



Agricultural and Veterinary Chemicals Code Act 1994

No. 47, 1994

Compilation No. 29

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About this compilation

This compilation

This is a compilation of the *Agricultural and Veterinary Chemicals Code Act 1994* that shows the text of the law as amended and in force on 21 October 2016 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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**An Act to make provision for the evaluation,
registration and control of agricultural and
veterinary chemical products, and for related
matters, for the purposes of the *Agricultural and
Veterinary Chemicals Act 1994***

RECOGNISING:

- (a) that the protection of the health and safety of human beings, animals and the environment is essential to the well-being of society and can be enhanced by putting in place a system to regulate agricultural chemical products and veterinary chemical products; and
- (b) that the principle of ecologically sustainable development requires a regulatory system that is designed to ensure that the use of such products at the present time will not impair the prospects of future generations; and
- (c) that the furthering of trade and commerce between Australia and places outside Australia, and the present and future economic viability and competitiveness of primary industry and of a domestic industry for manufacturing and formulating such products, are essential for the well being of the economy and require a system for regulating such products that is cost effective, efficient, predictable, adaptive and responsive; and
- (d) that it is desirable to establish a regulatory system that is open and accountable and gives opportunity for public input with respect to the regulation of such products; and
- (e) that the system should, so far as practicable, be uniform throughout Australia; and
- (f) that uniformity could best be achieved by the enactment of legislation by the Parliament of the Commonwealth as a law for the government of the Australian Capital Territory and the adoption of that legislation by the Parliaments and legislatures of the States and the Northern Territory:

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Agricultural and Veterinary Chemicals Code Act 1994*.

2 Commencement

This Act commences on the same day as the *Agricultural and Veterinary Chemicals Act 1994*.

3 Definitions

In this Act, unless the contrary intention appears:

APVMA means the Australian Pesticides and Veterinary Medicines Authority continued in existence by section 6 of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

participating Territory has the same meaning as in the *Agricultural and Veterinary Chemicals Act 1994*.

prescribed means prescribed by the regulations.

the Code means the Agvet Code of the participating Territories.

the regulations means the regulations in force for the time being under section 6.

4 The Schedule

The Schedule has effect for the purposes of the *Agricultural and Veterinary Chemicals Act 1994*.

5 Citation and interpretation of Agvet Code and Agvet Regulations

- (1) The Agricultural and Veterinary Chemicals Code set out in the Schedule, as it applies as a law for the government of the

participating Territories, may be referred to as the Agvet Code of the participating Territories.

- (2) The regulations, as they apply for the purposes of the Agvet Code of the participating Territories, may be referred to as the Agvet Regulations of the participating Territories.
- (3) In the Agvet Code, and the Agvet Regulations, of the participating Territories:

Act of this jurisdiction means an Act of the Parliament or an Act or Ordinance of a participating Territory.

the Minister for this jurisdiction means the Minister.

this jurisdiction means the participating Territories.

- (4) In the Agvet Code, or the Agvet Regulations, of the participating Territories, a reference to an offence against that Code, or those Regulations, includes a reference to an offence against:
 - (a) section 6 of the *Crimes Act 1914*; or
 - (b) section 11.1, 11.4 or 11.5 of the *Criminal Code*;
 that relates to an offence against that Code or those Regulations, as the case may be.

6 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by the Code to be prescribed by regulations within the meaning of the Code; or
 - (b) necessary or convenient to be prescribed by such regulations for carrying out or giving effect to the Code.
- (2) In particular, the regulations may include provision for the purposes of the Code for or in relation to:
 - (a) the development and approval of standards for:
 - (i) constituents for chemical products; and
 - (ii) chemical products; and
 - (iii) labels for containers for chemical products; or

- (b) prescribing and regulating all matters and things with respect to inspection and investigation and with respect to samples, including the method of taking samples, the quantity or weight of samples, the labelling of samples, the delivery of samples to the APVMA and the analysis of samples; or
 - (c) authorising any matter or thing to be from time to time determined, applied or regulated by a particular person; or
 - (d) the records to be made and kept and the persons by whom they are to be made and kept; or
 - (e) requiring records so kept to be produced at stated times to the APVMA; or
 - (f) the particulars to be included in labels for containers for chemical products, the way to write those particulars on those labels and the way to attach those labels to containers; or
 - (g) the size and type of labels to be attached to containers for chemical products; or
 - (h) the giving of notices by or to the APVMA; or
 - (i) prescribing penalties of not more than 50 penalty units for offences against the regulations; or
 - (j) declaring provisions of the regulations to be civil penalty provisions.
- (3) The regulations may:
- (a) adopt wholly or partly, and specifically or by reference, and with any modifications, any of the standards, rules, codes, specifications or methods of any association, body or institution whether as in force at the time of adoption or as changed from time to time; and
 - (b) provide for the approval of the APVMA to be the standard that applies in respect of a particular matter or thing; and
 - (c) exempt particular substances or chemical products from the operation of any provision of the Code, either unconditionally or subject to conditions; and
 - (d) exempt persons identified in the regulations from the operation of any provision of the Code, either unconditionally or subject to conditions.

- (4) Except as otherwise expressly provided in this Act or the Code, the regulations may be of general or specially limited application or may differ according to differences in time, locality, place or circumstance.
- (5) Subject to subsection (6), in the regulations, unless the contrary intention appears, an expression has the same meaning as it has in the Agvet Code of the participating Territories.
- (6) In a provision of the regulations that has effect for the purposes of a particular provision of the Agvet Code of the participating Territories, unless the contrary intention appears, an expression has the same meaning as it has in that provision of that Code.
- (7) The regulations are to be interpreted subject to the Agvet Code of the participating Territories and it is intended that if, apart from this subsection, a provision of the regulations would have been interpreted as being inconsistent with that Code, the provision is nevertheless to be valid in so far as it is not so inconsistent.
- (8) An expression has, in this section, the meaning it would have if this section were included in the Code.

7 Orders

- (1) Subject to subsection (2), if:
 - (a) provision may be made by the regulations for or in relation to a matter; and
 - (b) the regulations declare that this section applies to that matter; the Minister may, by legislative instrument, make orders with respect to that matter that are consistent with the regulations.
- (2) An order must not be made prescribing a penalty.
- (3) Despite subsection 44(1) of the *Legislation Act 2003*, section 42 (disallowance) of that Act applies to a legislative instrument made under subsection (1) of this section.
- (6) In considering whether to make an order under subsection (1), the Minister must have regard to:

- (a) the effect that the order would have for the purposes of the Agvet Code of each jurisdiction other than the participating Territories because of a law of that jurisdiction that corresponds to the *Agricultural and Veterinary Chemicals Act 1994*; and
 - (b) the fact that section 42 of the *Legislation Act 2003* would apply in relation to the order because of subsection (3) of this section.
- (7) Subject to subsection (8), in an order, unless the contrary intention appears, an expression has the same meaning as it has in the Agvet Code of the participating Territories.
- (8) In a provision of an order that has effect for the purposes of a particular provision of the Agvet Code of the participating Territories, unless the contrary intention appears, an expression has the same meaning as it has in that provision of that Code.
- (9) An order is to be interpreted subject to the Agvet Code of the participating Territories and it is intended that if, apart from this subsection, a provision of an order would have been interpreted as being inconsistent with that Code, the provision is nevertheless to be valid in so far as it is not so inconsistent.

8 Compensation

- (1) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

- (2) If the operation of, or the doing of any act by the APVMA under, the Agvet Code of the participating Territories results in the acquisition of property from a person, the Commonwealth is liable to pay to the person such compensation as is agreed upon between them or, in the absence of agreement, as is determined by the Supreme Court of a participating Territory in an action brought in that Court by the person against the Commonwealth.

Schedule—Agricultural and Veterinary Chemicals Code

Section 4

Part 1—Preliminary

Division 1—Object, definitions etc.

1 Object of Code

The object of this Code is to make provision for and in relation to:

- (a) the evaluation, approval, and control of the supply, of active constituents for proposed or existing agricultural chemical products or veterinary chemical products; and
- (b) the evaluation, registration, and control of the manufacture and supply, of agricultural chemical products and veterinary chemical products.

1A Implementing the Code

(1) This Code recognises that:

- (a) the furthering of trade and commerce between Australia and places outside Australia; and
- (b) the present and future economic viability and competitiveness of primary industry which relies on access to chemical products and their constituents; and
- (c) a domestic industry for manufacturing and formulating chemical products and their constituents;

are essential for the well-being of the economy and require a system for regulating chemical products and their constituents that is cost effective, efficient, predictable, adaptive and responsive.

(2) This Code is to be implemented in a manner that:

- (a) recognises that the health and safety of human beings, animals and the environment is the first priority of the system for regulating chemical products and their constituents, in

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- part to ensure that the use of chemical products at the present time will not impair the prospects of future generations; and
- (b) reflects established best-practice principles for the assessment and management of risk, based on science; and
 - (c) balances regulatory effort and any burden imposed by the system of regulation on:
 - (i) holders of approvals, registrations, permits and licences; and
 - (ii) the domestic industry for manufacturing and formulating chemical products and their constituents; and
 - (iii) the users of chemical products;with the risk of the use of the products and constituents to the health and safety of human beings, animals and the environment; and
 - (d) recognises that the use of chemical products that pose unmanageable risks to the health and safety of human beings, animals and the environment is not appropriate in Australia; and
 - (e) promotes community confidence in the regulation of chemical products and their constituents, is open and accountable, and gives opportunity for public involvement and participation; and
 - (f) secures compliance with this Code through appropriate, proportionate, consistent and effective compliance and enforcement measures.

2 Relationship of Code to other laws

- (1) This Code excludes the operation of any other laws of this jurisdiction that are inconsistent with this Code.
- (2) A law of this jurisdiction is not taken to be inconsistent with this Code if it can operate concurrently with this Code.
- (3) A law of this jurisdiction enacted, or an instrument made under a law of this jurisdiction, after the commencement of this Code is not to be interpreted as amending or repealing, or otherwise altering

the effect of, this Code unless that law, or the law under which that instrument was made, as the case may be, so provides expressly.

3 Definitions

In this Code, unless the contrary intention appears:

active constituent, in relation to a proposed or existing agricultural chemical product or veterinary chemical product, means the substance that is, or one of the substances that together are, primarily responsible for the biological or other effect identifying the product as an agricultural chemical product or a veterinary chemical product, as the case may be.

adequate, in relation to instructions on a label for containers for a chemical product, means adequate to ensure, as far as reasonably practicable, that the product meets the safety criteria and the trade criteria.

agricultural chemical product has the meaning given by section 4.

agvet law means:

- (a) the Agvet Code or the Agvet Regulations of this, or another, jurisdiction; or
- (b) the *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994*; or
- (c) the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

agvet penalty provision means:

- (a) a civil penalty provision of the Agvet Code or the Agvet Regulations of this, or another, jurisdiction; or
- (b) a civil penalty provision of the *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994*; or
- (c) a civil penalty provision of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

animal means any animal (other than a human being), whether vertebrate or not, and whether a food-producing species or not, and includes:

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- (a) mammals, birds, bees, reptiles, amphibians, fish, crustaceans and molluscs; and
- (b) the semen, ova or embryo of an animal (other than a human being) or any other substance or thing directly relevant to the reproduction of an animal (other than a human being); and
- (c) any other prescribed form of animal life, whether prescribed by reference to a species or in any other way.

application means an application under this Code.

approval means approval under Part 2 of:

- (a) an active constituent for a proposed or existing chemical product; or
- (b) a label for containers for a chemical product.

approved active constituent means an active constituent that is approved and complies with the relevant particulars entered in the Record for the constituent.

approved analyst means a person appointed under subsection 69G(1) of the *Agricultural and Veterinary Chemicals (Administration) Act 1992* to be an approved analyst for the purposes of this Code.

approved form means a form approved by the APVMA or prescribed by the regulations.

approved label means a label that is approved and complies with the relevant particulars recorded in the relevant APVMA file for the label.

APVMA means the Australian Pesticides and Veterinary Medicines Authority continued in existence by section 6 of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

Australia includes any external Territories that are participating Territories.

authorising party for information means a person who would be entitled to bring an action for breach of an obligation of confidence if the information were disclosed by someone else to the APVMA for the purposes of this Code without the person's permission.

chemical product means an agricultural chemical product or a veterinary chemical product, or both.

Chief Executive Officer, in relation to the APVMA, includes a person acting as the Chief Executive Officer of the APVMA.

civil penalty order has the meaning given by section 145A.

civil penalty provision means a provision declared by this Code to be a civil penalty provision.

claim includes any statement.

confidential commercial information, in relation to an active constituent for a proposed or existing chemical product, or in relation to a chemical product or a constituent of a chemical product, means:

- (a) a trade secret relating to the constituent or product; or
- (b) any other information relating to the constituent or product that has a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or
- (c) information (other than trade secrets to which paragraph (a) applies or information to which paragraph (b) applies) that:
 - (i) concerns the lawful commercial or financial affairs of a person, organisation or undertaking; and
 - (ii) relates to the manufacture, distribution or supply of the constituent or product; and
 - (iii) if it were disclosed, could unreasonably affect the person, organisation or undertaking in an adverse manner;

but does not include:

- (d) the making of an application for a permit for the use of an active constituent for a proposed or existing chemical product or for the use of a chemical product, if the use of the product proposed in the application is:
 - (i) a minor use; or
 - (ii) an emergency use; or

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- (e) any prescribed information relating to the making of an application for a permit, as mentioned in paragraph (d).

constituent, in relation to a chemical product, means any constituent of the product, whether an active constituent or not.

container includes anything by which or in which a chemical product is, or is to be, covered, enclosed, contained or packaged, but does not include a container (such as a shipping container) in which other containers of chemical products are, or are to be, placed for the purpose of being transported.

continue, in relation to an approval or registration, has, for the purposes of Part 3, the meaning given by subsection 59(6).

co-ordinator, in relation to a jurisdiction, means a person designated:

- (a) if the jurisdiction is a State—by a Minister of the State; or
- (b) if the jurisdiction is the participating Territories:
 - (i) if the Australian Capital Territory is the only participating Territory—by a Minister of the Australian Capital Territory; or
 - (ii) if there is more than one participating Territory—jointly by a Minister of the Commonwealth and a Minister of the Australian Capital Territory;

to perform the functions of a co-ordinator under this Code.

copy, in relation to a warrant issued under section 143 or 143A (or a form of warrant completed under subsection 143B(6)), includes:

- (a) a copy sent by fax or other electronic means; or
- (b) a copy of a copy so sent.

corresponding previous law means a previous law of this jurisdiction that corresponds wholly or partly to this Code, to the extent that it so corresponds.

criteria includes standards.

damage, in relation to data, includes damage by erasure of data or addition of other data.

data includes:

- (a) information in any form; and
- (b) any program (or part of a program).

date-controlled chemical product means a chemical product declared by the regulations to be a date-controlled chemical product.

date of manufacture, in relation to a chemical product, means the date on which formulation of the product was completed.

deal with, in relation to an active constituent for a proposed or existing chemical product, or in relation to a chemical product, includes supply or otherwise dispose of the constituent or product.

determine, in relation to an application, means:

- (a) approve, register, renew, vary or issue upon the application; or
- (b) refuse the application.

director, in relation to a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory, means:

- (a) a constituent member of the body; or
- (b) if the body does not have any members—a member of the board or other group of persons responsible for the administration or management of the affairs of the body.

distinguishing number includes a distinguishing number together with one or more letters or symbols, or both.

electronic signature of a person means the unique identification of the person in an electronic form approved by the APVMA.

eligible law, in relation to a jurisdiction, means a law, or a provision of a law, of that jurisdiction that is declared by a law of that jurisdiction to be an eligible law for the purposes of this Code.

emergency use has the same meaning as in the regulations.

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environment includes all aspects of the surroundings of human beings, whether affecting them as individuals or in their social groupings.

established standard has the meaning given by subsection 8U(7).

evidential burden, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

evidential material means any of the following:

- (a) a thing with respect to which an offence against an agvet law has been committed or is suspected, on reasonable grounds, to have been committed;
- (b) a thing with respect to which an agvet penalty provision has been contravened or is suspected, on reasonable grounds, to have been contravened;
- (c) a thing that there are reasonable grounds for suspecting will afford evidence as to the commission of such an offence or contravention of such an agvet penalty provision;
- (d) a thing that there are reasonable grounds for suspecting is intended to be used for the purpose of committing such an offence or contravening such an agvet penalty provision.

excluded organism means an organism that is declared by the regulations to be an excluded organism.

executive officer of a body corporate means a person, by whatever name called and whether or not a director of the body, who is concerned in, or takes part in, the management of the body.

expiry date, in relation to the contents of a container, means the month and year after which the contents should not be used.

fee includes a fee that is a tax.

file includes a file of information stored or recorded by means of a computer.

food-producing species means an animal that produces food for human consumption or is used as food for human beings, and includes:

- (a) any buffalo, cattle, deer, fish (other than ornamental fish), goat, kangaroo, pig, poultry, rabbit, sheep, bee, crustacean or mollusc; or
- (b) any animal declared by the regulations to be a food-producing species.

give information includes make a statement.

handling includes transportation, storage, processing, use or disposal.

holder:

- (a) in relation to an approval or registration, means:
 - (i) the person entered in the Record, Register or relevant APVMA file as the holder of the approval or registration; or
 - (ii) if the holder was an individual who has died or is an individual whose affairs are being lawfully administered by another person—the legal personal representative of the individual or the person administering the individual's affairs; or
 - (iii) if the holder was a body corporate—a successor in law of the body corporate; or
- (b) in relation to a permit or licence, means the person to whom the permit or licence was issued.

inspector means:

- (a) a person appointed as an inspector for the purposes of this Code under subsection 69F(1) of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*; or
- (b) a person to whom an authorisation referred to in subsection 69F(2) of that Act applies for the purposes of this Code.

instruction includes direction, caution, warning or recommendation.

instructions approved by the APVMA includes authorisations and requirements (however described) set out in a permit.

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investigation powers has the meaning given by sections 132A, 132B and 132C.

investigation warrant means:

- (a) a warrant issued under section 143A; or
- (b) a warrant signed by a magistrate under section 143B, being a warrant of the same kind as would have been issued under section 143A.

jurisdiction means:

- (a) a State; or
- (b) the participating Territories.

label includes tag, leaflet, brand, stamp, mark, stencil or written statement.

licence means a licence under Part 8.

limitation period has the meanings given by section 34M.

listed chemical product means a chemical product that:

- (a) is, or is included in a class of chemical products that is, listed by regulations under section 8T; and
- (b) complies with the established standard for the product.

lodged, in relation to an application under this Code or a notice under Division 2AA of Part 2, has the meaning prescribed by the regulations.

manufacture, in relation to a chemical product, means:

- (a) to produce the chemical product; or
- (b) to engage in any part of the process of producing the chemical product, or any component or ingredient of the chemical product as part of that process, or of bringing the chemical product to its final state, including by formulating, processing, assembling, packaging, labelling, storing, sterilising, testing, supplying or releasing for supply.

manufacturing principles means principles that the APVMA has determined under section 23 of the *Agricultural and Veterinary*

Chemicals Act 1994 to be principles to be observed in the manufacture of chemical products.

Maximum Residue Limits Standard means the Maximum Residue Limits Standard, made under the *Food Standards Australia New Zealand Act 1991*, as in force from time to time, or any standard in force in substitution for that standard.

meets the application requirements has the meaning given by section 8A.

meets the efficacy criteria has the meaning given by subsection 5B(1).

meets the labelling criteria has the meaning given by subsection 5D(1).

meets the notice requirements has the meaning given by subsection 26AD(1).

meets the safety criteria has the meaning given by subsection 5A(1).

meets the trade criteria has the meaning given by subsection 5C(1).

member of the staff, in relation to the APVMA, has the same meaning as in the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

minor use has the same meaning as in the regulations.

monitoring powers has the meaning given by sections 131A, 131B and 131C.

monitoring warrant means:

- (a) a warrant issued under section 143; or
- (b) a warrant signed by a magistrate under section 143B, being a warrant of the same kind as would have been issued under section 143.

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nominated agent, for an approval or registration, means the person entered in the Record, Register or relevant APVMA file as the nominated agent for the approval or registration.

notifiable variation, of the relevant particulars of an approval or registration, has the meaning given by subsection 26AB(3).

occupier, in relation to any premises or a part of any premises, means the person in occupation, charge or control of the premises or of that part of the premises, as the case may be.

ordinary office hours means the hours when the office of the APVMA is open to members of the public.

participating Territory has the same meaning as in the *Agricultural and Veterinary Chemicals Act 1994*.

penalty unit has the same meaning as in section 4AA of the *Crimes Act 1914*.

permit means a permit under Part 7.

person assisting an inspector:

- (a) in relation to the exercise of monitoring powers—has the meaning given by section 131D; and
- (b) in relation to the exercise of investigation powers—has the meaning given by section 132E.

pest means:

- (a) in relation to an animal, plant or thing—any animal, plant or other biological entity that injuriously affects the physical condition, worth or utility of the first-mentioned animal or plant or of that thing; or
- (b) in relation to a place—an animal, plant or other biological entity that injuriously affects the use or enjoyment of that place.

place of residence, in relation to a body corporate that is incorporated in Australia, means its registered office in Australia.

plant means any vegetation or fungus and includes a seed or cutting of a plant, or any other part or product of a plant.

premises includes any place (whether enclosed or built on or not), including a place situated under ground or under water, and, in particular, includes:

- (a) a building, aircraft, vehicle or vessel; and
- (b) any structure, whether a fixed structure, or a moveable structure such as a tent, and whether on land or the bed of any waters or floating on any waters; and
- (c) a part of premises (including a part of premises of a kind referred to in paragraph (a) or (b)).

prescribed means prescribed by the Agvet Code of this jurisdiction or by the regulations.

prescribed civil penalty provision means a civil penalty provision that is prescribed by the regulations.

prescribed variation, of the relevant particulars of an approval or registration, has the meaning given by subsection 26B(4).

previous registering authority means a registering authority under a corresponding previous law.

previously endorsed active constituent for a chemical product at a particular time means a substance that:

- (a) before that time, had been approved or registered (however described) under a law of the Commonwealth or a State or Territory as an active constituent for a chemical product; or
- (b) was an active constituent for a chemical product that, before that time, had been approved or registered (however described) under a law of the Commonwealth or a State or Territory as a chemical product;

whether or not the approval or registration was a result of an application by a particular person.

primary active constituent has the meaning given in section 59.

primary chemical product has the meaning given in section 59.

primary holder means:

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- (a) in relation to a primary active constituent—the holder by whom, or on whose behalf, protected information was given to the APVMA in respect of the constituent; or
- (b) in relation to a primary chemical product—the holder by whom, or on whose behalf, protected information was given to the APVMA in respect of the product.

prohibited chemical product means a chemical product that is declared by the regulations to be a prohibited chemical product.

protected active constituent means an active constituent for a proposed or existing chemical product, being an active constituent to which each of the following paragraphs apply:

- (a) the constituent is or includes an invention in respect of which letters patent were granted under the *Patents Act 1952* or the *Patents Act 1990*;
- (b) the term of the letters patent (including any extension of that term) has ended, or will end, during the protection period that applies to protected information about that constituent;
- (c) the constituent is approved under Part 2.

protected chemical product means a chemical product to which each of the following paragraphs apply:

- (a) the product is or includes an invention in respect of which letters patent were granted under the *Patents Act 1952* or the *Patents Act 1990*;
- (b) the term of the letters patent (including any extension of that term) has ended, or will end, during the protection period that applies to protected information about that product;
- (c) the product is registered under Part 2.

protected commodity means:

- (a) any substance or thing of a kind used, or capable of being used, as food or drink by human beings; or
- (b) any substance or thing of a kind used, or capable of being used, as an ingredient or additive in, or any substance used in the preparation of, a substance or thing referred to in paragraph (a); or
- (c) any plant or animal; or

- (d) any soil, water or other environmental component; or
- (e) any other agricultural commodity; or
- (f) any animal feed; or
- (g) any other prescribed substance or thing; or
- (h) any substance or thing that is capable of being made into anything referred to in any of the above paragraphs;

but does not include a therapeutic good within the meaning of the *Therapeutic Goods Act 1989*.

protected information means information or results given to the APVMA as required under paragraph 32(1)(b) or 33(1)(a) or (c), or subparagraph 159(1)(d)(i), (ii) or (iii), that:

- (a) have been obtained because of a trial or laboratory experiment; and
- (b) relate to:
 - (i) an active constituent that has been approved; or
 - (ii) a chemical product that has been registered.

protection period, in relation to protected information, means the period that:

- (a) begins when the information is first given to the APVMA in relation to a reconsideration; and
- (b) ends 8 years after the APVMA makes its decision on the reconsideration.

published literature, in relation to a particular matter, means all documents that relate to that matter and are accessible to the public.

recall notice means a notice issued under section 101, 102 or 103.

Record means the Record of Approved Active Constituents for Chemical Products kept under section 17.

Record of Permits means the Record of Permits kept under section 113.

re-entry period, in relation to the use of a chemical product in a particular place (including a use of the product in relation to a crop or pasture in that place), means the period after that use during

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which it is unsafe for a person to enter the place without wearing appropriate protective clothing or equipment, or both.

Register means the Register of Agricultural and Veterinary Chemical Products kept under section 18.

registered chemical product means a chemical product that is registered and complies with the relevant particulars entered in the Register for the product.

registration means registration under Part 2 of a chemical product.

regulations means the Agvet Regulations of this jurisdiction.

relevant APVMA file means the file in which information about approved labels is recorded as mentioned in paragraph 21(c).

relevant data means information relevant to determining whether:

- (a) an agvet law has been, or is being, complied with; or
- (b) information provided under an agvet law is correct.

relevant particulars means:

- (a) in relation to the approval of an active constituent—the distinguishing number, any instructions for use and any other particulars required by paragraph 19(c) to be entered in the Record; and
- (b) in relation to the registration of a chemical product—the distinguishing number, any instructions for use and any other particulars required by paragraph 20(1)(c) to be entered in the Register; and
- (c) in relation to the approval of a label—the information required to be recorded in the relevant APVMA file by subparagraphs 21(c)(i) to (iva);

and includes particulars of variations of relevant particulars made under section 26, 26AC, 26C, 29, 29A, 34A or 34AF.

repealed Act means the *Agricultural and Veterinary Chemicals Act 1988*.

reserved means reserved by being a chemical product that is, or is included in a class of chemical products that is, specified in the Reserved Schedule.

reserved chemical product means a chemical product that is, or is included in a class of chemical products that is, specified in the Reserved Schedule.

Reserved Schedule means the schedule contained in the regulations under section 56ZU.

residues, in relation to an active constituent for a proposed or existing chemical product, or in relation to a chemical product, means:

- (a) subject to paragraph (b), any remains, persisting in or on a protected commodity, of:
 - (i) the active constituent, or the active constituents in the chemical product; or
 - (ii) any derivatives, metabolites, or degradation products, of the active constituent or of the active constituents in the chemical product; or
- (b) if the APVMA has published a notice in the *Gazette* for the purposes of this paragraph that applies to the active constituent or chemical product—only such of the remains referred to in paragraph (a) as are specified in the notice to be remains that constitute residues of the active constituent or of the chemical product for the purposes of this Code.

restricted chemical product means a chemical product declared by regulations made for the purposes of section 93 to be a restricted chemical product.

sample includes specimen.

secondary active constituent has the meaning given in section 59.

secondary chemical product has the meaning given in section 59.

secondary holder, in relation to a secondary active constituent for a proposed or existing chemical product, means:

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- (a) if the APVMA is considering an application for the approval of that constituent—the person who made the application; or
- (b) if the APVMA has reconsidered or is reconsidering the approval of that constituent:
 - (i) the person entered in the Record as the holder of the approval; or
 - (ii) if the holder was an individual who has died or is an individual whose affairs are being lawfully administered by another person—the legal personal representative of the individual or the person administering the individual's affairs; or
 - (iii) if the holder was a body corporate—a successor in law of the body corporate.

secondary holder, in relation to a secondary chemical product, means:

- (a) if the APVMA is considering an application for the registration of that product—the person who made the application; or
- (b) if the APVMA has reconsidered or is reconsidering the registration of that product:
 - (i) the person entered in the Register as the holder of the registration; or
 - (ii) if the holder was an individual who has died or is an individual whose affairs are being lawfully administered by another person—the legal personal representative of the individual or the person administering the individual's affairs; or
 - (iii) if the holder was a body corporate—a successor in law of the body corporate.

State includes the Northern Territory.

substance includes:

- (a) any gas, liquid, mixture or compound of gases, or mixture or compound of liquids; and
- (b) an organism or part of an organism, including a genetically manipulated organism or part of a genetically manipulated organism; and

(c) material that is produced from an organism; and
(d) matter whose production involves the use of an organism;
but does not include an excluded organism or part of an excluded organism, or material that is produced from, or matter whose production involves the use of, an excluded organism.

supply includes do, or cause or permit the doing of, any of the following:

- (a) sell;
- (b) expose for sale;
- (c) send or deliver for sale or on sale;
- (d) dispose of under a hire purchase agreement;
- (e) exchange;
- (f) give;
- (g) offer to do an act that would be a supply (including an act referred to in any of the above paragraphs);

and, for example, includes supply under a contract for work or labour that also involves the supply of any thing.

Territory does not include the Northern Territory;

thing, except where used as an object of the verb “to do”, includes:

- (a) an animal; and
- (b) information; and
- (c) a document; and
- (d) a substance.

this Code means the Agvet Code of this jurisdiction and includes the Agvet Regulations of this jurisdiction.

use, in relation to an active constituent for a proposed or existing chemical product, or in relation to a chemical product, includes deal with the constituent or product.

variations includes additions, omissions, substitutions and modifications.

veterinary chemical product has the meaning given by section 5.

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veterinary surgeon means a person who is registered as a veterinary surgeon under the law of a State or Territory.

warrant means a monitoring warrant or an investigation warrant.

withholding period, in relation to the use of a chemical product, means the minimum period that needs to elapse between:

- (a) the last use of the product in relation to a crop, pasture or animal; and
- (b) the harvesting or cutting of, or the grazing of animals on, the crop or pasture, the shearing or slaughtering of the animal, or the collection of milk or eggs from the animal for human consumption, as the case may be;

in order to ensure that the product's residues fall to or below the maximum limit that the APVMA permits.

working day means a day other than a Saturday, a Sunday or a day that is a public holiday in the place where the office of the APVMA is situated.

4 Definition of *agricultural chemical product*

- (1) This section defines what is meant by an agricultural chemical product for the purposes of this Code.
- (2) Subject to subsections (3) and (4), an agricultural chemical product is a substance or mixture of substances that is represented, imported, manufactured, supplied or used as a means of directly or indirectly:
 - (a) destroying, stupefying, repelling, inhibiting the feeding of, or preventing infestation by or attacks of, any pest in relation to a plant, a place or a thing; or
 - (b) destroying a plant; or
 - (c) modifying the physiology of a plant or pest so as to alter its natural development, productivity, quality or reproductive capacity; or
 - (d) modifying an effect of another agricultural chemical product; or
 - (e) attracting a pest for the purpose of destroying it.

- (3) An agricultural chemical product includes a substance or mixture of substances declared by the regulations to be an agricultural chemical product.
- (4) An agricultural chemical product does not include:
 - (a) a veterinary chemical product; or
 - (b) a substance or mixture of substances declared by the regulations not to be an agricultural chemical product.

5 Definition of *veterinary chemical product*

- (1) This section defines what is meant by a veterinary chemical product for the purposes of this Code.
- (2) Subject to subsections (3) and (4), a veterinary chemical product is a substance or mixture of substances that is represented as being suitable for, or is manufactured, supplied or used for, administration or application to an animal by any means, or consumption by an animal, as a way of directly or indirectly:
 - (a) preventing, diagnosing, curing or alleviating a disease or condition in the animal or an infestation of the animal by a pest; or
 - (b) curing or alleviating an injury suffered by the animal; or
 - (c) modifying the physiology of the animal:
 - (i) so as to alter its natural development, productivity, quality or reproductive capacity; or
 - (ii) so as to make it more manageable; or
 - (d) modifying the effect of another veterinary chemical product.
- (3) A veterinary chemical product includes:
 - (a) a vitamin, a mineral substance, or an additive, if, and only if, the vitamin, substance or additive is used for a purpose mentioned in paragraph (2)(a), (b), (c) or (d); and
 - (b) a substance or mixture of substances declared by the regulations to be a veterinary chemical product.
- (4) A veterinary chemical product does not include:
 - (a) a substance or mixture of substances that is:

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- (i) prepared by a pharmacist in accordance with the instructions of a veterinary surgeon; or
- (ii) prepared by a veterinary surgeon; in the course of the practice, by the person preparing the substance or mixture of substances, of his or her profession as permitted by or under a law of this jurisdiction; or
- (b) a substance or mixture of substances declared by the regulations not to be a veterinary chemical product.

5A Definition of *meets the safety criteria*

- (1) An active constituent or chemical product *meets the safety criteria* if use of the constituent or product, in accordance with any instructions approved, or to be approved, by the APVMA for the constituent or product or contained in an established standard:
 - (a) is not, or would not be, an undue hazard to the safety of people exposed to it during its handling or people using anything containing its residues; and
 - (b) is not, or would not be, likely to have an effect that is harmful to human beings; and
 - (c) is not, or would not be, likely to have an unintended effect that is harmful to animals, plants or things or to the environment.
- (2) For the purposes of being satisfied as to whether an active constituent meets the safety criteria, the APVMA:
 - (a) must have regard to the following:
 - (i) the toxicity of the constituent and its residues, including metabolites and degradation products, in relation to relevant organisms and ecosystems, including human beings;
 - (ii) the method by which the constituent is, or is proposed to be, manufactured;
 - (iii) the extent to which the constituent will contain impurities;
 - (iv) whether an analysis of the chemical composition of the constituent has been carried out and, if so, the results of the analysis;

- (v) any conditions to which its approval is, or would be, subject;
 - (vi) any relevant particulars that are, or would be, entered in the Record for the constituent;
 - (via) whether the constituent conforms, or would conform, to any standard made for the constituent under section 6E to the extent that the standard relates to matters covered by subsection (1);
 - (vii) any matters prescribed by the regulations; and
 - (b) may have regard to such other matters as it thinks relevant.
- (3) For the purposes of being satisfied as to whether a chemical product meets the safety criteria, the APVMA:
- (a) must have regard to the following:
 - (i) the toxicity of the product and its residues, including metabolites and degradation products, in relation to relevant organisms and ecosystems, including human beings;
 - (ii) the relevant poison classification of the product under the law in force in this jurisdiction;
 - (iii) how the product is formulated;
 - (iv) the composition and form of the constituents of the product;
 - (v) any conditions to which its registration is, or would be, subject;
 - (vi) any relevant particulars that are, or would be, entered in the Register for the product;
 - (via) whether the product conforms, or would conform, to any standard made for the product under section 6E to the extent that the standard relates to matters covered by subsection (1);
 - (vii) any matters prescribed by the regulations; and
 - (b) may have regard to one or more of the following:
 - (i) the acceptable daily intake of each constituent contained in the product;
 - (ii) any dietary exposure assessment prepared under subsection 82(4) of the *Food Standards Australia New*

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Zealand Act 1991 as a result of any proposed variation notified under subsection 82(3) of that Act in relation to the product, and any comments on the assessment given to the APVMA under subsection 82(4) of that Act;

- (iii) whether any trials or laboratory experiments have been carried out to determine the residues of the product and, if so, the results of those trials or experiments and whether those results show that the residues of the product will not be greater than limits that the APVMA has approved or approves;
- (iv) the stability of the product;
- (v) the specifications for containers for the product;
- (vi) such other matters as it thinks relevant.

5B Definition of *meets the efficacy criteria*

- (1) A chemical product *meets the efficacy criteria* if use of the product, in accordance with instructions approved, or to be approved, by the APVMA for the product or contained in an established standard, is, or would be, effective according to criteria determined by the APVMA by legislative instrument.
- (2) For the purposes of being satisfied as to whether a chemical product meets the efficacy criteria, the APVMA must have regard to the following:
 - (a) whether any trials or laboratory experiments have been carried out to determine the efficacy of the product and, if so, the results of those trials or experiments;
 - (b) any conditions to which its registration is, or would be, subject;
 - (c) any relevant particulars that are, or would be, entered in the Register for the product;
 - (ca) whether the product conforms, or would conform, to any standard made for the product under section 6E to the extent that the standard relates to matters covered by subsection (1);
 - (d) any matters prescribed by the regulations.

- (3) For the purposes of the operation of this Code in relation to a particular chemical product, the APVMA is required to have regard to the matters set out in subsections (1) and (2) only:
- (a) to the extent prescribed by the regulations; or
 - (b) if there are no such regulations—to the extent that the APVMA thinks the matters are relevant.

5C Definition of *meets the trade criteria*

- (1) A chemical product *meets the trade criteria* if use of the product, in accordance with instructions approved, or to be approved, by the APVMA or contained in an established standard, does not, or would not, unduly prejudice trade or commerce between Australia and places outside Australia.
- (2) For the purposes of being satisfied as to whether a chemical product meets the trade criteria, the APVMA must have regard to the following:
- (a) any conditions to which its registration is, or would be, subject;
 - (b) any relevant particulars that are, or would be, entered in the Register for the product;
 - (ba) whether the product conforms, or would conform, to any standard made for the product under section 6E to the extent that the standard relates to matters covered by subsection (1);
 - (c) any matters prescribed by the regulations.
- (3) For the purposes of the operation of this Code in relation to a particular chemical product, the APVMA is required to have regard to the matters set out in subsections (1) and (2) only:
- (a) to the extent prescribed by the regulations; or
 - (b) if there are no such regulations—to the extent that the APVMA thinks the matters are relevant.

5D Definition of *meets the labelling criteria*

- (1) A label for containers for a chemical product *meets the labelling criteria* if the label contains adequate instructions relating to such of the following as are appropriate:

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- (a) the circumstances in which the product should be used;
 - (b) how the product should be used;
 - (c) the times when the product should be used;
 - (d) the frequency of the use of the product;
 - (e) the withholding period after the use of the product;
 - (f) the re-entry period after the use of the product;
 - (g) the disposal of the product when it is no longer required;
 - (h) the disposal of containers of the product;
 - (i) the safe handling of the product and first aid in the event of an accident caused by the handling of the product;
 - (j) any matters prescribed by the regulations.
- (2) For the purposes of being satisfied as to whether a label meets the labelling criteria, the APVMA must have regard to the following:
- (a) any conditions to which its approval is, or would be, subject;
 - (b) any relevant particulars and instructions that are, or would be, entered in the relevant APVMA file for the label;
 - (c) whether the label conforms, or would conform, to any standard made for the label under section 6E to the extent that the standard relates to matters covered by subsection (1).

6 Determinations, approvals, exemptions etc. by APVMA

- (1) If a provision of this Code refers to a determination made, approval or exemption given or other thing done by the APVMA and there is no other provision of this Code expressly authorising the APVMA to make such a determination, give such an approval or exemption or do such a thing, the APVMA is authorised by this section to make such a determination, give such an approval or exemption or do such a thing either unconditionally or subject to conditions.
- (2) The APVMA may at any time vary or revoke a determination made, approval or exemption given, or other thing done, by it under subsection (1).

6A APVMA may make guidelines etc.

- (1) The APVMA may make written guidelines for performing its functions and exercising its powers under this Code.
- (2) The APVMA must have regard to the guidelines.
- (3) The guidelines must include:
 - (a) principles and processes for effective and efficient regulation of chemical products and their constituents; and
 - (b) principles and processes relating to:
 - (i) the approval of active constituents for proposed or existing chemical products; and
 - (ii) the registration of chemical products; and
 - (iii) the approval of labels for containers for chemical products; and
 - (iv) the variation of relevant particulars and conditions; and
 - (v) the issue of permits and licences; and
 - (vi) the reconsideration of approvals and registrations.
- (4) The guidelines must not be inconsistent with an agvet law.
- (5) The APVMA must publish the guidelines on its website.
- (6) The guidelines are not a legislative instrument.

6B Varying relevant particulars and conditions

To avoid doubt, a power under this Code to vary relevant particulars or conditions:

- (a) includes the power to add or remove relevant particulars or conditions; but
- (b) does not authorise the APVMA to vary or remove relevant particulars that were not determined, or conditions that were not imposed, by the APVMA.

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6C Right of APVMA to use information

- (1) The APVMA may use information obtained by it from any source for the purpose of performing any of its functions or exercising any of its powers under this Code.
- (2) Subsection (1) has effect subject to this Code.

6D Failure to comply with time limit does not affect validity

Failure by the APVMA to comply with a time limit set out in this Code does not affect the validity of anything done by the APVMA.

6E APVMA may make standards

- (1) The APVMA may, by legislative instrument, make standards for the following:
 - (a) constituents for chemical products;
 - (b) chemical products;
 - (c) labels for containers for chemical products.
- (2) A standard made under subsection (1) may apply, adopt or incorporate, with or without modification, any matter contained in any instrument or other writing as in force at a particular time or as in force from time to time.

