

## Chapter 1 – New and continuing matters

This chapter lists new matters identified by the committee at its meeting on 23 June 2014, and continuing matters in relation to which the committee has received recent correspondence. The committee will write to the relevant proponent of the bill or instrument maker in relation to substantive matters seeking further information.

Matters which the committee draws to the attention of the proponent of the bill or instrument maker are raised on an advice-only basis and do not require a response.

This chapter includes the committee's consideration of 18 bills introduced between 2 and 19 June 2014, in addition to eight bills which have been previously deferred, and 51 instruments received between 31 May and 6 June 2014.

### **Agricultural and Veterinary Chemicals Legislation Amendments (Removing Re-approval and Re-registration) Bill 2014**

*Portfolio: Agriculture*

*Introduced: House of Representatives, 19 March 2014*

#### **Purpose**

1.1 The Agricultural and Veterinary Chemicals Legislation Amendments (Removing Re-approval and Re-registration) Bill 2014 (the bill) seeks to amend the *Agricultural and Veterinary Chemicals Code Act 1994* to:

- remove requirements for mandatory periodic re-registering of agricultural chemicals and veterinary medicines (together, 'agvet chemicals'), which would otherwise commence on 1 July 2014;
- prevent the expiry of active constituent approvals and prevent the application of dates after which a registration cannot be renewed;
- enable the Australian Pesticides and Veterinary Medicines Authority (APVMA) to require information to be provided about substances supplied as a chemical product;
- simplify how variations to approvals and registrations are processed by APVMA; and
- enable APVMA to charge a fee when it provides copies of documents in its possession.

1.2 The bill would also make consequential amendments to the *Agricultural and Veterinary Chemicals Code Act 1994*, *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994*, *Agricultural and Veterinary Chemicals Legislation Amendment Act 2013* and the *Food Standards Australia New Zealand Act 1991*.

## **Committee view on compatibility**

### ***Right to health and a healthy environment***

1.3 The right to health is guaranteed by article 12(1) of the International Covenant on Economic Social and Cultural Rights (ICESCR), and is fundamental to the exercise of other human rights.

1.4 The right to health is understood as the right to enjoy the highest attainable standard of physical and mental health, and to have access to adequate health care and live in conditions that promote a healthy life (including, for example, safe and healthy working conditions; access to safe drinking water; adequate sanitation; adequate supply of safe food, nutrition and housing; healthy occupational and environmental conditions; and access to health-related education and information).

1.5 The right is not, however, a right to be healthy, as such, given that individual health is not something wholly within the ability of the State to control.

1.6 Under article 2(1) of ICESCR, Australia has certain obligations in relation to the right to health. These include:

- the immediate obligation to satisfy certain minimum aspects of the right;
- the obligation not to unjustifiably take any backwards steps that might affect the right;
- the obligation to ensure the right is made available in a non-discriminatory way; and
- the obligation to take reasonable measures within its available resources to progressively secure broader enjoyment of the right.

### ***Removal of mandatory re-registration process***

1.7 As noted above, the bill seeks to remove requirements for mandatory periodic re-registering of agvet chemicals (to commence on 1 July 2014). This requirement was introduced by the *Agricultural and Veterinary Chemicals Legislation Amendment Act 2013* (the AVCLAA), which was enacted in June 2013. Prior to this, there was no mandatory requirement for agvet chemicals, once approved or registered, to be reviewed.

1.8 The explanatory memorandum (EM) for the AVCLAA stated that the re-registration requirements were intended 'to provide greater certainty to the community that chemicals approved for use in Australia are 'safe' and to 'provide better protection for both human health and the environment'.<sup>1</sup>

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1 Agricultural and Veterinary Chemicals Legislation Amendment Bill 2013, Explanatory Memorandum, p. 2.

1.9 The statement of compatibility for the bill identifies the removal of the re-registration requirement as engaging the right to health and a healthy environment. On the potential for the measure to limit this right it states:

Removing re-registration removes an opportunity for the APVMA to confirm that chemical products supplied to the market are the same as the product evaluation and registered.<sup>2</sup>

1.10 In concluding that the bill promotes the right to health, the statement of compatibility notes that the reduction in the APVMA's 'opportunity' for mandatory periodic evaluation of agvet chemicals:

...can be addressed in part by improving the ability of the APVMA to require a person who supplies an agvet chemical product in Australia to provide information...about the product they are supplying.<sup>3</sup>

1.11 However, the committee notes that the measure may be considered a limitation on the right to health, to the extent that the reduced opportunity for evaluation of substances that may be unsafe or unhealthy may lead to adverse health impacts or environmental conditions. A detailed justification for this limitation is not provided in the statement of compatibility.

1.12 The committee's usual expectation where a limitation on this right is proposed is that the statement of compatibility provides an assessment of whether the limitation is reasonable, necessary, and proportionate to achieving a legitimate objective.

**1.13 The committee therefore seeks the advice of the Minister for Agriculture as to whether the removal of the re-registration requirement for agvet chemical is compatible with the right to health and a healthy environment and in particular how the measures are:**

- **aimed at achieving a legitimate objective;**
- **there is a rational connection between the measures and the objective; and**
- **the measures are proportionate to that objective.**

***Right to a fair trial and fair hearing rights***

1.14 The right to a fair trial and fair hearing are contained in article 14 of the International Covenant on Civil and Political Rights (ICCPR). The right applies to both criminal and civil proceedings, to cases before both courts and tribunals and to military disciplinary hearings. The right is concerned with procedural fairness, and encompasses notions of equality in proceedings, the right to a public hearing and the requirement that hearings are conducted by an independent and impartial body.

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2 Explanatory Memorandum (EM), p 7.

3 EM, p. 7.

1.15 Circumstances which engage the right to a fair trial and fair hearing may also engage other rights in relation to legal proceedings contained in Article 14, such as the presumption of innocence, the right against self-incrimination and minimum guarantees in criminal proceedings.

*Reintroduction of the right not to incriminate oneself*

1.16 The bill would re-introduce the right not to incriminate oneself in the *Agricultural and Veterinary Chemicals Code Act 1994*. Specifically, the bill will introduce provisions which confirm that, where an individual is required to give information, produce a document or do any other thing, unless the individual has a reasonable excuse, there is no intention to abrogate the privilege against self-incrimination.

1.17 The statement of compatibility notes that this measure promotes the right not to incriminate oneself.<sup>4</sup> The committee notes that the rights to a fair trial and fair hearing rights protected by the ICCPR include protection against self-incrimination.

**1.18 Accordingly, the committee considers that the measure promotes the right to a fair trial.**