or (b)”.

9 **56 Paragraphs 60(3)(c) and (e) of the Code set out in the**
10 **Schedule**

11 Omit “applicant” (wherever occurring), substitute “holder”.

12 **57 Section 61 of the Code set out in the Schedule (heading)**

13 Repeal the heading, substitute:

14 **61 Primary holder to notify secondary holder**

15 **58 Subsection 61(1) of the Code set out in the Schedule**

16 Omit “As soon as practicable”, substitute “Within 28 days”.

17 **59 Subsection 61(1) of the Code set out in the Schedule**

18 Omit “applicant” (wherever occurring), substitute “holder”.

19 **60 Subsection 61(1) of the Code set out in the Schedule**

20 Omit “section 60”, substitute “subsection 60(3)”.

21 **61 Section 62 of the Code set out in the Schedule**

22 Omit “applicant” (wherever occurring), substitute “holder”.

23 **62 Paragraph 62(1)(b) of the Code set out in the Schedule**

24 Omit “applicants”, substitute “holders”.

25 **63 Subsection 62(1) of the Code set out in the Schedule**

26 Omit “and the secondary”, substitute “and any”.

1 **64 Section 69 of the Code set out in the Schedule**

2 Omit “applicant” (wherever occurring), substitute “holder”.

3 **65 Section 70 of the Code set out in the Schedule**

4 Omit “applicant” (wherever occurring), substitute “holder”.

5 **66 Subsection 70(1) of the Code set out in the Schedule**

6 Omit “applicants”, substitute “holders”.

7 **67 Subsection 71(1) of the Code set out in the Schedule**

8 Omit “section”, substitute “Division”.

9 **68 Section 169 of the Code set out in the Schedule**

10 Before “When”, insert “(1)”.

11 **69 At the end of section 169 of the Code set out in the**
12 **Schedule**

13 Add:

14 (2) Subsection (1) is not limited by section 14B, Division 4A of Part 2
15 or Part 3.
16

1 **Schedule 5—Arrangements for collecting levy**
2

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

5 **1 Subsection 3(1)**

6 Insert:

7 *Agency* has the same meaning as in the *Financial Management and*
8 *Accountability Act 1997*.

9 **2 Subsection 3(1)**

10 Insert:

11 *collecting agency* means:

- 12 (a) if an Agency is specified by instrument under section 3A to
13 be the collecting agency—the Agency; or
14 (b) if paragraph (a) does not apply—the APVMA.

15 **3 Subsection 3(1) (definition of *notional wholesale value*)**

16 Omit “APVMA”, substitute “collecting agency”.

17 **4 After section 3**

18 Insert:

19 **3A Minister may specify collecting agency**

- 20 (1) The Minister may, by written instrument, specify an Agency to be
21 the collecting agency.
- 22 (2) Before making an instrument specifying an Agency, the Minister
23 must get the written agreement of the Minister responsible for the
24 Agency.
- 25 (3) An instrument under subsection (1) is not a legislative instrument.

26 **5 Section 6 (heading)**

27 Repeal the heading, substitute:

1 **6 Power of collecting agency to make certain determinations**

2 **6 Subsection 6(1)**

3 Omit “APVMA”, substitute “collecting agency”.

4 **7 Subsection 14(2)**

5 Omit “APVMA”, substitute “collecting agency”.

6 **8 Paragraph 14A(1)(a)**

7 Omit “APVMA”, substitute “collecting agency”.

8 **9 Subsection 14A(3)**

9 Omit “APVMA”, substitute “collecting agency”.

10 **10 Subsection 15(1)**

11 Omit “APVMA” (wherever occurring), substitute “collecting agency”.

12 **11 Subsection 15(3)**

13 Omit “APVMA” (wherever occurring), substitute “collecting agency”.

14 **12 Subsections 15(4), (5) and (6)**

15 Omit “APVMA”, substitute “collecting agency”.

16 **13 Section 16 (heading)**

17 Repeal the heading, substitute:

18 **16 Assessment of levy by collecting agency**

19 **14 Subsection 16(1)**

20 Omit “APVMA”, substitute “collecting agency”.

21 **15 Subsection 16(4)**

22 After “APVMA”, insert “or, if an Agency is specified by instrument
23 under section 3A, the Agency”.

24 **16 Subsections 16(5) and (6)**

25 Omit “APVMA”, substitute “collecting agency”.

1 **17 Subsection 16(12)**

2 Omit “APVMA by the Chief Executive Officer of the APVMA”,
3 substitute “collecting agency by the Chief Executive Officer of the
4 Agency”.