7 Possession or custody of constituent or product

A reference in this Code to doing anything in respect of an active constituent for a proposed or existing chemical product, or in respect of a chemical product, includes a reference to having possession or custody of the constituent or product.

8 Labels attached to containers

- (1) For the purposes of this Code, a label is attached to a container if the label is securely attached or affixed to, appears on, or is included with, the container.
 - (2) For the purposes of this Code but without limiting the generality of subsection (1):
-

- (a) writing appearing on a container is taken to have been written on a label attached to the container; and
- (b) a reference to a label attached to a container includes a reference to writing appearing on the container; and
- (c) a reference to attaching a label to a container includes a reference to putting writing on the container.

8AA Application of the *Criminal Code*

Chapter 2 (other than Part 2.5) of the *Criminal Code* applies to all offences against this Code.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Division 2—General provisions about applications

8A Definition of *meets the application requirements*

An application *meets the application requirements* if:

- (a) the application:
 - (i) is in writing in the approved form; and
 - (ii) is signed by the applicant; and
 - (iii) is accompanied by so much of the prescribed fee as is required to be paid when the application is made; and
 - (iv) is lodged with the APVMA; and
 - (v) contains, or is accompanied by, any information specified for the application by the APVMA under section 8B or prescribed for the application by the regulations for the purposes of this subparagraph.
- (b) the constituent, product or label in relation to which the application is made complies, or will comply, with any requirement prescribed by the regulations; and
- (c) any requirement made under section 157 or 159 in relation to the application has been complied with; and
- (d) any requirement prescribed by another provision of this Code in relation to the application has been complied with; and
- (e) any amount (including an amount in respect of a tax or penalty) that is due and payable by the applicant to the APVMA (including under a law of another jurisdiction or the agvet law), has been paid.

Note: For giving information electronically, see section 156A.

8B Information to be provided with applications

- (1) The APVMA may, by legislative instrument, specify the information that must be contained in, or accompany, the application.
- (2) The APVMA may specify information under subsection (1) only if the inclusion of the information would enable the APVMA to determine the application.

8C Information to be taken into account in determining applications

- (1) In determining the application, the APVMA:
 - (a) must have regard to:
 - (i) the information in, or accompanying, the application as required under section 8B or any other provision of this Code; and
 - (ii) any information or thing given to the APVMA as required under section 157 or 159 or by section 160A in relation to the application; and
 - (iii) any submission made in response to an invitation given by the APVMA in relation to the application; and
 - (b) may have regard to any other matter that it thinks relevant.
- (2) However, the APVMA must not take into account any information that:
 - (a) is given by or on behalf of the applicant in connection with the application; but
 - (b) is not covered by paragraph (1)(a).
- (3) This section does not apply in relation to an application under section 122 for a licence.

8D Applications may be withdrawn

At any time after the application is made and before it is determined, the applicant may withdraw it by giving the APVMA written notice of the withdrawal signed by the applicant.

Division 3—General provisions about notices

8E Notice to Food Standards Australia New Zealand

- (1) The APVMA must notify Food Standards Australia New Zealand if an approval, registration, variation or permit proposed under this Code (whether by application or on the initiative of the APVMA) would, if it were given, made or issued, be likely to require a variation to the Maximum Residue Limits Standard.
- (2) The notice must:
 - (a) be in writing; and
 - (b) set out:
 - (i) the relevant particulars, or proposed relevant particulars, of the active constituents and products concerned, other than confidential commercial information; and
 - (ii) any other matters that the APVMA thinks appropriate; and
 - (c) be given to Food Standards Australia New Zealand:
 - (i) for an application—within 28 days after the APVMA completes a preliminary assessment of the application; or
 - (ii) for a variation under section 26C, 29, 29A, 34A or 34AF—before the variation is made.
- (3) This section does not apply in relation to an approval, registration, variation or permit proposed by an application that is subject to preliminary assessment before the application has passed preliminary assessment.

8F Notice to holder of approval, registration or variation

- (1) The APVMA must give written notice to the holder within 14 days if the APVMA:
 - (a) approves an active constituent; or
 - (b) registers a chemical product; or
 - (c) renews the registration of a chemical product; or

- (d) approves a label; or
- (e) varies relevant particulars or conditions (whether on notice under Division 2AA of Part 2, on application or on the initiative of the APVMA), other than under section 34A (varying relevant particulars or conditions to allow affirmation).

Note: For notices in relation to reconsiderations, see Division 4 of Part 2.

(2) The notice must:

- (a) for an approval or registration:
 - (i) state that the constituent, product or label has been approved or registered; and
 - (ii) set out the relevant particulars and conditions of the approval or registration; and
- (b) for a registration—state the date the registration ends; and
- (c) for the renewal of a registration:
 - (i) state that the registration of the chemical product has been renewed; and
 - (ii) state the date the registration (as renewed) ends; and
- (d) for the variation of relevant particulars or conditions:
 - (i) state that the relevant particulars or conditions have been varied; and
 - (ii) set out the relevant particulars or conditions as varied; and
 - (iii) of a registration—state the date the registration ends; and
- (e) include any information prescribed by the regulations.

Note: This subsection does not authorise the disclosure of confidential commercial information whose disclosure would otherwise be prohibited by section 162: see section 8X.

8G Notice to applicant of refusal of application

- (1) The APVMA must give written notice to the applicant within 14 days if the APVMA refuses an application.

Note: For notices in relation to reconsiderations, see Division 4 of Part 2.

(2) The notice must:

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- (a) state that the application has been refused; and
- (b) set out the reasons for the refusal; and
- (c) include any information prescribed by the regulations; and
- (d) specify any amount of fee that is repayable because of the refusal.

Note: Other provisions of this Code specify additional requirements for certain notices of refusal.

8H Published notice of approvals and registrations

- (1) If the APVMA approves an active constituent or registers a chemical product, it must, unless it thinks that in the circumstances it is unnecessary to do so, publish notice of the approval or registration.
- (2) The notice must:
 - (a) be published in the *Gazette*, as soon as practicable, and in any other manner that the APVMA thinks appropriate; and
 - (b) state that the constituent has been approved or the product has been registered and the date of the approval or registration as mentioned in section 22; and
 - (d) contain a brief statement of the conditions of the approval or registration that directly regulate the use of the constituent or product; and
 - (e) include any information prescribed by the regulations.

8J Published notice of variations of approvals and registrations

- (1) If the APVMA varies any of the relevant particulars or conditions of the approval of an active constituent or the registration of a chemical product, it must, unless it thinks that in the circumstances it is unnecessary to do so, publish notice of the variation.
- (2) The notice must:
 - (a) be published in the *Gazette*, as soon as practicable, and in any other manner that the APVMA thinks appropriate; and
 - (b) state that the relevant particulars or conditions have been varied and the date on which the variation took place; and

- (c) contain a brief statement of the nature of, and reasons for, the variation; and
- (d) include any information prescribed by the regulations.

Division 4—Holders of approvals and registrations and nominated agents

8L Changing the holder

- (1) The holder of an approval or registration may apply to the APVMA to change the holder.
- (2) The APVMA must record the change in the Record, Register or relevant APVMA file, as required, if the APVMA is satisfied that:
 - (a) the application meets the application requirements; and
 - (b) the proposed holder has consented, by signed writing, to being the holder; and
 - (c) if the proposed holder is not a resident of, and does not carry on business in, Australia—there will be a nominated agent for the approval or registration; and
 - (d) any requirements prescribed by the regulations have been met.
- (3) Otherwise, the APVMA must refuse the application.

Note: For notice of refusal, see section 8G.

8M Nominated agent

- (1) The holder may, at any time, apply to the APVMA for the person nominated in the application to be the nominated agent for the approval or registration.
- (2) The APVMA must record the person as the nominated agent in the Record, Register or relevant APVMA file, as required, if the APVMA is satisfied that:
 - (a) the application meets the application requirements; and
 - (b) the nominated person has consented, by signed writing, to being the nominated agent; and
 - (c) any requirements prescribed by the regulations have been met.
- (3) Otherwise, the APVMA must refuse the application.

Note: For notice of refusal, see section 8G.

- (4) It is a condition of the approval or registration that the nominated agent is a resident of, or carries on business in, Australia.

8N Overseas holder must have nominated agent

If the holder is not a resident of, and does not carry on business in, Australia, it is a condition of the approval or registration that there is a nominated agent for the approval or registration.

8P Changing the nominated agent

- (1) The holder may apply to the APVMA to change the nominated agent.
- (2) The APVMA must record the change in the Record, Register or relevant APVMA file, as required, if the APVMA is satisfied that:
 - (a) the application meets the application requirements; and
 - (b) the person to be the nominated agent has consented, by signed writing, to being the nominated agent; and
 - (c) any requirements prescribed by the regulations have been met.
- (3) Otherwise, the APVMA must refuse the application.

Note: For notice of refusal, see section 8G.

8Q Nominated agent may withdraw

- (1) The nominated agent may, by signed writing given to the APVMA, request to withdraw from being the nominated agent.
- (2) The APVMA must record the withdrawal in the Record, Register or relevant APVMA file, as required, if the APVMA is satisfied that:
 - (a) the nominated agent has notified the holder of the withdrawal; and
 - (b) any requirements prescribed by the regulations have been met.

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8R Role of nominated agent

Anything that may, or must, be done under this Code by, or in relation to, the holder, as the holder of the approval or registration, may be done by, or in relation to, either the holder or the nominated agent.

Note: For liabilities imposed on the nominated agent, see section 152.

Division 5—Notice of certain proposed decisions

8S Notice of certain proposed decisions

- (1) The APVMA must give the applicant written notice of what it proposes to do before it:
- (a) refuses an application, other than on preliminary assessment; or
 - (b) approves or registers an active constituent, chemical product or label with instructions or relevant particulars other than those set out in the application.

Note: For notices in relation to reconsiderations, see Division 4 of Part 2.

- (2) The notice must:
- (a) for notice under paragraph (1)(b)—set out the proposed instructions and relevant particulars; and
 - (c) include a draft statement of reasons for the proposed course of action; and
 - (d) set out the information on which the reasons are based (including information not given to the APVMA by the applicant); and
 - (e) invite written submissions from the applicant within 28 days, or within such further period as is specified in the notice.

Note: This subsection does not authorise the disclosure of confidential commercial information whose disclosure would otherwise be prohibited by section 162: see section 8X.

- (3) The APVMA is not required to take account of anything given in response to the invitation under paragraph (2)(e) that is not related to information:
- (a) already given to the APVMA by, or on behalf of, the applicant; or
 - (b) set out in the notice under paragraph (2)(d).
- (4) The APVMA is not required to comply with this section more than once in relation to a particular application.

Division 6—Listed chemical products and established standards

8T Regulations may include schedule of listed chemical products

- (1) The regulations may include a schedule specifying chemical products, or classes of chemical products, that are listed chemical products for the purposes of this Code.
- (2) Before the Governor-General makes a regulation that includes, or amends, the schedule referred to in subsection (1), the APVMA must publish in the *Gazette*, and in any other manner that the APVMA thinks appropriate, a notice:
 - (a) stating that it proposes to recommend to the Minister that the regulation be made; and
 - (b) setting out particulars of the chemical products, or class of chemical products, that would be covered, or otherwise affected, by the regulation; and
 - (c) setting out a draft standard the APVMA proposes to make under section 8U in relation to each chemical product that would be covered by the regulation; and
 - (d) giving the reasons for the proposed recommendation; and
 - (e) inviting any person, within a period of at least 28 days specified in the notice, to make a written submission to the APVMA as to whether the proposed regulation should be made and stating the grounds on which the submission is based, which must be grounds relating to the matters mentioned in paragraph 8V(a).
- (3) In making a recommendation to the Minister, the APVMA must take into account any submissions made in accordance with the invitation.
- (4) Before the Governor-General makes a regulation that includes, or amends, the schedule referred to in subsection (1):
 - (a) the APVMA must have recommended to the Minister that the regulation be made; and
 - (b) the APVMA must have given to the Minister:

- (i) its reasons for the recommendation; and
- (ii) written particulars of the product or class of products that would be covered, or otherwise affected, by the regulation; and
- (iii) a draft of the standard that the APVMA proposes to make under section 8U for the product, or for products in the class, if the product or class is specified in the schedule; and
- (iv) a written explanation as to why the APVMA is satisfied that the product, or class of products, meets the safety criteria, the trade criteria and the efficacy criteria (see section 8V); and
- (v) a written statement identifying the consultations held by, and setting out the advice given to, the APVMA in relation to the proposed regulation.

8U APVMA to prepare standards

- (1) This section applies in respect of each listed chemical product, whether or not the product is the subject of a monograph in the British Pharmacopoeia or the British Pharmacopoeia (Veterinary) or in a similar publication.
- (2) The APVMA must, by legislative instrument, make a standard for each listed chemical product. A particular standard may relate to a specified chemical product or specified chemical products or to each chemical product in a specified class of chemical products.
- (3) The standard for a listed chemical product must require that the product be labelled in a manner, or kept in containers that comply with requirements, specified in the standard.
- (4) The APVMA may, in a standard, direct that the particulars required by the standard be set out, in a manner specified in the standard, on:
 - (a) chemical products, or a class of chemical products, identified in the standard; or
 - (b) a container containing chemical products, or a class of chemical products, identified in the standard; or

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- (c) a label for containers for chemical products, or a class of chemical products, identified in the standard.
- (5) A standard for a listed chemical product:
 - (a) may be specified by reference to any one or more of the following:
 - (i) the composition and form of the constituents of the product;
 - (ii) the physical and chemical properties of the chemical product;
 - (iii) the quantity of the chemical product when contained in specified containers;
 - (iv) procedures to be carried out in the manufacture of the chemical product;
 - (v) a monograph in the British Pharmacopoeia or the British Pharmacopoeia (Veterinary);
 - (vi) a monograph in another publication approved by the APVMA for the purposes of this subparagraph;
 - (vii) a monograph referred to in subparagraph (v) or (vi) as modified in a manner specified in the standard;
 - (viii) a standard published by Standards Australia;
 - (ix) such other matters as the APVMA thinks fit; and
 - (b) may require that a matter relating to the standard be determined in accordance with a particular test.
- (6) Subsections (4) and (5) do not limit subsection (3).
- (7) The standard made by the APVMA in relation to a listed chemical product is the **established standard** for the product.

Note: The APVMA may revoke or amend a standard. See subsection 33(3) of the *Acts Interpretation Act 1901*.

8V Matters to be taken into account in preparing a standard

The APVMA must not make a standard for a listed chemical product unless the APVMA is satisfied that compliance with the standard would result in:

- (a) the product meeting the safety criteria, the trade criteria and the efficacy criteria; and
-

- (b) any label for containers for the product meeting the labelling criteria.

Division 7—Access to certain documents and information

8W Access to certain documents in the possession or custody of the APVMA

- (1) A person may, in writing, apply to the APVMA for a copy of, or extract from, a document (other than a document in any part of the Record or Register) in the possession or custody of the APVMA in relation to an approved active constituent or registered chemical product.
- (2) The APVMA must provide the copy or extract to the person if the person pays the prescribed fee (if any).

Note 1: See subsections 17(4) and (5) and 18(4) and (5) for access to the Record and Register.

Note 2: This subsection does not authorise the disclosure of confidential commercial information whose disclosure would otherwise be prohibited by section 162: see section 8X.

8X Confidential commercial information must not be disclosed under certain provisions

- (1) Engaging in conduct in the performance of functions or duties, or the exercise of powers, under any of the following provisions does not authorise the disclosure of confidential commercial information whose disclosure would otherwise be prohibited by section 162:
 - (a) subsection 8F(2);
 - (b) subsection 8S(2);
 - (c) subsection 8W(2);
 - (d) subsection 17(4) or (5);
 - (e) subsection 18(4) or (5);
 - (f) subsection 34AB(2);
 - (g) subsection 34AC(2).
- (2) Subsection (1) has effect despite subsection 162(1A).

Part 2—Approvals and registration

Division 1—Preliminary

9 Explanation of Part

- (1) This Part contains provisions relating to:
 - (a) approval of active constituents for proposed or existing chemical products; and
 - (b) registration of chemical products; and
 - (c) approval of labels for containers for chemical products.
- (2) Division 2 provides for approvals and registrations.
- (2A) Division 2AA provides for notifiable variations of relevant particulars of approvals and registrations if the variations are of a kind determined by the APVMA or prescribed by the regulations and are not prescribed variations under Division 2A. Only holders of approvals or registrations may notify variations under Division 2AA.
- (3) Division 2A provides for variation of relevant particulars of approvals and registrations if the variations are of a kind determined by the APVMA or prescribed by the regulations. Only holders of approvals or registrations may apply under Division 2A.
- (4) Division 3 provides generally for variation of relevant particulars or conditions of approvals and registrations. Holders and other persons may apply under Division 3.
- (6) Division 4 provides for the APVMA to reconsider approvals and registrations in order to decide whether they should remain in force.
- (7) Division 4A limits the use the APVMA can make of certain information given to it in connection with certain applications.
- (8) Division 5 sets out the circumstances in which the APVMA may suspend or cancel approvals and registrations.

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- (9) Division 6 states how long approvals and registrations are to continue in force and makes provision for the renewal of registrations.

Division 2—Approving and registering

9A Explanation of Division

- (1) This Division provides for:
 - (a) approval of active constituents for proposed or existing chemical products; and
 - (b) registration of chemical products; and
 - (c) approval of labels for containers for chemical products.
- (2) Section 10 provides for applications to be made. Applications must meet the application requirements specified in section 8A.
- (3) The APVMA must complete a preliminary assessment of an application. If the application passes preliminary assessment, the APVMA must notify the applicant and publish a summary of the application (section 11).
- (4) Before determining certain applications that have passed preliminary assessment, the APVMA must publish a notice inviting public submissions (sections 12 and 13).
- (5) The APVMA must approve an active constituent or label, or register a chemical product, if specified criteria are met (section 14). Sections 14A to 16 set out special rules about approvals and registrations.
- (6) The APVMA must keep a Record of Approved Active Constituents for Chemical Products and a Register of Agricultural and Veterinary Chemical Products (sections 17 and 18).
- (7) Sections 19 to 21 set out how approvals and registrations take place, and section 22 deals with dates of approval and registration.
- (8) Approvals and registrations may be subject to conditions (section 23).
- (9) Section 26 provides for incorrect relevant particulars and conditions of a kind prescribed by the regulations to be corrected.

Section 10

10 Applications

- (1) A person may apply to the APVMA:
 - (a) for approval of an active constituent for a proposed or existing chemical product; or
 - (b) for registration of a chemical product; or
 - (c) for approval of a label for containers for a chemical product.
- (2) The application:
 - (a) must meet the application requirements; and
 - (b) for an active constituent or chemical product—must include proposed instructions for use of the constituent or product.

Note: For *meets the application requirements*, see section 8A.

11 Preliminary assessment

- (1) The APVMA must complete a preliminary assessment of the application within 1 month after it is lodged.
- (2) If it appears from the preliminary assessment that the application meets the application requirements, the APVMA must, within 14 days:
 - (a) give written notice to the applicant:
 - (i) stating that the application has passed preliminary assessment and that it will be determined under section 14; and
 - (ii) setting out any matters prescribed by the regulations; and
 - (b) publish a summary of the application that includes any details prescribed by the regulations.
- (3) Otherwise, the APVMA must refuse the application.

Note: For notice of refusal, see section 8G.

- (4) The APVMA may alter the application, after it has passed preliminary assessment, with the written consent of the applicant.

12 APVMA to publish notice before deciding whether to approve new active constituent

- (1) This section applies if the application:
 - (a) has passed preliminary assessment; and
 - (b) is for approval of an active constituent not previously contained in a chemical product registered in this or another jurisdiction under the Agvet Code, or a corresponding previous law, of the jurisdiction concerned.
- (2) The APVMA must publish a notice in the *Gazette* and in any other manner that it thinks appropriate.
- (3) The notice must state that the APVMA has to decide whether to approve the constituent and must:
 - (a) set out the following:
 - (i) the name of the constituent;
 - (ii) particulars of the constituent;
 - (iii) a summary of the APVMA's assessment of whether the constituent meets the safety criteria;
 - (iv) any other matters that the APVMA thinks appropriate; and
 - (b) invite any person to make, within a specified period of at least 28 days, a written submission as to whether the constituent should be approved and stating the grounds on which the submission is based, which must be grounds that relate to the safety criteria.

13 APVMA to publish notice before deciding whether to register chemical product containing new active constituent

- (1) This section applies if the application:
 - (a) has passed preliminary assessment; and
 - (b) is for registration of a chemical product containing an active constituent not previously contained in a chemical product registered in this or another jurisdiction under the Agvet Code, or a corresponding previous law, of the jurisdiction concerned.
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- (2) The APVMA must publish a notice in the *Gazette* and in any other manner that it thinks appropriate.
- (3) The notice must state that the APVMA has to decide whether to register the product and must:
 - (a) set out the following:
 - (i) the name that the applicant intends to use to describe the product;
 - (ii) particulars of the product and its active constituents;
 - (iii) a summary of the APVMA's assessment of whether the product meets the safety criteria, the trade criteria and the efficacy criteria;
 - (iv) any other matters that the APVMA thinks appropriate; and
 - (b) invite any person to make, within a specified period of at least 28 days, a written submission to the APVMA as to whether the product should be registered and stating the grounds on which the submission is based, which must be grounds that relate to the safety criteria, the trade criteria or the efficacy criteria.

14 Approval and registration

- (1) The APVMA must approve the active constituent or label, or register the chemical product, if it is satisfied:
 - (a) that the application meets the application requirements; and
 - (b) for an active constituent—that the constituent meets the safety criteria; and
 - (c) for a chemical product—that the product:
 - (i) meets the safety criteria, the trade criteria and the efficacy criteria; or
 - (ii) complies with the established standard for the product; and
 - (d) for a label for a chemical product—that the label:
 - (i) meets the labelling criteria; or
 - (ii) complies with the established standard for the product.

Note: For notice of approval or registration, see section 8F.

- (2) Otherwise, the APVMA must refuse the application.

Note: For notice of refusal, see section 8G.

14A Approval of active constituents for which information is not readily available

- (1) The APVMA may approve an active constituent for a proposed or existing chemical product if:
- (a) either of the following applies:
 - (i) the APVMA considers that information it requires in respect of the constituent is not readily available;
 - (ii) the constituent is, or is part of, a product in respect of which a standard is specified in the European Pharmacopoeia, the British Pharmacopoeia (Veterinary), the United States Pharmacopoeia or any other publication considered by the APVMA to be appropriate; and
 - (b) having regard to information that is readily available, the APVMA is satisfied that the constituent would meet the safety criteria.
- (2) Subsection (1) applies:
- (a) despite subsection 14(2); and
 - (b) whether or not an application has been made for approval of the constituent.
- (3) If the APVMA approves an active constituent under this section without an application having been made for the approval, the APVMA must, under paragraph 19(a), be entered in the Record as the holder of the approval.

14B APVMA not to use information for registration of new chemical product to register a similar product after disclosure

- (1) This section applies if:
- (a) information was given to the APVMA in connection with an application made after the commencement of this section for registration of a chemical product (the *first product*) containing an active constituent that was not a previously
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- endorsed active constituent at the time of registration of the first product; and
- (b) the information related to the first product or the active constituent and:
- (i) the safety criteria; or
 - (ii) a matter that is prescribed by the regulations; and
- (c) the information was disclosed:
- (i) by the Commonwealth, a State or a Territory; or
 - (ii) by an authority of the Commonwealth, a State or a Territory (including the APVMA); or
 - (iii) by anyone acting on behalf of the Commonwealth, a State, a Territory or an authority of the Commonwealth, a State or a Territory; and
- (d) the information was not publicly available before the disclosure; and
- (e) as a result of the disclosure, the applicant for an application for registration of a chemical product (the **second product**) that is the same as, or similar to, the first product, seeks to have the APVMA use the information in determining the application.
- (2) For 10 years after the first day on which the first product was registered, the APVMA must not use the information to register the second product if:
- (a) the registration of the second product would be commercially unfair; and
 - (b) the authorising party for the information does not consent to the use.
- (3) The use of information in contravention of subsection (2) for determining the application for registration of the second product does not affect the validity of the registration of the second product.
- (4) An action or proceeding does not lie against any of the following for any loss directly or indirectly sustained because of the use of information in contravention of subsection (2):
- (a) the Commonwealth;

- (b) the APVMA;
 - (c) a person who is or has been:
 - (i) a director of the APVMA; or
 - (ii) the Chief Executive Officer of the APVMA; or
 - (iii) a delegate of the APVMA; or
 - (iv) a member of the staff of the APVMA.
- (5) This section has effect in addition to Division 4A.

15 Restriction on power of APVMA to register products and approve labels

- (1) Subject to subsection (2), the APVMA must not:
 - (a) register a chemical product unless:
 - (i) the APVMA also approves each active constituent for the product; and
 - (ii) the APVMA also approves a label for containers for the product; or
 - (b) approve a label for containers for a chemical product unless it also registers the product.
- (2) Subparagraph (1)(a)(i) does not apply in relation to:
 - (a) an active constituent that is exempted by the APVMA from the operation of that subparagraph; or
 - (b) an active constituent for a listed chemical product.

16 Multiple approvals or registrations

- (1) The approval of an active constituent does not preclude the approval of the same constituent on the application of another person.
- (2) The registration of a chemical product on the application of a person does not preclude the registration on the application of another person of another chemical product that has the same or similar constituents.

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- (3) The approval of a label for containers for a chemical product does not preclude the approval of another label or other labels for containers for that product.

17 APVMA must keep a Record of Approved Active Constituents for Chemical Products

- (1) For the purposes of this Code, the APVMA must keep a record to be known as the Record of Approved Active Constituents for Chemical Products.
- (2) The Record may be kept at a place and in a form that the APVMA determines, and may be kept by electronic means.
- (3) The Record is to be kept in 3 parts as follows:
- (a) one part is to consist of confidential commercial information relating to constituents approved under section 14;
 - (b) one part is to consist of other information relating to constituents approved under section 14;
 - (c) one part is to consist of information relating to constituents approved under section 14A.
- (4) The APVMA must permit any person to inspect any part of the Record at any time during ordinary office hours on a working day.

Note: This subsection does not authorise the disclosure of confidential commercial information whose disclosure would otherwise be prohibited by section 162: see section 8X.

- (5) If a person applies to the APVMA for a copy of, or extract from, a part of the Record and pays the prescribed fee (if any), the APVMA must give the copy or extract to that person.

Note: This subsection does not authorise the disclosure of confidential commercial information whose disclosure would otherwise be prohibited by section 162: see section 8X.

18 APVMA must keep a Register of Agricultural and Veterinary Chemical Products

- (1) For the purposes of this Code, the APVMA must keep a register to be known as the Register of Agricultural and Veterinary Chemical Products.
- (2) The Register may be kept at a place and in a form that the APVMA determines, and may be kept by electronic means.
- (3) The Register is to be kept in 2 parts, one containing confidential commercial information and the other containing other information.
- (4) The APVMA must permit any person to inspect any part of the Register at any time during ordinary office hours on a working day.

Note: This subsection does not authorise the disclosure of confidential commercial information whose disclosure would otherwise be prohibited by section 162: see section 8X.

- (5) If a person applies to the APVMA for a copy of, or extract from, a part of the Register and pays the prescribed fee (if any), the APVMA must give the copy or extract to that person.

Note: This subsection does not authorise the disclosure of confidential commercial information whose disclosure would otherwise be prohibited by section 162: see section 8X.

19 How approval of active constituent takes place

Approval of an active constituent takes place when the APVMA enters the following in the Record:

- (a) the name of the person who applied for the approval as the holder of the approval;
- (b) the name of any nominated agent for the approval;
- (c) the relevant particulars, which are the distinguishing number, any instructions for the use of the constituent and any other particulars prescribed by the regulations;
- (d) any conditions of the approval imposed by the APVMA.

20 How registration of chemical product takes place

- (1) Registration of a chemical product takes place when the APVMA enters the following in the Register:
 - (a) the name of the person who applied for the registration as the holder of the registration;
 - (b) the name of any nominated agent for the registration;
 - (c) the relevant particulars, which are the distinguishing number, any instructions for the use of the product and any other particulars prescribed by the regulations;
 - (d) if the product is a listed chemical product—a notation to that effect;
 - (e) any conditions of the registration imposed by the APVMA;
 - (f) the date the registration ends.
- (2) The date the registration ends must:
 - (a) be the last day of a calendar month not more than 7 years after the registration takes place; and
 - (b) be worked out in accordance with the method prescribed by the regulations.
- (3) However, if the regulations do not prescribe a method for the purposes of paragraph (2)(b), the date the registration ends must be the next 30 June after the registration takes place.

21 How approval of label takes place

Approval of a label takes place when the APVMA:

- (a) determines the particulars prescribed by the regulations that are appropriate to be contained on the label; and
- (b) gives a distinguishing number to the label; and
- (c) records the following information in the relevant APVMA file:
 - (i) the name of the person who applied for the approval as the holder of the approval;
 - (ii) the name of any nominated agent for the approval;
 - (iii) the distinguishing number;

- (iv) the instructions and any particulars that are to be contained on the label;
- (iva) any other particulars prescribed by the regulations;
- (v) any conditions of the approval imposed by the APVMA.

22 Date of approval or registration

- (1) The date of approval of an active constituent, of registration of a chemical product or of approval of a label is the date on which the relevant particulars are entered in the Record, Register or relevant APVMA file.
- (2) If:
 - (a) any of the relevant particulars of:
 - (i) an approval of an active constituent; or
 - (ii) a registration of a chemical product; or
 - (iii) an approval of a label; or
 - (b) any of the conditions of such an approval or registration imposed by the APVMA;are varied, then, the date of approval of the constituent, registration of the product, or approval of the label, as varied, or as subject to the varied conditions, is the date on which particulars of the variation are entered in the Record, Register or relevant APVMA file.

23 Conditions of approval or registration

- (1) The approval of an active constituent, the registration of a chemical product or the approval of a label for containers for a chemical product is subject to:
 - (a) the conditions prescribed by the regulations (whether or not the conditions are prescribed at the time the constituent, product or label is approved or registered); and
 - (b) any conditions imposed on the approval or registration as the APVMA thinks appropriate.
- (2) An active constituent, chemical product or a label may be approved or registered on the condition that the approval or registration is

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taken to remain in force only for a stated period of not more than 1 year.

(3) If:

- (a) the approval or registration is subject to a condition referred to in subsection (2); and
- (b) the conditions of approval or registration have not been varied before the end of the period referred to in the condition, or the end of that period as previously extended under this subsection, so as to remove the condition;

the APVMA may vary the condition so as to extend the period for a further period of not more than 1 year.

26 Incorrect particulars and conditions

(1) If:

- (a) the APVMA is satisfied that a relevant particular or condition entered in the Record or Register, or recorded in the relevant APVMA file, is incorrect in a material respect; and
- (b) the relevant particular or condition is of a kind prescribed by the regulations;

the APVMA must vary the entry or record accordingly.

Note: For notice of variation, see section 8F.

(2) If the APVMA is satisfied that a relevant particular or condition entered in the Record or Register, or recorded in the relevant APVMA file, is incorrect in a material respect because of inaccurate recording, the APVMA must vary the entry or record accordingly.

Note: For notice of variation, see section 8F.

(3) If the holder of the approval of an active constituent, the registration of a chemical product or the approval of a label for containers for a chemical product has reasonable cause to believe that:

- (a) a relevant particular or condition entered in the Record or Register, or recorded in the relevant APVMA file, in relation to the constituent, product or label is incorrect in a material respect; and

- (b) the relevant particular or condition is incorrect because of inaccurate recording;
the holder must, within 28 days, give to the APVMA a written notice, signed by the holder, identifying the incorrect particular or condition and informing the APVMA of the correct particular or condition.
- (4) The holder commits an offence of strict liability if the holder contravenes subsection (3).
- Penalty: 30 penalty units.
- Note: For strict liability, see section 6.1 of the *Criminal Code*.
- (5) Subsection (3) is a civil penalty provision.
- Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Division 2AA—Notified variations of relevant particulars

26AA Explanation of Division

- (1) This Division provides for some kinds of variations of relevant particulars of approvals and registrations (called notifiable variations) to be made on notice by the holders of approvals or registrations.
- (2) A notifiable variation is a variation of a kind:
 - (a) determined by the APVMA; or
 - (b) prescribed by the regulations.A prescribed variation under Division 2A cannot be a notifiable variation.
- (3) Only holders of approvals or registrations may notify variations under this Division (section 26AB). The notice must meet the notice requirements specified in subsection 26AD(1).
- (4) Section 26AC sets out how the APVMA varies the relevant particulars on notice under this Division.

26AB Notice of notifiable variations

- (1) The holder may, in writing, lodge notice with the APVMA of one or more notifiable variations of the relevant particulars of an approval or registration.
- (2) The notice must meet the notice requirements.

Note: For *meets the notice requirements*, see subsection 26AD(1).
- (3) A **notifiable variation** is a variation of a kind that:
 - (a) either:
 - (i) is determined by the APVMA under subsection (5); or
 - (ii) is prescribed by the regulations; and
 - (b) is not a prescribed variation under Division 2A.

- (4) The APVMA must not determine a kind of variation under subsection (5) unless it is satisfied that, with the relevant particulars so varied:
 - (a) for an active constituent—the constituent would meet the safety criteria; and
 - (b) for a chemical product—the product would:
 - (i) meet the safety criteria, the trade criteria and the efficacy criteria; or
 - (ii) comply with the established standard for the product; and
 - (c) for a label for a chemical product—the label would:
 - (i) meet the labelling criteria; or
 - (ii) comply with the established standard for the product.
- (5) The APVMA may, by legislative instrument, determine a kind of variation for the purposes of subparagraph (3)(a)(i).
- (6) If the notice does not meet the notice requirements, the APVMA must:
 - (a) notify the holder in writing of that fact; and
 - (b) include in the notice the reasons why the holder's notice does not meet the notice requirements.

26AC Variation of relevant particulars

- (1) If a notice is lodged under section 26AB, the APVMA must vary the relevant particulars of the approval or registration as proposed in the notice.
- (2) The variation is taken to have effect on the day the notice is lodged.
- (3) The APVMA must, within 14 days after the notice is lodged:
 - (a) record in the Record, Register or relevant APVMA file, as required, the relevant particulars as varied and the day the notice was lodged; and
 - (b) if the relevant particulars of a listed chemical product are varied in such a way that the product or any approved label for the product does not comply with the established standard

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for the product—amend the Register so that the product is no longer noted as a listed chemical product.

Note 1: For notice of variation, see section 8F.

Note 2: For publication of the variation, see section 8J.

26AD Notice requirements

- (1) For the purposes of this Division, a notice *meets the notice requirements* if the notice:
 - (a) is in writing in the approved form; and
 - (b) is signed by the holder of the approval or registration to which the notice relates; and
 - (c) is accompanied by the prescribed fee; and
 - (d) is lodged with the APVMA; and
 - (e) contains, or is accompanied by, any information:
 - (i) specified by the APVMA under subsection (2); or
 - (ii) prescribed by the regulations.
- (2) For the purposes of subparagraph (1)(e)(i), the APVMA may, by legislative instrument, specify the information that must be contained in, or accompany, the notice.
- (3) The APVMA may specify information under subsection (2) only if the information is relevant to a notifiable variation.

Division 2A—Prescribed variations of relevant particulars

26A Explanation of Division

- (1) This Division provides for prescribed variations of relevant particulars of approvals and registrations.
- (2) A prescribed variation is a variation of a kind:
 - (a) determined by the APVMA; or
 - (b) prescribed by the regulations.
- (3) Only holders of approvals or registrations may apply under this Division (section 26B). The application must meet the application requirements specified in section 8A.
- (4) Section 26D sets out how a variation takes place.

26B Applications for prescribed variations

- (1) The holder may apply to the APVMA for one or more prescribed variations of the relevant particulars of an approval or registration.
- (2) The application must meet the application requirements.

Note: For *meets the application requirements*, see section 8A.
- (3) The APVMA may alter the application with the written consent of the applicant.
- (4) A *prescribed variation* is a variation of a kind:
 - (a) determined by the APVMA under subsection (6); or
 - (b) prescribed by the regulations.
- (5) The APVMA must not determine a kind of variation under subsection (6) unless it is satisfied that, with the relevant particulars so varied:
 - (a) for an active constituent—the constituent would meet the safety criteria; and
 - (b) for a chemical product—the product would:

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- (i) meet the safety criteria, the trade criteria and the efficacy criteria; or
 - (ii) comply with the established standard for the product; and
- (c) for a label for a chemical product—the label would:
 - (i) meet the labelling criteria; or
 - (ii) comply with the established standard for the product.
- (6) The APVMA may, by legislative instrument, determine a kind of variation for the purposes of paragraph (4)(a).
- (7) If the application does not meet the application requirements, the APVMA must:
 - (a) notify the holder in writing of that fact; and
 - (b) include in the notice the reasons why the holder's application does not meet the application requirements.

26C Decision on prescribed variations

- (1) The APVMA must, within the period prescribed by the regulations:
 - (a) if it is satisfied that the application meets the application requirements—vary the relevant particulars as proposed in the application; or
 - (b) otherwise—refuse the application.

Note 1: For notice of variation, see section 8F.

Note 2: For notice of refusal, see section 8G.

- (2) If the APVMA does not make a decision on the application within the period prescribed, the APVMA is, immediately after the end of that period, taken to have made a decision under subsection (1) to vary the relevant particulars as proposed in the application.

26D How prescribed variation takes place

- (1) Variation of relevant particulars under this Division takes place when the APVMA records in the Record, Register or relevant APVMA file, as required, the relevant particulars as varied and the date on which the variation is made.

- (2) If the relevant particulars of a listed chemical product are varied in such a way that the product or any approved label for the product does not comply with the established standard for the product, the APVMA must amend the Register so that the product is no longer noted as a listed chemical product.

Division 3—Varying relevant particulars and conditions

26E Explanation of Division

- (1) This Division provides generally for variation of relevant particulars or conditions of approvals and registrations.
- (2) Holders and other persons may apply under this Division.
- (3) Section 27 provides for applications to be made. An application must meet the application requirements specified in section 8A.
- (4) The APVMA must complete a preliminary assessment of the application. If the application passes preliminary assessment, the APVMA must notify the applicant and may be required to publish a summary of the application (section 28).
- (5) The APVMA must vary the relevant particulars or conditions if specified criteria are met (section 29).
- (6) The APVMA may vary relevant particulars or conditions on its own initiative with the consent of the holder (section 29A).
- (7) Section 29B sets out how a variation takes place.

27 Applications

- (1) The holder may apply to the APVMA for variation of the relevant particulars or conditions of:
 - (a) the approval of an active constituent; or
 - (b) the registration of a chemical product; or
 - (c) the approval of a label for containers for a chemical product.

Note: The APVMA may only vary relevant particulars or conditions that it has imposed. See section 6B.

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- (2) A person may, with the consent of the holder, apply to the APVMA for variation of the relevant particulars or conditions of:
 - (a) the registration of a chemical product; or
 - (b) the approval of a label for containers for a chemical product.
- (3) An application under subsection (1) or (2) must meet the application requirements.

Note: For *meets the application requirements*, see section 8A.

28 Preliminary assessment

- (1) The APVMA must complete a preliminary assessment of the application within 1 month after it is lodged.
- (2) If it appears from the preliminary assessment that the application meets the application requirements, the APVMA must, within 14 days:
 - (a) give written notice to the applicant:
 - (i) stating that the application has passed preliminary assessment and that it will be determined under section 29; and
 - (ii) setting out any matters prescribed by the regulations; and
 - (b) if the variation relates to the use of a chemical product—publish a summary of the application including any details prescribed by the regulations.

- (3) Otherwise, the APVMA must refuse the application.

Note: For notice of refusal, see section 8G.

- (4) The APVMA may alter the application, after it has passed preliminary assessment, with the written consent of:
 - (a) the applicant; and
 - (b) if the applicant is not the holder—the holder.

29 Varying relevant particulars and conditions

- (1) The APVMA must vary the relevant particulars or conditions if it is satisfied:
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- (a) that the application meets the application requirements; and
- (b) for an active constituent—that, if those particulars or conditions were varied in accordance with the application, the constituent would meet the safety criteria; and
- (c) for a chemical product—that, if those particulars or conditions were varied in accordance with the application, the product would:
 - (i) meet the safety criteria, the trade criteria and the efficacy criteria; or
 - (ii) comply with the established standard for the product; and
- (d) for a label for a chemical product—that, if those particulars or conditions were varied in accordance with the application, the label would:
 - (i) meet the labelling criteria; or
 - (ii) comply with the established standard for the product.

Note: For notice of variation, see section 8F.

- (2) Otherwise, the APVMA must refuse the application.

Note: For notice of refusal, see section 8G.

29A APVMA may vary on its own initiative with holder's consent

- (1) The APVMA may, on its own initiative, and with the written consent of the holder, vary the relevant particulars or conditions of an approval or registration.

Note 1: The APVMA may only vary relevant particulars or conditions that it has imposed. See section 6B.

