



Agricultural and Veterinary Chemicals Legislation Amendment (Levy and Fees) Bill 2005

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Law and Bills Digest Section

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Agricultural and Veterinary Chemicals Legislation Amendment (Levy and Fees) Bill 2005

Date Introduced: 17 February 2005

House: House of Representatives

Portfolio: Agriculture, Fisheries and Forestry

Commencement: The principal amendments are to commence on Royal Assent. Some consequential amendments are tied to the commencement of other legislation, some of it retrospective.

Purpose

- To amend the *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994* in order to implement new cost recovery arrangements for the Australian Pesticides and Veterinary Medicines Authority
- to make consequential and miscellaneous amendments to the following Acts: *Agricultural and Veterinary Chemicals (Administration) Act 1992*, *Agricultural and Veterinary Chemicals Code Act 1994*, *Agricultural and Veterinary Chemicals Legislation Amendment (Name Change) Act 2004*, and the *Financial Framework Legislation Amendment Act 2005*, and
- to repeal a suite of interim cost recovery legislation that is redundant.

Background

The Australian Pesticides and Veterinary Medicines Authority (APVMA) is a Commonwealth statutory authority responsible for evaluating, registering and reviewing agricultural and veterinary chemicals and for their control up to, and including, the point of wholesale sale.¹ It works in partnership with the States and Territories and implements the legislative powers and functions provided to it under the legislation on behalf of all jurisdictions. The States and Territories retain responsibility for controlling the use of agricultural and veterinary chemicals including the licensing of pest control operators and aerial spraying.

The activities of the APVMA are fully funded by the payment of fees, levies and penalties. As reported in the APVMA 2003-04 Annual Report, the major components of the APVMA's revenue collections were:

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- application (registration) fees: \$2.29 million or 13%
- levies: \$9.74 million or 54%
- renewal fees: \$4.70 million or 26%
- other: \$1.39 million or 7%²

The Legislation

The APVMA legislation consists of seven Acts: three dealing with registration activities and four relating to registration fees and charges. The principal piece of legislation is the Agricultural and Veterinary Chemicals Code (the ‘Agvet Code’).³ This provides the APVMA with detailed operational provisions for registering chemical products. It also provides the APVMA with its full range of powers which include evaluating, registering and reviewing agricultural and chemical products (including active constituents and product labels); issuing permits; controlling the manufacture of chemical products; regulating the supply of chemical products; and ensuring compliance with, and enforcing the Code. The fees and charges legislation contains the cost recovery mechanisms, in particular, the imposition, assessment and collection of a levy on sales of chemical products, which contribute to the funding of the APVMA as an independent, self-funding regulatory body.⁴

The Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994 (the Act) which is amended by this Bill, contains measures that allow for the assessment and collection of levies in regard to agricultural and veterinary products registered for use in Australia. The Act provides for the assessment and collection of levies imposed on agricultural and veterinary chemicals by the other three levy Acts, namely the *Agricultural and Veterinary Chemical Products Levy Imposition (Customs) Act 1994*, *Agricultural and Veterinary Chemical Products Levy Imposition (Excise) Act 1994*, and the *Agricultural and Veterinary Chemical Products Levy Imposition (General) Act 1994*.

The following terms are defined in the Act and are relevant to the changes proposed by this Bill.

‘*Chemical product*’ is defined in section 3 as an agricultural or veterinary chemical product, other than a product exempted under the regulations from levy. Agricultural products include chemicals which generally destroy or repel pests or plants. Veterinary products are used to prevent, diagnose, or treat diseases in animals.⁵

‘*Leviable disposal*’ is defined in section 3 to mean:

- where a chemical product is an Australian product:
 - if it is disposed of in Australia by a manufacturer, that disposal;
 - if it is applied by a manufacturer to their own use, that application; or

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- where a chemical product is an imported chemical product:
 - if it is disposed of in Australia by an importer, that disposal; or
 - if it is applied by an importer to their own use, that application.

In other words, ‘disposal’ refers to the sale or use in manufacture of agricultural and veterinary chemical products.

The levy rate is specified in the Agriculture and Veterinary Chemical Products (Collection of Levy) Act and Regulations. Currently the levy rate is set at:

- 0.65% of annual sales (disposals) revenues⁶
- with a maximum annual payment of \$25 000,⁷ and
- no payment due where annual sales (disposals) are less than \$100 000.⁸