5 **18 Subsection 17(1)**

6 Omit “APVMA” (wherever occurring), substitute “collecting agency”.

7 **19 Paragraph 17(2)(a)**

8 Omit “or to an inspector”, substitute “, an Agency specified by
9 instrument under section 3A or an inspector”.

10 **20 Subsection 18(1)**

11 Omit “APVMA” (wherever occurring), substitute “collecting agency”.

12 **21 Subsections 18(3), (4), (5), (7) and (8)**

13 Omit “APVMA”, substitute “collecting agency”.

14 **22 At the end of Part 3**

15 Add:

16 **18A Reporting obligations of collecting agency**

17 (1) This section applies if an Agency is specified by instrument under
18 section 3A to be the collecting agency.

19 (2) In relation to a particular period, the Agency must notify the
20 APVMA, in writing, of the following:

21 (a) the leviable disposals of a chemical product that took place
22 during the period;

23 (b) the total leviable value (if any) in respect of the product for
24 that period and the amount of the levy (if any) that was
25 payable;

26 (c) any assessment made by the Agency as to whether any levy
27 was payable in respect of leviable disposals of the chemical
28 product during the period;

29 (d) the amounts of levy, late payment penalty or understatement
30 penalty collected by the Agency during the period;

-
- 1 (e) if the prescribed date for payment of levy falls within the
 2 period—the amounts of levy that have not been paid on or
 3 before the prescribed date;
- 4 (f) if late payment penalty or understatement penalty is payable
 5 during the period—any amounts of late payment penalty or
 6 understatement penalty that have not been paid;
- 7 (g) if the amounts of any levy, late payment penalty or
 8 understatement penalty overpaid by a person have been
 9 credited during the period against a liability of the person to
 10 pay another such amount under the Act—the amount credited
 11 and the person in relation to whom the amount was credited;
- 12 (h) if the whole or part of the liability to pay an amount of levy,
 13 late payment penalty or understatement penalty has been
 14 waived during the period—the amount that has been waived
 15 and the person in relation to whom the amount was waived;
- 16 (i) if the total amount of levy, late payment penalty or
 17 understatement penalty was rounded during the period—the
 18 amount of levy, late payment penalty or understatement
 19 penalty payable, the amount as rounded and the person in
 20 relation to whom the amount was rounded.
- 21 (3) The Agency must notify the APVMA in such form, and by such
 22 time after the end of the period, as the APVMA requires.

23 **18B APVMA may request information from collecting agency**

- 24 (1) This section applies if an Agency is specified by instrument under
 25 section 3A to be the collecting agency.
- 26 (2) The APVMA may request the collecting agency to provide any
 27 information it has acquired under this Act if the APVMA considers
 28 that the information is or may be required to enable:
- 29 (a) the APVMA to perform functions, or exercise powers, under
 30 the *Agricultural and Veterinary Chemicals (Administration)*
 31 *Act 1992* or the Agvet Code of a State or of the participating
 32 Territories; or
- 33 (b) the Chief Executive Officer of the APVMA to perform his or
 34 her functions, or exercise his or her powers, under the
 35 *Agricultural and Veterinary Chemicals (Administration) Act*
 36 *1992* or the Agvet Code of a State or of the participating
 37 Territories.

1 (3) The Agency must respond to the APVMA in such form, and by
2 such time, as the APVMA requires.

3 **23 Section 20 (heading)**

4 Repeal the heading, substitute:

5 **20 APVMA or collecting agency may require information about**
6 **disposals of chemical products**

7 **24 Subsection 20(1)**

8 After “the APVMA may”, insert “or, if a collecting agency is specified
9 by instrument under section 3A to be the collecting agency, the
10 collecting agency may”.