Note 2: For notice of variation, see section 8F.

- (2) The APVMA may vary the relevant particulars or conditions only if it is satisfied:
 - (a) for an active constituent—that, if those particulars or conditions were so varied, the constituent would meet the safety criteria; and
 - (b) for a chemical product—that, if those particulars or conditions were so varied, the product would:

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- (i) meet the safety criteria, the trade criteria and the efficacy criteria; or
 - (ii) comply with the established standard for the product; and
 - (c) for a label for a chemical product—that, if those particulars or conditions were so varied, the label would:
 - (i) meet the labelling criteria; or
 - (ii) comply with the established standard for the product; and
 - (d) that the constituent, product or label complies, or will comply, with any requirement prescribed by the regulations.
- (3) No fee is payable in relation to a variation made under this section.
- (4) Nothing in this Code requires the APVMA to make a variation under this section.

29B How variation takes place

- (1) Variation of relevant particulars or conditions under this Division takes place when the APVMA records in the Record, Register or relevant APVMA file, as required, the relevant particulars or conditions as varied and the date on which the variation is made.
- (2) If the relevant particulars or conditions of a listed chemical product are varied in such a way that the product or any approved label for the product does not comply with the established standard for the product, the APVMA must amend the Register so that the product is no longer noted as a listed chemical product.

Division 4—Reconsidering approvals and registrations

29L Explanation of Division

- (1) This Division provides for reconsideration of approvals and registrations.
- (2) The APVMA may invite proposals for reconsideration (section 30), and the APVMA may reconsider an approval or registration at any time (section 31).
- (3) Before reconsidering an approval or registration, the APVMA must prepare a work plan (section 31), notify the holder and invite the holder to make a written submission on the reconsideration. The holder will also be required to give the APVMA information relevant to the reconsideration (section 32).
- (4) The APVMA may inform any person that the APVMA proposes to reconsider, or is reconsidering, the approval or registration and invite written submissions (section 32).
- (5) The APVMA may require the holder to conduct trials or experiments or provide information or samples for the purposes of the reconsideration (section 33).
- (6) The APVMA must affirm the approval or registration if it is satisfied that the constituent or product concerned meets specified criteria (section 34).
- (7) The APVMA must vary the relevant particulars or conditions of the approval or registration if the APVMA is satisfied that they can be varied in such a way as to allow the approval or registration to be affirmed (section 34A).
- (8) If the APVMA does not affirm the approval or registration, it must suspend or cancel the approval or registration (section 34AA).
- (9) The APVMA must give notice of what it proposes to do before it:
 - (a) varies the relevant particulars or conditions; or

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- (b) suspends or cancels the approval or registration (section 34AB).
- (10) If the APVMA affirms the approval or registration, it must notify the holder and publish a notice in the *Gazette* (section 34AC).
- (11) The APVMA may reconsider the approval of a label to determine whether the instructions on the label are adequate (section 34AF).

30 Inviting the public to propose reconsiderations

- (1) The APVMA may at any time publish in the *Gazette*, and in any other manner it thinks appropriate, notices inviting persons to propose active constituents, chemical products or labels whose approval or registration the APVMA might reconsider.
- (2) A notice under subsection (1) must state the criteria that are to be taken into account by the APVMA in reconsidering the approval or registration.
- (3) A proposal made by a person because of an invitation contained in a notice under subsection (1) must submit reasons, based on the criteria stated in the notice, in support of the proposal.

31 APVMA may reconsider approval or registration

- (1) The APVMA may at any time, in accordance with this Division, reconsider:
 - (a) the approval of an active constituent for a proposed or existing chemical product; or
 - (b) the registration of a chemical product; or
 - (c) the approval of a label for containers for a chemical product.
- (2) Before commencing the reconsideration, the APVMA must prepare a work plan in accordance with any requirements prescribed by the regulations.
- (3) The work plan:
 - (a) must be maintained in accordance with the regulations; and
 - (b) is not a legislative instrument.

32 Notice of reconsideration

- (1) The APVMA must give written notice to the holder of the approval or registration:
- (a) setting out the matters it proposes to deal with in the reconsideration and its reasons for so proposing; and
 - (b) requiring the holder, within a period stated in the notice that ends not earlier than 28 days after the day the notice is given, to give to the APVMA either or both of the following:
 - (i) any information of a kind stated in the notice of which the holder is aware and which is relevant to the reconsideration;
 - (ii) any information of which the holder is aware that is relevant to the reconsideration; and
 - (c) inviting the holder, within that period, to make a written submission to the APVMA about the matters referred to in paragraph (a); and
 - (d) setting out the work plan.
- (1A) The APVMA may, by written notice given to the holder, extend the period stated in the notice.
- (2) The APVMA may, if it thinks it desirable to do so, inform any person, in any manner that it thinks appropriate, that the APVMA proposes to reconsider, or is reconsidering, the approval or registration.
- (2A) If the APVMA informs a person as mentioned in subsection (2), it must:
- (a) inform the person of:
 - (i) the matters that it proposes to reconsider, or is reconsidering; and
 - (ii) the work plan; and
 - (b) invite any person to make, within a specified period which must not end earlier than 28 days after the invitation is given, a written submission to the APVMA about the matters it proposes to reconsider, or is reconsidering.
- (2B) Nothing in subsections (1), (2) or (2A):
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- (a) requires the APVMA to deal with a particular matter as part of the reconsideration; or
 - (b) prevents the APVMA from dealing with a particular matter as part of the reconsideration.
- (3) The holder must comply with a requirement made of the holder under paragraph (1)(b).
- Note: A person does not commit an offence by failing to do something the person is not capable of doing. See subsections 4.2(1) and (4) of the *Criminal Code*.
- (4) Subsection (3) does not apply if, before the end of the period stated in the notice, the holder requests the APVMA under section 42 to cancel the approval of the constituent, the registration of the product or the approval of the label, as the case may be, and the APVMA complies with the request.
- (5) The holder commits an offence of strict liability if the holder contravenes subsection (3).

Penalty: 120 penalty units.

Note 1: For strict liability, see section 6.1 of the *Criminal Code*.

Note 2: A defendant bears an evidential burden in relation to the matter in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

- (6) Subsection (3) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matter in subsection (4), see section 145CD.

33 APVMA may require information, reports, results or samples

- (1) The APVMA may, by written notice given to the holder of the approval or registration, require the holder, within a reasonable period stated in the notice or such further period as the APVMA allows, to do one or more of the following for the purposes of the reconsideration:
- (a) give to the APVMA information of a kind stated in the notice;

- (b) carry out a search of published literature for information and give a report to the APVMA on the results of that search;
- (c) conduct, or cause to be conducted, trials or laboratory experiments and give the results of the trials or experiments to the APVMA;
- (d) give to the APVMA, or to another body specified in the notice, a sample of an active constituent, or of a chemical product or any of its constituents, for the purpose of analysis by an approved analyst.

The information, trials, experiments or analysis must be relevant to the reconsideration.

- (1A) The period stated in the notice must be no longer than the period prescribed by the regulations.
- (1B) The APVMA may allow a further period only in the circumstances prescribed by the regulations.
- (1C) The power under subsection (1) includes the power to require the holder to give to the APVMA information, a report, results or a sample in addition to any information, report, results, or sample previously given by the holder to the APVMA under any provision of this Code other than this section.
- (1D) Any information, report, results or sample that the holder has to give to the APVMA or another body under subsection (1) must be given as follows:
 - (a) information, a report or results must be given in writing:
 - (i) signed by the holder; or
 - (ii) attached to a covering letter signed by the holder;
 - (b) a sample must be:
 - (i) labelled with a label signed by the holder; or
 - (ii) attached to a covering letter signed by the holder.

Note: For giving information electronically, see section 156A.

- (2) The holder must comply with a requirement made of the holder under subsection (1).

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Note: A person does not commit an offence by failing to do something the person is not capable of doing. See subsections 4.2(1) and (4) of the *Criminal Code*.

- (3) Subsection (2) does not apply if, before the end of the period stated in the notice, the holder requests the APVMA under section 42 to cancel the approval of the constituent or the registration of the product, as the case may be, and the APVMA complies with the request.
- (4) The holder commits an offence of strict liability if the holder contravenes subsection (2).

Penalty: 120 penalty units.

Note 1: For strict liability, see section 6.1 of the *Criminal Code*.

Note 2: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

- (5) Subsection (2) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matter in subsection (3), see section 145CD.

34 Reconsideration by APVMA

- (1) The APVMA must affirm the approval or registration if, and only if, it is satisfied:
- (a) for an active constituent—that the constituent meets the safety criteria; and
 - (b) for a chemical product—that the product meets the safety criteria, the trade criteria and the efficacy criteria; and
 - (c) for a label—that the label meets the labelling criteria; and
 - (d) that the constituent, product or label complies with any requirement prescribed by the regulations.
- (2) Subsection (1) applies only to the extent that the APVMA decides to reconsider matters covered by the subsection.
- (3) For the purposes of subsection (1), the APVMA:
- (a) must have regard to:

- (i) any information given, or submissions made, to the APVMA in response to a notice given under subsection 32(1); and
 - (ii) any submissions made to the APVMA in response to an invitation under paragraph 32(2A)(b) or 34AB(2)(f); and
 - (iii) any information given by the holder in response to an invitation given by the APVMA (whether or not under this Code) in relation to the constituent, product or label; and
 - (iv) any information, report, results or sample given to the APVMA in response to a notice given under section 33; and
 - (v) any information given to the APVMA as required by section 161 in relation to the constituent, product or label; and
 - (vi) any other information that it considers necessary to enable it to make a decision on the reconsideration; but
- (b) must not take into account any submission, information, report, results or sample not covered by paragraph (a).

34A Varying relevant particulars or conditions to allow affirmation

- (1) If the APVMA:
- (a) is not satisfied as mentioned in subsection 34(1); but
 - (b) is satisfied that the relevant particulars or conditions of the approval or registration can be varied in such a way as to allow the approval or registration to be affirmed;

the APVMA must vary the relevant particulars or conditions.

Note: The APVMA may only vary relevant particulars or conditions that it has imposed. See section 6B.

- (2) For the purposes of paragraph (1)(b), the APVMA may have regard only to the following:
- (a) submissions, information, reports, results or samples that it had regard to under section 34;
 - (b) submissions made to the APVMA in response to the invitation under paragraph 34AB(2)(f).

Section 34AA

- (3) If the variation would affect any instructions for the use of an active constituent or chemical product, or any instructions on a label, the APVMA must not make the variation until it has consulted each co-ordinator designated for a jurisdiction and taken into account any recommendations made by the co-ordinators.
- (4) If the APVMA varies the relevant particulars or conditions, it must record in the Record, Register or relevant APVMA file, as required, the relevant particulars or conditions as varied and the date on which the variation is made.

34AA Suspension or cancellation

- (1) If the APVMA does not affirm the approval or registration, it must suspend or cancel the approval or registration.
- (2) If the reconsideration is of the approval of a label for containers for a chemical product, the APVMA must suspend or cancel the approval if:
 - (a) the APVMA is satisfied that the relevant particulars of the approval can be varied in such a way as to allow the approval to be affirmed; but
 - (b) the holder does not satisfy the APVMA that a label, including the particulars as varied, will be attached to the containers for the product.
- (3) Subsection (2) has effect despite subsection 34A(1).

Note: For general requirements in relation to suspension and cancellation, see Division 5.

34AB Notice of proposed decision

- (1) The APVMA must give notice of what it proposes to do before it:
 - (a) varies the relevant particulars or conditions under section 34A; or
 - (b) suspends or cancels the approval or registration under section 34AA.
- (2) The notice must:
 - (a) be given to the holder in writing; and

- (b) be given to the other persons informed of the reconsideration as mentioned in subsection 32(2):
 - (i) in writing; or
 - (ii) in the way the persons were informed under that subsection; and
- (c) include a draft statement of reasons for the proposed course of action; and
- (d) set out the information on which the reasons are based (including information not given to the APVMA by the holder); and
- (e) for variation of relevant particulars or conditions—set out the proposed variation; and
- (f) invite written submissions from the holder or other persons within 3 months.

Note: This subsection does not authorise the disclosure of confidential commercial information whose disclosure would otherwise be prohibited by section 162: see section 8X.

- (3) The APVMA is not required to comply with this section more than once in relation to:
 - (a) variation of the relevant particulars or conditions; or
 - (b) suspension or cancellation of the approval or registration.

34AC Notice of decision on reconsideration

- (1) If the APVMA affirms the approval or registration, the APVMA must, within 14 days:
 - (a) give written notice of the affirmation to the holder; and
 - (b) publish a notice of the affirmation in the *Gazette* and in any other manner that it thinks appropriate.
- (2) The notice given to the holder must:
 - (a) state that the approval or registration has been affirmed; and
 - (b) set out the relevant particulars and conditions of the approval or registration as affirmed; and
 - (c) state the date the registration ends; and
 - (d) include any information prescribed by the regulations.

Section 34AF

Note: This subsection does not authorise the disclosure of confidential commercial information whose disclosure would otherwise be prohibited by section 162: see section 8X.

- (3) The notice in the *Gazette* must:
- (a) state that the approval or registration has been affirmed; and
 - (b) contain a brief statement of the reasons for the affirmation.

Note: If the APVMA does not affirm the approval or registration, it must suspend or cancel the approval or registration under section 34AA. For notice of suspension or cancellation, see Division 5.

34AF Reconsideration of approval of label without notice in certain circumstances

- (1) The APVMA may, at any time, reconsider the approval of a label for the purpose of deciding whether the label contains adequate instructions relating to matters prescribed by the regulations for the purposes of this section.
- (2) The matters that may be prescribed must be matters covered by the definition of *meets the labelling criteria*.
- (3) If the APVMA considers that the particulars do not contain adequate instructions in relation to a matter, the APVMA must:
 - (a) vary the relevant particulars; and
 - (b) record in the relevant APVMA file the relevant particulars as varied and the date on which the record is made; and
 - (c) give written notice to the holder setting out particulars of the variation.
- (4) Sections 30 to 34AC do not apply to a reconsideration under this section.

Division 4A—Limits on use of information

Subdivision A—Preliminary

34F Explanation of Division

- (1) This Division limits the use the APVMA can make of information given to it:
 - (a) in connection with an application under section 10 or 27; or
 - (b) under section 161.
- (2) Section 34G sets out general rules about the use of information.
- (3) Section 34H provides that a breach of the rules does not affect the validity of the APVMA's actions.
- (4) Sections 34J, 34K and 34L set out exceptions to the general rules.
- (5) Section 34M sets out limitation periods for certain information.

Subdivision B—General rules

34G General rules

- (1) The APVMA must not use the following information to assess or make a decision on an application made under section 10 or 27:
 - (a) information given to the APVMA in connection with another application made under section 10 or 27 by the applicant for the other application;
 - (b) information given under section 161.
- (1A) The APVMA must not use the following information to vary relevant particulars or conditions under section 26C or 29A or reconsider an approval or registration under Division 4 of Part 2:
 - (a) information given to the APVMA in connection with an application made under section 10 or 27 by the applicant for the application;
 - (b) information given under section 161.

Section 34H

- (1B) For the purposes of subsections (1) and (1A), the use of information includes the following:
- (a) applying a decision made, or a conclusion reached, based on the information;
 - (b) the use of knowledge or understanding gained from the information.
- (2) This section applies only to information given to the APVMA:
- (a) in connection with an application made after the commencement of this section; or
 - (b) under section 161 in connection with a chemical product that was registered as a result of an application made after the commencement of this section.
- (3) A person or body consulted under section 8 or 8A of the *Agricultural and Veterinary Chemicals (Administration) Act 1992* must not, for the purposes of providing information or advice in relation to an application or reconsideration, use information that the APVMA must not use in determining the application or reconsidering the approval or registration.

34H Contraventions of general rules

- (1) The use of information in contravention of section 34G to determine an application, reconsider an approval or registration or vary relevant particulars or conditions does not affect the validity of the determination, the decision on the reconsideration or the relevant particulars or conditions.
- (2) An action or proceeding does not lie against any of the following for any loss directly or indirectly sustained because of the use of information in contravention of section 34G:
- (a) the Commonwealth;
 - (b) the APVMA;
 - (c) a person who is or has been:
 - (ii) the Chief Executive Officer of the APVMA; or
 - (iii) a delegate of the APVMA; or
 - (iv) a member of the staff of the APVMA.

Subdivision C—Exceptions

34J Consent, public interest etc.

- (1) Section 34G does not prevent the APVMA from using information if a condition in this section is met.

Consent to use

- (2) One condition is that the authorising party gives written consent to the use of the information. This condition is met even if the authorising party:
- (a) later states that it has not consented; or
 - (b) withdraws the consent (whether before or after the APVMA is given the consent).

Note: Chapter 7 of the *Criminal Code* creates offences relating to false and misleading statements and forgery.

Use in the public interest

- (3) Another condition is that the APVMA is satisfied, having regard to the criteria (if any) prescribed by the regulations, that the use of the information is in the public interest.

Note: Section 34K sets out other rules that are relevant to the exception based on this condition.

Information does not favour the applicant or holder

- (4) Another condition is that:
- (a) the information relates to:
 - (i) a proposed or existing approval of an active constituent for a proposed or existing chemical product; or
 - (ii) a proposed or existing registration of a proposed or existing chemical product; and
 - (b) the information shows that the constituent or product may not meet the safety criteria, the trade criteria or the efficacy criteria.

Section 34K

Information given again

- (5) Another condition is that the information:
- (a) is given to the APVMA in connection with an application and is used to assess or make a decision on the application; or
 - (b) is given to the APVMA in connection with the reconsideration, under Division 4 of Part 2, of an approval or registration and is used to reconsider the approval or registration.

Protected information whose protection period has expired

- (5A) Another condition is that the information is protected information whose protection period has expired.

Note: For *protected information* and *protection period*, see section 3 and Part 3.

Information is publicly available

- (5B) Another condition is that the information is publicly available.

Information given to APVMA in connection with certain applications

- (6) Another condition is that the information was given in connection with:
- (a) an application for approval, as an active constituent for a chemical product, of a substance that was a previously endorsed active constituent on the commencement of this Division; or
 - (b) an application for the variation of the relevant particulars or conditions of the approval of an active constituent for a chemical product.

34K Further rules about public interest exception

- (1) This section applies if the APVMA is satisfied under subsection 34J(3) that it is in the public interest to use information.
- (2) The APVMA must, as soon as practicable, give written notice of its satisfaction to:

- (a) the applicant for the application in connection with which the information was given; and
 - (b) if the applicant is not the authorising party for the information—the person whom the APVMA believes is the authorising party.
- (3) The APVMA must not use the information before the end of 28 days after the day on which the notice is given.
- (4) However, subsection (3) does not apply if:
- (a) the APVMA believes it is necessary to use the information before the end of 28 days after the notice is given, to prevent imminent risk to persons of death, serious injury or serious illness; and
 - (b) states that belief in the notice.

34L Information with limitation periods

Section 34G does not prevent the APVMA from using information to which a limitation period applies:

- (a) after the limitation period has ended; or
- (b) to reconsider an approval or registration under Division 4 of Part 2 if the decision on the reconsideration is made after the limitation period has ended.

Note: Information given in connection with an application made under section 10 or 27 has a limitation period only if the information was relied on to:

- (a) approve or register the constituent, product or label concerned; or
- (b) vary the relevant particulars or conditions concerned.

Information that does not have a limitation period is protected indefinitely.

34M Limitation periods

- (1) The table below sets out *limitation periods* for certain information given in connection with an application made under section 10 or 27:

Schedule Agricultural and Veterinary Chemicals Code

Part 2 Approvals and registration

Division 4A Limits on use of information

Section 34M

Limitation periods for certain information given in connection with an application made under section 10 or 27

| | The limitation period for: | ends: | after: |
|---|--|--------------|---|
| 1 | information: (a) given in connection with an application under section 10 for approval of an active constituent (for a proposed or existing chemical product) that was not a previously endorsed active constituent on the commencement of this Division; and (b) relied on to approve the active constituent | 10 years | the constituent is approved. |
| 2 | information: (a) given in connection with an application made under section 10 for: (i) registration of a chemical product at least one of whose active constituents was not a previously endorsed active constituent when the application passed preliminary assessment; or (ii) approval of a label for a container for a chemical product at least one of whose active constituents was not a previously endorsed active constituent when the application passed preliminary assessment; and (b) relied on to register the product or approve the label | 10 years | the product or label, as required, is registered or approved. |
| 3 | information: (a) given in connection with an application (except one covered by item 2) made under section 10 for: (i) registration of an agricultural chemical product; or (ii) approval of a label for a container for an agricultural chemical product; and (b) relied on to register the product or approve | 5 years | the product or label, as required, is registered or approved. |

Limitation periods for certain information given in connection with an application made under section 10 or 27

| The limitation period for: | ends: | after: |
|---|--------------|---|
| the label | | |
| 4 information: (a) given in connection with an application (except one covered by item 2) made under section 10 for: (i) registration of a veterinary chemical product; or (ii) approval of a label for a container for a veterinary chemical product; and (b) relied on to register the product or approve the label | 3 years | the product or label, as required, is registered or approved. |
| 5 information: (a) given in connection with an application made under section 27 for variation of the relevant particulars or conditions of: (i) the registration of an agricultural chemical product; or (ii) the approval of a label for a container for an agricultural chemical product; and (b) relied on to vary the relevant particulars or conditions | 5 years | the relevant particulars or conditions are varied. |
| 6 information: (a) given in connection with an application made under section 27 for variation of the relevant particulars or conditions of: (i) the registration of a veterinary chemical product; or (ii) the approval of a label for a container for a veterinary chemical product; and (b) relied on to vary the relevant particulars or conditions | 3 years | the relevant particulars or conditions are varied. |

Section 34M

- (2) The table below sets out *limitation periods* for information given under section 161:

| Limitation periods for information given under section 161 | | | |
|---|---|--------------|---------------------------|
| | The limitation period for: | ends: | after: |
| 1 | information given under section 161 in connection with an agricultural chemical product | 5 years | the information is given. |
| 2 | information given under section 161 in connection with a veterinary chemical product | 3 years | the information is given. |

Division 5—Suspending and cancelling approvals and registrations

34N Explanation of Division

- (1) This Division provides for suspension and cancellation of approvals and registrations.
- (2) In most cases, the APVMA must not suspend or cancel an approval or registration without giving notice to the holder (section 34P).
- (3) In most cases, the APVMA must not suspend or cancel an approval or registration without giving notice to the co-ordinators for other jurisdictions (section 35).
- (4) The APVMA may suspend or cancel an approval or registration:
 - (a) if it is necessary to prevent imminent risk to persons of death, serious injury or serious illness (section 35A); or
 - (b) if a condition of the approval or registration is contravened (section 36); or
 - (c) if the holder does not comply with a requirement under section 32, 33, 159, 160A or 161 to give the APVMA information, a report or a sample (section 38); or
 - (d) if the holder has given information that is false or misleading (section 38A); or
 - (e) if primary and secondary holders cannot agree on compensation during the course of arbitration (section 39); or
 - (f) if it appears to the APVMA that the criteria for approval or registration are not, or are no longer, satisfied (section 41); or
 - (g) at the request of the holder if the APVMA agrees with the reasons for the request (section 42).
- (5) A suspension must be for a stated period, and does not prevent cancellation (section 43).
- (6) Section 44 deals with inter-related suspensions and cancellations.
- (7) Suspensions and cancellations are done by entries in the Record, the Register and the relevant APVMA file (section 45).

Section 34P

- (8) Notice of suspension and cancellation must be given to certain persons and must be published in the *Gazette* (section 45A).
- (9) If the APVMA suspends or cancels the approval of a constituent or the registration of a product, then:
 - (a) certain persons are taken to have a permit to possess, have custody of or use of the constituent or product for a limited period (section 45B); and
 - (b) such persons may only supply the constituent or product in accordance with instructions contained in the notice provided by the APVMA under section 45A (section 45C).
- (10) Section 46 sets out how suspensions and cancellations are revoked.

34P Notice of proposed suspension or cancellation to be given to holder

- (1) The APVMA must not suspend or cancel an approval or registration unless it has given the holder a written notice that:
 - (a) states that the APVMA proposes to suspend or cancel the approval, or suspend or cancel the registration, as the case may be; and
 - (b) sets out the reasons for the proposed suspension or cancellation; and
 - (c) invites the holder to make, within a reasonable period specified in the notice, submissions to the APVMA in relation to the proposed suspension or cancellation.
- (2) The APVMA must not make a decision relating to the proposed suspension or cancellation, as the case may be, until it has had regard to any submission made by the person in response to an invitation under paragraph (1)(c).
- (3) A written notice under subsection (1) must specify the period of the suspension.
- (4) Subsection (1) does not apply to a suspension or cancellation under section 34AA, 35A, 39 or 42.

35 Notice of proposed suspension or cancellation to be given to co-ordinators

- (1) Subject to subsection (2), the APVMA must not suspend or cancel an approval or registration unless:
 - (a) it has given notice of the proposed suspension or cancellation to each co-ordinator designated for a jurisdiction; and
 - (b) a period of 10 working days, or any other period that the APVMA thinks adequate in a particular case, has elapsed since the notice was given.
- (2) Subsection (1) does not apply to a suspension or cancellation under section 35A.

35A Suspension or cancellation of registration if imminent risk to persons of death, serious injury or serious illness

- (1) The APVMA may suspend or cancel the registration of a chemical product if the APVMA considers that doing so is necessary to prevent imminent risk to persons of death, serious injury or serious illness.

Note: Section 43 deals with the effect of suspension of registration.

- (2) The APVMA may suspend or cancel the registration of the product under subsection (1) whether or not the product is being used in accordance with instructions for its use that the APVMA has approved.

Note: Sections 34P and 35 do not apply to a suspension or cancellation under this section.

36 Suspension or cancellation of approval or registration for breach of condition

If there is a contravention of a condition of the approval of an active constituent for a proposed or existing chemical product, the registration of a chemical product or the approval of a label for containers for a chemical product, the APVMA may suspend or cancel the approval or registration.

38 Suspension of approval or registration for failing to give information, results, report or sample to APVMA

- (1) If the holder of an approval or registration fails, without reasonable excuse, to comply with a requirement contained in a notice under subsection 32(1) or section 33 or 159, or to comply with section 160A or 161, the APVMA may suspend the approval or registration.
- (2) Subject to subsection (3), the APVMA must revoke a suspension imposed under subsection (1) if it is satisfied that the relevant information, results, report or sample has been given to it.
- (3) If the information, results, report or sample is not given to the APVMA within a reasonable period after the suspension takes place, the APVMA may cancel the approval or registration.

38A Suspension or cancellation of approval or registration for providing false or misleading information

- (1) The APVMA may suspend or cancel the approval of an active constituent for a proposed or existing chemical product if:
 - (a) the holder has given information:
 - (i) in or in connection with an application for approval of the constituent; or
 - (ii) in response to a notice under section 33 or 159; or
 - (iii) as required by section 160A or 161; and
 - (b) the information was false or misleading in a material particular.
- (2) The APVMA may suspend or cancel the registration of a chemical product if:
 - (a) the holder has given information:
 - (i) in or in connection with an application for registration of the product; or
 - (ii) in response to a notice under section 33 or 159; or
 - (iii) as required by section 160A or 161; and
 - (b) the information was false or misleading in a material particular.

39 Suspension of approval or registration if compensation for use of protected information cannot be arbitrated

(1) If:

- (a) the primary holder in relation to a primary active constituent and the secondary holder in relation to a secondary active constituent or a secondary chemical product were parties to an arbitration under Division 3 of Part 3 as to the terms of compensation; and
- (b) the arbitrator gives notice to the APVMA under section 68 in respect of the failure of each party to the arbitration to make a fresh proposal as to the terms of the compensation or to make a fresh proposal as to those terms that the arbitrator thinks reasonable;

the APVMA may suspend the approval of the primary active constituent or may suspend the approval of the secondary active constituent or the registration of the secondary chemical product, as the case may be, or may do both of those things.

(2) If:

- (a) the primary holder in relation to a primary chemical product and the secondary holder in relation to a secondary chemical product were parties to an arbitration under Division 3 of Part 3 as to the terms of compensation; and
- (b) the arbitrator gives notice to the APVMA under section 68 in respect of the failure of each party to the arbitration to make a fresh proposal as to the terms of the compensation or to make a fresh proposal as to those terms that the arbitrator thinks reasonable;

the APVMA may suspend the registration of either or both of those products.

Note: Section 34P does not apply to a suspension or cancellation under this section.

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41 Suspension or cancellation of approval or registration for non-compliance with criteria for approval or registration or prescribed requirements

- (1) The APVMA may suspend or cancel the approval of an active constituent for a proposed or existing chemical product, or the registration of a chemical product, if it appears to the APVMA:
 - (a) for an active constituent—that the constituent may not meet the safety criteria; or
 - (b) for a chemical product—that the product may not meet the safety criteria, the trade criteria or the efficacy criteria; or
 - (c) that the constituent or product may not comply with any requirement prescribed by the regulations.
- (2) The APVMA may suspend or cancel the approval of a label for containers for a chemical product if it appears to the APVMA that the label may not meet the labelling criteria or may not comply with any requirement prescribed by the regulations.

42 Cancellation of approval or registration at request of holder

- (1) If:
 - (a) the holder gives to the APVMA a written notice:
 - (i) requesting the APVMA to cancel the approval or registration; and
 - (ii) stating the reasons for the request; and
 - (b) the APVMA is satisfied that there are no valid reasons why it should not agree to the request;the APVMA must cancel the approval or registration.
- (2) The APVMA must give written notice of its decision on a request under subsection (1) to the person or persons who made the request.

Note: Section 34P does not apply to a suspension or cancellation under this section.

43 Effect of suspension of approval or registration

- (1) A suspension of an approval or registration must be for a stated period.
- (2) An approval or registration is taken for the purposes of this Code other than sections 74 and 75 not to be in force during any period in which it is suspended.
- (3) An approval or registration may be cancelled even though it is suspended.

44 Inter-related suspensions and cancellations

- (1) If the APVMA suspends or cancels the approval of an active constituent for a proposed or existing chemical product, it must also suspend or cancel any registration of that product.
- (2) If the APVMA suspends or cancels the registration of a chemical product, it may also suspend or cancel, as the case may be, any approval relating to a label for containers for the product.
- (3) If the APVMA suspends or cancels the approval of the only approved label, or all the approved labels, for containers for a chemical product, it may also suspend or cancel, as the case may be, the registration of the product.

45 How approval or registration is suspended or cancelled

Suspension or cancellation of an approval or registration is made by entering in the Record or Register (as appropriate) or recording in the relevant APVMA file:

- (a) the fact that the approval or registration has been suspended or cancelled; and
- (b) in respect of a suspension—the period of the suspension; and
- (c) the date on which the entry or record is made.

Section 45A

45A Notice of suspension or cancellation

- (1) If the APVMA suspends or cancels the approval of an active constituent, the registration of a chemical product or the approval of a label, it must:
 - (a) give written notice of the suspension or cancellation to the holder and to any other person to whom, in its opinion, such a notice should be given; and
 - (b) publish in the *Gazette*, and in any other manner that it thinks appropriate, notice of the suspension or cancellation containing any information that it thinks relevant.
- (2) A notice under subsection (1):
 - (a) must include a statement that the APVMA will publish a notice of the suspension or cancellation in the *Gazette*; and
 - (b) in respect of a suspension or cancellation of the approval of an active constituent for a proposed or existing chemical product or the registration of a chemical product—must contain the following matters:
 - (i) brief reasons for the suspension or cancellation;
 - (ii) instructions for possessing, having custody of or using the constituent or product;
 - (iii) a warning of the consequences of failing to comply with the instructions, including a statement of any period after which it will be an offence against this Code to supply the constituent or product or to possess or have custody of the constituent or product with the intention of supplying it;
 - (iv) any other warnings or explanations in relation to the constituent or product that the APVMA thinks desirable.
- (3) If the reason, or one of the reasons, for the suspension or cancellation was:
 - (a) for an active constituent—that the constituent may not meet the safety criteria; or
 - (b) for a chemical product—that the product may not meet the safety criteria, the trade criteria or the efficacy criteria; or
 - (c) for a label—that the label may not meet the labelling criteria;

the notice published in the *Gazette* must contain a statement to that effect and must include the matters mentioned in subparagraphs (2)(b)(ii), (iii) and (iv).

- (4) Subsection (1) does not require notice of the cancellation under section 42 of an approval or registration to be given to the holder who requested the cancellation.

45B Permit taken to have been issued

Holder and certain persons taken to have permit

- (1) If notice of the suspension or cancellation is given to a holder or other person under paragraph 45A(1)(a), the holder or person is taken to have been issued with a permit to possess, have custody of or use the constituent or product, or the product as labelled, in accordance with the instructions contained in the notice.
- (2) A permit that is taken to have been issued under subsection (1) remains in force until:
- (a) 1 year after the day of the suspension or cancellation; or
 - (b) the APVMA revokes the suspension or cancellation; or
 - (c) the APVMA, by notice published in the *Gazette*, declares that this subsection ceases to apply in respect of the constituent or product;
- whichever first occurs.

Certain persons who possess etc. constituent or product taken to have permit

- (3) If notice of the suspension or cancellation is published under paragraph 45A(1)(b), a person who possesses, has custody of or uses the constituent or product, or the product as labelled, in accordance with the instructions contained in the notice, is taken to have been issued with a permit to possess, have custody of or use the constituent or product, or product as labelled, in accordance with those instructions.

Section 45C

- (4) A permit that is taken to have been issued under subsection (3) remains in force until whichever of the events mentioned in paragraph (2)(a), (b) or (c) first occurs.

Deemed permit does not authorise manufacture or import

- (5) A permit that is taken to have been issued to a holder or other person under subsection (1) or (3) does not authorise the holder or person to manufacture or import the constituent or product.

45C Possession or custody with intention of supply

- (1) This section applies if a person has possession or custody of the constituent or product with the intention of supplying it.
- (2) If notice of the suspension or cancellation is:
- (a) given to the person under paragraph 45A(1)(a); or
 - (b) published under paragraph 45A(1)(b);
- the person may only possess, have custody of or otherwise deal with the constituent or product if the possession, custody or dealing is in accordance with the instructions contained in the notice.
- (3) Subsection (2) does not apply to a possession, custody or dealing if the constituent was an approved active constituent or the product was a registered chemical product or a reserved chemical product when the possession, custody or use took place because of its having been approved or registered or having become reserved after its previous approval or registration had been cancelled.
- (4) Subsection (2) does not apply to a person (other than a person to whom a notice is given under paragraph 45A(1)(a)) if the person proves that, when the person possessed, had custody of or otherwise dealt with the constituent or product, the person did not know, and could not reasonably be expected to have known, of the existence of the notice published in the *Gazette* or that the possession, custody or dealing was not in accordance with the instructions contained in the *Gazette* notice.
- (5) A person commits an offence if the person contravenes subsection (2).

Penalty: 300 penalty units.

Note 1: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

Note 2: A defendant bears a legal burden in relation to the matter in subsection (4). See section 13.4 of the *Criminal Code*.

- (6) For the purposes of subsection (5), strict liability applies to the physical elements of circumstance:
- (a) in paragraph (2)(a), that the notice is a notice given to the person under paragraph 45A(1)(a); and
 - (b) in paragraph (2)(b), that the publishing of the notice was under paragraph 45A(1)(b).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (7) Subsection (2) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matter in subsection (3), see section 145CD.

46 How suspension or cancellation is revoked

- (1) Suspension or cancellation of an approval or registration is revoked by entering in the Record or Register (as appropriate) or recording in the relevant file:
- (a) the fact that the suspension or cancellation has been revoked; and
 - (b) the date on which the entry is made.
- (2) If the APVMA revokes the suspension or cancellation of an approval or registration, it must, within 14 days:
- (a) give written notice of the revocation to the holder and to any other person to whom, in its opinion, such a notice should be given; and
 - (b) publish in the *Gazette*, and in any other manner that it thinks appropriate, notice of the revocation containing any information that it thinks relevant.

Schedule Agricultural and Veterinary Chemicals Code

Part 2 Approvals and registration

Division 5 Suspending and cancelling approvals and registrations

Section 46

- (3) If the cancellation of an approval or registration is revoked, the cancellation is taken never to have occurred.

Division 6—Duration of approvals and registrations and renewal of registrations

Subdivision A—Preliminary

46A Explanation of Division

- (1) This Division deals with the duration of approvals and registrations, and with renewing registrations.
- (2) Section 47 sets out the periods for which approvals and registrations are in force.
- (3) The APVMA must publish notice of the end of a registration as soon as practicable after the registration has ended (section 47C).
- (4) If the APVMA publishes notice of the end of the registration of a product under section 47C, then:
 - (a) certain persons are taken to have a permit to possess, have custody of or use of the product for a limited period (section 47D); and
 - (b) persons may only supply the product in accordance with instructions contained in the notice (section 47E).
- (7) Section 48 provides for applications for renewal of a registration.
- (8) The APVMA must renew the registration if the application requirements are met (section 49).
- (9) Renewal takes place by entry in the Register (section 50).
- (10) The approval of a label for a container for a chemical product is automatically renewed when the registration of the product is renewed (section 51).

Section 47

Subdivision B—Period of approval or registration

47 Period of approval or registration

- (1) The approval of an active constituent continues in force unless it is cancelled.
- (2) The registration of a chemical product ends on the later of the following days:
 - (a) the day entered in the Register as the date the registration ends;
 - (b) if an application is made for renewal of the registration but is not determined by the day entered in the Register—the day on which the application is determined.
- (4) The approval of a label for containers for a chemical product ends when the registration of the product ends.
- (5) If:
 - (a) the registration of a chemical product ends; but
 - (b) a person is taken under section 47D to have been issued with a permit to possess, have custody of or use the product;the approval of a label for containers for the product continues in force until the permit ceases to have effect.

Subdivision C—Notifying the end of registrations

47C Notice of end of registration

- (1) If the registration of a chemical product ends without being renewed, the APVMA must publish in the Gazette, and in any other manner that it thinks appropriate, notice of the end of the registration.
- (2) The notice must:
 - (a) be published as soon as practicable after the registration ends; and
 - (b) state that the registration has ended; and
 - (c) set out the date on which the registration ended; and

- (d) contain instructions for possessing, having custody of or using the product; and
 - (e) contain a warning of the consequences if a person fails to comply with the instructions, including a statement of any period after which it will be an offence against this Code to supply the product or to possess or have custody of the product with the intention of supplying it; and
 - (f) contain any other warnings or explanations in relation to the product that the APVMA thinks desirable; and
 - (g) contain any other information that the APVMA thinks appropriate.
- (3) Subsection (1) does not apply if:
- (a) the APVMA thinks that, in the circumstances, it is unnecessary to publish the notice; or
 - (b) the registration of the chemical product ends because it is cancelled.

Note: For notice of the cancellation of the registration of a chemical product, see section 45A.

- (4) If a notice is published under this section, the APVMA must:
- (a) as soon as practicable cause a copy of the notice to be given to the person who was the holder of the registration; and
 - (b) cause a copy of the notice to be given to any other person who, in the opinion of the APVMA, should be given notice of the ending of the registration and of the instructions, warnings and explanations contained in the notice.

47D Permit taken to have been issued

- (1) This section applies if notice of the end of the registration of a chemical product is published under section 47C.
- (2) A person who possesses, has custody of or uses the product in accordance with the instructions contained in the notice is taken to have been issued with a permit to do so until:
 - (a) 1 year after the day on which the registration ended; or
 - (b) the APVMA, by notice published in the Gazette, declares that this subsection ceases to apply in respect of the product;

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whichever first occurs.

- (3) A permit that is taken to have been issued to a person under subsection (1) does not authorise the person to manufacture or import the product.

47E Possession or custody with intention of supply

- (1) This section applies if, after notice of the end of the registration of a chemical product is published under section 47C, a person has possession or custody of the product with the intention of supplying it.
- (2) The person must not possess, have custody of or otherwise deal with the product except in accordance with the instructions contained in the notice.
- (3) Subsection (2) does not apply to a possession, custody or dealing if the product was registered when the possession, custody or dealing took place because of its having been registered or having become reserved after its previous registration ended.
- (4) A person commits an offence if the person contravenes subsection (2).

Penalty: 300 penalty units.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

- (5) For the purposes of subsection (4), strict liability applies to the physical element of circumstance in subsection (1), that the publishing of the notice was under section 47C.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (6) Subsection (2) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matter in subsection (3), see section 145CD.

Subdivision D—Renewing registrations

48 Applications

- (1) The holder may apply for the renewal, or further renewal, as the case may be, of the registration of a chemical product.
- (2) Subject to subsection (3), the application must not be made:
 - (a) earlier than 3 months before the registration ends; or
 - (b) later than one month (or such shorter period as the APVMA allows) before the registration ends.
- (3) In circumstances that are prescribed by the regulations and upon payment of the prescribed fee (if any), the APVMA may accept a late application if the application is made on or before a date that the APVMA determines.
- (5) The APVMA may alter the application with the written consent of the holder.
- (6) Subsection (1) has effect subject to any condition imposed on the registration under subsection 23(2).