The National Competition Policy Review

In April 1995, the Council of Australian Governments (COAG) adopted three National Competition agreements. As part of these agreements, COAG committed to review, and where appropriate, reform legislation that restricts competition. The deadline for the reviews was June 2002.⁹ The national review of agricultural and veterinary chemical legislation was conducted by PricewaterhouseCoopers between October 1997 and July 1998. The review covered Commonwealth registration legislation and State and Territory ‘control of use’ legislation in Victoria, Queensland, Western Australia and Tasmania, with the other jurisdictions conducting separate reviews of their control of use legislation.¹⁰ The review report was released in March 1999 by the Standing Committee on Agricultural and Resource Management. At the same time a working group was established to prepare an inter-governmental response to the report’s recommendations. The inter-governmental response was endorsed by the Agriculture and Resource Management Council of Australia and New Zealand in August 2000.¹¹ The response essentially supported all recommendations, except those relating to licenses for chemical manufacturers and the efficiency review.¹² Following the report, various bills were introduced into State and Territory parliaments to implement recommendations relating to control of use.¹³ The Commonwealth implemented the majority of the endorsed recommendations through the Agricultural and Veterinary Chemicals Legislation Amendment Bill 2002.¹⁴

One recommendation that was not dealt with by that bill was recommendation 7, ‘that the levy be changed to a simple flat rate levy (on sales as at present) with no exemptions or caps’.¹⁵ The Final Report of the national review of agricultural and veterinary chemicals explained its recommendation:

To the extent that the levy and renewal fees continue to fund the bulk of the remainder of the operation of the [APVMA], much of the discrimination inherent in the current levy could be removed by applying the levy at a flat rate across all sales of

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agvet chemicals. This would entail the removal of the maximum levy cap, the removal of the minimum levy sales volume of \$100,000 and the abolition of the annual renewal fee.

The Review Team can see no particular purpose for the \$25,000 [maximum levy] cap. However, the Review Team understands that the purpose of not applying the levy at less than \$100,000 is to reduce the administrative cost of assessing levies on the many minor products within this category. While reducing administrative costs can make sense, it would appear that low sales volumes are still assessed for the determination of the renewal fee. As such, the Review Team suggests that it may be simpler to apply a flat rate levy without exemptions or caps.

Using the levy to fund all activities not captured in application fees would make the annual renewal fee redundant. However, this would mean that products with no sales would pay nothing. Given that this might risk leaving the [APVMA] with a long register of largely redundant chemicals, the Review Team considers that an appropriate compromise would be to apply a nominal minimum levy liability per product. The Review Team notes that the current renewal fee for such products is \$200, an amount which is probably higher than nominal.¹⁶

As a result of this recommendation, the APVMA cost recovery arrangements were reviewed. The Government issued a draft Cost Recovery Impact Statement (CRIS) that outlined the proposed new fee structure for the APVMA. The industry was invited to comment, a workshop on cost recovery was held for the industry in August 2004, and a revised CRIS was issued in November 2004.¹⁷

Main Provisions

Amendments to the Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994

The purpose of **items 1 to 17 of Schedule 1** is to provide for payment of a levy on leviable disposals of chemical products on a financial year basis rather than on a calendar year basis as at present. According to the second reading speech, the amendment creates consistency between the period of registration and liability for payment of levy.¹⁸

Item 18 of Schedule 1 removes the current threshold on leviable disposals of a particular chemical product below which no levy is payable. Currently no levy is payable in respect of a particular chemical product if leviable disposals of that product are less than \$100 000. This exemption is preserved until the end of the 2004-2005 financial year. From 1 July 2005 this threshold is removed in accordance with Recommendation 7 of the National Competition Policy review.

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A tiered rate of levy is to be set according to the volume of leviable chemical products disposed of (**proposed subsection 12C(2)**). Different rates of levy may be set by regulations depending on whether the chemical products have a listed registration or not.

Item 19 deals with the imposition of a late payment penalty on a person if an amount of levy is not paid on or before the prescribed date for payment. A late payment penalty of \$200 will be payable if the amount of unpaid levy is less than \$10 000, and \$400 if the amount unpaid is more than \$10 000.

Item 21 creates a new penalty in circumstances when a person provides information to the APVMA that results in that person being liable to pay less levy than if the correct information had been provided. If this happens, then the person is liable to pay the higher of \$100 or 25 per cent of the difference between the amount that was calculated to be payable and the amount that would have been payable if the correct information had been provided to the APVMA.

Item 24 requires the APVMA to include in any notice of assessment issued under section 16 of the Act, details of the amount of any understatement penalty that is payable and the date on which the penalty is to be paid.

Item 38 repeals section 34 of the Act. Section 34 provides that self-incrimination is a reasonable excuse for a person refusing or failing to give information or produce a document when required to under the Act. **New section 34** reverses this provision and now provides that self-incrimination is not a reasonable excuse for non-compliance with provisions in the Act that require the provision of information or the production of a document. However, **new subsection 34(2)** gives a person (not a corporation) some relief by providing that the information or documents that they are required to give, are not to be admissible in criminal proceedings, except for proceedings about false or misleading information or documents under the *Criminal Code*.

Item 39 inserts three new provisions into the Act to give the APVMA the power to:

- refund overpayments made to it under the Act (**new section 38A**)
- waive payments payable to it under the Act up to a maximum of \$100 (**new section 38B**), and
- round down amounts due under the Act to the nearest \$2 (**new section 38C**).