11 **25 Subsection 20(1)**

12 After “give to the APVMA”, insert “or the collecting agency, as the
13 case may be”.

14 **26 Subsection 20(2)**

15 Repeal the subsection, substitute:

16 (2) To avoid doubt, the APVMA may give a written notice under
17 subsection (1) even if an Agency is specified by instrument under
18 section 3A to be the collecting agency.

19 **27 Section 33 (heading)**

20 Repeal the heading, substitute:

21 **33 Administrative Appeals Tribunal may review certain decisions by**
22 **collecting agency**

23 **28 Paragraphs 33(b), (c) and (d)**

24 Omit “APVMA”, substitute “collecting agency”.

25 **29 Section 38**

26 Omit “delegate of the APVMA”, substitute “delegate of the APVMA or
27 of any other Agency”.

28 **30 Subsection 38A(1)**

1 Omit “APVMA”, substitute “collecting agency”.

2 **31 Section 38B**

3 Omit “APVMA”, substitute “collecting agency”.

4 **32 Section 38B (note)**

5 Omit “APVMA”, substitute “collecting agency”.

6 **33 Section 38C**

7 Omit “APVMA”, substitute “collecting agency”.

8 **34 After section 38C**

9 Insert:

10 **38D Costs and expenses of collecting agency**

11 If an Agency is specified by instrument under section 3A to be the
12 collecting agency, the APVMA:

13 (a) must pay the Agency for the costs and expenses incurred by
14 the Agency in relation to collecting levy, late payment
15 penalty or understatement penalty under this Act; and

16 (b) may debit the Australian Pesticides and Veterinary Medicines
17 Special Account for this purpose.

18 **38E Delegation**

19 The Chief Executive Officer of an Agency may, by writing,
20 delegate his or her power under subsection 16(12) to:

21 (a) if the Agency is the APVMA—an SES employee or acting
22 SES employee in the APVMA; or

23 (b) if the Agency is specified by instrument under section 3A to
24 be the collecting agency—an SES employee or acting SES
25 employee in the Agency.

26 **35 Subsection 39(1)**

27 After “APVMA”, insert “or, if a collecting agency is specified by
28 instrument under section 3A to be the collecting agency, the collecting
29 agency, or both,”.

30 **36 Validation of delegations**

Schedule 5 Arrangements for collecting levy

- 1 (1) If, before this item commenced:
2 (a) a member of the staff of the APVMA signed a notice of
3 assessment on behalf of the APVMA; and
4 (b) the member purported to do so as a delegate of the Chief
5 Executive Officer under subsection 16(12) of the
6 *Agricultural and Veterinary Chemical Products (Collection*
7 *of Levy) Act 1994*;
8 the member is taken to have done so as a delegate of the Chief
9 Executive Officer under that subsection.
- 10 (2) This item does not affect rights or liabilities arising between parties to
11 proceedings heard and finally determined by a court before the day this
12 item commenced.
13

1 **Schedule 6—Miscellaneous**

2 **Part 1—Miscellaneous amendments**

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

5 **1 Subsection 3(1) (definition of *prescribed date for payment*)**

6 Repeal the definition, substitute:

7 *prescribed date for payment*, in relation to any levy that is payable,
8 means:

- 9 (a) if levy is payable because of an assessment that has been
10 made—the date stated in the notice of assessment to be the
11 date by which the levy is to be paid; or
12 (b) in any other case—the next 31 December following the end
13 of the relevant financial year.

14 Note: As the levy is paid in arrears, levy might be payable in respect of a
15 chemical product whose registration has ceased.

16 **2 Subsection 3(1) (definition of *rate of levy*)**

17 Repeal the definition, substitute:

18 *rate of levy* has the meaning given by section 12C.

19 **3 Subsection 3(1) (definition of *registered*)**

20 Repeal the definition, substitute:

21 *registered*, in relation to a jurisdiction, means registered under a
22 registration law of the jurisdiction.