Note: Subsection 23(2) provides for an approval or registration to last for not more than one year.

49 Renewal of registration

- (1) If the APVMA is satisfied that an application for the renewal of a registration meets the application requirements, the APVMA must renew the registration.

Note: For notice of renewal, see section 8F.

- (2) Otherwise, the APVMA must refuse the application.

Note: For notice of refusal, see section 8G.

50 How renewal takes place

- (1) Renewal of the registration of a chemical product takes place when the APVMA enters in the Register a statement that the registration

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has been renewed and the date on which the registration (as renewed) ends.

- (2) The date the registration (as renewed) ends must:
 - (a) be the last day of a calendar month not less than 12 months and not more than 7 years after the renewal takes place; and
 - (b) be worked out in accordance with the method prescribed by the regulations.
- (3) However, if the regulations do not prescribe a method for the purposes of paragraph (2)(b), the date the registration (as renewed) ends must be the next 30 June after the renewal takes place.

51 Renewal of approval of label

If the registration of a chemical product is renewed:

- (a) any approval of a label for containers for the product is, by this section, also renewed; and
- (b) the renewal of that approval takes effect, or is to be regarded as having taken effect, as the case may be, at the beginning of the day immediately following the day on which the previous registration of the product ends or ended; and
- (c) the APVMA must record in the relevant file a statement that the approval of the label has been renewed and the date on which the renewed approval ends.

Part 2B—Reserved chemical products

56ZU Regulations may contain schedule of reserved chemical products

- (1) Subject to subsection (2), the regulations may contain a schedule specifying chemical products, or classes of chemical products, that are reserved chemical products for the purposes of this Code.
- (2) The schedule cannot specify a chemical product that is, or a class of chemical products that includes, a restricted chemical product.
- (3) Regulations containing a schedule mentioned in subsection (1) must state the conditions to which the possession, custody or use of each chemical product, or each chemical product included in a class of chemical products, specified in the schedule is subject.
- (4) Before the Governor-General makes a regulation for the purposes of this section:
 - (a) the reservation of the product, or class of products, must have been recommended to the Minister by the APVMA; and
 - (b) the APVMA must have given to the Minister:
 - (i) written particulars of the product or class of products; and
 - (ii) a draft of the conditions to which the APVMA proposes the product, or products in the class, should be subject; and
 - (c) the APVMA must have given to the Minister a written explanation as to why the APVMA is satisfied that the product, or class of products, meets the safety criteria, the trade criteria and the efficacy criteria; and
 - (d) the APVMA must have given to the Minister a written statement identifying the consultations held by, and setting out the advice given to, the APVMA in relation to the proposed reservation of the products or class of products.

Part 3—Compensation for provider of certain information in respect of continued registration of certain chemical products

Division 1—Preliminary

57 Explanation of Part

- (1) This Part contains provisions that entitle a person who has provided protected information to the APVMA in relation to a protected active constituent or in relation to a protected chemical product, in compliance with a requirement made of the person by the APVMA, to receive compensation from anyone else who wishes the information to be used by the APVMA in connection with an application for the approval, or continued approval, of another active constituent or the registration, or continued registration, of another chemical product.
- (2) Compensation is not payable in respect of the information unless:
 - (a) the protected active constituent or the protected chemical product is or includes a patentable invention and the term of the patent has ended or is about to end; and
 - (b) the information was obtained because of a trial or laboratory experiment and any of the following apply:
 - (i) the information is of a kind mentioned in paragraph 32(1)(b) and was given to the APVMA in response to a notice under that section;
 - (ii) the trial or laboratory experiment was conducted in response to a notice under section 33;
 - (iii) the information was given to the APVMA in response to a notice under subsection 159(1) for the purposes of subparagraph 159(1)(d)(i), (ii) or (iii).
- (4) The parties concerned are invited to negotiate the terms of the compensation and provision is made for the appointment of a mediator if the parties are unable to agree and for the terms to be arbitrated if the mediation is unsuccessful. If an arbitration takes

place, the arbitrator is to base his or her decision on whichever of the proposals put forward by the parties is considered by the arbitrator to be the most reasonable assessment of the proportion of the cost of producing the information that it is fair for the party wishing to use it to pay to the party who provided it.

Division 2—Right to compensation

59 Right of originator of protected information to compensation for its use in relation to other applications

(1) If protected information has been given to the APVMA in relation to:

- (a) a protected active constituent for a proposed or existing chemical product (the *primary active constituent*); or
- (b) a protected chemical product (the *primary chemical product*);

the APVMA must not use the information in determining whether to approve, or to continue the approval of, another active constituent for a proposed or existing chemical product (the *secondary active constituent*), or whether to register, or to continue the registration of, another chemical product (the *secondary chemical product*).

(2) Subsection (1) does not apply if:

- (a) the primary holder and the secondary holder:
 - (i) have agreed as to the terms of the compensation to be paid by the secondary holder to the primary holder for the information to be used in relation to the secondary active constituent or the secondary chemical product, as the case may be; and
 - (ii) have notified the APVMA in writing that they have so agreed and of the terms of the compensation; or
- (b) an arbitrator that the APVMA has appointed has determined the compensation to be so paid and the secondary holder has given notice to the primary holder and to the APVMA stating that the secondary holder agrees to comply with the determination; or
- (c) the protection period has elapsed since that information was given to the APVMA; or
- (d) the APVMA is satisfied, having regard to such criteria (if any) as are prescribed, that it is in the public interest for the information to be so used; or

- (e) the information was previously given to the APVMA other than as protected information and Division 4A of Part 2 does not limit the use of the information; or
 - (f) the information shows that the secondary active constituent or secondary chemical product may not meet the safety criteria, the trade criteria or the efficacy criteria; or
 - (g) the information is publicly available.
- (3) If the APVMA decides to use the information under paragraph (2)(d), the APVMA:
- (a) must give written notice of its decision to the primary holder and the secondary holder; and
 - (b) must not make a determination using the information before the end of 28 days after the day on which the notice is given.
- (5) Without affecting the duty of the APVMA to comply with subsection (1):
- (a) the validity of any approval, or continued approval, of the secondary active constituent or the validity of any registration, or continued registration, of the secondary chemical product is not affected by a contravention by the APVMA of that subsection or by the failure of the secondary holder to comply with the agreement or determination; and
 - (b) no action or other proceeding lies against the Commonwealth, the APVMA, or a person who is or has been a delegate of the APVMA, a director of the APVMA, the Chief Executive Officer of the APVMA, or a member of the staff of the APVMA, for any loss directly or indirectly sustained because of such a contravention or failure.
- (6) In this Part, *continue*, in relation to an approval or registration, means:
- (a) vary the relevant particulars or conditions of the approval or registration; or
 - (b) affirm the approval or registration under Division 4 of Part 2 (reconsidering approvals and registrations).

Section 60

60 APVMA to notify holders

- (1) This section applies if:
 - (a) the APVMA is unable to complete its consideration of:
 - (i) the approval or continued approval of an active constituent for a proposed or existing chemical product; or
 - (ii) the registration or continued registration of a secondary chemical product; under this Code unless it uses protected information; and
 - (b) paragraph 59(2) does not permit the APVMA to use the information.
- (2) The APVMA must give to the primary holder or each primary holder and to the secondary holder written notice:
 - (a) stating that the APVMA's consideration of:
 - (i) the approval or continued approval of the secondary active constituent; or
 - (ii) the registration or continued registration of the secondary chemical product; cannot be completed unless the APVMA uses the information; and
 - (b) stating that the APVMA is precluded from using the information except in circumstances prescribed by paragraph 59(2)(a) or (b) and setting out those circumstances; and
 - (c) requesting the notice recipient to tell the APVMA, before the day stated in the notice, which must be within 60 days after the notice is given, whether the notice recipient wants the APVMA to take further action in respect of the information under this section.
- (3) If a notice recipient tells the APVMA that it wants the APVMA to take further action in respect of the information under this section, the APVMA must, within 14 days, give to the primary holder or each primary holder and to the secondary holder written notice:
 - (a) containing:

- (i) in respect of the notice to a primary holder—the prescribed information about the secondary holder and about the secondary active constituent or the secondary chemical product, as the case may be; or
 - (ii) in respect of the notice to the secondary holder—the prescribed information about the primary holder and about the primary active constituent or the primary chemical product, or about each primary holder and about each primary active constituent or primary chemical product, as the case may be; and
- (b) stating that the APVMA’s consideration of the approval or continued approval of the secondary active constituent, or of the registration or continued registration of the secondary chemical product, cannot be completed unless the APVMA uses protected information given by a primary holder but the APVMA is precluded from using that information except in circumstances prescribed by paragraph 59(2)(a) or (b) and setting out those circumstances; and
- (c) inviting the primary holder or each primary holder, and the secondary holder, within a period stated in the notice, to negotiate as to the terms of the compensation to be paid by the secondary holder to that primary holder for the use of that information and to give written notice to the APVMA of the results of the negotiation; and
- (d) telling them that, if they are unable to agree as to the terms of the compensation:
- (i) a mediator will be appointed to try to help them to reach agreement; and
 - (ii) if the mediation is not successful, an arbitrator will be appointed to determine those terms in accordance with any reasonable proposals made in the course of the negotiations (including negotiations during the period of the mediation); and
 - (iii) if the arbitrator finds that no reasonable proposals were made, the APVMA may suspend the approval of the primary active constituent or the registration of the primary chemical product (as the case may be), or the approval of the secondary active constituent or the

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- registration of the secondary chemical product (as the case may be), or both; and
- (e) telling them of the obligations imposed on the primary holder or each primary holder under section 61.

61 Primary holder to notify secondary holder

- (1) Within 28 days after a primary holder receives a notice under subsection 60(3), the primary holder must give written notice to the secondary holder setting out the following:
- (a) the amount of the cost incurred by the primary holder in obtaining the protected information excluding any part of that cost that relates to information that was obtained from a Government or public authority, whether in Australia or elsewhere, or was otherwise publicly available;
 - (b) particulars of the amounts included in that cost as mentioned in subsection 69(3);
 - (c) when the protected information was obtained by the primary holder;
 - (d) when the APVMA required the primary holder to give the protected information to the APVMA;
 - (e) any other information required by the regulations.

Penalty: 300 penalty units.

- (2) An offence under subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Division 3—Mediation or arbitration as to terms of compensation

62 Application of Division

- (1) This Division applies if:
 - (a) there is only one primary holder and the primary holder is unable to agree with the secondary holder as to the terms of the compensation to be paid by the secondary holder to the primary holder; or
 - (b) there are 2 or more primary holders and none of them is able to agree with the secondary holder as to the terms of the compensation to be paid by the secondary holder to the primary holder concerned;and any holder has notified the APVMA in writing of the failure to reach agreement.
- (2) If the secondary holder tells the APVMA at any time during the course of any negotiations, mediation or arbitration under this Division that the secondary holder no longer wants any further action to be taken under this Division for the purposes of the secondary application, this Division ceases to apply in relation to that application.

63 Mediation

- (1) The APVMA must appoint a person as a mediator to try to help the parties to the negotiations to reach agreement as to the terms of the compensation.
- (2) The mediation ceases:
 - (a) if the parties reach agreement as to those terms; or
 - (b) the mediator or either party to the mediation tells the APVMA that the mediation has not been successful; or
 - (c) 14 days have elapsed since the appointment of the mediator.
- (3) If, before the mediation ceases, the person appointed as the mediator:

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- (a) dies; or
 - (b) becomes incapable of performing, or continuing to perform, his or her functions; or
 - (c) resigns his or her appointment; or
 - (d) for any other reason refuses or fails to perform, or to complete the performance of, his or her functions as required by this section;
- the APVMA may appoint another person as mediator in place of the first-mentioned person.
- (4) If another mediator is appointed under subsection (3), the period of 14 days referred to in paragraph (2)(c) is taken to have begun from the appointment of the first mediator but that period does not include any period after the occurrence of an event referred to in subsection (3) and before the appointment of the other mediator.

64 Appointment of arbitrator

- (1) If the mediation has ceased without the parties having reached agreement as to the terms of the compensation, the APVMA must appoint a person as an arbitrator to determine those terms in accordance with any reasonable proposals that were made in the course of the negotiations (including negotiations during the period of the mediation).
- (2) If, before the functions of an arbitrator appointed under this section (including this subsection) are fully performed, the person appointed as the arbitrator:
- (a) dies; or
 - (b) becomes incapable of performing, or continuing to perform, his or her functions; or
 - (c) resigns his or her appointment; or
 - (d) for any other reason refuses or fails to perform, or to complete the performance of, his or her functions as required by this section;
- the APVMA may appoint another person as arbitrator in place of the first-mentioned person.

65 Determination of compensation on the basis of proposals made during negotiations

- (1) The arbitrator must consider the proposals as to the terms of the compensation that were made by the parties to the negotiations or each of the negotiations.
- (2) If a party to any negotiations made a proposal as to the terms of the compensation that the arbitrator considers to be reasonable and the other party failed to make any proposal as to those terms or failed to make a proposal that the arbitrator considers to be reasonable, the arbitrator must determine those terms in accordance with the first-mentioned proposal.
- (3) If each party to any negotiations made proposals as to the terms of the compensation that the arbitrator considers to be reasonable, the arbitrator must determine those terms in accordance with whichever of those proposals the arbitrator considers to be the most reasonable.

66 Arbitrator may require fresh proposals

If each party to any negotiations failed to make any proposal as to the terms of the compensation or failed to make a proposal as to those terms that the arbitrator considers to be reasonable, the arbitrator must give written notice to each of them requiring them to make fresh proposals to the arbitrator as to the terms of the compensation.

67 Determination on basis of fresh proposals

- (1) If a party to an arbitration makes a fresh proposal as to the terms of the compensation that the arbitrator considers to be reasonable and the other party fails to make any fresh proposal as to those terms or fails to make a fresh proposal that the arbitrator considers to be reasonable, the arbitrator must determine those terms in accordance with the first-mentioned proposal.
 - (2) If each party to an arbitration makes fresh proposals as to the terms of the compensation that the arbitrator considers to be reasonable, the arbitrator must determine those terms in accordance with
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whichever of those proposals the arbitrator considers to be the most reasonable.

68 What happens if fresh proposals are not made or are inadequate

If each party to an arbitration fails, within a reasonable period, to make a fresh proposal as to the terms of the compensation or to make a fresh proposal as to those terms that the arbitrator considers to be reasonable, the arbitrator must give written notice of the failure to the APVMA and, upon the giving of the notice, section 39 permits the APVMA to suspend the registration of the primary product or any of the primary products or of the secondary product, or both or all of them.

69 What constitutes a reasonable proposal for compensation

- (1) A proposal as to the terms of the compensation is taken to be reasonable if, and only if, the arbitrator is satisfied that:
 - (a) it provides for an amount or amounts to be paid by the secondary holder to a primary holder; and
 - (b) the amount or amounts represent a fair proportion of:
 - (i) the amount of the cost incurred by that primary holder in obtaining the protected information excluding any part of that cost that relates to information that was obtained from a Government or public authority, whether in Australia or elsewhere, or was otherwise publicly available; or
 - (ii) if the protected information was obtained by that primary holder before the APVMA required that holder to give that information to the APVMA—a lesser amount than the amount worked out under subparagraph (i) that is appropriate having regard to the period between the time when that information was so obtained and the time when it was given to the APVMA.
- (2) The question as to what is a fair proportion of an amount referred to in subparagraph (1)(b)(i) or (ii) is to be determined by the arbitrator having regard to any matters that are prescribed by the

regulations and any other matters that he or she considers appropriate.

- (3) For the purposes of subsection (1), the amount of the cost incurred by a primary holder in obtaining protected information comprises:
- (a) all relevant costs incurred by that primary holder in obtaining that information (taking into account the practices generally engaged in by persons conducting tests or laboratory experiments of the kinds used to obtain information of the kind concerned) and including, without limiting the above:
 - (i) the direct and indirect costs of planning, conducting, and analysing the results of, tests and laboratory experiments and giving the information to the APVMA; and
 - (ii) the cost of repeating, or redoing with modifications, tests or laboratory experiments if it was appropriate to repeat or redo them; and
 - (iii) if the tests or laboratory experiments were conducted by the use of equipment of that primary holder— depreciation on that equipment; and
 - (iv) any other prescribed costs; and
 - (b) a reasonable rate of interest on the amount worked out under paragraph (a).
- (4) The reference in paragraph (3)(a) to all relevant costs incurred by a primary holder includes, if the primary holder is a body corporate, an appropriate portion of any relevant costs incurred by another body corporate that is related to the primary holder.
- (5) The question whether 2 bodies corporate are related to each other is to be determined in the same way as for the purposes of the *Corporations Act 2001*.

70 Effect and enforcement of determination by arbitrator

- (1) If the arbitrator makes a determination or determinations as to the terms of the compensation to be paid by the secondary holder to a primary holder or primary holders, the following provisions apply.

Schedule Agricultural and Veterinary Chemicals Code

Part 3 Compensation for provider of certain information in respect of continued registration of certain chemical products

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- (2) The arbitrator must:
- (a) send the determination, or each determination, to the APVMA; and
 - (b) give to the primary holder and secondary holder to whom a determination relates a copy of the determination certified by the arbitrator to be a true copy.
- (3) If there is only one such determination and the secondary holder gives written notice to the primary holder stating that the secondary holder agrees to comply with the determination, the secondary holder is liable to pay compensation to the primary holder in accordance with the determination.
- (4) If there are 2 or more such determinations and the secondary holder gives written notice to the primary holder to whom one of those determinations relates stating that the secondary holder agrees to comply with that determination, the secondary holder is liable to pay compensation to that primary holder in accordance with that determination.
- (5) If the secondary holder to whom a determination relates gives notice under subsection (3) or (4) to the primary holder to whom that determination relates, that secondary holder must give a copy of the notice to the APVMA.

Penalty: 10 penalty units.

- (5A) Subsection (5) does not apply if the secondary holder has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (5A). See subsection 13.3(3) of the *Criminal Code*.

- (5B) An offence under subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (6) If a primary holder to whom a determination by the arbitrator relates receives a notice under subsection (3) or (4) by the secondary holder to whom that determination relates, that primary holder may lodge a copy of the determination certified by the arbitrator, together with the notice, with a court having jurisdiction to the extent of the total amount of compensation payable under the

determination and, when the determination and application have been so lodged, the determination may be enforced as a final judgment of that court.

71 Regulations to govern conduct of arbitration

- (1) The regulations may make rules governing the conduct of an arbitration under this Division.
- (2) The regulations may provide that rules so made apply to the exclusion of any law of this jurisdiction relating to the conduct of commercial arbitrations.

Part 4—Control of chemical products

Division 1—Preliminary

72 Explanation of Part

- (1) This Part regulates the supply of active constituents for chemical products and the supply of chemical products.
- (2) The Part restricts:
 - (a) the supply of unapproved active constituents for chemical products and unregistered chemical products; and
 - (b) their possession for the purposes of supply; and
 - (c) the supply of active constituents for chemical products that have been approved and the supply of chemical products that have been registered or reserved in contravention of the conditions of their approval, registration or reservation.
- (3) Section 73 contains special provisions relating to the application of this Part to veterinary surgeons.
- (4) Division 2 contains provisions relating to active constituents for chemical products and chemical products generally.
- (5) Division 3 contains special provisions relating to the manufacture and supply of date-controlled chemical products.
- (6) Division 4 relates to the supply of certain restricted chemical products.

73 Part not to apply to veterinary surgeons acting under other laws

- (1) This Part does not apply to a veterinary surgeon, or a person acting under the instructions of a veterinary surgeon, in respect of any thing done or omitted to be done by him or her if the doing of, or the omitting to do, that thing is permitted by or under a law of this jurisdiction other than the Agvet Code of this jurisdiction.

- (2) Nothing in this Part affects the application to a veterinary surgeon of any other law of this jurisdiction.

Division 2—Control generally

74 Possession or custody of unapproved active constituents with the intention of supply

- (1) A person must not at any time (the *relevant time*) have in the person's possession or custody with the intention of supply a substance that is likely to be used as an active constituent for a chemical product unless:
 - (a) the substance is an approved active constituent for a proposed or existing chemical product; or
 - (b) the substance is exempted by the APVMA from the operation of this section; or
 - (c) the possession or custody is authorised by a permit; or
 - (d) all the following subparagraphs apply:
 - (i) the constituent had, at a time or times before the relevant time, been approved under this Code or a corresponding previous law;
 - (ii) the period beginning on the day when the constituent ceased, or last ceased, to be so approved and ending at the relevant time is not longer than a period that the APVMA has determined in relation to the constituent for the purposes of this subparagraph;
 - (iii) if the approval of the constituent was subject to conditions—the possession or custody is in accordance with those conditions.
- (2) The APVMA may, on its own initiative or on the application of a person, extend a period determined by it under subparagraph (1)(d)(ii) for a further period or periods determined by it.
- (2A) A person commits an offence if the person contravenes subsection (1).

Penalty: 200 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in paragraphs (1)(a) to (d). See subsection 13.3(3) of the *Criminal Code*.

- (3) It is a defence to a prosecution of a person for an offence against subsection (2A) if the person proves that at the relevant time the person did not know, and could not reasonably be expected to have known, that the substance was not an approved active constituent.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

- (3A) Subsection (1) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matters in paragraphs (1)(a) to (d), see section 145CD.

- (4) If an application is made to the APVMA under subsection (2), the APVMA must give to the applicant written notice of its decision on the application.

75 Possession or custody of chemical products, other than registered or reserved products, with the intention of supply

- (1) A person must not at any time (the *relevant time*) have in the person's possession or custody with the intention of supply a chemical product that is not a registered chemical product or a reserved chemical product unless:
- (a) the possession or custody is authorised by a permit; or
 - (b) the product is exempted by the APVMA from the operation of this section; or
 - (c) all the following subparagraphs apply:
 - (i) the product had, at a time or times before the relevant time, been registered under this Code or a corresponding previous law;
 - (ii) the period beginning on the day when the product ceased, or last ceased, to be so registered and ending at the relevant time is not longer than a period that the APVMA has determined in relation to the product for the purposes of this subparagraph;
 - (iii) a recall notice has not been issued in respect of the product;

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(iv) if the registration of the product was subject to conditions—the possession or custody is in accordance with those conditions.

(2) The APVMA may, on its own initiative or on the application of a person, extend a period determined by it under subparagraph (1)(c)(ii) for a further period or periods determined by it.

(2A) A person commits an offence if the person contravenes subsection (1).

Penalty: 200 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in paragraphs (1)(a) to (c). See subsection 13.3(3) of the *Criminal Code*.

(3) It is a defence to a prosecution of a person for an offence against subsection (2A) if the person proves that at the relevant time the person did not know, and could not reasonably be expected to have known, that the chemical product was not a registered chemical product or a reserved chemical product.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

(3A) Subsection (1) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matters in paragraphs (1)(a) to (c), see section 145CD.

(4) If an application is made to the APVMA under subsection (2), the APVMA must give to the applicant written notice of its decision on the application.

76 Supply of unapproved active constituents

- (1) A person must not supply, or cause or permit to be supplied, an active constituent for a proposed or existing chemical product that is not an approved active constituent unless:
- (a) the constituent is exempted by the APVMA from the operation of this section; or

- (b) the supply is authorised by a permit; or
 - (c) all the following subparagraphs apply:
 - (i) the constituent had, at a time or times before the supply takes place, been approved under this Code or a corresponding previous law;
 - (ii) the period beginning on the day when the constituent ceased, or last ceased, to be so approved and ending on the day when the supply takes place is not longer than a period that the APVMA has determined in relation to the constituent for the purposes of this subparagraph;
 - (iii) the supply is a supply of part of a stock of the constituent that was in the person's possession or custody immediately before the product so ceased, or last ceased, to be approved;
 - (iv) if the approval of the constituent was subject to conditions—the supply is in accordance with those conditions.
- (2) The APVMA may, on its own initiative or on the application of a person, extend a period determined by it under subparagraph (1)(c)(ii) for a further period or periods determined by it.
- (2A) A person commits an offence if the person contravenes subsection (1).
- Penalty: 300 penalty units.
- Note: A defendant bears an evidential burden in relation to the matters in paragraphs (1)(a) to (c). See subsection 13.3(3) of the *Criminal Code*.
- (3) It is a defence to a prosecution of a person for an offence against subsection (2A) if the person proves that, when the person supplied the constituent, or caused or permitted the constituent to be supplied, as the case may be, the person did not know, and could not reasonably be expected to have known, that the active constituent was not an approved active constituent.
- Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.
- (3A) Subsection (1) is a civil penalty provision.
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Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matters in paragraphs (1)(a) to (c), see section 145CD.

- (4) If an application is made to the APVMA under subsection (2), the APVMA must give to the applicant written notice of its decision on the application.

77 Supply of approved active constituents in contravention of conditions of approval

- (1) A person must not supply, or cause or permit to be supplied, an approved active constituent for a proposed or existing chemical product whose approval is subject to conditions unless the supply is in accordance with those conditions or is authorised by a permit.

- (1A) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

Note: The defendant bears an evidential burden in relation to establishing that the supply is in accordance with the conditions or is authorised by a permit. See subsection 13.3(3) of the *Criminal Code*.

- (2) It is a defence to a prosecution of a person for an offence against subsection (1A) if the person proves that, when the person supplied the constituent, or caused or permitted the constituent to be supplied, as the case may be, the person did not know, and could not reasonably be expected to have known, that the approval of the constituent was subject to the conditions referred to in that subsection.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

- (3) Subsection (1) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to establishing that the supply is in accordance with the conditions or is authorised by a permit, see section 145CD.

78 Supply of chemical products that are not registered products or reserved products

- (1) A person must not supply, or cause or permit to be supplied, a chemical product that is not a registered chemical product or a reserved chemical product unless:
- (a) the supply is authorised by a permit; or
 - (b) the product is exempted by the APVMA from the operation of this section; or
 - (c) all the following subparagraphs apply:
 - (i) at a time or times before the supply takes place, the product had been registered or reserved under this Code or had been registered under a corresponding previous law;
 - (ii) the period beginning on the day when the product ceased, or last ceased, to be so registered or reserved, and ending on the day when the supply takes place is not longer than a period that the APVMA has determined in relation to the product for the purposes of this subparagraph;
 - (iii) the supply is a supply of part of a stock of the product that was in the person's possession or custody immediately before the product ceased, or last ceased, to be so registered or reserved;
 - (iv) a recall notice has not been given in respect of the product;
 - (v) the person is not the person who imported the product into, or manufactured the product in, Australia;
 - (vi) if the registration of the product was subject to conditions—the supply is in accordance with those conditions.
- (2) The APVMA may, on its own initiative or on the application of a person, extend a period determined by it under subparagraph (1)(c)(ii) for a further period or periods determined by it.
- (2A) A person commits an offence if the person contravenes subsection (1).
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Penalty: 300 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in paragraphs (1)(a) to (c). See subsection 13.3(3) of the *Criminal Code*.

- (3) It is a defence to a prosecution of a person for an offence against subsection (2A) if the person proves that, when the chemical product was supplied, or caused or permitted to be supplied, as the case may be, the person did not know, and could not reasonably be expected to have known, that the product was not a registered chemical product or a reserved chemical product.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

- (3A) Subsection (1) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matters in paragraphs (1)(a) to (c), see section 145CD.

- (4) If an application is made to the APVMA under subsection (2), the APVMA must give to the applicant written notice of its decision on the application.

79 Supply of registered chemical products in contravention of conditions of registration

- (1) A person must not supply, or cause or permit to be supplied, a registered chemical product whose registration is subject to conditions unless the supply is in accordance with those conditions or is authorised by a permit.

- (1A) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

Note: The defendant bears an evidential burden in relation to establishing that the supply is in accordance with the conditions or is authorised by a permit. See subsection 13.3(3) of the *Criminal Code*.

- (2) It is a defence to a prosecution of a person for an offence against subsection (1A) if the person proves that, when the chemical
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product was supplied, or caused or permitted to be supplied, as the case may be, the person did not know, and could not reasonably be expected to have known, that the registration of the product was subject to the conditions referred to in that subsection.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

(3) Subsection (1) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to establishing that the supply is in accordance with the conditions or is authorised by a permit, see section 145CD.

79B Supply of reserved chemical products contrary to conditions specified in the regulations

- (1) A person may only supply, or cause or permit to be supplied, a reserved chemical product if:
- (a) the supply is in accordance with the conditions specified in regulations made for the purposes of section 56ZU that relate to the product; or
 - (b) the supply is authorised by a permit.

(1A) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

(2) In subsection (1), strict liability applies to the physical element of circumstance, that the conditions relating to the product were specified in regulations made for the purposes of section 56ZU.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

(3) Subsection (1) is a civil penalty provision.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

80 Supply of chemical products without a label

- (1) A person must not supply, or cause or permit to be supplied, a chemical product in a container that does not have a label attached to it unless the supply is authorised by a permit.

- (1A) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

Note: A defendant bears an evidential burden in relation to establishing that the supply is authorised by a permit. See subsection 13.3(3) of the *Criminal Code*.

- (2) It is a defence to a prosecution of a person for an offence against subsection (1A) if the person proves that, when the chemical product was supplied, or caused or permitted to be supplied, as the case may be, in the container, the person did not know, and could not reasonably be expected to have known, that the container did not have a label attached to it.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

- (3) Subsection (1) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to establishing that the supply is authorised by a permit, see section 145CD.

81 Supply of registered chemical products with unapproved label

- (1) A person may only supply, or cause or permit to be supplied, a registered chemical product in a container if:
- (a) the label attached to the container:
 - (i) states the relevant particulars; and
 - (ii) does not contain information that is contrary to the relevant particulars; or
 - (b) the supply is authorised by a permit.

- (1A) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

- (2) It is a defence to a prosecution of a person for an offence against subsection (1A) if the person proves that, when the chemical product was supplied, or caused or permitted to be supplied, as the case may be, in the container, the person did not know, and could not reasonably be expected to have known, that the label attached to the container:
- (a) did not state the relevant particulars; or
 - (b) contained information contrary to the relevant particulars.

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

- (3) Subsection (1) does not apply to the supply of a registered chemical product in a container in the circumstances mentioned in that subsection if:
- (a) the label attached to the container states the relevant particulars that were required to be stated on a label (the **earlier approved label**) that was an approved label for containers for the product at a time before the supply takes place; and
 - (b) the APVMA has determined that this subsection is to apply in respect of the earlier approved label; and
 - (c) the supply takes place not later than 2 years (or such shorter or longer period as the APVMA allows) after the earlier approved label ceased to be the approved label for containers for the product.

- (4) Subsection (1) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matter in subsection (3), see section 145CD.

83 Supply of substances whose constituents differ from constituents of registered chemical product

- (1) A person must not supply, or cause or permit to be supplied, a substance or mixture of substances in a container to which is attached a label containing a name of a registered chemical product if:
- (a) the constituents of the substance or mixture differ by more than the prescribed extent from the constituents of the registered chemical product that were shown in the particulars of the registered chemical product contained in the Register; or
 - (b) the concentration of the constituents of the substance or mixture differs by more than the prescribed extent from the concentration of the constituents of the registered chemical product that was shown in those particulars; or
 - (c) the composition or purity of any constituent of the substance or mixture differs by more than the prescribed extent from the composition or purity of the corresponding constituent of the registered chemical product that was shown in those particulars.

- (1A) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (2) Subsection (1A) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) Subsection (1) is a civil penalty provision.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

84 Claims inconsistent with labels

- (1) A person must not make any claim, or cause or permit any claim to be made, in respect of:
- (a) a registered chemical product; or
 - (b) a chemical product that contains a registered chemical product;

that is inconsistent with any of the instructions on any approved label for containers for the registered chemical product or inconsistent with any instruction required by an established standard for the registered chemical product to be included on a label for a container for the registered chemical product, as the case may be.

- (2) Subsection (1) does not apply to:
- (a) a claim that is exempted by the APVMA from the operation of this section; or
 - (b) a claim made in a notice published under paragraph 45A(1)(b); or
 - (c) a claim that is permitted to be made under any other law of this jurisdiction.

- (3) Subsection (1) does not apply to the extent that the person is authorised by a permit to engage in the conduct concerned.

Note: The defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

- (3A) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

- (4) Subsection (3A) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

- (5) Subsection (1) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

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Note 2: For the evidential burden in civil penalty proceedings in relation to the matter in subsection (3), see section 145CD.

85 Modification of warning prohibited

- (1) A person must not, in connection with the supply of a chemical product, make a claim, or cause or permit a claim to be made, in respect of the product that is inconsistent with the expiry date required by the regulations to be contained on a label attached to a container of the product.
- (2) Subsection (1) does not apply to a claim made in a notice published under paragraph 45A(1)(b).
- (3) Subsection (1) does not apply to the extent that the person is authorised by a permit to engage in the conduct concerned.

Note: The defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

- (3A) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

- (4) Subsection (3A) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

- (5) In subsection (1), strict liability applies to the physical element of circumstance, that it is the regulations that require an expiry date to be contained on a label attached to a container of the product.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

(6) Subsection (1) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matter in subsection (3), see section 145CD.

86 Labels not to be detached etc.

(1) A person contravenes this subsection if:

(a) either:

- (i) a label attached to a container of a chemical product contains any relevant particular identical to any relevant particular contained on an approved label for containers for the product; or
- (ii) a label attached to a container of a chemical product contains any relevant particular identical to any matter required by an established standard for the product to be included on a label for containers for the product; and

(b) the person:

- (i) detaches or otherwise removes the label; or
- (ii) alters, defaces, obliterates or destroys the relevant particular; or
- (iii) attaches another label to, or endorses anything upon, the container that in either case has the effect of expressly or impliedly negating, varying, or in any way detracting from, qualifying or minimising the purport or effect of, the relevant particular.

(1A) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

(2) A person contravenes this subsection if:

(a) either:

- (i) a label attached to a container of a chemical product contains any relevant particular identical to any relevant

particular contained on an approved label for containers for the product; or

- (ii) a label attached to a container of a chemical product contains any relevant particular identical to any matter required by an established standard for the product to be included on a label for containers for the product; and
- (b) the person causes or permits:
- (i) the label to be detached or otherwise removed; or
 - (ii) the relevant particular contained on the label to be altered, defaced, obliterated or destroyed; or
 - (iii) another label to be attached to the container that has the effect of expressly or impliedly negating, varying, or in any way detracting from, qualifying or minimising the purport or effect of, the relevant particular; or
 - (iv) anything to be endorsed upon the container that has the effect of expressly or impliedly negating, varying, or in any way detracting from, qualifying or minimising the purport or effect of, the relevant particular.
- (2A) A person commits an offence if the person contravenes subsection (2).
- Penalty: 300 penalty units.
- (3) Subparagraphs (1)(b)(ii) and (2)(b)(ii) do not apply to an alteration, defacing, obliteration or destruction of a relevant particular that is done by the destruction or disposal of the chemical product without otherwise contravening this Code.
- (3A) Subsections (1) and (2) do not apply:
- (a) if a person acts in accordance with a direction given to the person under:
 - (i) subsection 131A(1) or 132A(1) of this Code; or
 - (ii) subsection 69EAC(1) or 69EBA(1) of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*; or
 - (b) to the extent that the person is authorised by a permit to engage in the conduct concerned.

- (4) Subsections (1A) and (2A) do not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matters in subsections (3), (3A) and (4). See subsection 13.3(3) of the *Criminal Code*.

- (5) Subsections (1) and (2) are civil penalty provisions.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matters in subsections (3) and (3A), see section 145CD.

87 Chemical product to conform to standard

- (1) This section applies to a chemical product if:
- (a) a standard is prescribed in respect of the product or in respect of a constituent contained in the product; and
 - (b) the product is:
 - (i) a listed chemical product; or
 - (ii) prescribed for the purposes of this section.
- (2) A person must not supply the product, or cause or permit the product to be supplied, unless:
- (a) if a standard is prescribed in respect of the product—the product conforms to the standard; or
 - (b) if a standard is prescribed in respect of a constituent contained in the product—the constituent contained in the product conforms to the standard.
- (3) Subsection (2) does not apply to the extent that the conduct is authorised by a permit.

Note: The defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

- (3A) A person commits an offence if the person contravenes subsection (2).

Penalty: 300 penalty units.

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- (4) Subsection (3A) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

- (5) Subsection (2) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matter in subsection (3), see section 145CD.

88 Certain notices not to be published

- (1) In this section:

chemical product does not include a reserved chemical product.

notice includes a circular and an advertisement.

publish, means publish by any means, including in a newspaper or periodical, by broadcasting or televising, in a cinematograph film or in a video recording.

- (2) A person must not publish, or cause or permit to be published, a notice that offers to sell, or invites the making of offers to buy:

(a) an active constituent for a proposed or existing chemical product if the constituent is not an approved active constituent; or

(b) a chemical product that is not a registered chemical product;

unless:

(c) an application has been made for approval of the constituent or registration of the product, as the case may be; and

(d) the notice states:

(i) that the constituent is not an approved active constituent or the product is not a registered chemical product, as the case may be; and

(ii) that such an application has been made.

- (2A) A person commits an offence if the person contravenes subsection (2).

Penalty: 50 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in paragraphs (2)(c) and (d). See subsection 13.3(3) of the *Criminal Code*.

- (3) It is a defence to a prosecution of a person for an offence against subsection (2A) if the defendant proves that, when the notice was published, or caused or permitted to be published, as the case may be, the defendant did not know, and could not reasonably be expected to have known, that:
- (a) if paragraph (2)(a) applies—the constituent was not an approved active constituent; or
 - (b) if paragraph (2)(b) applies—the product was not a registered chemical product.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

- (4) Subsection (2) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matters in paragraphs (2)(c) and (d), see section 145CD.

89 Certain statements prohibited

- (1) A person must not do, or cause or permit to be done, any of the following:
- (a) publish or communicate any false or misleading information about a chemical product;
 - (b) expressly or impliedly claim that the APVMA recommends the use of a chemical product;
 - (c) expressly or impliedly claim that the APVMA guarantees, warrants or assures the safety or efficacy of a chemical product;
 - (d) expressly or impliedly claim that the use of a chemical product is recommended:
 - (i) by the Commonwealth, a State or a Territory; or
 - (ii) by an authority of the Commonwealth, a State or a Territory; or

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- (iii) by an officer or employee of, or of an authority of, the Commonwealth, a State or a Territory;
 - (e) expressly or impliedly make a claim (however the claim is stated), without any qualification, or with a qualification that, in the APVMA's opinion, is unjustified, to the effect that a chemical product is natural, organic, safe, harmless, non-toxic, non-poisonous, non-injurious or environment-friendly;
 - (f) expressly or impliedly claim that a chemical product has particular qualities if those qualities are prescribed by the regulations for the purposes of this paragraph.
- (2) Paragraph (1)(d) does not apply:
 - (a) to an officer or employee of, or of an authority of, the Commonwealth, a State or a Territory when, in the course of his or her employment as such an officer or employee, he or she expressly or impliedly claims that a chemical product is recommended; or
 - (b) to a prescribed person when, in prescribed circumstances, the person expressly or impliedly claims that a chemical product is recommended.
- (3) Subsection (1) does not prevent a person from making statements about a chemical product in circumstances prescribed by the regulations or from reporting statements so made.
- (4) Paragraph (1)(b) or (c) does not apply in relation to a claim as to a recommendation, guarantee, warrant or assurance by the APVMA if a document issued to the public by the APVMA contains such a recommendation, guarantee, warrant or assurance and the APVMA did not, before the claim was made, publicly withdraw or revoke the recommendation, guarantee, warrant or assurance.
- (5) Paragraph (1)(d) does not apply in relation to a claim as to a recommendation by, or by an authority of, the Commonwealth, a State or a Territory, or by an officer or employee of the Commonwealth, a State, a Territory or such an authority, if a document issued to the public by the Commonwealth, the State, the Territory or the authority, as the case may be, contains such a recommendation and the Commonwealth, State, Territory or

authority did not, before the claim was made, publicly withdraw or revoke the recommendation.

- (5A) A person commits an offence if the person contravenes subsection (1).

Penalty: 50 penalty units.

- (6) Subsection (5A) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (6). See subsection 13.3(3) of the *Criminal Code*.

- (7) In paragraph (1)(f), strict liability applies to the physical element of circumstance, that the particular qualities concerned were prescribed by the regulations for the purposes of that paragraph.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (8) Subsection (1) is a civil penalty provision.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Division 3—Date-controlled chemical products

89A Exclusion of certain chemical products

This Division does not apply to a chemical product, or a product included in a class of chemical products, prescribed by the regulations.

90 Manufacture or import of date-controlled chemical product

- (1) A person who manufactures or imports a date-controlled chemical product must:
- (a) within 28 days make a record in the approved form and in the prescribed manner containing the date of manufacture, or the date of manufacture and import, as the case may be, of the product and any other particulars that are required by the regulations to be inserted in the record; and
 - (b) keep that record for at least the period prescribed by the regulations for keeping it.

- (1A) A person commits an offence if the person contravenes subsection (1).

Penalty: 120 penalty units.