Amendments to the Agricultural and Veterinary Chemicals Code Act 1994

The Agvet Code is set out in the Schedule to the *Agricultural and Veterinary Code Act 1994*. **Items 43 to 47** amend the Agvet Code.

Item 43 repeals paragraph 11(1)(d) and substitutes a new provision requiring that, if only part of the prescribed fee is required to be paid at the time an application is made under the

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Agvet Code, then the application must be accompanied by that part, otherwise the application must be accompanied by the whole of the prescribed fee.

Item 45 amends the Agvet Code to remove the cap on the level of fees that may be prescribed by regulations. In future, a person making an application will be required to determine their level of fee under a modular assessment scheme. **Item 44** gives the APVMA the power to make a legislative instrument setting out the criteria for working out which fee applies under the regulations in a particular case. According to the Explanatory Memorandum, the fees prescribed in the regulations will consist of 24 categories, and **new subsection 164(1A)** will allow a person to determine which is the appropriate category for their particular application.¹⁹ **Item 47** inserts **new subsection 165(1A)** which provides that the APVMA can make a legislative instrument setting out the criteria for working out the assessment period that applies in a particular case. Both of these new provisions are required to enable a person to determine, within the modular system of fees and assessment periods, which criteria apply in their particular case.

Endnotes

- 1 The APVMA was previously known as the National Registration Authority for Agricultural and Veterinary Chemicals or NRA. The legislation giving effect to the name change came into effect on 30 July 2004. A history of the APVMA is on their Website at www.apvma.gov.au.
- 2 Australian Pesticides and Veterinary Medicines Authority, *Annual report 2003-04*, p. 19. At http://www.apvma.gov.au/publications/annualreport0304_part2.pdf (site visited 1/3/2005).
- 3 Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*.
- 4 The operations of the APVMA are essentially funded through application (or registration) fees, levies and annual renewal fees. Section 58 of the *Agricultural and Veterinary Chemicals (Administration) Act 1992* has the effect of requiring the functions of the APVMA to be fully funded by the payment of fees, levies and penalties.
- 5 See 'Assessment and regulation of chemicals in Australia' on the NICNAS Website at <http://www.nicnas.gov.au/australia/ARCA.asp> (site visited 1/3/2005).
- 6 *Agricultural and Veterinary Chemical Products (Collection of Levy)*, Regulation 5.
- 7 *ibid.*, Regulation 6.
- 8 *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994*, Subsection 8(2).
- 9 Victorian Department of Primary Industries, *National Competition Policy*. At Website <http://www.dpi.vic.gov.au> 'Review of Legislative Restrictions on Competition'. (Site visited 18/2/2005).

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- 10 National Legislation Review: Agricultural and Veterinary Chemicals, *Final report*, by PricewaterhouseCoopers and Francis Abourizk Lightowlers Lawyers, 13 January 1999. Available on the Website of the Victorian Department of Primary Industries under 'Agvet Chemical Legislation Review' at <http://www.dpi.vic.gov.au> (Site visited 18/2/2005).
- 11 Agriculture and Resource Management Council of Australia and New Zealand, *Endorsement of the intergovernmental response to the National Competition Policy review of agricultural and veterinary chemicals legislation 18 March 2000*, [dated 18 August 2000].
- 12 National Competition Council, *Legislation Review Compendium*, 4th ed., February 2002, Chapter 2, p. 8.
- 13 For example, the Agricultural and Veterinary Chemicals (Control of Use) Amendment Bill 2000 (Vic); Agricultural and Veterinary Chemicals Legislation Amendment Act 2002 (Qld); *Agricultural and Veterinary Chemicals (Control of Use) Amendment Act (No. 2) 2002* (Tas).
- 14 *Agricultural and Veterinary Chemicals Legislation Amendment Act 2003* (Act No. 13, 2003).
- 15 National Legislation Review: Agricultural and Veterinary Chemicals, *Final report*, Recommendation 7.
- 16 National Legislation Review: Agricultural and Veterinary Chemicals, *Final report*, p. 52.
- 17 Department of Agriculture, Fisheries and Forestry, *APVMA - Cost Recovery Impact Statement (CRIS): Pesticides and veterinary medicines*.
(Version 1 December 2003; Version 2 April 2004; Version 3 November 2004). Available at http://www.affa.gov.au/corporate_docs/publications/pdf/product_integrity/CRISfinalNov04.pdf
- 18 Truss, Hon Warren, Minister for Agriculture, Fisheries and Forestry, 'Second reading speech: Agricultural and Veterinary Chemicals Legislation Amendment (Levy and Fees) Bill 2005', House of Representatives, *Debates*, 17 February 2005, p. 2.
- 19 Agricultural and Veterinary Chemicals Legislation Amendment (Levy and Fees) Bill 2005, *Explanatory Memorandum*, p. 15.

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