



Australian Government

Australian Government response to the Senate Rural and
Regional Affairs and Transport Legislation Committee
inquiry report:

Agricultural and Veterinary Chemicals Legislation
Amendment (Australian Pesticides and Veterinary Medicines
Authority Board and Other Improvements) Bill 2019
[Provisions]

March 2020

INTRODUCTION

On 19 September 2019, the Senate Standing Committee for the Selection of Bills referred the provisions of the Agricultural and Veterinary Chemicals Legislation Amendment (Australian Pesticides and Veterinary Medicines Authority Board and Other Improvements) Bill 2019 (the Bill) to the Senate Rural and Regional Affairs and Transport Legislation Committee (the committee) for inquiry and report by 28 November 2019.

The stated reasons for referral / principal issues for consideration, were to investigate:

- the impact of the bill on the regulation of agricultural chemical and veterinary medicine products in Australia
- the cost of establishing the governance board and who will pay for the board
- any other related matters.

The committee published its report on 28 November 2019 with one recommendation; that the Bill be passed. The committee highlighted that the measures proposed in the Bill will improve the efficiency and effectiveness of the national system for regulating agricultural and veterinary (agvet) chemical products in Australia.

The Australian Labor Party and the Australian Greens committee members provided dissenting reports.

The Liberal and Nationals Government provides the following response.

DETAILED RESPONSE TO THE RECOMMENDATIONS OF THE MAJORITY REPORT

RECOMMENDATION 1

The committee recommends the Agricultural and Veterinary Chemicals Legislation Amendment (Australian Pesticides and Veterinary Medicines Authority Board and Other Improvements) Bill 2019 be passed.

The Government welcomes and agrees with the committee's recommendation that the Bill should be passed.

The Government recognises the need to better balance regulatory effort with risk and improve farmers' and other users' access to newer and better agricultural and veterinary (agvet) chemicals. The Government also recognises the need to ensure that our regulatory agencies have effective governance arrangements, with clear accountability and transparency.

Streamlining the regulation of agricultural and veterinary (agvet) chemicals was a government commitment made in the 2015 *Agricultural Competitiveness White Paper* (the white paper). The Government remains committed to delivering the white paper initiatives.

DETAILED RESPONSE TO THE AUSTRALIAN LABOR PARTY'S DISSENTING REPORT

RECOMMENDATION 1

The Australian Labor Party urges the Morrison Government to reconsider the implementation of the Governance Board and to remove Schedule 2 of the Bill until the concerns identified by stakeholders are addressed.

The Government does not support the recommendation.

The Government recognises the need to ensure that Australia's regulatory agencies have effective and efficient governance arrangements, with clear accountability and transparency.

Rationale for a board

Establishing a board will strengthen the APVMA's governance arrangements. It will ensure the proper, efficient and effective performance of the APVMA's functions; and determine the policies, objectives and strategies to be followed by the APVMA. This includes providing oversight to help the regulator manage operational, financial and performance matters.

The APVMA is one of only a few corporate Commonwealth entities without a board. Despite its complex regulatory responsibilities—and the critical impact of its decisions on human health, animal welfare, the environment and trade—all responsibility for its strategic leadership, governance and day-to-day operations rests with the APVMA's Chief Executive Officer (CEO).

This creates a potential vulnerability and, if schedule 2 were omitted, the CEO will have to continue to manage such issues without the support and guidance that the board would provide while also being responsible for all of the agency's day-to-day regulatory decisions.

Creating a more effective and efficient regulator, through more robust governance arrangements, will deliver flow-on benefits to the APVMA's stakeholders, including improved client services, stronger operational performance and an optimised risk framework.

Schedule 2 also ceases the legislative authority underpinning the nine-member APVMA Advisory Board, which has been inactive since 2015, following the Government decision that it should be terminated. The Government is committed to put this into action. Unlike the five-member governance board (comprising four part-time members plus the CEO), the advisory board (comprising nine part-time members) has no legislative powers to direct any course of action and, despite considerable costs associated with its operation, does not serve a necessary regulatory function. Omitting schedule 2 would maintain the legislative authority for a future government to reinstate the Advisory Board—a wasteful outcome that the Government does not support.

Minister's powers to direct the board

In relation to concerns about ministerial direction powers, the board will assume responsibility for the effective performance of the APVMA's functions and determine the policies, objectives and strategies the APVMA is to follow—matters that are currently the responsibility of the CEO. It is appropriate, therefore, that existing provisions for providing a ministerial direction to the CEO be extended to the board.