- (2) Subsection (1A) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) In subsection (1), strict liability applies to the physical element of circumstance, that the relevant matter is prescribed by the regulations.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) Subsection (1) is a civil penalty provision.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

91 Supply of date-controlled chemical product

- (1) A person must not supply, or cause or permit to be supplied, a date-controlled chemical product in a container that does not have attached to it an approved label containing:
- (a) matter that the APVMA has approved as sufficient to enable the APVMA to identify the date of manufacture of the product; and
 - (b) the expiry date required to be contained on the label as a condition of the registration of the product.

- (1A) Subsection (1) does not apply to the extent that the person's conduct is otherwise authorised by a permit.

Note: The defendant bears an evidential burden in relation to the matter in subsection (1A). See subsection 13.3(3) of the *Criminal Code*.

- (1AA) A person commits an offence if the person contravenes subsection (1).

Penalty: 120 penalty units.

- (1B) Subsection (1AA) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (1B). See subsection 13.3(3) of the *Criminal Code*.

- (1C) For the purposes of subsection (1AA), strict liability applies to the physical elements of circumstance, that:

- (a) the APVMA has not approved the relevant matter as mentioned in paragraph (1)(a); and
- (b) an expiry date was required to be contained on the label as a condition of the registration of the product.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (1D) Subsection (1) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matters in subsection (1A), see section 145CD.

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- (2) If the container of a date-controlled chemical product has attached to it a label containing an expiry date, a person must not, after that date, supply, or cause or permit to be supplied, the product that is in the container unless:
- (a) the person is authorised to do so by a permit; or
 - (b) the person does so on a date that, despite the date on the label, is earlier than the date that is required to be contained on the label as a condition of the registration of the product.

- (2A) A person commits an offence if the person contravenes subsection (2).

Penalty: 120 penalty units.

Note: The defendant bears an evidential burden in relation to the matters in paragraphs (2)(a) and (b). See subsection 13.3(3) of the *Criminal Code*.

- (3) Subsection (2A) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

- (4) Subsection (2) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matters in paragraphs (2)(a) and (b), see section 145CD.

92 Abuse of warning on label prohibited

- (1) If a label attached to a container of a chemical product contains any matter (the ***approved matter***) that is, or has been, required to be contained on the label by or under subsection 91(1), a person must not do, or cause or permit to be done, any of the following:
- (a) detach or otherwise remove the label;
 - (b) alter, deface, obliterate or destroy the approved matter;
 - (c) attach another label to, or endorse anything upon, the container that in either case has the effect of negating, varying, or in any way detracting from, qualifying or minimising the purport or effect of, the approved matter.

(2) Paragraph (1)(b) does not apply to an alteration, defacing, obliteration or destruction of matter that is done by the destruction or disposal of the chemical product without otherwise contravening this Code.

(2A) A person commits an offence if the person contravenes subsection (1).

Penalty: 120 penalty units.

Note: The defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

(3) Subsection (2A) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

(4) Subsection (1) is a civil penalty provision.

Note 1: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matter in subsection (2), see section 145CD.

Division 4—Restricted chemical products

93 Restricted chemical product

- (1) Subject to subsection (2), the regulations may declare a chemical product to be a restricted chemical product.
- (2) A chemical product may not be declared by the regulations to be a restricted chemical product unless the APVMA has certified in writing that it is in the public interest for the product to be so declared.
- (3) In deciding whether to give a certificate in relation to a chemical product under subsection (2), the APVMA must have regard to the following:
 - (a) whether the product may have an effect that is harmful to human beings;
 - (b) whether the product may have any unintended effect that is harmful to any animal, plant or thing or to the environment;
 - (c) whether any special knowledge, skill or qualification is required in the preparation or handling of the product;
 - (d) whether any special equipment is required to use the product with safety.

94 Restricted chemical products may be supplied only to authorised persons

- (1) A person must not supply a restricted chemical product, or cause or permit a restricted chemical product to be supplied, to a person who is not authorised to use the product under another law of this jurisdiction.
- (1A) A person commits an offence if the person contravenes subsection (1).

Penalty: 120 penalty units.
- (2) Subsection (1A) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

(3) Subsection (1) is a civil penalty provision.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

95 Labels for restricted chemical products

(1) A person must not supply a restricted chemical product, or cause or permit a restricted chemical product to be supplied, unless the label attached to the container for the product contains the words “RESTRICTED CHEMICAL PRODUCT—ONLY TO BE SUPPLIED TO OR USED BY AN AUTHORISED PERSON”.

(1A) A person commits an offence if the person contravenes subsection (1).

Penalty: 120 penalty units.

(2) Subsection (1A) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

(3) Subsection (1) is a civil penalty provision.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

Part 5—Analysis

96 Explanation of Part

This Part sets out the procedure by which samples or substances are to be analysed and states how evidence of the results of the analysis may be given in proceedings under this Code.

97 Analysis by approved analysts

- (1) An inspector may give a portion of a sample taken under section 131A or 132A to an approved analyst for analysis.
- (2) If an analysis has been made by, or under the personal supervision of, an approved analyst in respect of a sample given for analysis under this Code, the analyst must give to the APVMA a certificate in the approved form in respect of the analysis.

Penalty: 10 penalty units.

- (2A) An offence under subsection (2) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) The APVMA must, if asked to do so by an inspector, give to the inspector a copy of a certificate given under subsection (2).
- (4) The APVMA must, upon receipt of the prescribed fee (if any), give a copy of a certificate given to it under subsection (2) to a person who appears to it to be:
 - (a) the owner of the substance from which the sample analysed was taken or the person in whose possession or custody, or under whose control, the substance was when the sample was taken; or
 - (b) an applicant for approval of that substance as an active constituent or for registration of that substance as a chemical product.

- (5) If a person referred to in paragraph (4)(a) or (b) so requests, the APVMA must give to the person a portion of the sample that is sufficient to enable the person to have a further analysis made.
- (6) A person must not, for trade purposes or for advertisement, use a certificate given under subsection (2) or any matter contained in it.

Penalty: 60 penalty units.

- (6A) Subsection (6) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (6A). See subsection 13.3(3) of the *Criminal Code*.

- (6B) An offence under subsection (6) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (7) This section applies in respect of a substance seized under an investigation warrant in the same way as it applies in respect of a sample of a substance taken under section 131A or 132A and references in this section to a sample or to a substance from which a sample was taken include references to a substance so seized.

98 Evidence of results of analysis

- (1) Subject to subsection (3), in any proceedings under this Code, a certificate of an approved analyst in the approved form stating, in respect of a sample of a substance in relation to which the offence is alleged to have been committed, any of the following:
 - (a) that the analyst signing the certificate is an approved analyst;
 - (b) when and from whom the sample of the substance was received;
 - (c) what, if any, labels or other means of identifying the sample of the substance accompanied it when it was received;
 - (d) what container or containers the sample of the substance was contained in when it was received;
 - (e) a description of the sample of the substance received;
 - (f) when the sample of the substance, or a portion of it, was analysed;
 - (g) a description of the method of analysis;

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- (h) the results of the analysis;
 - (i) how the sample of the substance was dealt with after handling by the analyst, including details of:
 - (i) the quantity kept; and
 - (ii) the name of the person, if any, to whom any quantity so kept was given; and
 - (iii) measures taken to secure any quantity so kept;is admissible as prima facie evidence of the matters stated in the certificate and, if the certificate states the results of the analysis, of the correctness of those results.
- (2) Unless the contrary is proved, a document purporting to be a certificate under subsection (1) is taken to be such a certificate and to have been duly given.
- (3) A certificate must not be admitted in evidence under subsection (1) in proceedings for an offence unless:
- (a) the person charged with the offence or a barrister or solicitor who has appeared for the person in those proceedings has, at least 14 days before the certificate is sought to be so admitted, been given a copy of the certificate together with reasonable notice of the intention to produce the certificate as evidence in the proceedings; or
 - (b) reasonable efforts were made to give the copy and notice as required by paragraph (a) but those efforts were unsuccessful.
- (4) Subject to subsection (5), if, under subsection (1), a certificate of an analyst is admitted in evidence in a proceeding for an offence, the person charged with the offence may require the analyst to be called as a witness for the prosecution and the analyst may be cross-examined as if he or she had given evidence of the matters stated in the certificate.
- (5) Subsection (4) does not entitle a person to require an analyst to be called as a witness for the prosecution unless:
- (a) the prosecutor has been given at least 4 days' notice of the person's intention to require the analyst to be so called; or

- (b) the court, by order, allows the person to require the analyst to be so called.
- (6) This section applies in respect of a substance seized under an investigation warrant in the same way as it applies in respect of a sample of a substance taken under section 131A or 132A and references in this section to a sample or to a substance from which a sample was taken include references to a substance so seized.

99 Information and documents about, and analysis of, substances supplied as active constituents or chemical products

- (1) This section applies if the APVMA reasonably believes that it is necessary to exercise powers under this section:
 - (a) to protect the health and safety of human beings; or
 - (b) to protect animals, plants or things, or the environment; or
 - (c) to prevent significant prejudice to trade or commerce between Australia and places outside Australia.
- (2) The APVMA may give written notice to a person who has, has had or will have, possession or custody of a substance or mixture of substances that is or was intended for supply by the person:
 - (a) as a chemical product; or
 - (b) as an active constituent for a proposed or existing chemical product;requiring the person to give the APVMA information or documents specified in the notice or to take the steps specified in the notice.
- (3) The notice may require the person to give to the APVMA, within such reasonable period as is specified in the notice, information or documents required by the notice about the following:
 - (a) the constituents of the substance or mixture;
 - (b) the concentration of the constituents of the substance or mixture;
 - (c) the formulation type of the substance or mixture;
 - (d) the composition or purity of a constituent of the substance or mixture;
 - (e) the name of each manufacturer of the substance or mixture;

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- (f) the address of each site at which the substance or mixture is manufactured;
 - (g) the packaging or labelling of the substance or mixture;
 - (h) advertising material related to the substance or mixture;
 - (j) if the substance or mixture is intended to be supplied, or has been supplied, as an active constituent for a chemical product, or as a chemical product, under a particular name—the name of the constituent or product and whether:
 - (i) the substance or mixture conforms to any standard prescribed in respect of the constituent or product with that name, any established standard or any other prescribed requirement; or
 - (ii) the supply of the substance or mixture is or was in accordance with any conditions applying to the approval or registration of the constituent or product with that name;
 - (k) any other prescribed information or documents.
- (4) The notice may also require the person, within such reasonable period as is specified in the notice:
- (a) to have the substance or mixture analysed to find out about the matters mentioned in paragraphs (3)(a) to (d) and paragraphs (3)(j) and (k); and
 - (b) to give the results of the analysis to the APVMA; and
 - (c) to give the analyst's certificate to the APVMA.
- (4A) Without limiting subsection (4), the notice may require any one or more of the following:
- (a) that samples of the substance or mixture are taken:
 - (i) under the supervision of an inspector; or
 - (ii) in the manner stated in the notice;
 - (b) that the analysis is carried out:
 - (i) under the supervision of an approved analyst; or
 - (ii) in the manner stated in the notice;
 - (c) that the analysis is carried out at a prescribed laboratory;
 - (d) that the analysis is carried out within a period stated in the notice;

- (e) that the analysis is carried out at the expense of the person.
- (4B) Information or results required to be given to the APVMA must be given in writing.
- Note: For giving information electronically, see section 156A.
- (5) A person to whom a notice is given under subsection (2) must not fail to comply with the notice.
- (5AA) A person commits an offence of strict liability if the person contravenes subsection (5).
- Penalty: 120 penalty units.
- Note: For strict liability, see section 6.1 of the *Criminal Code*.
- (5A) Subsection (5AA) does not apply if the person has a reasonable excuse.
- Note: The defendant bears an evidential burden in relation to the matter in subsection (5A). See subsection 13.3(3) of the *Criminal Code*.
- (5B) Subsection (5) is a civil penalty provision.
- Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.
- (6) The APVMA may publish in a manner that it thinks appropriate:
- (a) the name, and the address of the place of business, of:
 - (i) the person who had possession or custody of the substance or mixture; and
 - (ii) if the substance or mixture is intended for supply as a chemical product and the person referred to in subparagraph (i) is not the holder of the registration—the holder; and
 - (b) the result of the analysis of the substance or mixture.
- (7) If a requirement made under this section is inconsistent with an earlier requirement made under this section, the earlier requirement is, to the extent of the inconsistency, of no effect.

Part 6—Recall notices

100 Explanation of Part

This Part sets out various circumstances in which the APVMA may issue recall notices requiring persons who have, or have had, stocks of chemical products in their possession to stop supplying the products and to take action in relation to the products as directed by the APVMA. The power of the APVMA to issue recall notices is in addition to powers conferred on the Australian Competition and Consumer Commission under the *Competition and Consumer Act 2010*.

101 Recall of products that are not registered or whose registration is being reconsidered

- (1) If:
 - (a) a chemical product (other than a reserved chemical product) is not registered under the Agvet Code of this jurisdiction; or
 - (b) the APVMA is reconsidering the registration of a chemical product under Division 4 of Part 2 of that Code;the APVMA may give written notice to any person (the ***notified person***) who has, or has had, possession or custody of stocks of the product, or of a particular batch of the product, in this jurisdiction, requiring the notified person to do any one or more of the things mentioned in subsection (2).
- (2) The things that the notified person may be required to do under subsection (1) are as follows:
 - (a) not to supply, or to stop supplying, the product, or that batch, in this jurisdiction either immediately or within a stated period;
 - (b) to take any action stated in the notice that the notified person is reasonably capable of taking to recover stocks of the product or of that batch from any other person in this jurisdiction:

- (i) to whom the product or that batch has been supplied by the notified person; or
- (ii) who has possession or custody of any such stocks directly or indirectly because of a supply by the notified person;
- (c) if the product is not registered—to destroy, as stated in the notice, stocks of the product or of that batch in the possession or custody of, or recovered by, the notified person in this jurisdiction or to deal with them as stated in the notice;
- (d) to report to the APVMA within a stated period on the action taken by the notified person under the notice.

102 Recall of products in certain circumstances

- (1) If it appears to the APVMA that:
 - (a) a chemical product may not meet the safety criteria, the trade criteria or the efficacy criteria; or
 - (b) the constituents of stocks of a registered chemical product or of a particular batch of a registered chemical product differ by more than the prescribed extent from the constituents stated in relation to the product in the Register; or
 - (c) the concentration of the constituents of stocks of a registered chemical product or of a particular batch of a registered chemical product differs by more than the prescribed extent from the concentration of the constituents stated in relation to the product in the Register; or
 - (d) the composition or purity of any constituent of stocks of a registered chemical product or of a particular batch of a registered chemical product differs by more than the prescribed extent from the composition or purity of that constituent stated in relation to the product in the Register;the APVMA may give written notice to any person (the **notified person**) who has, or has had, possession or custody in this jurisdiction of any of the stocks or of the batch, or of stocks or a batch of the product in containers to which the label is attached, as the case may be, requiring the notified person to do any one or more of the things mentioned in subsection (2).

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- (2) The things that the notified person may be required to do under subsection (1) are as follows:
- (a) not to supply, or to stop supplying, any of those stocks or of that batch, either immediately or within a stated period;
 - (b) to take any action stated in the notice that the notified person is reasonably capable of taking to recover stocks of the product or of that batch from any other person in this jurisdiction:
 - (i) to whom the product or that batch has been supplied by the notified person; or
 - (ii) who has possession or custody of any such stocks directly or indirectly because of a supply by the notified person;
 - (c) to take any action that is stated in the notice, or that the notified person thinks necessary, to prevent or reduce any harmful effects that may have resulted from the use of the product;
 - (d) to destroy, as stated in the notice, any of those stocks or any of that batch in the possession or custody of, or recovered by, the notified person in this jurisdiction or to deal with them as stated in the notice;
 - (e) to report to the APVMA within a stated period on the action taken by the notified person under the notice.

103 Recall of products with labels that are not approved or are not authorised by an established standard

- (1) If it appears to the APVMA that labels attached to the containers:
- (a) of stocks of a registered chemical product; or
 - (b) of a particular batch of a registered chemical product;
- differ from the approved label for the product or the label required by the established standard for the product, the APVMA may give written notice to any person (the ***notified person***) who has, or has had, possession or custody of any of those stocks or of that batch in this jurisdiction requiring the person to do any one or more of the things mentioned in subsection (2).

- (2) The things that the notified person may be required to do under subsection (1) are as follows:
- (a) not to supply, or to stop supplying, any of those stocks or of that batch, either immediately or within a stated period;
 - (b) to take any action stated in the notice that the notified person is reasonably capable of taking to recover stocks of the product or of that batch from any other person in this jurisdiction:
 - (i) to whom the product or that batch has been supplied by the notified person; or
 - (ii) who has possession or custody of any such stocks directly or indirectly because of a supply by the notified person;
 - (c) to attach labels to the containers that are the same as the approved label for the product or the label required by the established standard for the product, as the case may be or to destroy any of those stocks or of that batch in the possession or custody of, or recovered by, the notified person or to deal with them as stated in the notice;
 - (d) to report to the APVMA within a stated period on the action taken by the notified person under the notice.

104 Notice of recall to be published

- (1) If the APVMA issues a recall notice, it must, within 14 days, publish notice of the issue of the recall notice in the *Gazette* and in any other manner that it thinks appropriate.
- (2) Each notice must contain a brief statement of the matters to which the recall notice relates.

105 Non-compliance with recall notice

- (1) A person to whom a recall notice is given must not fail to comply with the notice.
- (1A) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 120 penalty units.

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Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (2) Subsection (1A) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) Subsection (1) is a civil penalty provision.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

106 Recall under Competition and Consumer Act

Section 128 of Schedule 2 to the *Competition and Consumer Act 2010*, as that section applies as a law of the Commonwealth, imposes obligations on certain persons who voluntarily recall chemical products.

107 Inconsistent requirements

If a requirement made under section 101, 102 or 103 is inconsistent with an earlier requirement made under any of those sections, the earlier requirement is, to the extent of the inconsistency, of no effect.

Part 7—Permits

108 Explanation of Part

- (1) This Part sets up a system under which a person who wants to do something in respect of an active constituent for a proposed or existing chemical product, or in respect of a chemical product, that would otherwise be prohibited by this Code or another law of this jurisdiction may obtain a permit in respect of the doing of the thing. The permit does not have any practical operation unless a law of this jurisdiction permits the thing to be done by the holder of such a permit.
- (2) Examples of circumstances in which a permit could be sought are:
 - (a) if someone wants to conduct a trial or experiment in relation to a constituent that is not an approved constituent, or in relation to a chemical product that is not a registered chemical product or a reserved chemical product, in order to decide whether to make an application for approval or registration; or
 - (b) if someone wants to use a registered chemical product in a way that is not authorised by the approved label for containers for the product.

109 Definition of permit

In this Part:

permit means a permit, in respect of an active constituent for a proposed or existing chemical product, or in respect of a chemical product, to do or omit to do any thing stated in the permit the doing of which, or the omission to do which, would, apart from the permit, be:

- (a) an offence against section 74, 75, 76, 77, 78, 79, 79B, 80, 81, 84, 85, 86, 87 or 91 or subsection 121(4A) or (5A); or
- (b) an offence against an eligible law of this jurisdiction; or

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- (c) a contravention of a civil penalty provision mentioned in section 74, 75, 76, 77, 78, 79, 79B, 80, 81, 84, 85, 86, 87 or 91 or a contravention of the civil penalty provision set out in subsection 121(4) or (5).

110 Applications

- (1) Any person may apply to the APVMA, on behalf of that person, a class of persons or persons generally, for a permit in respect of an active constituent for a proposed or existing chemical product or in respect of a chemical product.
- (2) The application must meet the application requirements.

Note: For *meets the application requirements*, see section 8A.

110A Preliminary assessment

- (1) The APVMA must complete a preliminary assessment of the application within 1 month after it is lodged.
- (2) If it appears from the preliminary assessment that the application meets the application requirements, the APVMA must, within 14 days, give written notice to the applicant:
- (a) stating that the application has passed preliminary assessment and that it will be determined under section 112; and
 - (b) setting out any matters prescribed by the regulations.
- (3) If it appears from the preliminary assessment that the application does not meet the application requirements but that the defects in the application can reasonably be rectified, the APVMA must, within 14 days, give written notice to the applicant:
- (a) stating that the application does not meet the application requirements; and
 - (b) giving particulars of the defects in the application; and
 - (c) requiring the defects to be rectified within 1 month.
- (4) The APVMA must refuse the application if:
- (a) the APVMA is not satisfied that defects in the application can reasonably be rectified; or

- (b) the defects are not rectified to the satisfaction of the APVMA within the period mentioned in paragraph (3)(c).

Note: For notice of refusal, see section 8G.

- (5) The APVMA may alter the application, after it has passed preliminary assessment, with the written consent of the applicant.

111 Functions of co-ordinators

- (1) If there is a co-ordinator designated for this or another jurisdiction:
 - (a) the APVMA must, unless it thinks it inappropriate to do so, give the co-ordinator a copy of the application and of any accompanying documents; and
 - (b) if:
 - (i) the APVMA has given a copy of the application and documents referred to in paragraph (a) to a co-ordinator; and
 - (ii) the co-ordinator requests any additional information for the purpose of enabling him or her to make a recommendation to the APVMA about the application;then, unless the APVMA has reasonable grounds for refusing the request:
 - (iii) the APVMA must, by written notice given to the applicant, require the applicant to give the additional information to the APVMA; and
 - (iv) when the APVMA receives the additional information, it must, as soon as practicable, give the information to the co-ordinator; and
 - (c) when the co-ordinator is satisfied that he or she has sufficient information to enable a recommendation to be made about the application, the co-ordinator may give to the APVMA a recommendation as to whether the permit should be issued.
- (2) Any information given by a person to a co-ordinator because of a requirement made under subsection (1) must be in writing and be signed by an approved person.

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112 Issuing permits

- (1) The APVMA must consider the application and take into account any recommendations made by a co-ordinator.
- (2) The APVMA must issue the permit if it is satisfied:
 - (a) that the application meets the application requirements; and
 - (b) that the applicant has complied with any requirement made by the APVMA under subparagraph 111(1)(b)(iii); and
 - (c) for an active constituent—that the constituent would meet the safety criteria; and
 - (d) for a chemical product—that the product would meet the safety criteria, the trade criteria and the efficacy criteria; and
 - (e) that any requirements prescribed by the regulations in relation to the issue of a permit under this section have been complied with; and
 - (f) if an application has not been made for approval of the constituent or registration of the product or such an application has not been determined—that there are reasonable grounds for the application not having been made or for issuing the permit pending determination of the application; and
 - (g) if the application is for a permit to do, or omit to do, any thing which would, apart from the permit, be an offence against subsection 121(4A) or (5A) or a contravention of the civil penalty provision set out in subsection 121(4) or (5)—that there are exceptional circumstances that justify issuing the permit.

Note: For how permits are issued, see section 114.

- (3) Otherwise, the APVMA must refuse the application.

Note: For notice of refusal, see section 8G.

- (4) Despite subsection (2), the APVMA must also refuse the application if it is satisfied that:
 - (a) the applicant will be unable to comply with the conditions of the permit; or
 - (b) at least one of the following persons:

- (i) the applicant;
 - (ii) any other person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the applicant's affairs;
 - (iii) if the applicant is a body corporate—a major interest holder of the body corporate;
- has, within the 10 years immediately before the application:
- (iv) been convicted of an offence against an agvet law; or
 - (v) been convicted of an offence against a law of this or another jurisdiction relating to chemical products; or
 - (vi) been convicted of an offence against a law of the Commonwealth or a law of a State or Territory involving fraud or dishonesty; or
 - (vii) been ordered to pay a pecuniary penalty for the contravention of an agvet penalty provision; or
 - (viii) been ordered to pay a pecuniary penalty for the contravention of another law of this or another jurisdiction relating to chemical products; or
 - (ix) been ordered to pay a pecuniary penalty for the contravention of a civil penalty provision of a law of the Commonwealth or a law of a State or Territory involving fraud or dishonesty; or
 - (x) held a permit that was cancelled under subsection 119(2) or section 119B of this Code or under a corresponding provision of the Agvet Code of another jurisdiction; or
 - (xi) been a manager, or a major interest holder, of a body corporate in respect of which subparagraph (iv), (v), (vi), (vii), (viii), (ix) or (x) applies in that 10 year period, if the conduct resulting in that subparagraph applying occurred when the person was a manager or major interest holder of the body corporate.
- (5) A reference in paragraph (4)(b) to a person convicted of an offence includes a reference to a person in respect of whom an order has been made relating to the offence under:
- (a) section 19B of the *Crimes Act 1914*; or
 - (b) a corresponding provision of a law of a State or Territory.

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Note: Section 19B of the *Crimes Act 1914* empowers a court that has found a person to have committed an offence to take action without proceeding to record a conviction.

- (6) However, the APVMA may issue the permit despite subsection (4) if, in the opinion of the APVMA, special circumstances make it appropriate to do so.
- (7) If the APVMA refuses the application, it must give written notice of the refusal to each co-ordinator to whom a copy of the application was given.

112A APVMA may issue permit on its own initiative

- (1) The APVMA may, on its own initiative and in accordance with this section, issue a permit to a person in respect of an active constituent for a proposed or existing chemical product or in respect of a chemical product.
- (2) The APVMA may issue the permit if it is satisfied of the following:
 - (a) that the active constituent or chemical product in respect of which the permit is to be issued meets the safety criteria, the trade criteria and the efficacy criteria;
 - (b) that any requirements prescribed by the regulations in relation to the issue of a permit under this section have been complied with;
 - (c) if an application has not been made for approval of the constituent or registration of the product or such an application has not been determined—that there are reasonable grounds for the application not having been made or for issuing the permit pending determination of the application, as the case may be;
 - (d) if the permit would authorise a person to do, or omit to do, any thing which would, apart from the permit, be an offence against subsection 121(4A) or (5A) or a contravention of the civil penalty provision set out in subsection 121(4) or (5)—that there are exceptional circumstances that justify issuing the permit.

Note: For how permits are issued, see section 114.

- (3) However, the APVMA must not issue the permit to a person (the ***proposed permit holder***) if it is satisfied that:
- (a) the proposed permit holder will be unable to comply with the conditions of the permit; or
 - (b) at least one of the following persons:
 - (i) the proposed permit holder;
 - (ii) any other person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the proposed permit holder's affairs;
 - (iii) if the proposed permit holder is a body corporate—a major interest holder of the body corporate; has, within the previous 10 years:
 - (iv) been convicted of an offence against an agvet law; or
 - (v) been convicted of an offence against a law of this or another jurisdiction relating to chemical products; or
 - (vi) been convicted of an offence against a law of the Commonwealth or a law of a State or Territory involving fraud or dishonesty; or
 - (vii) been ordered to pay a pecuniary penalty for the contravention of an agvet penalty provision; or
 - (viii) been ordered to pay a pecuniary penalty for the contravention of another law of this or another jurisdiction relating to chemical products; or
 - (ix) been ordered to pay a pecuniary penalty for the contravention of a civil penalty provision of a law of the Commonwealth or a law of a State or Territory involving fraud or dishonesty; or
 - (x) held a permit that was cancelled under subsection 119(2) or section 119B of this Code or under a corresponding provision of the Agvet Code of another jurisdiction; or
 - (xi) been a manager, or a major interest holder, of a body corporate in respect of which subparagraph (iv), (v), (vi), (vii), (viii), (ix) or (x) applies, if the conduct resulting in that subparagraph applying occurred when the person was a manager or major interest holder of the body corporate.

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- (4) A reference in paragraph (3)(b) to a person convicted of an offence includes a reference to a person in respect of whom an order has been made relating to the offence under:
- (a) section 19B of the *Crimes Act 1914*; or
 - (b) a corresponding provision of a law of a State or Territory.

Note: Section 19B of the *Crimes Act 1914* empowers a court that has found a person to have committed an offence to take action without proceeding to record a conviction.

- (5) However, the APVMA may issue the permit despite subsection (3) if, in the opinion of the APVMA, special circumstances make it appropriate to do so.
- (6) If the active constituent or chemical product in respect of which the permit is to be issued is approved or registered, the APVMA:
- (a) must, before issuing the permit, give written notice of its intention to do so to the holder of the approval or registration; and
 - (b) must not issue the permit before the end of 28 days after the day on which the notice is given.
- (7) However, subsection (6) does not apply to the extent that, in the opinion of the APVMA, special circumstances make it appropriate to:
- (a) issue the permit without giving written notice to the holder of the approval or registration; or
 - (b) issue the permit before the end of the 28 days.

113 Record of Permits

- (1) For the purposes of this Code, the APVMA must keep a record, in a form determined by it, to be known as the Record of Permits.
- (2) The Record of Permits is to be kept in 2 parts as provided by subsections (3) and (4).
- (3) One part is to contain:
- (a) information about permits the making of applications for which is confidential commercial information; and
 - (b) confidential commercial information about other permits.

- (4) The other part is to contain information about the other permits referred to in paragraph (3)(b) that is not confidential commercial information.
- (5) The APVMA must permit any person to inspect the part of the Record of Permits referred to in subsection (4) at any time during ordinary office hours on a working day.
- (6) Subject to subsection (7), if a person asks for a copy of a permit other than a permit to which paragraph (3)(a) applies and pays the prescribed fee (if any), the APVMA must give the person a copy of the permit.
- (7) If a permit referred to in subsection (6) contains confidential commercial information, the APVMA must delete that information from the copy given under that subsection.

114 How permits are issued

- (2) When issuing a permit, the APVMA must give a distinguishing number to the permit.
- (3) The permit may be unconditional or subject to any conditions that the APVMA thinks appropriate.
- (4) The permit must:
 - (a) contain the distinguishing number given to the permit; and
 - (b) state whether it applies to persons generally and, if not, state the persons or class of persons to whom it applies, other than persons to whom it applies because of subsection 116(3); and
 - (c) state the active constituent or chemical product in respect of which it is issued; and
 - (d) state the things authorised by the permit to be done or omitted to be done; and
 - (e) state any conditions of the permit.
- (5) Within 14 days after a permit is issued, the APVMA must:
 - (a) place a copy of the permit in the Record of Permits; and
 - (b) if there is a co-ordinator designated for this or another jurisdiction, tell the co-ordinator that the permit has been

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- issued and tell him or her of any conditions to which the permit is subject; and
- (c) in prescribed circumstances, tell a prescribed authority that the permit has been issued.

115 Duration of permit

- (1) Subject to this section, a permit is in force until it is surrendered under section 117 or the APVMA cancels it under section 119, 119A or 119B.
- (2) Subject to subsection (3), a permit may be expressed to be in force only for a period stated in the permit.
- (3) The holder of a permit to which subsection (2) applies may apply in writing to the APVMA for an extension or extensions of the permit.
- (3A) The APVMA may extend the permit for a further period that it thinks appropriate if it is satisfied that:
- (a) the application meets the application requirements; and
 - (b) any requirements prescribed by the regulations have been met.
- (3B) If the APVMA does not extend the permit, it must refuse the application.

Note: For notice of refusal, see section 8G.

- (4) This section has effect subject to subsection 118(6).

- (5) If an application is made to the APVMA under subsection (3), the APVMA must give to the applicant written notice of its decision on the application.

Note: For notice of refusal, see section 8G.

116 Effect of permit and compliance with conditions of permit

- (1) If, while a permit in respect of an active constituent for a proposed or existing chemical product, or in respect of a chemical product, is in force:

- (a) a person to whom the permit applies who, in accordance with the conditions (if any) stated in the permit, does or omits to do any thing in respect of the constituent or product that the permit states may be done or omitted to be done; and
 - (b) a provision of this Code or of an eligible law of this jurisdiction prohibits the doing of, or the omitting to do, that thing unless authorised by a permit;
- the person does not commit an offence against that provision.

(2) The persons to whom a permit applies are:

- (a) if the permit states that it applies to persons generally—any person; or
- (b) otherwise—the person or each person named, or included in a class of persons stated, in the permit.

(3) If a permit names a person or states a class of persons as mentioned in paragraph (2)(b), the permit also applies to:

- (a) any qualified employee of the person, or of a person in the class, acting in the course of his or her employment; and
- (b) if a person, or a person in the class, is a body corporate—any qualified person acting in his or her capacity as a director of the body corporate.

(3A) A person to whom a permit applies must not contravene a condition of the permit.

(3B) A person commits an offence if the person contravenes subsection (3A).

Penalty: 300 penalty units.

(3C) Subsection (3A) is a civil penalty provision.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

(4) In this section:

qualified means qualified under another law of this jurisdiction in relation to the things authorised by the permit to be done or omitted to be done.

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117 Surrender of permit

- (1) The holder of a permit may surrender it by giving to the APVMA a written notice, signed by the holder, stating that the holder surrenders the permit.
- (2) The surrender of a permit takes effect when the APVMA receives the notice of surrender.
- (3) If there is a co-ordinator designated for this or another jurisdiction, the APVMA must, within 14 days, tell the co-ordinator that the permit has been surrendered.

117A Notice of proposed suspension or cancellation to be given to permit holder

- (1) Subject to subsection (4), the APVMA must not suspend or cancel a permit unless it has given the permit holder a written notice that:
 - (a) states that the APVMA proposes to suspend or cancel the approval, or suspend or cancel the registration, as the case may be; and
 - (b) sets out the reasons for the proposed suspension or cancellation; and
 - (c) invites the permit holder to make, within a reasonable period specified in the notice, submissions to the APVMA in relation to the proposed suspension or cancellation.
- (2) The APVMA must not make a decision relating to the proposed suspension or cancellation, as the case may be, until it has had regard to any submission made by the permit holder in response to an invitation under paragraph (1)(c).
- (3) A written notice under subsection (1) must specify the period of the proposed suspension.
- (4) Subsection (1) does not apply to a suspension or cancellation under section 119A.

118 Suspension of permit—general grounds

- (1) The APVMA may, by written notice given to the holder of a permit, suspend the permit if it appears to the APVMA:
 - (a) for an active constituent—that the constituent may not meet the safety criteria; or
 - (b) for a chemical product—that the product may not meet the safety criteria, the trade criteria or the efficacy criteria; or
 - (c) that the use of the active constituent or chemical product in accordance with the permit is inappropriate for any other reason; or
 - (d) that the holder has contravened a condition of the permit.
- (2) If the holder of a permit fails, without reasonable excuse, to comply with a requirement contained in a notice under section 159 or with section 161, the APVMA may, by written notice given to the holder of the permit, suspend the permit.
- (3) The APVMA may, for any reason that it thinks sufficient, suspend a permit that is taken by section 181 to have been issued under section 114.
- (4) A suspension of a permit under subsection (1), (2) or (3) must be for a stated period.
- (5) If the holder of a permit is proceeded against for an offence against, or has failed to comply with a lawful direction or requirement of an inspector given under, the Agvet Code of this or another jurisdiction, the APVMA may, by written notice given to the holder of the permit, suspend the permit until the proceeding has been disposed of or the direction or requirement has been complied with, as the case may be.
- (6) A permit is not in force during any period in which it is suspended.
- (7) A notice of suspension of a permit must include the reasons for the suspension.
- (9) If a permit is suspended, the APVMA may, by written notice given to the holder of the permit, revoke the suspension.

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- (10) If:
- (a) the APVMA suspends, or revokes the suspension of, a permit; and
 - (b) there is a co-ordinator designated for this or another jurisdiction;
- the APVMA must, within 14 days, tell the co-ordinator of the suspension or revocation.

119 Cancellation of permit—general grounds

- (1) The APVMA, by written notice given to the holder of a permit, may cancel the permit if it appears to the APVMA:
- (a) for an active constituent—that the constituent may not meet the safety criteria; or
 - (b) for a chemical product—that the product may not meet the safety criteria, the trade criteria or the efficacy criteria; or
 - (c) that the use of the active constituent or chemical product in accordance with the permit is inappropriate for any other reason.
- (2) If a permit is suspended under subsection 118(2) and the information, report or sample referred to in section 159 or 161 is not given within a reasonable period after the suspension takes place, the APVMA may cancel the permit.
- (3) The APVMA may, for any reason that it thinks sufficient, cancel a permit that is taken by section 181 to have been issued under section 114.
- (4) The APVMA may, by written notice given to the holder of a permit, cancel the permit if the APVMA is satisfied that:
- (a) the holder has contravened a condition of the permit; or
 - (b) at least one of the following persons:
 - (i) the holder;
 - (ii) any other person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the holder's affairs;
 - (iii) if the holder is a body corporate—a major interest holder of the body corporate;

has, within the 10 years immediately before the notice is given:

- (iv) been convicted of an offence against an agvet law of this or another jurisdiction; or
 - (v) been convicted of an offence against a law of this or another jurisdiction relating to chemical products; or
 - (vi) been convicted of an offence against a law of the Commonwealth or a law of a State or Territory involving fraud or dishonesty; or
 - (vii) been ordered to pay a pecuniary penalty for the contravention of an agvet penalty provision; or
 - (viii) been ordered to pay a pecuniary penalty for the contravention of another law of this or another jurisdiction relating to chemical products; or
 - (ix) been ordered to pay a pecuniary penalty for the contravention of a civil penalty provision of a law of the Commonwealth or a law of a State or Territory involving fraud or dishonesty; or
 - (x) held a permit that was cancelled under subsection 119(2) or section 119B of this Code or under a corresponding provision of the Agvet Code of another jurisdiction; or
 - (xi) been a manager, or a major interest holder, of a body corporate in respect of which subparagraph (iv), (v), (vi), (vii), (viii), (ix) or (x) applies, if the conduct resulting in that subparagraph applying occurred when the person was a manager or major interest holder of the body corporate.
- (4A) A reference in paragraph (4)(b) to a person convicted of an offence includes a reference to a person in respect of whom an order has been made relating to the offence under:
- (a) section 19B of the *Crimes Act 1914*; or
 - (b) a corresponding provision of a law of a State or Territory.

Note: Section 19B of the *Crimes Act 1914* empowers a court that has found a person to have committed an offence to take action without proceeding to record a conviction.

(5) A permit may be cancelled even though it is suspended.

Section 119A

- (6) If information about the holder of a permit comes to the APVMA's knowledge and it is of the opinion that, if it had been in possession of the information before it issued the permit, it would have refused to issue the permit, it may, by written notice given to the holder, cancel the permit.
- (7) A notice of cancellation of a permit must include the reasons for the cancellation.
- (9) If a permit is cancelled, the APVMA may, by written notice to the person who held the permit, revoke the cancellation.
- (10) If the cancellation of a permit is revoked, the cancellation is taken never to have occurred.
- (11) If:
 - (a) a permit is cancelled or the cancellation of a permit is revoked; and
 - (b) there is a co-ordinator designated for this or another jurisdiction;the APVMA must, within 14 days, tell the co-ordinator of the cancellation or revocation.

119A Suspension or cancellation of permit—imminent risk to persons of death, serious injury or serious illness

- (1) The APVMA may, by written notice to the holder of a permit, suspend or cancel the permit if the APVMA considers that doing so is necessary to prevent imminent risk to persons of death, serious injury or serious illness.
- (2) The APVMA may suspend or cancel the permit whether or not the conditions of the permit have been, or are being, complied with.
- (3) A notice under subsection (1) must specify the period of the suspension.

Note: Section 117A does not apply to a suspension or cancellation under this section.

119B Suspension or cancellation of permit—providing false or misleading information

The APVMA may suspend or cancel a permit if:

- (a) the holder of the permit has given information:
 - (i) in or in connection with an application for the permit; or
 - (ii) in response to a notice under section 159; or
 - (iii) as required by section 160A or 161; and
- (b) the information was false or misleading in a material particular.

Part 8—Manufacture of chemical products

120 Explanation of Part

- (1) This Part:
 - (a) prohibits the manufacture of certain chemical products; and
 - (b) provides for the licensing of manufacturers of other chemical products.
- (2) A licensee is required by this Part to comply with manufacturing principles determined by the APVMA, which may include codes of good manufacturing practice.
- (3) A licensee is required to comply with conditions imposed on a licence by the APVMA in relation to the manufacture of chemical products. A licence is also subject to various statutory conditions.

120A Exclusion of certain chemical products

This Part does not apply to a chemical product, or a product included in a class of chemical products, prescribed by the regulations.

121 Offences relating to manufacture and licences

- (3) A person must not carry out a step in the manufacture of a prohibited chemical product at premises in this jurisdiction.
- (3A) A person commits an offence of strict liability if the person contravenes subsection (3).