23 **4 Subsection 3(1) (paragraph (a) of the definition of**
24 ***registration law*)**

25 Omit “or 2A”.

26 **5 Subsection 3(1) (definition of *relevant calendar year*)**

27 Repeal the definition.

28 **6 Division 1 of Part 2**

1 Repeal the Division.

2 **7 Subsection 12C(1)**

3 Omit “(1)”.

4 **8 Subsections 12C(2) and (3)**

5 Repeal the subsections.

6 **9 Subsection 20(1)**

7 Omit “(other than section 9)”.

8 **10 Section 36 (heading)**

9 Repeal the heading, substitute:

10 **36 Records to be kept by applicants for registration of, and persons**
11 **who import or manufacture, chemical products**

12 **11 Subsection 36(1)**

13 Omit “or the renewal of registration,”, substitute “renewal of
14 registration or re-registration”.

15 **12 Subsection 39(2)**

16 Omit “11, 12 or”.

17 ***Agricultural and Veterinary Chemicals Act 1994***

18 **13 Subsection 7(4)**

19 Repeal the subsection.

20 **14 After section 8**

21 Insert:

22 **8A Application of legislative instruments in the participating**
23 **Territories**

24 Legislative instruments in force for the time being under the
25 *Agricultural and Veterinary Chemicals Code Act 1994* apply as
26 legislative instruments in force for the purposes of the Agvet Code
27 of the participating Territories.

1 **15 Subsection 23(1)**

2 Omit “may determine”, substitute “may, by legislative instrument,
3 determine”.

4 **16 Subsection 23(1)**

5 Omit “written”.

6 **17 Subsection 23(3)**

7 Repeal the subsection, substitute:

8 (3) Despite subsection 44(1) of the *Legislative Instruments Act 2003*,
9 section 42 (disallowance) of that Act applies to a legislative
10 instrument made under subsection (1) of this section.

11 ***Agricultural and Veterinary Chemicals (Administration) Act***
12 ***1992***

13 **18 Paragraph 7(1A)(b)**

14 Omit “registered listed chemical products,”.

15 **19 Subsection 8(1)**

16 Omit “persons, bodies or Governments”, substitute “persons or bodies”.

17 **20 After paragraph 8(1)(b)**

18 Insert:

19 (ba) a national regulatory authority of a foreign country that has
20 national responsibility relating to the evaluation, registration
21 or control of agricultural or veterinary chemical products;
22 and

23 **21 Subsection 8(1A)**

24 Omit “person, body or Government”, substitute “person or body”.

25 **22 Subsection 8A(2)**

26 Omit “or listed registration” (wherever occurring).

27 **23 Paragraph 55(2)(a)**

28 Omit “goals”, substitute “objectives”.

1 **24 At the end of subsection 55(2)**

2 Add:
3 ; and (c) include such other information (if any) as is prescribed by the
4 regulations.

5 **25 Paragraph 61(2)(c)**

6 Repeal the paragraph, substitute:
7 (c) an evaluation of its overall performance during that year
8 against:
9 (i) the performance indicators set out in the corporate plan
10 applicable to the period and the annual operational plan;
11 and
12 (ii) the performance indicators (if any) prescribed by the
13 regulations for the purposes of this subparagraph;

