

Bills Digest
No. 91 2003–04

Agricultural and Veterinary Chemicals
(Administration) Amendment Bill 2004

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INFORMATION AND RESEARCH SERVICES

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Agricultural and Veterinary Chemicals (Administration)
Amendment Bill 2004

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Agricultural and Veterinary Chemicals (Administration) Amendment Bill 2004

Date Introduced: 11 February 2004

House: House of Representatives

Portfolio: Agriculture, Fisheries and Forestry

Commencement: The day after the Act receives Royal Assent

Purpose

To amend the *Agricultural and Veterinary Chemicals (Administration) Act 1992* (the Act) as part of the legislative changes required to allow ratification of the *Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade* (the Rotterdam Convention) and the *Stockholm Convention on Persistent Organic Pollutants* (the Stockholm Convention).

Background

The Act established the National Registration Authority for Agricultural and Veterinary Chemicals (the NRA). The NRA¹ is the Australian government authority responsible for the assessment and registration of pesticides and veterinary medicines and for their regulation up to and including the point of retail sale.

In 1994, Part 7A was introduced into the Act by the *Agricultural and Veterinary Chemicals (Consequential Amendments) Act 1994* to give the NRA control over the importation, manufacture and exportation of, in the language of the Act, ‘active constituent and chemical products’. Currently Part 7A contains offences regarding the illegal importation etc of prescribed active constituent and chemical products (hereafter ‘chemicals’) and accompanying enforcement powers, including search and seizure.

In July 1999, Australia signed the Rotterdam Convention. As its name implies, the emphasis of the Rotterdam Convention is the exchange of information between countries so that importing countries are fully aware of the potential hazards of importing relevant certain chemicals and pesticides. The Rotterdam Convention does not actually ban any chemicals or pesticides.

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Australia signed the Stockholm Convention in May 2001. Persistent Organic Pollutants (POPs) are chemical substances that persist in the environment, and accumulate in the food chain, thus posing significant risks to human health and the environment. Parties to the Convention must take measures to reduce or eliminate the release of POPs into the environment, including managing wastes that may contain POPs.

Essentially the Bill provides that regulations may prescribe that a person who imports, manufactures, uses, deals with or exports nominated chemicals must provide specified information to the NRA or the Department administering the Act. The requirement to provide information can include chemicals that are the subject of an international agreement that is not yet in force in Australia or even a prospective agreement that is still under negotiation. The Bill creates offences for failing to supply the required information or for supplying false or misleading information.

Main Provisions

Schedule 1

Item 1 inserts **new sections 69CA-CD**.

New section 69CA allows for regulations to prescribe that information requirements attach to specified chemicals for ‘the purposes of complying with a prescribed [international] agreement or arrangement’. A person who imports, manufactures, uses, deals with or exports relevant chemicals must provide the prescribed information to the relevant agency² in a form and within a time period to be set out in regulations. Such requirements cannot apply before the relevant agreement or arrangement comes into force in Australia.

New section 69CB mirrors **new section 69CA** except that it is ‘anticipatory’ in scope. That is, it allows for information requirements to apply to chemicals that are the subject of an international agreement that is not yet in force in Australia or are under ‘consideration’ either by an international agreement that is not yet in force in Australia or a prospective agreement that is still under negotiation.³ Where a person only manufactures, uses or deals with⁴ the relevant chemical, the information requirements only arise where the situation falls within the Commonwealth’s constitutional power with respect to trading corporations, interstate or overseas trade, Territories, or Commonwealth entities.

New section 69CC allows the administering Department or the NRA to provide other countries or relevant international organisations with information regarding importation, manufacture, use, exportation or any other dealing with chemicals which is prescribed in regulations pursuant to **new subsections 69CA(1)** or **69CB(2)**. In doing so, the Department or the NRA *may* (but is not obliged to) take into account the terms of the

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international agreement or arrangement and the interest of any person in maintaining confidentiality with respect to the movement, use etc of the chemicals in question.