There will be full transparency under the proposed legislation should the minister ever exercise the power to direct the board in the performance of its functions. These include that:

- any such direction must be in writing

- the board need not comply if a direction relates to the board's obligations as the accountable authority under the PGPA Act
- provisions are included to clarify and ensure the need for a direction prior to it being issued (by requiring the minister to first give written notice to the board stating the intention to give a direction, and provide the board with an adequate opportunity to discuss the need for the proposed direction)
- any such direction is a notifiable instrument which must be laid before each House of Parliament within 15 sitting days of giving the direction (to provide for public scrutiny of a direction)
- the APVMA annual report must include any direction given to the board and the APVMA by the minister and the impact of any direction on the APVMA.

Cost of the board

The initial costs of establishing and maintaining the board in its first year of operation (estimated at approximately \$600,000) will be funded out of the existing APVMA appropriation. Future running costs (approximately \$400,000 per year) will be met through the APVMA's cost recovery arrangements.

It is appropriate for ongoing costs of the board to be recovered from industry—it is consistent with the Australian Government Charging Framework and previous APVMA boards have been funded this way.

First-principles review

The Government believes that it is important to establish the board now to ensure that it is part of the implementation work following the comprehensive, independent review of the regulatory framework for agvet chemicals.

The Government knows, such as from the Australian National Audit Office's 2017 report into Pesticide and Veterinary Medicine Regulatory Reform, that the APVMA's past performance in implementing reforms has been mixed. The oversight provided by the APVMA board will ensure that outcomes arising from the comprehensive independent review of the agvet chemicals regulatory system will be implemented effectively, efficiently and completely.

DETAILED RESPONSE TO THE AUSTRALIAN GREENS' DISSENTING REPORT

RECOMMENDATION 1

The Australian Greens recommend that the Bill not be supported in its current form.

The Government does not support the recommendation.

The Government recognises the need to better balance regulatory effort with risk and improve farmers' and other users' access to newer and better agvet chemicals.

Rationale for a board and Minister's powers to direct the board

These points are addressed above in the response to the Australian Labor Party's dissenting report.

Priority of environmental risks

In determining objectives, strategies and policies to be followed by the APVMA, the board must have regard to section 1A of the Agvet Code. Section 1A describes how the code is to be implemented, including that the health and safety of humans, animals and the environment is the first priority of the regulatory system.

Simplifying processes for chemicals of low regulatory concern

The measure proposed is not a new concept for agvet chemical legislation. Under Part 2 of the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*, processes already exist that provide for variations with reduced information requirements and lighter-touch 'assessments', where the risks associated with a variation warrant such an approach.

The proposed measure simply extends this mechanism by amending the agvet legislation to provide the APVMA with greater flexibility to manage applications and better align regulatory effort with risk, similar to the existing pathway for variations. The Government is confident about the judgment and expertise of the APVMA staff, in identifying and managing the risks posed by agvet chemicals.

Importantly, the types of products or active constituents that would be subject to this pathway will be prescribed in a legislative instrument or regulations and will be subject to consultation and disallowance.

Outsourcing of responsibility from APVMA

As noted by the Australian Greens, this Bill does not include an earlier proposal for accredited third-party assessors. The APVMA already outsources some of its assessment work, including for efficacy and in the fields of environment and health. The Bill does not change or expand on this.

Removal of requirement to prepare an operating plan

The annual operational plan requirements largely duplicate those of the corporate plan required under section 35 of the *Public Governance, Performance and Accountability Act 2013*.

This includes identifying how the APVMA will achieve its purposes including identifying the strategies and plans to do this; setting performance measures; the requirement for ministerial approval and annual reporting against the plan.

Removing the requirement to prepare an operational plan will address administrative inefficiencies and duplication of the APVMA's reporting requirements.

Automated decision making

The Bill contains a measure that supports the use of computerised decision-making by the APVMA. This measure—where applied properly and with appropriate safeguards—will provide the APVMA with the flexibility to further streamline services, reduce costs and liberate resources.

The Senate Standing Committee for the Scrutiny of Bills also considered this measure. In the Minister for Agriculture’s response to the Scrutiny of Bills Committee, set out in Scrutiny Digest 10 of 2019, the Government agreed to incorporate further information in the explanatory material and to amend the Bill to prescribe additional safeguards to help ensure that decisions made by computers will be consistent with relevant laws.