14 **26 Subparagraph 69B(1)(a)(ii)**

15 Omit “a registered listed chemical product,”.

16 **27 Section 69EZB**

17 Omit “subsection 58(1)”, insert “subsection 6C(1)”.

18 **28 Paragraph 69H(1)(b)**

19 Omit “, a registered listed chemical product”.

20 **29 Paragraph 69H(1)(e)**

21 Omit “listed registration,” (wherever occurring).

22 **30 Paragraph 69H(2)(ba)**

23 Repeal the paragraph.

24 **31 Subsection 69H(2)**

25 Omit “granted listed registration to the product,”.

26 **32 Subparagraph 70(1)(b)(iii)**

27 Omit “, a registered listed chemical product”.

28 **33 After section 71**

29 Insert:

1 **72 Review of Agvet Scheme every 10 years**

- 2 (1) The Minister must ensure that, at least every 10 years, there is a
3 review of the operation of the following Acts, and any instruments
4 made under those Acts:
- 5 (a) the *Agricultural and Veterinary Chemical Products*
6 *(Collection of Levy) Act 1994*;
 - 7 (b) the *Agricultural and Veterinary Chemical Products Levy*
8 *Imposition (Customs) Act 1994*;
 - 9 (c) the *Agricultural and Veterinary Chemical Products Levy*
10 *Imposition (Excise) Act 1994*;
 - 11 (d) the *Agricultural and Veterinary Chemical Products Levy*
12 *Imposition (General) Act 1994*;
 - 13 (e) the *Agricultural and Veterinary Chemicals Act 1994*;
 - 14 (f) the *Agricultural and Veterinary Chemicals (Administration)*
15 *Act 1992*;
 - 16 (g) the *Agricultural and Veterinary Chemicals Code Act 1994*.
- 17 (2) The Minister may include any related matter in the review.
- 18 (3) At least one of the persons conducting the review must not be
19 otherwise appointed, employed or engaged by the Commonwealth.
- 20 (4) The review must include a request for, and consideration of,
21 submissions from members of the public.
- 22 (5) The Minister must cause a written report of the review to be laid
23 before each House of the Parliament within 15 sitting days of the
24 House after:
- 25 (a) for the first review under this section—the tenth anniversary
26 of the commencement of this section; and
 - 27 (b) for later reviews—the tenth anniversary of the day on which
28 the written report of the immediately preceding review was
29 laid before each House of the Parliament.

30 **34 Section 77**

31 Repeal the section.

32 ***Agricultural and Veterinary Chemicals Code Act 1994***

33 **35 Subsection 7(1)**

1 Omit “signed writing”, substitute “legislative instrument”.

2 **36 Subsections 7(3) to (5)**

3 Repeal the subsections, substitute:

4 (3) Despite subsection 44(1) of the *Legislative Instruments Act 2003*,
5 section 42 of that Act applies to a legislative instrument made
6 under subsection (1) of this section.

7 **37 Paragraph 7(6)(b)**

8 Repeal the paragraph, substitute:

9 (b) the fact that section 42 of the *Legislative Instruments Act*
10 *2003* would apply in relation to the order because of
11 subsection (3) of this section.

12 **38 Section 9**

13 Repeal the section.

14 **39 Schedule (table of contents)**

15 Repeal the table of contents.

16 **40 Schedule (list of terms defined by section 3)**

17 Repeal the list.

18 **41 Subsection 3(1) of the Code set out in the Schedule**

19 Omit “(1)”.

20 **42 Subsection 3(1) of the Code set out in the Schedule**
21 **(definition of *material safety data sheet*)**

22 Repeal the definition.

23 **43 Subsection 3(2) of the Code set out in the Schedule**

24 Repeal the subsection.

25 **44 After section 163 of the Code set out in the Schedule**

26 Insert:

1 **163A Legislative instruments to be disallowable**

2 (1) Despite subsection 44(1) of the *Legislative Instruments Act 2003*
3 but subject to subsection (2) of this section, section 42 of that Act
4 applies to a legislative instrument made under this Code.

5 (2) However, subsection (1) does not apply to a legislative instrument
6 made under section 5B or 8B of this Code.

7 **163B Certain provisions to have effect as part of this Code**

8 If a law amends this Code, any provision of that law, or of any
9 other instrument made under that law, has effect, to the extent that
10 it deals with matters of a transitional, application or savings nature
11 relating to the amendment, as if it were part of this Code.

12 **45 Sections 173, 175, 177, 179 and 182 of the Code set out in**
13 **the Schedule**

14 Repeal the sections.
15

1 **Part 2—Transitional, application and savings**
2 **provisions**

3 **46 Definitions**

4 In this Part:

5 *agvet law* means:

- 6 (a) the Agvet Code of this, or another, jurisdiction; or
7 (b) the *Agricultural and Veterinary Chemical Products*
8 *(Collection of Levy) Act 1994*; or
9 (c) the *Agricultural and Veterinary Chemicals (Administration)*
10 *Act 1992*.

11 *commencement time* means the time when item 1 of Schedule 1 to this
12 Act commences.

13 *new Code* means the following as in force on and after the
14 commencement of this Schedule:

- 15 (a) the Code set out in the Schedule to the *Agricultural and*
16 *Veterinary Chemicals Code Act 1994*;
17 (b) the regulations made under the Code;
18 (c) any instruments made under the Code or the regulations.