New section 69CD creates two offences in relation to the information obligations under **new sections 69CA and 69CB**.

A person who fails to provide the information as required is subject to a fine of up 50 penalty units (\$5500): **new subsection 69CD(1)**.⁵ Strict liability applies to the question of whether the information is required – eg it is no excuse for a person to say that they were unaware that the information was required.

The provision of false or misleading information is subject to a fine of up 300 penalty units (\$33 000): **new subsection 69CD(3)**.⁶ Specifically, an offence occurs where a person knowingly provides false or misleading information and fails *both* to tell the agency about the relevant deficiencies and provide the correct information where he or she possesses it, or can reasonably acquire it. The fault element applying to this ‘failure’ aspect of the offence is recklessness. Presumably this is designed to place significant responsibility on the provider of information to ensure that the relevant authorities are given the most accurate information possible. Strict liability applies to the issue of the circumstances where the information is provided: eg it is no excuse that certain (false or misleading) information is provided by accident.

Item 2 substitutes a new version of **subsection 69C(1)**. Existing subsection 69C(1) allows for the making of regulations to prohibit the importation etc of chemicals when such a requirement is necessary under a specified international agreement or arrangement. The new version will allow a prohibition to apply to the ‘use...or any other dealing’ in addition to the existing situations of import, export or manufacture. Thus its width is expanded, although the *Explanatory Memorandum* to the Bill suggests the purpose of the amendment is to ‘[provide] for greater clarity of the intent of the subsection’.⁷ **Item 6** inserts a consequential amendment to existing subsection 69C(5) which extends the existing offence provisions to the use and dealing with chemicals which are the subject of regulations made under **new subsection 69C(1)**.

Item 8 inserts **new subsection 69EA(1A)** which deals with record keeping. It provides that a person who imports, exports, manufactures, uses or deals with chemicals must keep any relevant records for six years.⁸ The *Explanatory Memorandum* comments that this provision applies to records that ‘enable the Department to ascertain whether the relevant sections relating to international agreements have been complied with’.⁹ Failure to retain records accordingly is subject to a fine of 30 penalty units.

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Concluding Comments

Due to the fact this Bill is due to be debated in the House of Representatives very shortly after its introduction into Parliament, it has not been possible to research stakeholder views on the specific provisions of the Bill. However, formal consultations with stakeholders were conducted during mid-2002 regarding the proposed ratification of the Rotterdam and Stockholm Conventions. These consultations and the views of stakeholders are summarised in the respective [National Interest Analysis](#) accompanying the tabling of the Conventions before Parliament on 9 September 2003. If the summaries are accurate regarding stakeholder views, there would appear to be wide support for ratification. The main concerns seem to relate to the need for ongoing consultation with respect to implementation of the Conventions in Australia, particularly in relation to minimising costs of administration etc. During September and October 2003, the Joint Standing Committee on Treaties held a very brief inquiry into the Conventions. The resultant [report](#) recommended that ratification take place for both Conventions.

Endnotes

- 1 In 2003 the NRA made an administrative decision to change its name to the Australian Pesticides and Veterinary Medicines Authority (APVMA), but it is still referred to as the NRA in all relevant legislation.
- 2 This is defined in **new section 69EAA** as the NRA or the Department. By virtue of section 19A of the *Acts Interpretation Act 1901*, ‘the Department’ is the Department that administers the Act – in this case the Department of Agriculture, Fisheries and Forestry.
- 3 There is no indication how far advanced any bilateral or multilateral discussions would have to be to constitute ‘negotiations’ in this context.
- 4 As opposed to importing or exporting.
- 5 Corporations would be subject to a maximum penalty of 250 penalty units.
- 6 Corporations would be subject to a maximum penalty of 1 500 penalty units
- 7 P. 10.
- 8 The same requirement for record keeping applies to existing subsection 69EA(1).
- 9 P. 11.

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