Penalty: 240 penalty units.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) A person must not carry out a step in the manufacture of chemical products at premises in this jurisdiction unless:
 - (a) under the regulations, the person is an exempt person in relation to the manufacture of the products; or

- (b) the person is the holder of a licence that is in force that authorises the carrying out of that step in relation to the products at those premises; or
 - (c) the person holds a permit that authorises the carrying out of that step in relation to the product at those premises.
- (4A) A person commits an offence of strict liability if the person contravenes subsection (4).
- Penalty: 240 penalty units.
- Note: For strict liability, see section 6.1 of the *Criminal Code*.
- (5) A person who is the holder of a licence must not contravene a condition of the licence unless the person holds a permit that authorises the conduct that would contravene the condition of the licence.
- (5A) A person commits an offence of strict liability if the person contravenes subsection (5).
- Penalty: 120 penalty units.
- Note: For strict liability, see section 6.1 of the *Criminal Code*.
- (6) Subsections (3A), (4A) and (5A) do not apply if the person has a reasonable excuse.
- Note: The defendant bears an evidential burden in relation to the matter in subsection (6). See subsection 13.3(3) of the *Criminal Code*.
- (7) Subsections (3), (4) and (5) are civil penalty provisions.
- Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

122 Application for licence

- (1) An application for a licence must:
 - (a) be in writing in the approved form; and
 - (b) be signed by the applicant; and
 - (c) be accompanied by so much of the prescribed fee as is required to be paid when the application is made; and
 - (d) be lodged with the APVMA; and

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- (e) contain, or be accompanied by, any information specified for the application under section 8B.
- (2) The APVMA may, by written notice given to the applicant, require the applicant:
 - (a) to give to the APVMA, within a reasonable time stated in the notice, the further information concerning the application that is mentioned in the notice; or
 - (b) to allow an inspector, or another person authorised in writing by the APVMA, at any reasonable time set out in the notice, to inspect the premises, equipment, processes and facilities that are proposed to be used in the manufacture of the chemical products, or to inspect other goods on those premises.

123 Issue of licence

- (1) If an application is made for a licence to carry out steps in the manufacture of chemical products (other than prohibited chemical products) at particular premises, the APVMA must issue the licence to the applicant unless the APVMA is satisfied that:
 - (a) the applicant has not complied with subsection 122(1) or any requirement under subsection 122(2); or
 - (b) any requirement prescribed by the regulations in relation to the application or the issue of the licence has not been complied with; or
 - (c) the applicant will be unable to comply with the conditions of the licence; or
 - (d) the applicant will be unable to comply with the manufacturing principles; or
 - (e) at least one of the following persons:
 - (i) the applicant;
 - (ii) any other person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the applicant's affairs;
 - (iii) if the applicant is a body corporate—a major interest holder of the body corporate;has, within the 10 years immediately before the application:

- (iv) been convicted of an offence against an agvet law; or
 - (v) been convicted of an offence against a law of this or another jurisdiction relating to chemical products; or
 - (vi) been convicted of an offence against a law of the Commonwealth or a law of a State or Territory involving fraud or dishonesty; or
 - (vii) been ordered to pay a pecuniary penalty for the contravention of an agvet penalty provision; or
 - (viii) been ordered to pay a pecuniary penalty for the contravention of another law of this or another jurisdiction relating to chemical products; or
 - (ix) been ordered to pay a pecuniary penalty for the contravention of a civil penalty provision of a law of the Commonwealth or a law of a State or Territory involving fraud or dishonesty; or
 - (x) contravened a condition of a manufacturing licence issued under an agvet law; or
 - (xi) held a manufacturing licence or permit that was cancelled under an agvet law, other than paragraph 127(1)(d) or (e) of this Code or a corresponding provision of the Agvet Code of another jurisdiction; or
 - (xii) been a manager, or a major interest holder, of a body corporate in respect of which subparagraph (iv), (v), (vi), (vii), (viii), (ix), (x) or (xi) applies in that 10 year period, if the conduct resulting in that subparagraph applying occurred when the person was a manager or major interest holder of the body corporate; or
- (f) at least one of the following persons:
- (i) the applicant;
 - (ii) any other person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the applicant's affairs;
 - (iii) if the applicant is a body corporate—a major interest holder of the body corporate;
- has, within the 5 years immediately before the application, failed to comply with a manufacturing principle in connection with the manufacture of chemical products.
-

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- (1A) If the APVMA does not issue the licence, it must refuse the application.

Note: For notice of refusal, see section 8G.

- (1B) A reference in paragraph (1)(e) to a person convicted of an offence includes a reference to a person in respect of whom an order has been made relating to the offence under:

- (a) section 19B of the *Crimes Act 1914*; or
- (b) a corresponding provision of a law of a State or Territory.

Note: Section 19B of the *Crimes Act 1914* empowers a court that has found a person to have committed an offence to take action without proceeding to record a conviction.

- (1C) Paragraph (1)(f) does not apply to the extent that the APVMA thinks the failure to comply with the manufacturing principle is not relevant.

- (2) Despite paragraph (1)(e) or (f), the APVMA may issue a licence to a person to whom, apart from this subsection, it could not issue a licence because of that paragraph if, in the opinion of the APVMA, special circumstances make it appropriate to do so.
- (3) A licence is subject to conditions as mentioned in section 126.
- (4) The licence must state:
 - (a) the person to whom it is issued; and
 - (b) the products to which it relates; and
 - (c) any conditions (other than conditions referred to in subsection 126(4)) to which the licence is subject when it is issued.
- (5) If the APVMA issues a licence, the APVMA must publish particulars of the licence in the *Gazette*, and in any other manner that it thinks appropriate, as soon as is practicable after the licence is issued.

125 Period of licence

- (1) A licence comes into force on the day stated in the licence and, subject to subsection (2), remains in force until it is cancelled.

- (2) A licence is not in force during any period in which it is suspended.

126 Conditions of licences

- (1) The conditions to which a licence may be subject are:
- (a) the conditions that the APVMA imposes for the purpose of ensuring that the holder of the licence manufactures the chemical products in accordance with the manufacturing principles and any standards that apply to the products; and
 - (b) any other conditions relating to the manufacture of the products that the APVMA thinks appropriate to impose.
- (2) The APVMA may, by written notice given to the holder of a licence, impose new conditions on the licence or vary or remove existing conditions.
- (3) The imposition or variation of a condition under subsection (2) takes effect:
- (a) on the day on which the notice is given to the holder, but only if the notice states that the action is necessary to prevent one or more of the following:
 - (i) an imminent risk to persons of death, serious injury or serious illness;
 - (ii) an imminent risk of unintended harm to animals, plants or things, or to the environment;
 - (iii) an imminent risk of impact on trade or commerce between Australia and places outside Australia; or
 - (b) otherwise—on a day stated for the purpose in the notice that, unless the APVMA and the holder agree, is not earlier than 28 days after the notice is given to the holder.
- (4) In addition to any conditions imposed in accordance with subsection (1) or (2), each licence is, except as otherwise stated in the licence, subject to the conditions that the holder of the licence will:
- (a) ensure that the chemical products conform to any standard that applies to them; and

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- (aa) allow an inspector to enter premises at which the chemical products are manufactured and to exercise the monitoring powers under section 131A in relation to premises; and
- (b) comply with any other conditions prescribed by the regulations for the purposes of this section.

127 Suspension and cancellation of licences

- (1) Subject to subsection (2), the APVMA may, by written notice given to the holder of a licence, suspend the licence for a period stated in the notice, or cancel the licence, if:
 - (a) the APVMA is satisfied that at least one of the following persons:
 - (i) the holder of the licence;
 - (ii) any other person who makes, or participates in making, decisions that affect the whole, or a substantial part, of the holder's affairs;
 - (iii) if the holder is a body corporate—a major interest holder of the body corporate;has, within the 10 years immediately before the notice is given:
 - (iv) given information to the APVMA in connection with an application for a licence, in response to a notice under section 159, or as required by section 160A or 161, and the information was false or misleading in a material particular; or
 - (v) been convicted of an offence against an agvet law; or
 - (vi) been convicted of an offence against a law of this or another jurisdiction relating to chemical products; or
 - (vii) been convicted of an offence against a law of the Commonwealth or a law of a State or Territory involving fraud or dishonesty; or
 - (viii) been ordered to pay a pecuniary penalty for the contravention of an agvet penalty provision; or
 - (ix) been ordered to pay a pecuniary penalty for the contravention of another law of this or another jurisdiction relating to chemical products; or

- (x) been ordered to pay a pecuniary penalty for the contravention of a civil penalty provision of a law of the Commonwealth or a law of a State or Territory involving fraud or dishonesty; or
 - (xi) contravened a condition of a manufacturing licence issued under an agvet law; or
 - (b) the APVMA is satisfied that the holder failed, within the 5 years immediately before the notice was given, to comply with a manufacturing principle in connection with the manufacture of chemical products; or
 - (c) any other circumstances prescribed by the regulations for the purposes of this paragraph exist; or
 - (d) the holder has asked in writing that the licence be suspended or cancelled, as the case may be; or
 - (e) the holder ceases to carry on the business of manufacturing the chemical products to which the licence relates; or
 - (f) a prescribed fee in connection with the licence has not been paid.
- (2) If the APVMA proposes to suspend or cancel a licence except when asked to do so by the holder of the licence, the APVMA must, unless subsection (2A) applies:
- (a) by written notice given to the holder, set out the action that the APVMA proposes to take and the reasons for the proposed action; and
 - (b) except if the proposed action is to be taken because of a failure to pay a prescribed fee—give the holder an opportunity to make, within a reasonable time stated in the notice, written submissions to the APVMA in relation to the proposed action.
- (2A) This subsection applies if the APVMA thinks that a failure to suspend or cancel the licence immediately would result in:
- (a) imminent risk to persons of death, serious injury or serious illness; or
 - (b) imminent risk of unintended harm to animals, plants or things, or to the environment; or

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- (c) imminent risk of impact on trade or commerce between Australia and places outside Australia.
- (3) If the holder makes written submissions in accordance with paragraph (2)(b), the APVMA must not make a decision relating to the suspension or cancellation of the licence before taking the submissions into account.
- (4) A licence may be cancelled even though it is suspended.
- (5) A notice suspending or cancelling a licence must include the reasons for the suspension or cancellation.
- (7) If a licence is suspended or cancelled, the APVMA may, by written notice given to the holder of the licence, revoke the suspension or cancellation.
- (8) If the APVMA suspends or cancels, or revokes the suspension or cancellation of, a licence, the APVMA must publish particulars of the suspension, cancellation or revocation in the *Gazette*, and in any other manner that it thinks appropriate, as soon as is practicable after the suspension, cancellation or revocation takes place.
- (9) If the cancellation of a licence is revoked, the cancellation is taken never to have occurred.

128 Publication of list of manufacturers etc.

The APVMA may, from time to time and in a manner determined by it, publish a list of the holders of licences, the chemical products to which the licences relate, the steps of manufacture that the licences authorise and the addresses of the premises to which the licences relate.

Part 9—Investigative powers

Division 1—Preliminary

129 Explanation of Part

- (1) This Part contains powers:
 - (a) to gather information; and
 - (b) to search premises with or, in some cases, without a warrant to find out whether either or both of the following apply:
 - (i) an offence against an agvet law has been committed;
 - (ii) an agvet penalty provision has been contravened.
- (2) It also contains various ancillary provisions.

Division 2—Requiring people to attend, give information and produce documents or things

Subdivision A—Notices by the APVMA

130 Notice to produce or attend

- (1) The APVMA may give a notice to a person under subsection (2) if the APVMA has reason to believe that the person has information, a document or thing that is relevant to the administration or enforcement of this Code.
- (2) The APVMA may, by notice in writing, given to the person, require the person to do one or more of the following:
 - (a) give any such information as is specified in the notice to a specified inspector;
 - (b) produce any such document or thing as is specified in the notice to a specified inspector;
 - (c) appear before a specified inspector to answer questions.
- (3) The APVMA may require that information to be provided under paragraph (2)(a) is to be provided in writing or verified on oath or affirmation.
- (4) The inspector may require that answers under paragraph (2)(c) be given on oath or affirmation, and for that purpose the inspector may administer an oath or affirmation.
- (5) The notice must:
 - (a) be served on the person; and
 - (b) be signed by the Chief Executive Officer; and
 - (c) if paragraph (2)(a) or (b) applies—specify the period within which the person must comply with the notice; and
 - (d) if paragraph (2)(c) applies—both:
 - (i) specify the time and place at which the person must appear; and
 - (ii) state that the person may be accompanied by a lawyer; and

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- (e) set out the effect of sections 130B and 130C.
- (6) The period specified under paragraph (5)(c) must be at least 14 days after the notice is served on the person.
- (7) The person must comply with the notice within the time specified in the notice, or within such further time as the APVMA allows.

Note: Failure to comply with a notice is an offence, see section 130B.

130A APVMA may retain documents and things

- (1) If a document or thing is produced to the APVMA in accordance with a notice served under section 130, the APVMA:
 - (a) may take possession of, and may make copies of, the document or thing, or take extracts from the document; and
 - (b) may retain possession of the document or thing for such period as is necessary:
 - (i) for the purposes of this Code; or
 - (ii) for the purposes of an investigation to which the document or thing relates; or
 - (iii) to enable evidence to be secured for the purposes of a prosecution or proceedings for a civil penalty order.
- (2) While the APVMA retains the document or thing, it must allow a person who would otherwise be entitled to inspect the document or view the thing to do so at the times that the person would ordinarily be able to do so.

Subdivision B—Offence and related provisions

130B Failure to comply with notice etc.

- (1) A person commits an offence if:
 - (a) the person is served with a notice under section 130; and
 - (b) the notice requires the person to:
 - (i) give information; or
 - (ii) produce documents or things;specified in the notice; and

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- (c) the person fails to comply with the notice:
 - (i) within the period specified in the notice; or
 - (ii) if the APVMA has allowed the person further time under subsection 130(7)—within such further time.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

- (2) A person commits an offence if:
 - (a) the person is served with a notice under section 130; and
 - (b) the notice requires the person to appear before an inspector to answer questions put by the inspector; and
 - (c) the person fails to comply with the notice.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

- (3) A person commits an offence if:
 - (a) the person is required to take an oath; and
 - (b) the person refuses or fails to comply with the requirement.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

- (4) A person commits an offence if:
 - (a) the person is served with a notice under section 130; and
 - (b) the notice requires the person to appear before an inspector to answer questions put by the inspector; and
 - (c) the person refuses or fails to answer a question put by the inspector.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

130C Self-incrimination etc.

- (1) A person is not excused from:
 - (a) giving information; or
 - (b) producing a document or thing; or
 - (c) answering a question;in relation to a notice under section 130 on the ground that doing so might tend to incriminate the person or expose the person to a penalty.

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- (2) However, in the case of an individual, none of the following:
- (a) the information or answer given;
 - (b) the document or thing produced;
 - (c) the giving of the information or the answer, or the producing of the document or thing;
 - (d) any information, document or thing obtained as a direct or indirect consequence of giving the information or answer, or producing the document or thing;
- is admissible in evidence against the individual in:
- (e) criminal proceedings, other than:
 - (i) proceedings for an offence against section 130B or 146; or
 - (ii) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (which deal with false or misleading information or documents) that relates to this Code; or
 - (iii) proceedings for an offence against section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) that relates to this Code; or
 - (f) civil proceedings for a contravention of a civil penalty provision.

Division 3—Monitoring

Subdivision A—Monitoring powers etc.

131 Powers available to inspectors for monitoring compliance

- (1) Subject to subsections (2) and (3), for the purpose of finding out whether an agvet law has been, or is being, complied with or of assessing the correctness of information provided under an agvet law, an inspector may do both of the following:
 - (a) enter any premises;
 - (b) exercise the monitoring powers.
- (2) If premises mentioned in subsection (1) are a residence, an inspector may only enter the premises if:
 - (a) the premises are used for commercial purposes in relation to active constituents or chemical products, in addition to residential purposes; and
 - (b) paragraph (3)(a), (b) or (c) is satisfied.
- (3) An inspector is not authorised to enter premises under subsection (1) unless:
 - (a) the occupier of the premises has consented to the entry and the inspector has shown his or her identity card if required by the occupier; or
 - (b) if the premises are covered by a licence under section 123—both the following apply:
 - (i) it is a condition of the licence under subsection 126(4) that the holder of the licence will allow an inspector to enter the premises and exercise monitoring powers under section 131A in relation to the premises;
 - (ii) the inspector has shown his or her identity card if required by the occupier; or
 - (c) the entry is made under a monitoring warrant.

Note: If entry to the premises is with the occupier's consent, the inspector must leave the premises if the consent ceases to have effect, see section 133.

131AA Monitoring powers to prevent imminent risk to persons of death, serious injury or serious illness

- (1) Subject to subsection (3), this section applies if an inspector has reasonable grounds for suspecting that it is necessary to exercise monitoring powers under section 131A in relation to premises to prevent imminent risk to persons of death, serious injury or serious illness.
- (2) The inspector may, to the extent that it is reasonably necessary for the purpose of preventing imminent risk to persons of death, serious injury or serious illness, enter the premises and exercise monitoring powers under section 131A.
- (3) An inspector is not entitled to exercise monitoring powers in accordance with subsection (2) in relation to premises if:
 - (a) the occupier of the premises has required the inspector to produce his or her identity card for inspection by the occupier; and
 - (b) the inspector fails to comply with the requirement.
- (4) An inspector is not entitled to exercise monitoring powers in accordance with subsection (2) unless the inspector has been authorised in writing by the APVMA for the purposes of this section.

131A Monitoring powers—with consent or with warrant

- (1) The following are the *monitoring powers* that an inspector may exercise in relation to premises:
 - (a) the power to search the premises and any thing on the premises;
 - (b) the power to examine or observe any activity conducted on the premises;
 - (c) the power to inspect, examine, take measurements of or conduct tests on any thing on the premises;
 - (d) the power to make any still or moving image or any recording of the premises or any thing on the premises;
 - (e) the power to inspect any document on the premises;

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- (f) the power to take extracts from, or make copies of, any such document;
 - (g) the power to take and keep samples of any thing on the premises;
 - (h) the power to open any container at the premises for the purpose of inspecting, or taking a sample of, its contents provided that the container is resealed after the inspection is made or the sample is taken;
 - (i) the power to give directions for dealing with a container, or a label on a container, that has been opened or sampled in accordance with paragraph (h);
 - (j) the power to destroy or make harmless, or give directions for the destruction or making harmless of, a chemical product at the premises;
 - (k) the power to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;
 - (l) the powers set out in subsections 131B(1) and (3) and 131C(1).
- (2) A person who is given a direction under subsection (1) must comply with the direction.
- (3) A person commits an offence of strict liability if the person contravenes subsection (2).

Penalty: 30 penalty units.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) Subsection (2) is a civil penalty provision.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

131B Operating electronic equipment

- (1) The ***monitoring powers*** include the power to:
- (a) operate electronic equipment on the premises; and
 - (b) use a disk, tape or other storage device that:
 - (i) is on the premises; and

- (ii) can be used with the equipment or is associated with it.
- (2) The **monitoring powers** include the powers mentioned in subsection (3) if relevant data is found in the exercise of the power under subsection (1).
- (3) The powers are as follows:
- (a) the power to operate electronic equipment on the premises to put the relevant data in documentary form and remove the documents so produced from the premises;
 - (b) the power to operate electronic equipment on the premises to transfer the relevant data to a disk, tape or other storage device that:
 - (i) is brought to the premises for the exercise of the power; or
 - (ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises;and remove the disk, tape or other storage device from the premises.
- (4) An inspector may operate electronic equipment as mentioned in subsection (1) or (3) only if the inspector believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

Note: For compensation for damage to electronic equipment, see section 138.

131C Securing evidence of the contravention of a related provision

- (1) The **monitoring powers** include the power to secure a thing for a period not exceeding 7 days if:
- (a) the thing is found during the exercise of monitoring powers on the premises; and
 - (b) an inspector believes on reasonable grounds that the thing affords evidence of:
 - (i) the commission of an offence against an agvet law or the contravention of an agvet penalty provision or both; or

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- (ii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to an agvet law; and
 - (c) the inspector believes on reasonable grounds that:
 - (i) it is necessary to secure the thing in order to prevent it from being concealed, lost or destroyed before a warrant to seize the thing is obtained; and
 - (ii) it is necessary to secure the thing without a warrant because the circumstances are serious and urgent.
- The thing may be secured by locking it up, placing a guard or any other means.
- (2) If an inspector believes on reasonable grounds that the thing needs to be secured for more than 7 days, the inspector may apply to a magistrate for an extension of that period.
 - (3) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of his or her intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.
 - (4) The provisions of this Part relating to the issue of monitoring warrants apply, with such modifications as are necessary, to the issue of an extension.
 - (5) The 7 day period may be extended more than once.

131D Persons assisting inspectors

Inspectors may be assisted by other persons

- (1) When exercising monitoring powers, an inspector may be assisted by other persons in exercising powers or performing functions or duties under this Part, if that assistance is necessary and reasonable. A person giving such assistance is a **person assisting** the inspector.

Powers, functions and duties of a person assisting the inspector

- (2) A person assisting the inspector:
 - (a) may enter premises; and

- (b) may exercise powers and perform functions and duties under this Part for the purposes of assisting the inspector to determine whether:
 - (i) an agvet law has been, or is being, complied with; or
 - (ii) information provided under an agvet law is correct; and
 - (c) must do so in accordance with a direction given to the person assisting by the inspector.
- (3) A power exercised by a person assisting the inspector as mentioned in subsection (2) is taken for all purposes to have been exercised by the inspector.
 - (4) A function or duty performed by a person assisting the inspector as mentioned in subsection (2) is taken for all purposes to have been performed by the inspector.
 - (5) If a direction is given under paragraph (2)(c) in writing, the direction is not a legislative instrument.

131E Use of force in executing a monitoring warrant

In executing a monitoring warrant, an inspector and a person assisting the inspector may use such force against things as is necessary and reasonable in the circumstances.

Subdivision B—Powers of inspectors to ask questions and seek production of documents

131F Inspector may ask questions and seek production of documents

- (1) This section applies if an inspector enters premises for the purposes of determining whether:
 - (a) an agvet law has been, or is being, complied with; or
 - (b) information provided under an agvet law is correct.
- (2) If the entry is authorised because the occupier of the premises consented to the entry, the inspector may ask the occupier to answer any questions, and produce any document, relating to:
 - (a) the operation of an agvet law; or

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- (b) the information.
- (3) If the entry is authorised by a monitoring warrant, the inspector may require any person on the premises to answer any questions, and produce any document, relating to:
 - (a) the operation of an agvet law; or
 - (b) the information.

Offence

- (4) A person commits an offence if:
 - (a) the person is subject to a requirement under subsection (3);
and
 - (b) the person fails to comply with the requirement.

Penalty for contravention of this subsection: 50 penalty
units.

131G Copying of documents

If a person produces a document to an inspector in accordance with a requirement under section 131F, the inspector may make copies of, or take extracts from, the document.

Division 4—Investigation

Subdivision A—Investigation powers

132 Powers available to inspectors to investigate potential breaches of an agvet law

- (1) Subject to subsections (2) and (3), if an inspector has reasonable grounds for suspecting that there may be evidential material on any premises, the inspector may:
 - (a) enter the premises; and
 - (b) exercise the investigation powers; and
 - (c) do one or more of the things mentioned in subsection 132D(2).
- (2) If the premises are a residence, an inspector may only enter the premises if:
 - (a) the premises are used for commercial purposes in relation to active constituents or chemical products, in addition to residential purposes; and
 - (b) paragraph (3)(a) or (b) is satisfied.
- (3) An inspector is not authorised to enter the premises unless:
 - (a) the occupier of the premises has consented to the entry and the inspector has shown his or her identity card if required by the occupier; or
 - (b) the entry is made under an investigation warrant.

Note: If entry to the premises is with the occupier's consent, the inspector must leave the premises if the consent ceases to have effect, see section 133.

132A Investigation powers

- (1) The following are the *investigation powers* that an inspector may exercise in relation to premises under section 132:
 - (a) if entry to the premises is with the occupier's consent—the power to search the premises and any thing on the premises

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- for the evidential material the inspector has reasonable grounds for suspecting may be on the premises;
- (b) if entry to the premises is under an investigation warrant:
 - (i) the power to search the premises and any thing on the premises for the kind of evidential material specified in the warrant; and
 - (ii) the power to seize evidential material of that kind if the inspector finds it on the premises;
 - (c) the power to inspect, examine, take measurements of, and conduct tests on evidential material referred to in paragraph (a) or (b);
 - (d) the power to make any still or moving image or any recording of the premises or evidential material referred to in paragraph (a) or (b);
 - (e) the power to inspect any document on the premises;
 - (f) the power to take extracts from, or make copies of, any such document;
 - (g) the power to take and keep samples of any thing on the premises;
 - (h) the power to open any container at the premises for the purpose of inspecting, or taking a sample of, its contents provided that the container is resealed after the inspection is made or the sample is taken;
 - (i) the power to give directions for dealing with a container, or a label on a container, that has been opened or sampled in accordance with paragraph (h);
 - (j) the power to destroy or make harmless, or give directions for the destruction or making harmless of, a chemical product at the premises;
 - (k) the power to take onto the premises such equipment and materials as the inspector requires for the purpose of exercising powers in relation to the premises;
 - (l) the powers set out in subsections 132B(1) and (2) and section 132C.
- (2) A person who is given a direction under subsection (1) must comply with the direction.

- (3) A person commits an offence of strict liability if the person contravenes subsection (2).

Penalty: 30 penalty units.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (4) Subsection (2) is a civil penalty provision.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

132B Operating electronic equipment

- (1) The *investigation powers* include the power to:
- (a) operate electronic equipment on the premises; and
 - (b) use a disk, tape or other storage device that:
 - (i) is on the premises; and
 - (ii) can be used with the equipment or is associated with it;
- if an inspector has reasonable grounds for suspecting that the electronic equipment, disk, tape or other storage device is or contains evidential material.
- (2) The *investigation powers* include the following powers in relation to evidential material found in the exercise of the power under subsection (1):
- (a) if entry to the premises is under an investigation warrant—the power to seize the equipment and the disk, tape or other storage device referred to in that subsection;
 - (b) the power to operate electronic equipment on the premises to put the evidential material in documentary form and remove the documents so produced from the premises;
 - (c) the power to operate electronic equipment on the premises to transfer the evidential material to a disk, tape or other storage device that:
 - (i) is brought to the premises for the exercise of the power; or
 - (ii) is on the premises and the use of which for that purpose has been agreed in writing by the occupier of the premises;

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and remove the disk, tape or other storage device from the premises.

- (3) An inspector may operate electronic equipment as mentioned in subsection (1) or (2) only if the inspector believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

Note: For compensation for damage to electronic equipment, see section 138.

- (4) An inspector may seize equipment or a disk, tape or other storage device as mentioned in paragraph (2)(a) only if:
- (a) it is not practicable to put the evidential material in documentary form as mentioned in paragraph (2)(b) or to transfer the evidential material as mentioned in paragraph (2)(c); or
 - (b) possession of the equipment or the disk, tape or other storage device by the occupier could constitute an offence against a law of this jurisdiction.

132C Seizing evidence of related offences and civil penalty provisions

- (1) This section applies if an inspector enters premises under an investigation warrant to search for evidential material.
- (2) The *investigation powers* include seizing a thing that is not evidential material of the kind specified in the warrant if:
- (a) in the course of searching for the kind of evidential material specified in the warrant, the inspector finds the thing; and
 - (b) the inspector believes on reasonable grounds that the thing affords evidence of:
 - (i) the commission of an offence against an agvet law or the contravention of an agvet penalty provision or both; or
 - (ii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to an agvet law; and
 - (c) the inspector believes on reasonable grounds that it is necessary to seize the thing in order to prevent its

concealment, loss or destruction or to protect the health of the public or of any person.

- (3) If an inspector seizes a thing as mentioned in subsection (2), the **investigation powers** include:
- (a) the power to direct the occupier of the premises or the owner of the thing to keep it at the premises, or at other premises under the control of the occupier or owner that will, in the opinion of the inspector, cause least danger to the health of the public or of any person; and
 - (b) the power to give any other directions for, or with respect to, the detention of the thing.
- (4) A person who is given a direction under subsection (3) must comply with the direction.
- (5) A person commits an offence of strict liability if the person contravenes subsection (4).

Penalty: 30 penalty units.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (6) Subsection (4) is a civil penalty provision.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

132D Supervisory powers of seized things

- (1) If:
- (a) an inspector seizes a thing under section 132A or 132C; and
 - (b) the inspector is authorised by the APVMA to exercise powers under this section;
- the inspector may do one or more of the things mentioned in subsection (2).
- (2) The things are:
- (a) if the seizure related to a substance and the inspector suspects that this Code has not been complied with in respect of any of its constituents, or in respect of the concentration, composition or purity of any of its active constituents—

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supervise the reformulation of the substance so as to ensure compliance with this Code; and

- (b) if the seizure related to a substance and its container and the inspector suspects that this Code has not been complied with in respect of the container—supervise the placing of the substance in a container so that there is compliance with this Code; and
- (c) if the seizure related to a substance and its container and the inspector suspects that this Code has not been complied with in respect of the label attached to the container—supervise the attaching to the container of a label so that there is compliance with this Code.

132E Persons assisting inspectors

Inspectors may be assisted by other persons

- (1) When exercising investigation powers, an inspector may be assisted by other persons in exercising powers or performing functions or duties under this Part, if that assistance is necessary and reasonable. A person giving such assistance is a **person assisting** the inspector.

Powers, functions and duties of a person assisting the inspector

- (2) A person assisting the inspector:
 - (a) may enter premises; and
 - (b) may exercise powers and perform functions and duties under this Part in relation to evidential material; and
 - (c) must do so in accordance with a direction given to the person assisting by the inspector.
- (3) A power exercised by a person assisting the inspector as mentioned in subsection (2) is taken for all purposes to have been exercised by the inspector.
- (4) A function or duty performed by a person assisting the inspector as mentioned in subsection (2) is taken for all purposes to have been performed by the inspector.

- (5) If a direction is given under paragraph (2)(c) in writing, the direction is not a legislative instrument.

132F Use of force in executing an investigation warrant

In executing an investigation warrant, an inspector and a person assisting the inspector may use such force against things as is necessary and reasonable in the circumstances.

Subdivision B—Powers of inspectors to ask questions and seek production of documents

132G Inspector may ask questions and seek production of documents

- (1) This section applies if an inspector enters premises to search for evidential material.
- (2) If the entry is authorised because the occupier of the premises consented to the entry, the inspector may ask the occupier to answer any questions, and produce any document, relating to evidential material.
- (3) If the entry is authorised by an investigation warrant, the inspector may require any person on the premises to answer any questions, and produce any document, relating to evidential material of the kind specified in the warrant.
- (4) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (3); and
 - (b) the person fails to comply with the requirement.

Penalty for contravention of this subsection: 50 penalty units.

Schedule Agricultural and Veterinary Chemicals Code

Part 9 Investigative powers

Division 4 Investigation

Section 132H

132H Copying of documents

If a person produces a document to an inspector in accordance with a requirement under section 132G, the inspector may make copies of, or take extracts from, the document.

Division 5—Obligations and incidental powers of inspectors

133 Consent

- (1) Before obtaining the consent of an occupier of premises for the purposes of paragraph 131(3)(a) or 132(3)(a), an inspector must inform the occupier that the occupier may refuse consent.
- (2) A consent has no effect unless the consent is voluntary.
- (3) A consent may be expressed to be limited to entry during a particular period. If so, the consent has effect for that period unless the consent is withdrawn before the end of that period.
- (4) A consent that is not limited as mentioned in subsection (3) has effect until the consent is withdrawn.
- (5) If an inspector entered premises because of the consent of the occupier of the premises, the inspector, and any person assisting the inspector, must leave the premises if the consent ceases to have effect.

134 Announcement before entry

- (1) Before entering premises under a warrant, an inspector must:
 - (a) announce that:
 - (i) he or she is authorised to enter the premises; and
 - (ii) any person assisting the inspector is authorised to enter the premises; and
 - (b) show his or her identity card to the occupier of the premises, or to another person who apparently represents the occupier, if the occupier or other person is present at the premises; and
 - (c) give any person at the premises an opportunity to allow entry to the premises.
- (2) The inspector does not have to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure:

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- (a) the safety of a person (including the inspector and any person assisting); or
 - (b) that the effective execution of the warrant is not frustrated.
- (3) If:
- (a) an inspector does not comply with subsection (1) because of subsection (2); and
 - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises;
- the inspector must show his or her identity card to the occupier or other person as soon as practicable after entering the premises.

135 Inspector to be in possession of warrant

An inspector executing a warrant must be in possession of:

- (a) the warrant issued by the magistrate under section 143 or 143A or a copy of the warrant as so issued; or
- (b) the form of warrant completed under subsection 143B(6) or a copy of the form as so completed.

136 Details of warrant etc. to be given to occupier

- (1) An inspector must comply with subsection (2) if:
- (a) a warrant is being executed in relation to premises; and
 - (b) the occupier of the premises, or another person who apparently represents the occupier, is present at the premises.
- (2) The inspector must, as soon as practicable:
- (a) do one of the following:
 - (i) if the warrant was issued under section 143 or 143A—make a copy of the warrant available to the occupier or other person (which need not include the signature of the magistrate who issued it);
 - (ii) if the warrant was signed by a magistrate under section 143B—make a copy of the form of warrant completed under subsection 143B(6) available to the occupier or other person; and

- (b) inform the occupier or other person of the rights and responsibilities of the occupier or other person under Division 7 of this Part.

137 Expert assistance to operate electronic equipment

- (1) This section applies if an inspector enters premises under a warrant.

Securing equipment

- (2) An inspector may do whatever is necessary to secure any electronic equipment that is on the premises if the inspector believes on reasonable grounds that:
 - (a) in the case of a monitoring warrant:
 - (i) there is relevant data on the premises; and
 - (ii) the relevant data may be accessible by operating the equipment; and
 - (iii) expert assistance is required to operate the equipment; and
 - (iv) the relevant data may be destroyed, altered or otherwise interfered with, if the inspector does not take action under this subsection; and
 - (b) in the case of an investigation warrant:
 - (i) there is evidential material of the kind specified in the warrant on the premises; and
 - (ii) the evidential material may be accessible by operating the electronic equipment; and
 - (iii) expert assistance is required to operate the equipment; and
 - (iv) the evidential material may be destroyed, altered or otherwise interfered with, if the inspector does not take action under this subsection.

The equipment may be secured by locking it up, placing a guard or any other means.

- (3) The inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of:

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- (a) the inspector's intention to secure the equipment; and
- (b) the fact that the equipment may be secured for up to 72 hours.

Period equipment may be secured

- (4) The equipment may be secured until the earlier of the following happens:
 - (a) the 72-hour period ends;
 - (b) the equipment has been operated by the expert.

Note: For compensation for damage to electronic equipment, see section 138.

Extensions

- (5) The inspector may apply to a magistrate for an extension of the 72-hour period, if the inspector believes on reasonable grounds that the equipment needs to be secured for a longer period.
- (6) Before making the application, the inspector must give notice to the occupier of the premises, or another person who apparently represents the occupier, of the inspector's intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.
- (7) The provisions of this Part relating to the issue of a warrant apply, with such modifications as are necessary, to the issue of an extension.
- (8) The 72-hour period may be extended more than once.

138 Compensation for damage to electronic equipment

- (1) This section applies if:
 - (a) as a result of electronic equipment being operated as mentioned in this Part:
 - (i) damage is caused to the equipment; or
 - (ii) the data recorded on the equipment is damaged; or
 - (iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and

- (b) the damage or corruption occurs because:
- (i) insufficient care was exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care was exercised by the person operating the equipment.
- (2) The APVMA must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the APVMA and the owner or user agree on.
- (3) However, if the owner or user and the APVMA fail to agree, the owner or user may institute proceedings in a court of competent jurisdiction for such reasonable amount of compensation as the court determines.
- (4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees or agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

Division 6—Execution of an investigation warrant interrupted

138A Completing execution of an investigation warrant after temporary cessation

- (1) This section applies if an inspector, and all persons assisting, who are executing an investigation warrant in relation to premises temporarily cease its execution and leave the premises.
- (2) The inspector, and persons assisting, may complete the execution of the warrant if:
 - (a) the warrant is still in force; and
 - (b) the inspector and persons assisting are absent from the premises:
 - (i) for not more than 1 hour; or
 - (ii) if there is an emergency situation, for not more than 12 hours or such longer period as allowed by a magistrate under subsection (5); or
 - (iii) for a longer period if the occupier of the premises consents in writing.

Application for extension in emergency situation

- (3) An inspector, or person assisting, may apply to a magistrate for an extension of the 12-hour period mentioned in subparagraph (2)(b)(ii) if:
 - (a) there is an emergency situation; and
 - (b) the inspector or person assisting believes on reasonable grounds that the inspector and the persons assisting will not be able to return to the premises within that period.
- (4) If it is practicable to do so, before making the application, the inspector or person assisting must give notice to the occupier of the premises of his or her intention to apply for an extension.

Extension in emergency situation

- (5) A magistrate may extend the period during which the inspector and persons assisting may be away from the premises if:
- (a) an application is made under subsection (3); and
 - (b) the magistrate is satisfied, by information on oath or affirmation, that there are exceptional circumstances that justify the extension; and
 - (c) the extension would not result in the period ending after the warrant ceases to be in force.

138B Completing execution of an investigation warrant stopped by court order

An inspector, and any persons assisting, may complete the execution of an investigation warrant that has been stopped by an order of a court if:

- (a) the order is later revoked or reversed on appeal; and
- (b) the warrant is still in force when the order is revoked or reversed.

Division 7—Occupier's rights and responsibilities

138C Occupier entitled to observe execution of warrant

- (1) The occupier of premises to which a warrant relates, or another person who apparently represents the occupier, is entitled to observe the execution of the warrant if the occupier or other person is present at the premises while the warrant is being executed.
- (2) The right to observe the execution of the warrant ceases if the occupier or other person impedes that execution.
- (3) This section does not prevent the execution of the warrant in 2 or more areas of the premises at the same time.

138D Occupier to provide inspector with facilities and assistance

- (1) The occupier of premises to which a warrant relates, or another person who apparently represents the occupier, must provide:
 - (a) an inspector executing the warrant; and
 - (b) any person assisting;with all reasonable facilities and assistance for the effective exercise of their powers.
- (2) A person commits an offence if:
 - (a) the person is subject to subsection (1); and
 - (b) the person fails to comply with that subsection.

Penalty for contravention of this subsection: 30 penalty units.

Division 8—General provisions relating to seizure

139 Copies of seized things to be given

- (1) Subject to subsection (2), if an inspector who has entered premises under an investigation warrant seizes:
 - (a) a document, film, computer file or other thing that can be readily copied; or
 - (b) a storage device the information in which can be readily copied;the inspector must, if asked to do so by the occupier of the premises or another person who apparently represents the occupier and is present when the seizure takes place, give a copy of the thing or the information to that person as soon as practicable after the seizure.
- (2) However, the inspector is not required to comply with the request if possession of the document, film, computer file, thing or information by the occupier or other person could constitute an offence against a law of this jurisdiction.

139A Receipts for seized things

- (1) An inspector must provide a receipt for a thing that is seized under an investigation warrant.
- (2) One receipt may cover 2 or more things seized.

140 Return of things that are seized

- (1) An inspector must take reasonable steps to return a thing seized under an investigation warrant when the earliest of the following happens:
 - (a) the reason for the thing's seizure no longer exists;
 - (b) it is decided that the thing is not to be used in evidence;
 - (c) the period of 60 days after the thing's seizure ends.

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Exception

- (1A) Subsection (1):
- (a) is subject to any contrary order of a court; and
 - (b) does not apply if the thing:
 - (i) is forfeited or forfeitable to the APVMA (see section 150); or
 - (ii) is the subject of a dispute as to ownership.
- (2) The inspector is not required to take reasonable steps to return a thing because of paragraph (1)(c) if:
- (a) proceedings in which the thing may be used in evidence were begun before the end of the 60 days and the proceedings (including an appeal to a court in relation to the proceedings) have not been completed; or
 - (b) the inspector may keep the thing because of an order under section 141; or
 - (c) the inspector is authorised by this Code or by an order of a court to keep, destroy or dispose of the thing.
- (3) If the thing has to be returned, it must be returned to the person from whom it was seized or, if that person is not entitled to possess it, to the owner.

141 Magistrate may permit a thing to be kept

- (1) If:
- (a) before the end of 60 days after an inspector seizes a thing under an investigation warrant; or
 - (b) before the end of a period previously stated in an order under this section in respect of a thing seized by an inspector as mentioned in paragraph (a);
- proceedings in which the thing may be used in evidence have not been brought, the inspector may apply to a magistrate for an order that he or she may keep the thing for a further period.
- (2) Before making the application, the inspector must:
- (a) take reasonable steps to discover who has an interest in the retention of the thing; and

- (b) if it is practicable to do so, notify each person who the inspector believes has such an interest of the proposed application.

Order to retain thing

- (3) A magistrate may order that the thing may continue to be retained for a period specified in the order if the magistrate is satisfied that it is necessary for the thing to continue to be retained:
 - (a) for the purposes of an investigation as to whether an offence against an agvet law has been committed or an agvet penalty provision has been contravened; or
 - (b) for the purposes of an investigation as to whether an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to an agvet law has been committed; or
 - (c) to enable evidence of:
 - (i) an offence mentioned in paragraph (a) or (b) to be secured for the purposes of a prosecution; or
 - (ii) a contravention mentioned in paragraph (a) to be secured for the purposes of proceedings for a civil penalty order.
- (4) The period specified must not exceed 3 years.