19 *old Code* means the following as in force immediately before the
20 commencement of this Schedule:

- 21 (a) the Code set out in the Schedule to the *Agricultural and*
22 *Veterinary Chemicals Code Act 1994*;
23 (b) the regulations made under the Code;
24 (c) any instruments made under the Code or the regulations.

25 **47 Applications made and reconsiderations commenced**

26 (1) For the first 12 months after the commencement time, the old Code
27 continues to apply for the purposes of:

- 28 (a) determining an application lodged with the APVMA before
29 the commencement time; and
30 (b) completing a reconsideration begun under Division 4 of
31 Part 2 before the commencement time.

32 (2) Paragraph (1)(a) does not apply in relation to an application made under
33 section 10 or 27 of the old Code if notice under section 11A of that

1 Code in relation to the application has not been given to an approved
2 person before the commencement time.

3 (3) For the purposes of paragraph (1)(b), a reconsideration begins when the
4 period within which a submission in relation to the reconsideration must
5 be given to the APVMA under paragraph 32(1)(b) or 32(2)(c) of the old
6 Code ends.

7 **48 Saving of regulations and other instruments**

8 (1) If:

- 9 (a) regulations (the *existing regulations*) were made under a
10 provision of the old Code; and
11 (b) a provision (the *corresponding provision*) of the new Code
12 provides for regulations to be made for the same, or
13 substantially the same, purpose;

14 the existing regulations have effect, to the extent that they could have
15 been made under the corresponding provision, as if they were so made.

16 (2) If:

- 17 (a) an instrument other than a regulation (the *existing*
18 *instrument*) was made under a provision of the old Code; and
19 (b) a provision (the *corresponding provision*) of the new Code
20 provides for an instrument to be made for the same, or
21 substantially the same, purpose;

22 the existing instrument has effect, to the extent that it could have been
23 made under the corresponding provision, as if it were so made.

24 **49 Saving of approvals, registrations, permits and licences**

25 (1) Despite the amendments made by this Act, an approval, registration,
26 permit or licence that was in force under the old Code immediately
27 before the commencement time continues in force on and after that time
28 as if it had been given, made or issued under the new Code.

29 (2) This item does not prevent:

- 30 (a) the suspension or cancellation of an approval, registration,
31 permit or licence; or
32 (b) the variation of the relevant particulars or conditions of an
33 approval or registration; or
34 (c) the variation of the conditions of a licence or permit.

1 **50 Existing conditions continue to apply**

2 To avoid doubt, the amendments made by this Act do not remove or
3 invalidate a condition of an approval, registration, permit or licence that
4 was imposed by the APVMA under the old Code.

5 **51 Existing approvals and registrations must be given end
6 date etc.**

- 7 (1) This item applies to the approval of an active constituent or the
8 registration of a chemical product (other than a listed registration), if the
9 approval or registration:
- 10 (a) was in force under the old Code immediately before the
11 commencement time; or
 - 12 (b) comes into force under the old Code, because of the
13 operation of item 47, during the first 12 months after the
14 commencement time.
- 15 (2) Within 2 years after this item commences, the APVMA must give
16 written notice to the holder:
- 17 (a) for an approval—of the date (the *end date*) the approval
18 ends; or
 - 19 (b) for a registration—of the date (the *last renewal date*) after
20 which the registration cannot be renewed under Division 6 of
21 the new Code.
- 22 (3) The end date or last renewal date, as required, must:
- 23 (a) be worked out in accordance with the method prescribed by
24 the regulations (if any); and
 - 25 (b) be the last day of a calendar month:
 - 26 (i) at least 7 years after the constituent or product was
27 approved or registered; and
 - 28 (ii) not earlier than 6 months, or later than 15 years, after
29 the commencement time; and
 - 30 (c) be entered in the Record, Register or relevant APVMA file,
31 as required.
- 32 (4) Despite subparagraph (3)(b)(i), the end date for an approval may be less
33 than 7 years after the commencement time if the APVMA believes that
34 it is necessary to provide for the approval to end at the same time as
35 another approval of the active constituent.

