



Australian Government
**Australian Pesticides and
Veterinary Medicines Authority**

26 October 2018

Senator Barry O'Sullivan
Chair
Senate Rural and Regional Affairs and Transport Legislation Committee
PO Box 6100
Parliament House
CANBERRA ACT

Dear Senator

Re: Legal advice pertaining to the maintenance of a Canberra Satellite Office of the APVMA

I refer to the Committee's questions at the recent Senate Estimates hearing about my decision to retain a satellite office of the APVMA in Canberra, in addition to the primary office located in Armidale. In particular, the Committee queried whether I had sought legal advice as part of my consideration of the issue and, if so, could I provide the Committee with a copy of that advice.

During the hearing, I confirmed that I had received legal advice on this issue, but indicated that I needed to consult with my General Counsel in relation to the release of a copy of the advice. I have done this.

The Australian Government Solicitor has previously advised me that it is longstanding practice of successive governments not to disclose privileged legal advice.

That being said, I recognise the interest of the Committee in this matter and the interest of some members of the public. Notwithstanding the general approach to the release of legal advice, I have decided to provide a summary of the legal advice to the Committee (attached).

Yours sincerely

Dr Chris Parker
Chief Executive Officer



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From Mark Henry	Date 20 June 2018
To Dr Chris Parker, CEO	Organisation Australian Pesticides and Veterinary Medicines Authority
Copy to Dwayne Currie, General Counsel and Senior Director, Legal and Compliance Program	Organisation Australian Pesticides and Veterinary Medicines Authority

Our Ref MSH:7580045

Dear Dr Parker

Australian Pesticides and Veterinary Medicines Authority – APGA Act advice

Instructions

1. You have asked us to consider the policy requirement for the Australian Pesticides and Veterinary Medicines Authority (**APVMA**) to relocate to Armidale and whether the APVMA may retain a Canberra Office.

Summary of Advice

- 1.1 The APVMA is to relocate its regulatory and corporate operations to Armidale, New South Wales. There is nothing to preclude the APVMA from also operating an office in Canberra to the extent that it is necessary to perform its legislative functions, provided in doing so it does not unnecessarily frustrate the policy objective set out in the order made under section 22(1) of the *Public Governance, Performance and Accountability Act 2013 (PGPA Act)*
- 1.2 The APVMA should prepare a policy which governs the establishment and operation of the Canberra Office including details of the positions/officers who will be located there.
- 1.3 The APVMA should inform its Responsible Minister and the Minister for Finance of its decision.

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- 1.4 There are examples of other statutory authorities with a number of offices throughout Australia established for the purposed of achieving their statutory functions.

Background

The APVMA is the independent statutory authority responsible for regulating pesticides and veterinary medicines proposed for supply and use in Australia.

- 1.5 The APVMA is part of the Agriculture and Water Resources portfolio. It is established under the *Agricultural and Veterinary Chemicals (Administration) Act 1992 (Cth) (AVCA Act)*,¹ and administers a series of Commonwealths acts and regulations.

- 1.1 The APVMA is a corporate Commonwealth entity under the **PGPA Act**.²

- 1.2 The Object of the APVMA is set out in section 3 of the AVCA Act and '*...is to establish a national registration authority to administer such laws of the Commonwealth or of the States and Territories relating to agricultural and veterinary chemical products as confer functions and powers on the Authority*'(**Object**).

- 1.3 As part of an election commitment to create a stronger agriculture sector, in June 2016 the Coalition government announced that:

'within the first year of re-election, the Coalition will proceed with the relocation of the Australian Pesticides and Veterinary Medicines Authority to Armidale, New South Wales'.

- 1.4 Section 22(1) of the PGPA Act empowers the Finance Minister to make a Government Policy Order (**Order**) that specifies a policy of the Australian Government that is to apply to one or more corporate Commonwealth entities.

- 1.5 On 24 November 2016, Mathias Cormann, Minister for Finance, issued an Order under section 22(1) of the PGPA Act. This Order requires the APVMA to be located 'in a regional community' and 'within 10 kilometres by road of the main campus of a regional university that is recognised for research and teaching in the field of agricultural science'.

- 1.6 Section 4 of the Order outlines the location of corporate Commonwealth entities. Section 4 states:

4 Location of corporate Commonwealth entities

2. (1) It is a policy of the Australian Government that a corporate Commonwealth entity with agricultural policy or regulatory responsibilities is to be located:

- (a) in a regional community; and
- (b) within 10 kilometres by road of the main campus of a regional university that is recognised for research and teaching in the field of agricultural science.

- (2) In this section:

¹ Section 6.

² See, <https://apvma.gov.au/node/3191> and https://www.finance.gov.au/sites/default/files/Flipchart_11%20May%202018.v2.pdf.

regional community means a community that is not within 150 kilometres by road of Canberra or the capital city of a State.

[emphasis added]

- 2.1 Section 5 of the Order confirms that the policy applies to the APVMA.
 - 2.2 On 25 November 2016, the Deputy Prime Minister and Minister for Agriculture and Water Resources, Barnaby Joyce MP announced that APVMA will relocate its operations to Armidale in regional New South Wales in 2019.
 - 2.3 On 8 February 2017, the matter was referred to the Senate Finance and Public Administration References Committee for inquiry and report.
 - 2.4 On 27 April 2017, an interim office was opened in Armidale for the APVMA. Recently on 12 March 2018, the APVMA announced the location of its permanent office in Armidale.³
 - 2.5 The APVMA is currently located and operates in Canberra, Australian Capital Territory, but has commenced relocating to Armidale.
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³ See, news, updates and media releases here: <https://apvma.gov.au/node/20996>.