141A Disposal of things

- (1) The APVMA may dispose of a thing seized under an investigation warrant if:
 - (a) an inspector has taken reasonable steps to return the thing to a person; and
 - (b) either:
 - (i) the inspector has been unable to locate the person; or
 - (ii) the person has refused to take possession of the thing.
- (2) The APVMA may dispose of the thing in such manner as it considers appropriate.

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142 Certain expenses to be recoverable by APVMA

- (1) Any expense incurred by the APVMA under paragraph 131A(1)(j) or 132A(1)(j) in respect of the destruction or making harmless of a chemical product is a debt due to the APVMA by the owner of the product.
- (2) Any expense incurred by the APVMA under subsection 132D(2) in supervising:
 - (a) the reformulation of a substance; or
 - (b) the placing of a substance in a container; or
 - (c) the attaching of a label to a container;is a debt due to the APVMA:
 - (d) if paragraph (a) or (b) applies—by the owner of the substance; or
 - (e) if paragraph (c) applies—by the owner of the substance in the container.
- (3) Any expense incurred by the APVMA under paragraph 140(2)(c) in destroying or disposing of a thing is a debt due to the APVMA by the owner of the thing.
- (4) Any expense incurred by the APVMA under section 140 in returning a thing to a person is a debt due to the APVMA by the person.
- (4A) Any expense incurred by the APVMA under section 141A in disposing of a thing is a debt due to the APVMA by the owner of the thing.
- (5) Any expense incurred by the APVMA under section 150 in disposing of a thing that has been forfeited to the APVMA is a debt due to the APVMA by the person whose property the thing was before it was forfeited.
- (6) The APVMA may recover a debt due by a person under this section by action against the person.

Division 9—Applying for warrants etc.

143 Monitoring warrants

Application for warrant

- (1) An inspector may apply to a magistrate for a monitoring warrant under this section in relation to premises.

Issue of warrant

- (2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more inspectors should have access to the premises for the purpose of determining whether:
 - (a) an agvet law has been, or is being, complied with; or
 - (b) information provided under an agvet law is correct.
- (3) However, the magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the monitoring warrant is being sought.

Content of warrant

- (4) The monitoring warrant must:
 - (a) describe the premises to which the warrant relates; and
 - (b) state that the warrant is issued under this section; and
 - (c) state the purpose for which the warrant is issued; and
 - (d) authorise one or more inspectors (whether or not named in the warrant) from time to time while the warrant remains in force:
 - (i) to enter the premises; and
 - (ii) to exercise the powers set out in Divisions 3 and 5 of this Part in relation to the premises; and
 - (e) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and

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- (f) specify the day (not more than 6 months after the issue of the warrant) the warrant ceases to be in force.
- (5) If the application for the warrant is made under section 143B, this section applies as if paragraph (4)(f) required the warrant to specify the period for which the warrant is to remain in force, which must not be more than 48 hours.

143A Investigation warrants

Application for warrant

- (1) An inspector may apply to a magistrate for an investigation warrant under this section in relation to premises.

Issue of warrant

- (2) The magistrate may issue the investigation warrant if the magistrate is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, evidential material on the premises.
- (3) However, the magistrate must not issue the investigation warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

Content of warrant

- (4) The investigation warrant must:
- (a) state the offence or offences, or civil penalty provision or civil penalty provisions, to which the warrant relates; and
 - (b) describe the premises to which the warrant relates; and
 - (c) state that the warrant is issued under this section; and
 - (d) specify the kinds of evidential material that are to be searched for under the warrant; and
 - (e) state that the evidential material specified may be seized under the warrant; and

- (f) state that any thing found in the course of executing the warrant that the person executing the warrant believes on reasonable grounds to be evidence of:
 - (i) the commission of an offence against an agvet law or the contravention of an agvet penalty provision or both; or
 - (ii) an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to an agvet law;may be seized under the warrant; and
 - (g) name one or more inspectors; and
 - (h) authorise the inspectors named in the warrant:
 - (i) to enter the premises; and
 - (ii) to exercise the powers set out in Divisions 4, 5 and 6 of this Part in relation to the premises; and
 - (i) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and
 - (j) specify the day (not more than 1 week after the issue of the warrant) the warrant ceases to be in force.
- (5) If the application for the warrant is made under section 143B, this section applies as if:
- (a) subsection (2) referred to 48 hours rather than 72 hours; and
 - (b) paragraph (4)(j) required the warrant to specify the period for which the warrant is to remain in force, which must not be more than 48 hours.

143B Warrants by telephone, fax etc.

Application for warrant

- (1) An inspector may apply to a magistrate by telephone, fax or other electronic means for a warrant in relation to premises:
 - (a) in an urgent case; or
 - (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (2) The magistrate may require communication by voice to the extent that it is practicable in the circumstances.

Section 143B

- (3) Before applying for a warrant, the inspector must:
- (a) in the case of a monitoring warrant—prepare an information of the kind mentioned in subsection 143(2); and
 - (b) in the case of an investigation warrant—prepare an information of the kind mentioned in subsection 143A(2);
- in relation to the premises that sets out the grounds on which the warrant is sought. If it is necessary to do so, the inspector may apply for the warrant before the information is sworn or affirmed.

Magistrate may complete and sign warrant

- (4) The magistrate may complete and sign the same warrant that would have been issued under section 143 or 143A if the magistrate is satisfied that there are reasonable grounds for doing so:
- (a) after considering the terms of the information; and
 - (b) after receiving such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.
- (5) After completing and signing the warrant, the magistrate must inform the inspector, by telephone, fax or other electronic means, of:
- (a) the terms of the warrant; and
 - (b) the day and time the warrant was signed.

Obligations on inspector

- (6) The inspector must then do the following:
- (a) complete and sign a form of warrant in the same terms as the warrant completed and signed by the magistrate;
 - (b) state on the form the following:
 - (i) the name of the magistrate;
 - (ii) the day and time the warrant was signed by the magistrate;
 - (c) send the following to the magistrate:
 - (i) the form of warrant completed by the inspector;
 - (ii) the information referred to in subsection (3), which must have been duly sworn or affirmed.

- (7) The inspector must comply with paragraph (6)(c) by the end of the day after the earlier of the following:
- (a) the day the warrant ceases to be in force;
 - (b) the day the warrant is executed.

Magistrate to attach documents together

- (8) The magistrate must attach the documents provided under paragraph (6)(c) to the warrant signed by the magistrate.

143C Authority of warrant

- (1) A form of warrant duly completed under subsection 143B(6) is authority for the same powers as are authorised by the warrant signed by the magistrate under subsection 143B(4).
- (2) In any proceedings, a court is to assume (unless the contrary is proved) that an exercise of power was not authorised by a warrant under section 143B if:
- (a) it is material, in those proceedings, for the court to be satisfied that the exercise of power was authorised by that section; and
 - (b) the warrant signed by the inspector authorising the exercise of the power is not produced in evidence.

143D Offence relating to warrants by telephone, fax etc.

An inspector must not:

- (a) state in a document that purports to be a form of warrant under section 143B the name of a magistrate unless that magistrate signed the warrant; or
- (b) state on a form of warrant under that section a matter that, to the inspector's knowledge, departs in a material particular from the terms of the warrant signed by the magistrate under that section; or
- (c) purport to execute, or present to another person, a document that purports to be a form of warrant under that section that the inspector knows departs in a material particular from the

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terms of a warrant signed by a magistrate under that section;
or

- (d) purport to execute, or present to another person, a document that purports to be a form of warrant under that section where the inspector knows that no warrant in the terms of the form of warrant has been completed and signed by a magistrate; or
- (e) give to a magistrate a form of warrant under that section that is not the form of warrant that the inspector purported to execute.

Penalty: Imprisonment for 2 years.

143E Effect of warrant

If a warrant is issued under the Agvet Code of a jurisdiction other than this jurisdiction, the warrant has effect and may be executed in this jurisdiction as if the warrant had been issued under this Code.

Division 10—Powers of magistrates

143F Powers of magistrates

Powers conferred personally

- (1) A power conferred on a magistrate by this Part is conferred on the magistrate:
 - (a) in a personal capacity; and
 - (b) not as a court or a member of a court.

Powers need not be accepted

- (2) The magistrate need not accept the power conferred.

Protection and immunity

- (3) A magistrate exercising a power conferred by this Part has the same protection and immunity as if the magistrate were exercising the power:
 - (a) as the court of which the magistrate is a member; or
 - (b) as a member of the court of which the magistrate is a member.

Part 9A—Enforcement

Division 1—Preliminary

145 Explanation of Part

This Part contains provisions for the enforcement of this Code, including provisions relating to the following:

- (a) the use of civil penalties to enforce civil penalty provisions;
- (b) the use of infringement notices to enforce certain civil penalty provisions;
- (c) the acceptance and enforcement of undertakings to comply with provisions;
- (d) the use of injunctions in the enforcement of provisions;
- (e) the issue of substantiation notices in relation to certain claims and representations;
- (f) the giving of enforceable directions in relation to suspected contraventions;
- (g) the issue of formal warnings in relation to suspected contraventions;
- (h) other ancillary matters.

Division 2—Civil penalty orders

Subdivision A—Obtaining a civil penalty order

145A Civil penalty orders

Application for order

- (1) The APVMA may, on behalf of the Commonwealth, apply to a court of competent jurisdiction for an order that a person, who is alleged to have contravened a civil penalty provision, pay the Commonwealth a pecuniary penalty.
- (2) The APVMA must make the application within 6 years of the alleged contravention.

Court may order person to pay pecuniary penalty

- (3) If the court is satisfied that the person has contravened the civil penalty provision, the court may order the person to pay to the Commonwealth such pecuniary penalty for the contravention as the court determines to be appropriate.

Note: Section 145AA sets out the maximum penalty that the court may order the person to pay.

- (4) An order under subsection (3) is a ***civil penalty order***.

Determining pecuniary penalty

- (5) In determining the pecuniary penalty, the court may take into account all relevant matters, including:
 - (a) the nature and extent of the contravention; and
 - (b) the nature and extent of any loss or damage suffered because of the contravention; and
 - (c) the circumstances in which the contravention took place; and
 - (d) whether the person has previously been found by a court to have engaged in any similar conduct; and
 - (e) the extent to which the person has cooperated with the authorities; and

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- (f) if the person is a body corporate:
 - (i) the level of the employees, officers or agents of the body corporate involved in the contravention; and
 - (ii) whether the body corporate exercised due diligence to avoid the contravention; and
 - (iii) whether the body corporate had a corporate culture conducive to compliance.

145AA Maximum penalties for contravention of civil penalty provisions

Penalty for body corporate

- (1) The pecuniary penalty for a contravention of a civil penalty provision by a body corporate must not exceed 5 times the amount of the maximum monetary penalty that could be imposed by a court if the body corporate were convicted of an offence constituted by conduct that is the same as the conduct constituting the contravention.

Penalty for individuals

- (2) The pecuniary penalty for a contravention of a civil penalty provision by an individual must not exceed 3 times the amount of the maximum monetary penalty that could be imposed by a court if the person were convicted of an offence constituted by conduct that is the same as the conduct constituting the contravention.

Penalty for contravention of subsection 145CF(1)

- (3) The pecuniary penalty for a contravention, by an executive officer of a body corporate, of subsection 145CF(1) in relation to the contravention by the body corporate of a civil penalty provision must not exceed 12% of the amount of the maximum monetary penalty that could be imposed on the body corporate for the contravention.

145AB Civil enforcement of penalty

- (1) A pecuniary penalty is a debt payable to the Commonwealth.
-

- (2) The Commonwealth may enforce a civil penalty order as if it were an order made in civil proceedings against a person to recover a debt due by the person. The debt arising from the order is taken to be a judgement debt.

145AC Conduct contravening more than one civil penalty provision

- (1) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Division against a person in relation to the contravention of any one or more of those provisions.
- (2) However, the person is not liable to more than one pecuniary penalty under this Division in relation to the same conduct.

145AD Multiple contraventions

- (1) A court may make a single civil penalty order against a person for multiple contraventions of a civil penalty provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form, or are part of, a series of contraventions of the same or a similar character.

Note: For continuing contraventions of civil penalty provisions, see section 145C.

- (2) However, the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions.

145AE Proceedings may be heard together

A court may direct that 2 or more proceedings for civil penalty orders be heard together.

145AF Civil evidence and procedure rules for civil penalty orders

A court must apply the rules of evidence and procedure for civil matters when hearing and determining an application for a civil penalty order.

145AG Contravening a civil penalty provision is not an offence

A contravention of a civil penalty provision is not an offence.

Subdivision B—Civil proceedings and criminal proceedings

145B Civil proceedings after criminal proceedings

A court may not make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is the same, or substantially the same, as the conduct constituting the contravention.

145BA Criminal proceedings during civil proceedings

- (1) Proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if:
 - (a) criminal proceedings are commenced or have already been commenced against the person for an offence; and
 - (b) the offence is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order (the *civil proceedings*) may be resumed if the person is not convicted of the offence. Otherwise, the civil proceedings are dismissed.

145BB Criminal proceedings after civil proceedings

Criminal proceedings may be commenced against a person for conduct that is the same, or substantially the same, as conduct that would constitute a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person in relation to the contravention.

145BC Evidence given in civil proceedings not admissible in criminal proceedings

- (1) Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual for an offence if:
 - (a) the individual previously gave the evidence or produced the documents in proceedings for a civil penalty order against the individual for an alleged contravention of a civil penalty provision (whether or not the order was made); and
 - (b) the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.
- (2) However, subsection (1) does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

Subdivision C—Miscellaneous

145C Continuing contraventions of civil penalty provisions

- (1) If an act or thing is required under a civil penalty provision to be done:
 - (a) within a particular period; or
 - (b) before a particular time;then the obligation to do that act or thing continues until the act or thing is done (even if the period has expired or the time has passed).
- (2) A person who contravenes a civil penalty provision that requires an act or thing to be done:
 - (a) within a particular period; or
 - (b) before a particular time;commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant civil penalty order is made or any later day).

145CA Ancillary contravention of civil penalty provisions

- (1) A person must not:
- (a) attempt to contravene a civil penalty provision; or
 - (b) aid, abet, counsel or procure a contravention of a civil penalty provision; or
 - (c) induce (by threats, promises or otherwise) a contravention of a civil penalty provision; or
 - (d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision; or
 - (e) conspire with others to effect a contravention of a civil penalty provision.

Civil penalty

- (2) A person who contravenes subsection (1) in relation to a civil penalty provision is taken to have contravened the provision.

Note: Section 145CC (which provides that a person's state of mind does not need to be proven in relation to a civil penalty provision) does not apply to the extent that proceedings relate to the contravention of subsection (1).

145CB Mistake of fact

- (1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision if:
- (a) at or before the time of the conduct constituting the contravention, the person:
 - (i) considered whether or not facts existed; and
 - (ii) was under a mistaken but reasonable belief about those facts; and
 - (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.
- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
- (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and

- (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.
- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

145CC State of mind

- (1) In proceedings for a civil penalty order against a person for a contravention of a civil penalty provision (other than subsection 145CA(1)), it is not necessary to prove:
 - (a) the person's intention; or
 - (b) the person's knowledge; or
 - (c) the person's recklessness; or
 - (d) the person's negligence; or
 - (e) any other state of mind of the person.
- (2) Subsection (1) does not apply to the extent that the proceedings relate to a contravention of subsection 145CA(1) (which is about ancillary contraventions of civil penalty provisions).
- (3) Subsection (1) does not affect the operation of section 145CB (which is about mistake of fact).
- (4) Subsection (1) does not apply to the extent that the civil penalty provision, or a provision that relates to the civil penalty provision, expressly provides otherwise.

145CD Evidential burden for exceptions

In proceedings for a civil penalty order, a person who wishes to rely on any exception, excuse, qualification or justification in relation to a civil penalty provision bears an evidential burden in relation to that matter.

145CE Liability of body corporate for actions by employees, agents or officers

If an element of a civil penalty provision is done by an employee, agent or officer of a body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, the element must also be attributed to the body corporate.

145CF Liability of executive officers

- (1) An executive officer of a body corporate contravenes this subsection if:
 - (a) the body corporate contravenes a civil penalty provision; and
 - (b) the officer knew that the contravention would occur; and
 - (c) the officer was in a position to influence the conduct of the body in relation to the contravention; and
 - (d) the officer failed to take all reasonable steps to prevent the contravention.
- (2) Subsection (1) is a civil penalty provision.

Note: Subdivision A of this Division provides for pecuniary penalties for contraventions of civil penalty provisions.

145CG Establishing whether an executive officer took reasonable steps to prevent the contravention of a civil penalty provision

- (1) For the purposes of section 145CF, in determining whether an executive officer of a body corporate failed to take all reasonable steps to prevent the contravention of a civil penalty provision, a court is to have regard to:
 - (a) what action (if any) the officer took towards ensuring that the body's employees, agents and contractors have a reasonable knowledge and understanding of the requirements to comply with this Code, in so far as those requirements affect the employees, agents or contractors concerned; and
 - (b) what action (if any) the officer took when he or she became aware that the body was contravening this Code.

- (2) This section does not, by implication, limit the generality of section 145CF.

Division 3—Infringement notices

145DA When an infringement notice may be given

- (1) If an inspector has reasonable grounds to believe that a person has contravened a prescribed civil penalty provision, the inspector may give the person an infringement notice for the alleged contravention.
- (2) The infringement notice must be given within 12 months after the day the contravention is alleged to have taken place.
- (3) A single infringement notice must relate only to a single contravention of a single prescribed civil penalty provision.

145DB Matters to be included in an infringement notice

- (1) An infringement notice must:
 - (a) be identified by a unique number; and
 - (b) state the day it is given; and
 - (c) state the name of the person to whom the notice is given; and
 - (d) state the name of the person who gave the notice; and
 - (e) give brief details of the alleged contravention, including:
 - (i) the provision that was allegedly contravened; and
 - (ii) the maximum penalty that a court could impose for the contravention; and
 - (iii) the time (if known) and day of, and the place of, the alleged contravention; and
 - (f) state the amount that is payable under the notice, and that the amount is payable to the Commonwealth; and
 - (g) give an explanation of how payment of the amount is to be made; and
 - (h) state that, if the person to whom the notice is given pays the amount within 28 days after the day the notice is given, then (unless the notice is withdrawn) proceedings seeking a civil penalty order will not be brought in relation to the alleged contravention; and

- (i) state that payment of the amount is not an admission of liability; and
 - (j) state that the person may apply to the APVMA to have the period in which to pay the amount extended; and
 - (k) state that the person may choose not to pay the amount and, if the person does so, proceedings seeking a civil penalty order may be brought in relation to the alleged contravention; and
 - (l) set out how the notice can be withdrawn; and
 - (m) state that if the notice is withdrawn proceedings seeking a civil penalty order may be brought in relation to the alleged contravention; and
 - (n) state that the person may make written representations to the APVMA seeking the withdrawal of the notice.
- (2) For the purposes of paragraph (1)(f), the amount to be stated in the notice for the alleged contravention of the provision must not exceed one-fifth of the maximum penalty that a court could impose on the person for that contravention.
- (3) The regulations may, subject to subsection (2), provide for a scale of amounts that may apply for an alleged contravention.

145DC Extension of time to pay amount

- (1) A person to whom an infringement notice has been given may apply to the APVMA for an extension of the period referred to in paragraph 145DB(1)(h).
- (2) If the application is made before the end of that period, the APVMA may, in writing, extend that period. The APVMA may do so before or after the end of that period.
- (3) If the APVMA extends that period, a reference in this Division to the period referred to in paragraph 145DB(1)(h) is taken to be a reference to that period so extended.
- (4) If the APVMA does not extend that period, a reference in this Division to the period referred to in paragraph 145DB(1)(h) is

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taken to be a reference to the period that ends on the later of the following days:

- (a) the day that is the last day of the period referred to in paragraph 145DB(1)(h);
 - (b) the day that is 7 days after the day the person was given notice of the APVMA's decision not to extend.
- (5) The APVMA may extend the period more than once under subsection (2).

145DD Withdrawal of an infringement notice

Representations seeking withdrawal of notice

- (1) A person to whom an infringement notice has been given may make written representations to the APVMA seeking the withdrawal of the notice.

Withdrawal of notice

- (2) The APVMA may withdraw an infringement notice given to a person (whether or not the person has made written representations seeking the withdrawal).
- (3) When deciding whether or not to withdraw an infringement notice (the **relevant infringement notice**), the APVMA:
- (a) must take into account any written representations seeking the withdrawal that were given by the person to the APVMA; and
 - (b) may take into account the following:
 - (i) whether a court has previously imposed a penalty on the person for a contravention of a prescribed civil penalty provision if the contravention is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the relevant infringement notice;
 - (ii) the circumstances of the alleged contravention;
 - (iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of a prescribed civil penalty provision if the contravention is

- constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the relevant infringement notice;
- (iv) any other matter the APVMA considers relevant.

Notice of withdrawal

- (4) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:
- (a) the person's name and address; and
 - (b) the day the infringement notice was given; and
 - (c) the identifying number of the infringement notice; and
 - (d) that the infringement notice is withdrawn; and
 - (e) that proceedings seeking a civil penalty order may be brought in relation to the alleged contravention.

Refund of amount if infringement notice withdrawn

- (5) If:
- (a) the APVMA withdraws the infringement notice; and
 - (b) the person has already paid the amount stated in the notice;
- the Commonwealth must refund to the person an amount equal to the amount paid.

145DE Effect of payment of amount

- (1) If the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount stated in the notice before the end of the period referred to in paragraph 145DB(1)(h):
- (a) any liability of the person for the alleged contravention is discharged; and
 - (b) proceedings seeking a civil penalty order may not be brought against the person in relation to the alleged contravention; and
 - (c) the person is not regarded as having admitted liability for the alleged contravention.
- (2) Subsection (1) does not apply if the notice has been withdrawn.

145DF Effect of this Division

This Division does not:

- (a) require an infringement notice to be given to a person for an alleged contravention of a prescribed civil penalty provision; or
- (b) affect the liability of a person for an alleged contravention of a prescribed civil penalty provision if:
 - (i) the person does not comply with an infringement notice given to the person for the contravention; or
 - (ii) an infringement notice is not given to the person for the contravention; or
 - (iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or
- (c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of a prescribed civil penalty provision; or
- (d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened a prescribed civil penalty provision.

Division 4—Enforceable undertakings

145E Acceptance of undertakings

- (1) The APVMA may accept any of the following undertakings:
 - (a) a written undertaking given by a person that the person will, in order to comply with a provision of this Code, take specified action;
 - (b) a written undertaking given by a person that the person will, in order to comply with a provision of this Code, refrain from taking specified action;
 - (c) a written undertaking given by a person that the person will take specified action directed towards ensuring that the person does not commit an offence against this Code or contravene a civil penalty provision, or is unlikely to do so, in the future.
- (2) The undertaking must be expressed to be an undertaking under this section.
- (3) The person may withdraw or vary the undertaking at any time, but only with the written consent of the APVMA.
- (4) The APVMA's consent is not a legislative instrument.
- (5) The APVMA may, by written notice given to the person, cancel the undertaking.
- (6) The APVMA must publish the undertaking on the APVMA's website.
- (7) However, the APVMA is not required to publish so much of the undertaking that the APVMA is satisfied:
 - (a) is confidential commercial information; or
 - (b) is personal information (within the meaning of the *Privacy Act 1988*); or
 - (c) should not be disclosed because it would be against the public interest to do so.

145EA Enforcement of undertakings

- (1) If:
- (a) a person has given an undertaking under section 145E; and
 - (b) the undertaking has not been withdrawn or cancelled; and
 - (c) the APVMA considers that the person has breached the undertaking;
- the APVMA may, on behalf of the Commonwealth, apply to a court of competent jurisdiction for an order under subsection (2).
- (2) If the court is satisfied that the person has breached the undertaking, the court may make any or all of the following orders:
- (a) an order directing the person to comply with the undertaking;
 - (b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
 - (c) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
 - (d) any other order that the court considers appropriate.

Division 5—Injunctions

145F Grant of injunctions

Restraining injunctions

- (1) If a person has engaged, is engaging or is proposing to engage, in conduct that constitutes an offence against this Code or a contravention of a civil penalty provision, a court of competent jurisdiction may, on application by any person, grant an injunction:
- (a) restraining the first-mentioned person from engaging in the conduct; and
 - (b) if, in the court's opinion, it is desirable to do so—requiring the first-mentioned person to do a thing.

Performance injunctions

- (2) If:
- (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do a thing; and
 - (b) the refusal or failure was, is or would be, an offence against this Code or a contravention of a civil penalty provision;
- the court may, on application by any person, grant an injunction requiring the first-mentioned person to do that thing.

Grant of interim injunctions

- (3) Before deciding an application for an injunction under this section, the court may grant an interim injunction:
- (a) restraining a person from engaging in conduct; or
 - (b) requiring a person to do a thing.

145FA Discharging or varying injunctions

A court may discharge or vary an injunction granted by that court under this Division.

145FB Certain limits on granting injunctions not to apply

Restraining injunctions

- (1) The power of a court under this Division to grant an injunction restraining a person from engaging in conduct may be exercised:
 - (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
 - (b) whether or not the person has previously engaged in conduct of that kind; and
 - (c) whether or not the conduct involves a serious and immediate risk of:
 - (i) an effect that is harmful to human beings; or
 - (ii) an unintended effect that is harmful to animals, plants or things, or to the environment.

Performance injunctions

- (2) The power of a court under this Division to grant an injunction requiring a person to do a thing may be exercised:
 - (a) whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that thing; and
 - (b) whether or not the person has previously refused or failed to do that thing; and
 - (c) whether or not the conduct involves a serious and immediate risk of:
 - (i) an effect that is harmful to human beings; or
 - (ii) an unintended effect that is harmful to animals, plants or things, or to the environment.

145FC Other powers of a court unaffected

The powers conferred on a court under this Division are in addition to, and not instead of, any other powers of the court, whether conferred by this Code or otherwise.

Division 6—Substantiation notices

145G APVMA may require claims to be substantiated etc.

- (1) This section applies if a person has made a claim or representation in relation to:
 - (a) a supply, or possible supply, of a chemical product by the person or another person; or
 - (b) the manufacture of a chemical product by the person or another person; or
 - (c) the safety or efficacy of a chemical product.
 - (2) The APVMA may give the person who made the claim or representation a written notice that requires the person to do one or more of the following:
 - (a) give information or produce documents to the APVMA that could be capable of substantiating or supporting the claim or representation;
 - (b) if the claim or representation relates to a supply, or possible supply, of chemical products by the person or another person—give information or produce documents to the APVMA that could be capable of substantiating:
 - (i) the quantities in which; and
 - (ii) the place in which; and
 - (iii) the period for which;the person or other person is or will be able to make such a supply (whether or not the claim or representation relates to those quantities, that place or that period);
 - (c) give information or produce documents to the APVMA that are of a kind specified in the notice;within 21 days after the notice is given to the person who made the claim or representation.
 - (3) Any kind of information or documents that the APVMA specifies under paragraph (2)(c) must be a kind that the APVMA is satisfied is relevant to:
 - (a) substantiating or supporting the claim or representation; or
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- (b) if the claim or representation relates to a supply, or possible supply, of chemical products by the person or another person—substantiating the quantities in which, the place in which, or the period for which, the person or other person is or will be able to make such a supply.
- (4) The notice must:
 - (a) name the person to whom it is given; and
 - (b) specify the claim or representation to which it relates; and
 - (c) explain the effect of sections 145GA and 145GB.
- (5) The notice may relate to more than one claim or representation that the person has made.
- (6) This section does not apply to a person who made the claim or representation if the person:
 - (a) made the claim or representation by publishing it on behalf of another person in the course of carrying on a business of providing information; and
 - (b) does not have a commercial relationship with the other person other than for the purpose of:
 - (i) publishing claims or representations promoting, or apparently intended to promote, the other person's business or other activities; or
 - (ii) the other person supplying goods or services.

145GA Compliance with substantiation notices

- (1) A person given a substantiation notice under section 145G must comply with the notice:
 - (a) within the period specified in the notice; or
 - (b) within such further time as the APVMA allows under subsection (3).
- (2) A person given a substantiation notice under section 145G may apply to the APVMA for further time to comply with the notice. An application must be in writing and made within 21 days after the notice is given to the person.

- (3) The APVMA may, by written notice given to the person, extend the period within which the person must comply with the notice.
- (4) Despite subsection (1), an individual may refuse or fail to give particular information or produce a particular document in compliance with a substantiation notice on the ground that the information, or production of the document, might tend to incriminate the individual or to expose the individual to a penalty.

145GB Failure to comply with substantiation notice

- (1) A person contravenes this subsection if:
 - (a) the person is given a notice under section 145G; and
 - (b) the person fails to comply with the notice:
 - (i) within the period specified in the notice; or
 - (ii) if the APVMA has allowed the person further time under subsection 145GA(3)—within such further time.
- (2) Subsection (1) does not apply if:
 - (a) the person is an individual; and
 - (b) the person refuses or fails to give particular information or produce a particular document in compliance with a substantiation notice; and
 - (c) the information, or production of the document, might tend to incriminate the individual or to expose the individual to a penalty.
- (3) A person commits an offence if the person contravenes subsection (1).

Penalty: 50 penalty units.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (4) Subsection (1) is a civil penalty provision.

Note 1: Division 2 provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 2: For the evidential burden in civil penalty proceedings in relation to the matter in subsection (2), see section 145CD.

Division 7—Enforceable directions

145H APVMA may give directions

- (1) This section applies if the APVMA believes, on reasonable grounds, that:
 - (a) a person is not complying with this Code; and
 - (b) it is necessary to exercise powers under this section:
 - (i) to protect the health and safety of human beings; or
 - (ii) to protect animals, plants or things, or the environment; or
 - (iii) to prevent significant prejudice to trade or commerce between Australia and places outside Australia.
- (2) The APVMA may, by written notice, give directions to the person requiring the person to take such steps, within the time specified in the notice, as are reasonable in the circumstances for the person to comply with this Code.
- (3) A time specified in a notice must be reasonable having regard to the circumstances.
- (4) A person contravenes this subsection if:
 - (a) the person is given a notice under this section; and
 - (b) the person fails to comply with the notice within the time specified in the notice.
- (5) A person commits an offence if the person contravenes subsection (4).

Penalty:

- (a) in the case of an aggravated offence—120 penalty units; and
 - (b) in any other case—30 penalty units.
- (6) Subsection (4) is a civil penalty provision.

Note: Division 2 provides for pecuniary penalties for contraventions of civil penalty provisions.

- (7) Section 4K of the *Crimes Act 1914* applies to an offence against subsection (5).
- (8) If the person does not take the steps specified in the notice within the time specified in the notice, the APVMA may arrange for those steps to be taken.
- (9) If the APVMA incurs costs because of arrangements made by the APVMA under subsection (8):
- (a) the person is liable to pay to the APVMA an amount equal to the costs incurred; and
 - (b) the amount may be recovered by the APVMA as a debt due to the APVMA in a court of competent jurisdiction.
- (10) To prove an aggravated offence, the prosecution must prove that the person who committed the offence:
- (a) intended his or her conduct:
 - (i) to cause significant damage to the health and safety of human beings; or
 - (ii) to cause significant damage to animals, plants or things, or the environment; or
 - (iii) to significantly prejudice trade or commerce between Australia and places outside Australia; or
 - (b) was reckless as to whether that conduct:
 - (i) would cause significant damage to the health and safety of human beings; or
 - (ii) would cause significant damage to animals, plants or things, or the environment; or
 - (iii) would significantly prejudice trade or commerce between Australia and places outside Australia.
- (11) In this section:
- aggravated offence*** means an offence the commission of which:
- (a) causes significant damage, or is likely to cause significant damage:
 - (i) to the health and safety of human beings; or
 - (ii) to animals, plants or things, or the environment; or

- (b) would significantly prejudice trade or commerce between Australia and places outside Australia.

Division 8—Formal warnings

145J APVMA may issue a formal warning

- (1) The APVMA may, by written notice, issue a formal warning to a person if the APVMA has reasonable grounds to suspect that the person may have contravened the Agvet Code of this jurisdiction.
- (2) A formal warning under subsection (1) is not a legislative instrument.

Division 9—Miscellaneous

146 False or misleading information or document

- (1) A person commits an offence if, for the purposes of, or in connection with, the consideration by the APVMA, in the course of the performance of any of its functions or the exercise of any of its powers under this Code, of any matters referred to in section 5A, 5B, 5C or 5D or subsection 123(1), the person:
- (a) gives information (whether orally or in writing) that the person knows to be false or misleading in a material particular; or
 - (b) produces a document that the person knows to be false or misleading in a material particular without:
 - (i) indicating to the person to whom the document is produced that it is false or misleading and the respect in which it is false or misleading; and
 - (ii) providing correct information to that person if the person producing the document is in possession of, or can reasonably acquire, the correct information.

Penalty: 300 penalty units.

- (2) A person commits an offence if, for the purposes of, or in connection with, the consideration by the APVMA, in the course of the performance of any of its functions or the exercise of any of its powers under this Code, of any matters other than matters referred to in subsection (1), the person:
- (a) gives information (whether orally or in writing) that the person knows to be false or misleading in a material particular; or
 - (b) produces a document that the person knows to be false or misleading in a material particular without:
 - (i) indicating to the person to whom the document is produced that it is false or misleading and the respect in which it is false or misleading; and

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- (ii) providing correct information to that person if the person producing the document is in possession of, or can reasonably acquire, the correct information.

Penalty: 60 penalty units.

146A Self-incrimination to be a reasonable excuse for non-compliance with requirement

It is a reasonable excuse for an individual to refuse or fail to give information, produce a document or do any other thing that the individual is required to do by or under this Code that the information, the production of the document or the doing of that other thing would tend to incriminate the individual.

147 Time for bringing proceedings

- (1) Proceedings for an offence against this Code may be brought:
 - (a) within 3 years after the date the offence is alleged to have been committed; or
 - (b) within 2 years after the date evidence of the offence first came to the attention of the APVMA, a member of the staff of the APVMA or an inspector.
- (2) If paragraph (1)(b) is relied on to begin proceedings for an offence, the court attendance notice, summons or application must contain particulars of the date that evidence of the offence first came to the attention of the APVMA, a member of the staff of the APVMA or an inspector, as the case may be. It need not contain particulars of the date on which the offence was committed.
- (3) The date on which evidence of the offence first came to the attention of the APVMA, a member of the staff of the APVMA or an inspector, as the case may be, is the date specified in the court attendance notice, summons or application, unless the contrary is established.

- (4) In this section:

evidence, in relation to an offence, means evidence of any act or omission constituting the offence.

149 Evidential certificates

- (1) This section has effect for the purposes of any proceeding:
 - (a) under or for the purposes of this Code or an eligible law of this jurisdiction; and
 - (b) before a court or tribunal of this jurisdiction or an authority or person having power to require the production of documents or the answering of questions in this jurisdiction; other than a proceeding for an offence that is directly punishable by imprisonment.
- (2) A certificate that states a matter referred to in subsection (3) is prima facie evidence of that matter if it is signed by the Chief Executive Officer of the APVMA, or by a member of the staff of the APVMA whom the APVMA has authorised to give certificates under this section.
- (3) The matters that may be stated in a certificate referred to in subsection (2) are as follows:
 - (a) that a substance referred to in the certificate was, or was not, at a particular time, or during a particular period, an active constituent, or an approved active constituent, for a proposed or existing chemical product;
 - (b) that a chemical product referred to in the certificate was, or was not, at a particular time, or during a particular period, a chemical product or a registered chemical product;
 - (c) that a label referred to in the certificate was, or was not, at a particular time, or during a particular period, an approved label for containers for a chemical product or a label for containers for a chemical product that is required by an established standard for the product;
 - (d) that a permit or exemption referred to in the certificate was in force at a particular time or during a particular period;
 - (e) that an approval, registration, permit or exemption referred to in the certificate was suspended at a particular time or during a particular period;
 - (f) that an approval, registration, permit or exemption referred to in the certificate is, or was at a particular time or during a particular period, subject to a stated condition;

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- (g) that the matter appearing on an approved label or on a label for containers for a chemical product that is required by an established standard for the product, or in a permit, referred to in the certificate is identical to matter set out in, or in a writing annexed to, the certificate;
 - (h) that a person named in the certificate was an inspector at a particular time or during a particular period;
 - (i) that a document referred to in the certificate that purports to be a copy of, or an extract from, a record, register or file kept under this Code is a true copy or extract, as the case may be;
 - (j) that a notice, direction or requirement referred to in the certificate was given at a particular time to a particular person under this Code;
 - (k) that the APVMA had not received by a particular time an application, statement, report or other document, or any sample or other thing, referred to in the certificate that was required or permitted to be made or given to the APVMA by a person under this Code;
 - (l) that a document referred to in the certificate is, or was at a particular time or during a particular period, a standard, rule, code, specification or method of a particular association, body or institution;
 - (m) that a licence referred to in the certificate was in force at a particular time or during a particular period;
 - (n) that a licence referred to in the certificate was suspended at a particular time or during a particular period;
 - (o) that a licence referred to in the certificate is, or was at a particular time or during a particular period, subject to a stated condition;
 - (p) that a particular statement contained in a document referred to in the certificate is, or was at a particular time or during a particular period, a manufacturing principle that the APVMA has determined.
- (4) Unless the contrary is proved, a document purporting to be a certificate referred to in subsection (2) is taken to be such a certificate and to have been duly given.

- (5) Unless the contrary is proved, evidence that a label attached to a sealed container contained any matter at any time in a manner prescribed or required by this Code in relation to a chemical product is also evidence that the product was in the container at that time.

149A Recovery of costs of investigations

- (1) This section applies if:
- (a) a person is convicted of an offence against an agvet law or is found to have contravened an agvet penalty provision; and
 - (b) the court convicting the person finds that the APVMA has reasonably incurred costs and expenses in taking a sample, or conducting an inspection, test or analysis during the investigation of the offence or agvet penalty provision; and
 - (c) the APVMA applies for an order against the person for the payment of the costs and expenses.
- (2) The court may order the person to pay to the APVMA the reasonable costs and expenses that it considers just and equitable in the circumstances.

Note: The APVMA may recover certain other expenses. See section 142.

150 Forfeiture

- (1) If a person is convicted of an offence against this Code in respect of a thing that the court finds to be the property of that person, the court may order all or any part of the thing to be forfeited to the APVMA.
- (2) If the court makes an order under subsection (1) in respect of, or in respect of part of, a thing, the thing, or that part of the thing, as the case may be, becomes the property of the APVMA and, subject to section 162, may be dealt with or disposed of in any manner that the APVMA thinks appropriate.

151 Conduct by directors, employees and agents

- (1) Subject to subsection (2), in proceedings against a body corporate for an offence against this Code:
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- (a) any conduct engaged in by a director, employee or agent of the body corporate within the actual or apparent scope of his or her employment or within his or her actual or apparent authority is taken to have been engaged in also by the body corporate; and
 - (b) it is taken to be established that conduct (the **relevant conduct**) was engaged in by the body corporate intentionally, knowingly or recklessly if it is proved:
 - (i) that the directors of the body corporate intentionally, knowingly or recklessly engaged in the relevant conduct or expressly, tacitly or impliedly authorised or permitted the relevant conduct to be engaged in; or
 - (ii) that an employee or agent of the body corporate with duties of such responsibility that his or her conduct may fairly be assumed to represent the policy of the body corporate intentionally, knowingly or recklessly engaged in the relevant conduct or expressly, tacitly or impliedly authorised or permitted the relevant conduct to be engaged in.
- (2) Subparagraph (1)(b)(ii) does not apply if the body corporate proves that it exercised due diligence to prevent the relevant conduct.
- (3) Subject to subsection (4), in proceedings against an individual for an offence against this Code:
- (a) any conduct engaged in by an employee or agent of the individual within the actual or apparent scope of his or her employment or within his or her actual or apparent authority is taken to have been engaged in also by the individual; and
 - (b) it is taken to be established that conduct (the **relevant conduct**) was engaged in by the individual intentionally, knowingly or recklessly if it is proved that an employee or agent of the individual with duties of such responsibility that his or her conduct may fairly be assumed to represent the policy of the individual intentionally, knowingly or recklessly engaged in the relevant conduct or expressly, tacitly or impliedly authorised or permitted the relevant conduct to be engaged in.

- (4) Paragraph (3)(b) does not apply if the individual proves that he or she exercised due diligence to prevent the relevant conduct.
- (5) If:
- (a) an individual is convicted of an offence against this Code;
and
 - (b) the individual would not have been convicted of the offence if subsections (3) and (4) had not been enacted;
- the individual is not liable to be punished by imprisonment for the offence.
- (6) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

152 Liability of persons acting on behalf of non-residents

- (1) If:
- (a) a person does any thing in this jurisdiction on behalf of another person who is not a resident of, and does not carry on business in, Australia; and
 - (b) the doing of that thing is an offence against this Code;
- this Code has effect, in addition to the effect that it has apart from this subsection, as if the first-mentioned person did that thing on that person's own account and not on behalf of the other person.
- (2) If:
- (a) the holder of an approval or registration who is not a resident of, and does not carry on business in, Australia fails to do a thing in this jurisdiction in relation to an active constituent or chemical product covered by the approval or registration; and
 - (b) the failure of the holder to do that thing is an offence against this Code;
- the nominated agent for the approval or registration is taken to have been under the same liability under this Code as the holder to do that thing and, if the thing is not done by the nominated agent, is punishable accordingly.
- (3) For an offence that arises because of subsection (2), strict liability applies to paragraphs (2)(a) and (b).