- 1 (5) Despite subparagraph (3)(b)(i), the last renewal date for a registration
2 may be less than 7 years after the commencement time if the APVMA
3 believes that it is necessary to provide for the date to be the same as the
4 last renewal date for the registration of another chemical product that
5 contains one or more of the same active constituents.
- 6 (6) Paragraph (3)(b) does not apply if the approval or registration is subject
7 to the condition that it remains in force only for a stated period of not
8 more than 1 year (see subsection 23(2) of the old Code).

9 **52 Saving protection for information given under Division 4A**
10 **of Part 2 of the old Code**

- 11 (1) Despite the amendments made by this Act, Division 4A of Part 2 of the
12 old Code continues to apply, after the commencement time, in relation
13 to the following information given as mentioned in section 34C of the
14 old Code:
- 15 (a) information given, whether before or after the
16 commencement time, in connection with an application
17 lodged before the commencement time;
- 18 (b) any other information given before the commencement time.
- 19 (2) Paragraph (1)(a) does not apply in relation to an application made under
20 section 10 or 27 of the old Code if notice under section 11A of that
21 Code in relation to the application has not been given to an approved
22 person before the commencement time.
- 23 (3) For the purposes of its operation after the commencement time,
24 Division 4A of Part 2 of the old Code applies with such modifications
25 as are necessary to provide for its operation to be equivalent to its
26 operation immediately before the commencement time.

27 **53 Saving protection for information given under Part 3 of the**
28 **old Code**

- 29 (1) Despite the amendments made by this Act, Part 3 of the old Code
30 continues to apply after the commencement time in relation to
31 information given before the commencement time as mentioned in
32 subsection 59(1) of the old Code.
- 33 (2) For the purposes of its operation after the commencement time, Part 3
34 of the old Code applies with such modifications as are necessary to

1 provide for its operation to be equivalent to its operation immediately
2 before the commencement time.

3 **54 Cancellation of permits and licences for convictions etc.**

4 Paragraphs 119(4)(b) and 127(1)(a) of the new Code apply only in
5 relation to a permit or licence that is issued on or after the
6 commencement time.

7 **55 Time for bringing proceedings**

8 Section 147 of the new Code applies only in relation to acts or
9 omissions that occur on or after the commencement time.

10 **56 Recovery of costs**

11 Section 149A of the new Code applies only in relation to acts or
12 omissions that occur on or after the commencement time.

13 **57 Regulations for this Part**

14 The Governor-General may make regulations prescribing matters:

- 15 (a) required or permitted by this Part to be prescribed; or
16 (b) necessary or convenient to be prescribed for carrying out or
17 giving effect to this Part.

18 **58 Regulations may deal with transitional, application and
19 savings matters**

- 20 (1) The regulations may deal with matters of a transitional, application or
21 savings nature relating to the amendments made by this Act.
- 22 (2) Regulations made for the purposes of subitem (1) have effect despite
23 anything else in this Part.
- 24 (3) Despite subsection 12(2) of the *Legislative Instruments Act 2003* but
25 subject to subitem (4), regulations made for the purposes of subitem (1)
26 may be expressed to take effect from a date before the regulations are
27 registered under that Act.
- 28 (4) If:
- 29 (a) regulations are expressed to take effect from a date (the
30 **registration date**) before the regulations are registered under
31 the *Legislative Instruments Act 2003*; and
32 (b) a person engaged in conduct before the registration date; and
-

1 (c) but for the retrospective effect of the regulations, the conduct
2 would not have contravened a provision of the agvet law;
3 then a court must not convict the person of an offence, or order the
4 person to pay a pecuniary penalty, in relation to the conduct on the
5 grounds that it contravened that provision.

6 **59 Regulations may end reconsiderations**

- 7 (1) The regulations may provide for one or more reconsiderations begun
8 under Division 4 of Part 2 of the old Code to end 12 months after the
9 commencement time if they have not already done so.
- 10 (2) A regulation under subitem (1) must not be made after that period of 12
11 months.
- 12 (3) If a reconsideration ends by force of a regulation made under
13 subitem (1), the decision on the reconsideration is taken to be a decision
14 to affirm the approval or registration concerned.