Schedule Agricultural and Veterinary Chemicals Code

Part 9A Enforcement

Division 9 Miscellaneous

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Note: For strict liability, see section 6.1 of the *Criminal Code*.

Part 10—Miscellaneous

153 Explanation of Part

This Part contains miscellaneous provisions (other than enforcement provisions) that relate generally to other provisions of this Code. Most provisions that affect only a particular part of this Code are contained in that Part.

154 Recognition of things done under corresponding laws

- (1) In this Code, unless the contrary intention appears, a reference to any thing done by or in relation to the APVMA is a reference to such a thing done under or for the purposes of the Agvet Code of this jurisdiction or of another jurisdiction.
- (2) In this Code, unless the contrary intention appears, a reference to any thing done by or in relation to a court is a reference to such a thing done under or for the purposes of the Agvet Code of this jurisdiction or of another jurisdiction.

155 Discharge of obligations under this Code

- (1) Except as expressly provided in this Code, any thing done, whether within Australia or elsewhere, which, if it had been done under or for the purposes of this Code, would have discharged an obligation under this Code, discharges that obligation.
- (2) Subject to subsection (3), any thing that has to be done under this Code may, for the purposes of this Code, be done anywhere in Australia, whether within or outside this jurisdiction.
- (3) Subsection (2) does not affect the operation of any provision of this Code that:
 - (a) expressly requires a particular thing to be done within this jurisdiction; or
 - (b) expressly or by implication permits a particular thing to be done outside Australia.

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156 The making of single applications or the giving of single notices under the Agvet Codes of all jurisdictions

- (1) This section facilitates the administration, on a national basis, of the Agvet Codes of all jurisdictions by permitting the making of a single application, or the giving or publication of a single notice, under the Agvet Codes of all jurisdictions.
- (2) If an application is expressed to be made under the Agvet Codes (rather than under the Agvet Code of a particular jurisdiction), it has effect as an application under the relevant provision of the Agvet Code of this jurisdiction in addition to any effect that it may have under the Agvet Code of any other jurisdiction.
- (3) If a notice is expressed to be given or published by the APVMA under the Agvet Codes (rather than under the Agvet Code of a particular jurisdiction), it has effect as a notice given or published under the relevant provision of the Agvet Code of this jurisdiction in addition to any effect that it may have under the Agvet Code of any other jurisdiction.

156A Giving information electronically

- (1) If, under this Code, a person is required or permitted to give the APVMA information (including an application) in writing, that requirement is taken to have been met if:
 - (a) the APVMA consents to the information being given electronically; and
 - (b) the person gives the information electronically in accordance with any requirements mentioned in subsection (3); and
 - (c) in a case where this Code requires the signature of an applicant or holder—the information includes the electronic signature of the applicant or holder.
- (2) If, under this Code, a person is required or permitted to give the APVMA information in writing, the regulations may, despite any other provision of this Code, require that the information be given only electronically and in accordance with any requirements mentioned in subsection (3).

- (3) For the purposes of subsections (1) and (2), the APVMA may require that the information be given, in accordance with particular information technology requirements, by means of a particular kind of electronic communication.
- (4) If, under this Code, the APVMA is required or permitted to give a person information in writing, that requirement is taken to have been met if:
 - (a) the person consents to the information being given electronically; and
 - (b) the APVMA gives the information electronically; and
 - (c) where applicable, the information includes the Chief Executive Officer's electronic signature; and
 - (d) in a case where a person's failure to do, or not do, a thing set out in the information is an offence against this Code or the contravention of a civil penalty provision—the APVMA has adequate systems for proving the person received the information.
- (5) This section applies to a requirement or permission to give information, whether the expression “give”, “lodge”, “send” or “serve”, or any other expression, is used.
- (6) For the purposes of this section, giving information includes, but is not limited to, the following:
 - (a) making or withdrawing an application;
 - (b) making or lodging a claim;
 - (c) giving, sending or serving a notification;
 - (d) giving a report;
 - (e) making a request;
 - (f) making a declaration;
 - (g) lodging or issuing a certificate;
 - (h) giving a statement of reasons.

157 Samples to be given for analysis

- (1) For the purposes of determining an application under this Code, the APVMA may require the applicant to:

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- (a) if the application relates to an active constituent or active constituents for a proposed or existing chemical product—give a sample of that constituent or of each of those constituents; or
 - (b) if the application relates to a chemical product—give a sample of any constituent of the product or a sample of the product, or both;
- to the APVMA or to a body named by the APVMA, for the purpose of analysis by an approved analyst.
- (2) The sample must:
 - (a) be of a quantity; and
 - (b) be taken on a day; and
 - (c) be taken in a manner; and
 - (d) be taken from a batch;that the APVMA has directed.
 - (3) The applicant must pay to the APVMA the amount that the APVMA notifies the applicant in writing to be the cost of the analysis referred to in subsection (1), including the cost of packaging and transporting the sample or samples for analysis.

159 APVMA or other authority may require, or require additional, information, report or sample in certain circumstances

- (1) For the purposes of:
 - (a) determining an application under this Code in relation to:
 - (i) an active constituent for a proposed or existing chemical product; or
 - (ii) a chemical product; or
 - (iii) a label for containers for a chemical product; or
 - (b) determining an application under this Code in relation to a permit in respect of:
 - (i) an active constituent for a proposed or existing chemical product; or
 - (ii) a chemical product; or
 - (d) deciding whether to suspend or cancel:

- (i) an approval of an active constituent for a proposed or existing chemical product; or
- (ii) the registration of a chemical product; or
- (iii) the approval of a label for containers for a chemical product; or
- (v) a permit in respect of an active constituent for a proposed or existing chemical product or in respect of a chemical product;

the APVMA or another prescribed authority may, by written notice given to the applicant (for the purposes of paragraph (a) or (b)) or the holder (for the purposes of paragraph (d)), require the applicant or holder, within a reasonable period stated in the notice, or within a further period that the APVMA allows, to do any one or more of the following:

- (e) give to the APVMA or that prescribed authority, as the case may be, information, of a kind stated in the notice;
- (f) carry out a search of published literature for information about the active constituent, or about the chemical product or any of its constituents, as the case may be, and give a report to the APVMA or that prescribed authority on the results of that search;
- (g) give to the APVMA or that prescribed authority, or to another body that the APVMA or that authority has determined, a sample of the active constituent, or of the chemical product or any of its constituents, as the case may be, for the purpose of analysis by an approved analyst;
- (h) conduct, or cause to be conducted, trials or laboratory experiments and give the results of the trials or experiments to the APVMA.

(1AA) The period stated in the notice must be no longer than the period prescribed by the regulations.

(1AB) The APVMA may allow a further period only in the circumstances prescribed by the regulations.

(1A) The power of the APVMA or another authority under subsection (1) to require a person to give to the APVMA or to that authority information, a report or a sample includes a power to

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require the person to give to the APVMA or to that authority such information or such a report or sample in addition to any information, report or sample previously given by the person to the APVMA or to that authority under any provision of this Code other than this section or under a previous application of this section.

- (2) Any information or report that an applicant or holder has to give to the APVMA or a prescribed authority under subsection (1) must be given in writing and be signed by the applicant or holder.

Note: For giving information electronically, see section 156A.

160 Overseas trials and experiments etc.

- (1) This section applies for the purposes of:
- (a) determining an application under this Code in relation to an active constituent for a proposed or existing chemical product; or
 - (b) determining an application under this Code in relation to a chemical product (including an application in relation to a label for containers for a chemical product); or
 - (c) reconsidering the approval of an active constituent for a proposed or existing chemical product, the registration of a chemical product or the approval of a label for containers for a chemical product; or
 - (d) deciding whether to suspend or cancel a permit in respect of an active constituent for a proposed or existing chemical product or in respect of a chemical product.
- (2) The APVMA may take account of any of the following:
- (a) the results of any trials or experiments already carried out in a foreign country in relation to an active constituent for a proposed or existing chemical product, or in relation to a chemical product or any of its constituents;
 - (b) any decisions or evaluations made by regulators of agricultural or veterinary chemicals in a foreign country;
 - (c) any information on which a decision or evaluation mentioned in paragraph (b) is based;
- to the extent that those results, decisions or evaluations are, or that information is, relevant having regard to any matters the APVMA

thinks appropriate, including any of the matters mentioned in subsection (3).

- (3) The matters are:
- (a) any significant differences in the proposed use of the constituent, or of the product, in Australia and in that foreign country; or
 - (b) any different environmental factors affecting the use of the constituent, or of the product, in Australia and in that foreign country; or
 - (c) any significant additional information relating to the properties of the constituent, or of the product or of any of its constituents, that has become available since the conduct of those trials or experiments; or
 - (d) any significant differences in the way decisions or evaluations are made in Australia and by the national regulatory authority in that foreign country.

160A Notification of new information to APVMA in respect of pending application

- (1) This section applies if:
- (a) an application has been lodged with the APVMA for:
 - (i) approval of an active constituent for a proposed or existing chemical product; or
 - (ii) registration of a chemical product; or
 - (iv) a permit in respect of such an active constituent or in respect of a chemical product; or
 - (v) a licence in respect of the manufacture of a chemical product; and
 - (b) the APVMA has not determined the application; and
 - (c) the applicant becomes aware of any relevant information in relation to the constituent, or in relation to the product or any of its constituents.
- (2) The applicant must, as soon as the applicant becomes aware of the information, give the information to the APVMA.

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- (2A) A person commits an offence if the person contravenes subsection (2).

Penalty: 300 penalty units.

- (2B) Subsection (2) is a civil penalty provision.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

- (4) Information is *relevant information* if it:
- (a) contradicts any information that:
 - (i) was given to the APVMA by the applicant in an application mentioned in paragraph (1)(a); and
 - (ii) relates to particulars prescribed by the regulations for the purposes of paragraph 19(c) or 20(1)(c); or
 - (b) shows that the constituent or product may not meet the safety criteria, the trade criteria or the efficacy criteria.
- (5) A corporation is taken to be aware of any information if a related corporation is aware of that information.
- (6) The question whether 2 corporations are related to each other is to be determined in the same way as that question would be determined under the *Corporations Act 2001*.
- (7) Any information given to the APVMA under this section must be given in writing signed by the applicant.

Note: For giving information electronically, see section 156A.

161 Notification of new information to APVMA

- (1) If:
- (a) the holder of the approval of an active constituent for a proposed or existing chemical product or the registration of a chemical product; or
 - (b) the holder of a permit in relation to an active constituent for a proposed or existing chemical product or in relation to a chemical product;
- becomes aware of any relevant information in relation to the constituent or in relation to the product or of any of its constituents,

the holder must, as soon as the holder becomes aware of the information, give that information to the APVMA.

- (1A) A person commits an offence if the person contravenes subsection (1).

Penalty: 300 penalty units.

- (1B) Subsection (1) is a civil penalty provision.

Note: Division 2 of Part 9A provides for pecuniary penalties for contraventions of civil penalty provisions.

- (2) Information is relevant information if it:
- (a) contradicts any information entered in the Record, Register or Record of Permits for the constituent or product; or
 - (b) shows that the constituent or product may not meet the safety criteria, the trade criteria or the efficacy criteria.

- (2A) A corporation is taken to be aware of any information if a related corporation is aware of that information.

- (2B) The question whether 2 corporations are related to each other is to be determined in the same way as that question would be determined under the *Corporations Act 2001*.

- (3) Any information given to the APVMA under this section must be given in writing signed by the holder.

Note: For giving information electronically, see section 156A.

162 Disclosure of confidential commercial information

- (1) A person who is or has been a director, the Chief Executive Officer, or a member of the staff, of the APVMA, or is or has been a consultant to the APVMA, a mediator or arbitrator appointed under this Code, or a co-ordinator designated for a jurisdiction, must not disclose, directly or indirectly, to another person any information about an active constituent for a proposed or existing chemical product, about a chemical product or any of its constituents, or about a label for containers for a chemical product, that:

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- (a) the person knows to be confidential commercial information;
and
- (b) was acquired by the person in the performance of such functions or duties or the exercise of such powers.

Penalty: Imprisonment for 2 years.

- (1A) Subsection (1) does not apply to the extent that the person engages in the conduct in the performance of functions or duties, or the exercise of powers, under this Code.

Note: The defendant bears an evidential burden in relation to the matter in subsection (1A). See subsection 13.3(3) of the *Criminal Code*.

- (2) Subsection (1) does not prohibit the disclosure of information about a constituent or a chemical product to a court in any proceeding but the court must do all things necessary to prevent disclosure of that information to any other person except for the purpose of the proceeding.
- (3) Despite subsection (1), a person (the **authorised person**) that the APVMA has authorised to act under this section may:
 - (a) disclose confidential commercial information about an active constituent for a proposed or existing chemical product:
 - (i) by disclosing a summary of an evaluation of the constituent made by the APVMA or by a prescribed authority or person; or
 - (ii) for the purposes of the APVMA's reconsideration of the approval of the constituent under Division 4 of Part 2—by disclosing the relevant particulars of the constituent; or
 - (iii) by disclosing, subject to the conditions prescribed by the regulations, information about the toxicity of the constituent and its residues in relation to relevant organisms and ecosystems, including human beings; or
 - (b) disclose confidential commercial information about a chemical product or any of its constituents:
 - (i) if the product contains an active constituent that, before the registration of the product, was not contained in a chemical product registered in this or another jurisdiction under the Agvet Code, or a corresponding

- previous law, of the jurisdiction concerned—by disclosing a summary of an evaluation that the APVMA has made of the product; or
- (ii) for the purposes of the APVMA's reconsideration of the registration of the product under Division 4 of Part 2—by disclosing the relevant particulars of the product; or
 - (iii) by disclosing, subject to any conditions prescribed by the regulations, information about the toxicity of the product and its residues in relation to relevant organisms and ecosystems, including human beings; or
- (c) disclose confidential commercial information about an active constituent for a proposed or existing chemical product, or about a chemical product or any of its constituents, to:
- (i) the Commonwealth, a State or a Territory, or an authority of the Commonwealth, of a State or of a Territory; or
 - (ia) the authorising party for the information; or
 - (ii) a person who is expressly authorised to obtain the information by the authorising party for the information; or
 - (iii) a prescribed authority or prescribed person; or
- (d) subject to subsection (4), disclose confidential commercial information about an active constituent for a proposed or existing chemical product, or about a chemical product or any of its constituents, to:
- (i) an overseas authority having similar functions to the APVMA; or
 - (ii) a prescribed international organisation;
- if the authorised person thinks it is reasonable to make the disclosure and the authorising party for the information has consented to the disclosure or the authorised person has made reasonable efforts to obtain that consent.
- (4) An authorised person must not disclose information to an authority or organisation under paragraph (3)(d) without the consent of the authorising party for the information unless:
- (a) the authorised person has given to the authorising party written notice of the decision to disclose the information; and

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- (b) a period of 28 days has elapsed since the notice was given.
- (6) A person who acquires information because of a disclosure under subsection (3), and any person under the control of that person, is, in respect of that information, subject to the same obligations and liabilities under subsection (1) as if that person were a person performing duties under this Code and had acquired the information in the performance of those duties.
- (7) Despite subsection (1), the authorised person may permit confidential commercial information about a constituent or chemical product to be disclosed to a Government, body or person:
- (a) for the purpose of enabling the Government, body or person to give advice to the APVMA or to another Government, body or person in accordance with section 8 of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*; or
 - (b) if the person is a co-ordinator for a jurisdiction—for the purpose of enabling the co-ordinator to make a recommendation to the APVMA in accordance with paragraph 111(1)(c).

Note: The defendant bears an evidential burden in relation to the matter in subsection (7). See subsection 13.3(3) of the *Criminal Code*.

- (8) A person who acquires information because of a disclosure under subsection (7), and any person who is or has been under the control of that person, must not disclose that information, directly or indirectly, to any person if the person disclosing the information knows that the information is confidential commercial information.

Penalty: Imprisonment for 2 years.

- (8A) Subsection (8) does not apply to conduct engaged in with the intention of providing advice to the APVMA in accordance with section 8 of the *Agricultural and Veterinary Chemicals (Administration) Act 1992* or making a recommendation to the APVMA in accordance with paragraph 111(1)(c).

Note: The defendant bears an evidential burden in relation to the matter in subsection (8A). See subsection 13.3(3) of the *Criminal Code*.

- (8B) In subsection (8), strict liability applies to the physical element of circumstance, that the disclosure was under subsection (7).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (9) If a person who is or has been a director, the Chief Executive Officer, or a member of the staff, of the APVMA, or is or has been a consultant to the APVMA, a mediator or arbitrator appointed under this Code, or a co-ordinator designated for a jurisdiction, has disclosed to another person, except under subsection (3) or (7), any confidential commercial information about an active constituent for a proposed or existing chemical product, or about a chemical product or any of its constituents, that was acquired by the first-mentioned person in the performance of functions or duties, or the exercise of powers, under this Code, the other person, and any person who is or has been under the control of the other person, must not disclose that information, directly or indirectly, to any person if the person disclosing the information knows that the information is confidential commercial information.

Penalty: Imprisonment for 2 years.

- (9A) In subsection (9), strict liability applies to the physical elements of circumstance, that:
- (a) the acquisition of the information by the first-mentioned person was in the performance of functions or duties, or the exercise of powers, under this Code; and
 - (b) the disclosure mentioned first in that subsection was made other than under subsection (3) or (7).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (10) The powers conferred by subsection (7) are in addition to, and do not prejudice, the powers conferred by subsection (3).
- (11) A notice published under section 8H or 8J, paragraph 45A(1)(b) or section 47C must not contain any confidential commercial information about an active constituent for a proposed or existing chemical product or about a chemical product or any of its constituents.

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- (12) This section does not preclude the institution of an action or other civil proceeding against a person in respect of the disclosure, or the proposed, threatened or likely disclosure, by that person of confidential commercial information about an active constituent for a proposed or existing chemical product, or about a chemical product or any of its constituents.
- (13) A reference in this section to information about an active constituent for a proposed or existing chemical product, or about a chemical product, includes a reference to the fact that:
- (a) an application has been made for approval of the constituent or registration of the product; or
 - (b) an application has been made for a permit in respect of the constituent or product, if the making of the application is confidential commercial information.
- (13A) A reference in this section to information about:
- (a) an active constituent for a proposed or existing chemical product; or
 - (b) a chemical product; or
 - (c) any of the constituents of a chemical product; or
 - (d) a label for containers for a chemical product;
- includes a reference to information about any substance or thing that was at any time such an active constituent, such a chemical product, such a constituent of a chemical product or such a label, as the case may be.
- (14) In this section:
- court* includes a tribunal, authority or person having power to require the production of documents or the answering of questions.
- disclose*, in relation to information, means give or communicate in any way.

163 Notice to the applicant or holder of proposed disclosure of information that is claimed to be confidential commercial information

If:

- (a) a person (the *disclosing person*) decides to disclose to another person information about an active constituent for a proposed or existing chemical product, about a chemical product or any of its constituents, or about a label for containers for a chemical product; and
 - (b) the applicant or holder concerned has claimed to the APVMA that the information is confidential commercial information but the disclosing person does not agree with the claim; and
 - (c) the disclosure would, if the information were confidential commercial information, contravene section 162;
- the disclosing person:
- (d) must give written notice to the applicant or holder of the decision to disclose the information stating the reasons why the disclosing person considers that the information is not confidential commercial information; and
 - (e) must not disclose the information until the end of 28 days after the notice is given.

Penalty: Imprisonment for 2 years.

163A Legislative instruments to be disallowable

- (1) Despite subsection 44(1) of the *Legislation Act 2003* but subject to subsection (2) of this section, section 42 (disallowance) of that Act applies to a legislative instrument made under this Code.
- (2) However, subsection (1) does not apply to a legislative instrument made under section 5B or 8B of this Code.

163B Certain provisions to have effect as part of this Code

If a law amends this Code, any provision of that law, or of any other instrument made under that law, has effect, to the extent that it deals with matters of a transitional, application or savings nature relating to the amendment, as if it were part of this Code.

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164 Fees

- (1) The regulations may prescribe, or prescribe a method of working out, the fees to be paid in respect of the making of an application to the APVMA, the lodging of a notice under Division 2AA of Part 2, or the doing of any thing by the APVMA or by an inspector, under this Code.
- (1A) The APVMA may make a legislative instrument setting out criteria for working out which fee applies under the regulations in a particular case.
- (2) Fees referred to in subsection (1) are due and payable in the manner and at the time or times that are prescribed.
- (4) Two or more fees may be prescribed for the same matter.
- (5) A fee is not payable in respect of the making of an application to the APVMA, the lodging of a notice under Division 2AA of Part 2, or the doing of any thing by the APVMA or by an inspector, under a provision of the Agvet Code of this jurisdiction in relation to an active constituent for a proposed or existing chemical product, a chemical product, or a label for containers for a chemical product, if a corresponding fee has been paid in respect of the making of a corresponding application, the lodging of a corresponding notice, or the doing of a corresponding thing, as the case may be, in relation to the same constituent, product or label, under the corresponding provision of the Agvet Code of another jurisdiction.
- (6) Any fee that the APVMA receives under this Code is to be paid to the Commonwealth.
- (7) If a fee has to be paid in respect of an application to the APVMA or in respect of the doing of any thing by the APVMA, the APVMA may refuse to consider the application or do that thing until the fee is paid.
- (7A) If a fee has to be paid in respect of a notice under Division 2AA of Part 2, the notice is taken not to have been lodged until the fee is paid.

- (8) The APVMA may, on behalf of the Commonwealth, either on its own initiative or on application by a person, waive the whole or a part of a fee that would otherwise be payable under this Code, or remit the whole or a part of a fee that has been paid under this Code:
- (a) if the fee is payable or was paid in respect of an application to the APVMA that is to be or has been withdrawn; or
 - (b) in any other circumstances that are prescribed by the regulations.
- (9) If an application is made to the APVMA under subsection (8), it must give to the applicant written notice of its decision on the application.

165 Period within which APVMA is to determine applications

- (1) When an application is made under this Code to the APVMA, the APVMA must determine the application within a period stated in, or determined in accordance with, the regulations.
- (1A) The APVMA may make a legislative instrument setting out criteria for working out which period stated in, or determined in accordance with, the regulations made for the purposes of subsection (1) applies in a particular case.
- (2) In working out the period within which an application has to be determined, no regard is to be had to:
- (b) if the APVMA has, before the application was made, published a notice in the *Gazette* under subsection 69EP(2) of the *Agricultural and Veterinary Chemicals (Administration) Act 1992* in relation to a hearing that is relevant to the determination of the application and the hearing did not finish before the application was made—the period beginning when the application was made and ending when the hearing finished; and
 - (c) if the APVMA has, after the application was made, published such a notice in the *Gazette*—the period beginning when the notice was published and ending when the hearing finished; and

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- (d) if the APVMA has given written notice to an applicant under subsection 8S(1)—the 28 day period after the notice is given, or such further period as is specified in the notice, within which submissions may be made.
- (3) If, at the end of the period referred to in subsection (1), the application has not been determined, the applicant may give the APVMA written notice that the applicant wishes to treat the application as having been refused.
- (4) The notice may be given at any time after the end of the period referred to in subsection (1) and before the application is determined.
- (5) If the notice is given, this Code has effect as if:
 - (a) the APVMA had refused the application; and
 - (b) the APVMA had confirmed the refusal under section 166; and
 - (c) the decisions mentioned in paragraphs (a) and (b) had been made on the day on which notice was given to the APVMA under subsection (3).

165A Period within which APVMA is to conclude reconsiderations under Division 4 of Part 2

- (1) If the APVMA reconsiders an approval or registration under Division 4 of Part 2, the APVMA must conclude the reconsideration within a period stated in, or determined in accordance with, the regulations.
- (2) The APVMA may make a legislative instrument setting out criteria for working out which period stated in, or determined in accordance with, the regulations applies in a particular case.
- (3) In working out the period within which the reconsideration is to be concluded, no regard is to be had to:
 - (a) the period, stated in the notice given to the holder under subsection 32(1), within which information must be given and submissions may be made; and

- (b) if the APVMA has given written notice to the holder under subsection 33(1)—the period stated in the notice within which any information, report, results or sample must be given to the APVMA.

166 Internal review of decisions

(1) This section applies if:

- (a) a decision (the *original decision*) on a particular matter (the *relevant matter*) has been made under this Code on behalf of the APVMA by a member of the staff of the APVMA; and
- (b) a person is entitled to apply under section 167 to the Administrative Appeals Tribunal for review of the original decision.

(1A) This section also applies if:

- (a) a decision (the *original decision*) on a particular matter (the *relevant matter*) has been made under this Code on behalf of the APVMA by a member of the staff of the APVMA; and
- (b) the original decision is:
 - (i) a decision under subsection 14(2), paragraph 26C(1)(b), subsection 29(2) or 115(3B) to refuse an application based only on requirements set out in paragraph 8A(a) or (b); or
 - (ia) a decision under Division 2AA of Part 2 that a notice does not meet the notice requirements; or
 - (ii) a decision under subsection 112(3) to refuse an application based only on requirements set out in paragraph 8A(a) or (b) or a requirement made by the APVMA under subparagraph 111(1)(b)(iii); or
 - (iii) a decision under subsection 123(1A) to refuse an application based only on requirements set out in subsection 122(1); and
- (c) if the original decision were reviewable by the Administrative Appeals Tribunal, a person would be entitled to apply to the Administrative Appeals Tribunal for review of the original decision.

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- (2) The person may, by writing within 42 days after the original decision is made, request the APVMA to reconsider the original decision.
- (3) If a request is so made, the APVMA must reconsider the original decision having regard only to the information used to make it, and must:
 - (a) confirm the original decision; or
 - (b) vary the original decision; or
 - (c) set aside the original decision; or
 - (d) set aside the original decision and make a new decision in substitution for the original decision.
- (4) The APVMA must, as soon as practicable, give written notice to the person who made the request setting out the APVMA's decision on the reconsideration.
- (5) The decision on the reconsideration is taken, for the purposes of this Code other than paragraph (1)(a), to be a fresh decision on the relevant matter made under the provision of this Code under which the original decision was made.
- (6) If the APVMA has not given notice under subsection (4) of its decision on the reconsideration within 90 days after the request is made, the person who made the request may, by writing, notify the APVMA that the person considers that the APVMA has confirmed the original decision.
- (7) If the person so notifies the APVMA, the decision on the reconsideration is taken to be a decision to confirm the original decision.

167 Review of decisions by Administrative Appeals Tribunal

- (1) An application may be made to the Administrative Appeals Tribunal for review of the following decisions of the APVMA:
 - (a) a decision under subsection 14(1) to approve or register a constituent, product or label:

- (i) with an instruction or relevant particular other than an instruction or particular set out in the application for the approval or registration; or
- (ii) subject to particular conditions;
- (b) a decision under subsection 14(2) to refuse an application for approval or registration, other than a decision based only on requirements set out in paragraph 8A(a) or (b);
- (c) a decision under paragraph 26C(1)(b) to refuse an application to vary relevant particulars, other than a decision based only on requirements set out in paragraph 8A(a) or (b);
- (d) a decision under subsection 29(2) to refuse an application to vary relevant particulars or conditions, other than a decision based only on requirements set out in paragraph 8A(a) or (b);
- (e) a decision under subsection 34A(1) or 34AF(3) to vary relevant particulars or conditions;
- (ea) a decision (the *information decision*) under subsection 34J(3) that the APVMA is satisfied that it is in the public interest to use information that section 34G would otherwise prohibit the APVMA from using for making a decision (the *substantive decision*);
- (f) a decision under section 34AA or Division 5 of Part 2 to suspend or cancel the approval of an active constituent for a proposed or existing chemical product, the registration of a chemical product or the approval of a label for containers for a chemical product;
- (g) a decision under subsection 48(3) refusing to accept a late application;
- (h) a decision to use protected information under paragraph 59(2)(d);
- (i) a decision under subsection 74(2), 75(2), 76(2) or 78(2) extending, or refusing to extend, a period;
- (ia) a decision under subsection 81(3) shortening, or extending or refusing to extend, a period;
- (j) a decision under section 99 to issue a notice;
- (k) a decision to issue a recall notice;
- (l) a decision under Part 7 to refuse an application for a permit, other than a decision based only on requirements set out in

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- paragraph 8A(a) or (b) or a requirement made by the APVMA under subparagraph 111(1)(b)(iii);
- (m) a decision under Part 7 to issue a permit subject to particular conditions or for a particular period only;
 - (n) a decision under Part 7 to refuse to extend a permit other than a decision based only on requirements set out in paragraph 8A(a) or (b);
 - (o) a decision under section 118, 119, 119A or 119B to suspend or cancel a permit;
 - (q) a decision under Part 8 to refuse an application for a licence other than a decision based only on requirements set out in subsection 122(1);
 - (r) a decision under Part 8 to issue a licence subject to particular conditions referred to in subsection 126(1);
 - (s) a decision under subsection 126(2) to impose a new condition on a licence or varying an existing condition;
 - (t) a decision under section 127 to suspend or cancel a licence;
 - (v) a decision to disclose information to an authority or organisation under paragraph 162(3)(d) without the consent of the applicant or holder concerned;
 - (w) a decision to disclose information under section 163;
 - (x) a decision under subsection 164(8) to refuse to waive or remit the whole or a part of a fee;
 - (y) a decision under this Code prescribed by the regulations.
- (2A) Despite paragraph (1)(ea), an application may not be made to the Administrative Appeals Tribunal for review of the information decision if the APVMA stated in the notice of that decision given under section 34K that the APVMA believed it was necessary to make the substantive decision before the end of 28 days after giving the notice, to prevent imminent risk to persons of death, serious injury or serious illness.
- (3) This section has effect subject to the *Administrative Appeals Tribunal Act 1975*.
- (4) In this section:

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

168 Statement to be included in certain notices of decisions

- (1) If written notice of the making of a decision to which section 167 applies, or of the making of a decision under section 166 which, because of subsection 166(5), is taken to be a decision to which section 167 applies, is given to a person (other than a co-ordinator designated for this or another jurisdiction), that notice must include a statement to the effect that:
 - (a) subject to the *Administrative Appeals Tribunal Act 1975*, application may be made by or on behalf of a person whose interests are affected by the decision to the Administrative Appeals Tribunal for review of the decision to which the notice relates; and
 - (b) unless subsection 28(4) of that Act applies, application may be made in accordance with section 28 of that Act by or on behalf of a person whose interests are affected by the decision for a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.
- (2) Any failure to comply with a requirement of subsection (1) in relation to a decision does not affect the validity of the decision.

169 Documents and samples become property of APVMA

- (1) When a document or sample is given to the APVMA for any purpose of this Code, it becomes the property of the APVMA.
- (2) Subsection (1) is not limited by section 14B, Division 4A of Part 2 or Part 3.

170 Provisions relating to offences

- (1) Offences against subsections 162(1), (8) and (9) and subsection 163(1) are indictable offences.

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- (2) All other offences against this Code are summary offences.
- (3) A provision of this Code relating to indictable offences or summary offences is taken to refer to bodies corporate as well as to individuals.
- (4) If an individual is convicted of an indictable offence against this Code, the court may, if the court thinks it appropriate in all the circumstances of the case, impose, instead of, or in addition to, a penalty of imprisonment, a monetary penalty not greater than the number of penalty units worked out using the formula:

$$\text{Term of Imprisonment} \times 5$$

where:

Term of Imprisonment means the number of months in the maximum term of imprisonment by which the offence is punishable.

- (5) If a body corporate is convicted of an offence against this Code, the court may, if the court thinks fit, impose a monetary penalty not greater than 5 times the amount of the maximum monetary penalty that could be imposed by the court on an individual convicted of the same offence.

170A Person not to use protected name or protected symbol

- (1) A person must not:
 - (a) use in relation to a business, trade, profession or occupation;
or
 - (b) use as the name, or as part of the name, of any firm, body corporate, institution, premises, vehicle, ship or craft (including aircraft); or
 - (c) apply, as a trade mark or otherwise, to goods imported, manufactured, produced, sold, offered for sale or let on hire;
or
 - (d) use in relation to:
 - (i) goods or services; or
 - (ii) the promotion, by any means, of the supply or use of goods or services;

either:

- (e) a protected name, or a name so closely resembling a protected name as to be likely to be mistaken for it; or
- (f) a protected symbol, or a symbol so closely resembling a protected symbol as to be likely to be mistaken for it.

Penalty: 50 penalty units.

- (2) Subsection (1) does not apply if the APVMA consents in writing to the use or application of the name or symbol.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) Nothing in subsection (1) affects rights conferred by law on a person in relation to:

- (a) a trade mark that is registered under the *Trade Marks Act 1995*; or
- (b) a design that is registered under the *Designs Act 2003*; and was so registered immediately before 24 March 2004 in relation to the name or symbol.

- (4) Nothing in this section affects the use, or rights conferred by law relating to the use, of the name or symbol by a person in a particular manner if, immediately before 24 March 2004, the person:

- (a) was using the name or symbol in good faith in that manner; or
- (b) would have been entitled to prevent another person from passing off, by means of the use of the name of the symbol or a similar name or symbol, goods or services as the goods or services of the first-mentioned person.

- (5) In this section:

protected name means:

- (a) “APVMA”; or
- (b) “Australian Pesticides and Veterinary Medicines Authority”.

protected symbol means the logo of the APVMA set out in the regulations.

Part 11—Transitional provisions

171 Explanation of Part

This Part contains provisions that continue in force, under the Agvet Code of this jurisdiction, certain existing clearances, registrations, approvals and permits and certain pending applications, reconsiderations and proceedings.

172 Existing clearance for registration of chemical product

- (1) If:
 - (a) immediately before the commencement of the Agvet Code of this jurisdiction:
 - (i) a clearance for registration that the APVMA granted under section 15 of the repealed Act in respect of a chemical product was in force; and
 - (ii) the product was not registered by a previous registering authority of this jurisdiction; and
 - (b) a label for containers for the product becomes approved under that Code;the following subsections apply.
- (2) The product is taken to be registered by the APVMA under section 20 of that Code when the label becomes approved and to be so registered subject to the conditions (if any) to which the clearance was subject.
- (3) The person who applied for the clearance is taken to be the person who applied for the registration.

174 Existing registration of chemical product

- (1) If, immediately before the commencement of the Agvet Code of this jurisdiction, a chemical product was registered by the previous registering authority of this jurisdiction and a label in relation to, or

in relation to containers for, that product was also registered or approved by that authority, the following paragraphs apply:

- (a) the product is taken to have been registered by the APVMA under section 20 of that Code upon that commencement subject to the conditions (if any) to which its registration by that previous registering authority was subject;
 - (b) the person who applied for the registration of the product by the previous registering authority or, if that registration was renewed, the person who applied for the renewal or the last renewal, as the case may be, is taken to be the person who applied for the registration of the product under that Code;
 - (c) the label is taken to have been approved in relation to the product by the APVMA under section 21 of that Code upon that commencement:
 - (i) for the containers for which it was registered or approved by that previous registering authority or, if it was not registered or approved for containers, for all containers for the product; and
 - (ii) subject to the conditions (if any) to which its registration or approval by that previous registering authority was subject.
- (2) If:
- (a) immediately before the commencement of the Agvet Code of this jurisdiction, the supply of a chemical product that was not registered by the previous registering authority of this jurisdiction was permitted in this jurisdiction, either unconditionally or subject to conditions, because the product was registered by the previous registering authority of another jurisdiction; and
 - (b) a label for containers for the product becomes approved under that Code;
- the following paragraphs apply:
- (c) if the supply of the product was permitted unconditionally—the product is taken to be registered by the APVMA under section 20 of that Code when the label becomes approved;
 - (d) if its supply was permitted subject to conditions—the product is taken to be so registered subject to those conditions;

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- (e) the person who applied for the registration of the product by the previous registering authority of the other jurisdiction or, if that registration was renewed, the person who applied for the renewal or the last renewal, as the case may be, is taken to be the person who applied for the registration of the product under that Code.
- (3) If, immediately before the commencement of the Agvet Code of this jurisdiction:
- (a) a chemical product was registered by the previous registering authority of this jurisdiction; but
 - (b) it was unlawful under the law of this jurisdiction to supply the product;
- the product is taken for the purposes of this section not to have been so registered immediately before that commencement.

176 Existing registration or approval of label

- (1) If, immediately before the commencement of the Agvet Code of this jurisdiction:
- (a) no provision was made by the corresponding previous law of this jurisdiction for the registration of chemical products; but
 - (b) a label in relation to, or in relation to containers for, a chemical product was registered or approved by the previous registering authority of this jurisdiction;
- then, upon that commencement, the following paragraphs apply:
- (c) the product is taken to have been registered unconditionally by the APVMA under section 20 of that Code;
 - (d) the label is taken to have been approved in relation to the product by the APVMA under section 21 of that Code:
 - (i) for the containers for which it was registered or approved by that previous registering authority or, if it was not registered or approved for containers, for all containers for the product; and
 - (ii) subject to the conditions (if any) to which its registration or approval by that authority was subject.
- (2) If, immediately before the commencement of the Agvet Code of this jurisdiction, a label in relation to, or in relation to containers

for, a chemical product was registered or approved by the previous registering authority of this jurisdiction, the label is taken to have been approved in relation to the product by the APVMA under section 21 of that Code upon that commencement:

- (a) for the containers for which it was registered or approved by that previous registering authority or, if it was not registered or approved for containers, for all containers for the product; and
- (b) subject to the conditions (if any) to which its registration or approval by that authority was subject.

178 Provisions that apply in respect of existing registrations or approvals

- (1) If a chemical product is taken by section 172 or 174 or subsection 176(1) of the Agvet Code of this jurisdiction to have been registered under that Code:
 - (a) the APVMA may, but does not have to, do either or both of the following:
 - (i) give a distinguishing number to the product;
 - (ii) enter the relevant particulars in the Register; and
 - (b) paragraph 167(1)(b) of that Code has effect as if the registration of the product that is taken to be effected by section 172 or 174 or subsection 176(1) of that Code resulted from a decision by the APVMA under Division 2 of Part 2 of that Code to register the product subject to the conditions to which its registration is taken to be subject by that section.
- (2) If a label for containers for a chemical product is taken by paragraph 174(1)(c) or section 176 of the Agvet Code of this jurisdiction to have been approved under that Code, the APVMA may, but does not have to, do either or both of the following:
 - (a) give a distinguishing number to the label;
 - (b) record the relevant particulars in the relevant APVMA file.

180 Reconsideration of existing clearances for registration

If:

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- (a) before the commencement of the Agvet Code of this jurisdiction, the APVMA had, under section 17 of the repealed Act, informed the person holding a certificate of clearance for registration issued in respect of a chemical product that it proposed to reconsider the grant of the clearance, but the APVMA had not completed its reconsideration; and
 - (b) the product is taken by section 172 or 174 of that Code to have been registered by the APVMA subject to conditions;
- the following paragraphs apply:
- (c) any notice that the APVMA has given to the person under subsection 17(1) of the repealed Act in respect of its proposed reconsideration of the clearance is taken to have been a notice of a proposed reconsideration of the registration that the APVMA has duly given, with any necessary changes, under subsection 32(1) of that Code as if that Code had been in force when the notice was given;
 - (ca) any information (other than particulars of trials or laboratory experiments) given to the APVMA by the person to whom the notice was given is taken to have been given by the person to the APVMA under subsection 32(1) of that Code;
 - (d) any particulars of trials or laboratory experiments given to the APVMA by the person to whom the notice was given is taken to have been given by the person to the APVMA under section 33 of that Code.

181 Existing permit

- (1) If:
 - (a) immediately before the commencement of the Agvet Code of this jurisdiction, there was in force a permit or other instrument issued by the previous registering authority of this jurisdiction in respect of an active constituent for a proposed or existing chemical product or in respect of a chemical product; and
 - (b) the permit or other instrument authorised persons generally, or a person or class of persons, to do or omit to do any thing the doing of which, or the omission to do which, after that commencement would, apart from this section, be an offence

against section 74, 75, 76, 77, 78, 79, 80, 81, 84, 85, 87 or 91 of that Code or against an eligible law of this jurisdiction; the following subsections apply.

- (2) The permit or other instrument, to the extent that it authorises a person to do or omit to do that thing, is taken to be a permit that the APVMA has issued under section 114 of that Code upon that commencement subject to the conditions (if any) to which it was subject immediately before that commencement.
- (3) The person who applied for the permit or other instrument is taken to be the person who applied for the permit under that Code.

183 Pending proceedings before Administrative Appeals Tribunal

- (1) If, before the commencement of the Agvet Code of this jurisdiction, an application had been duly made under the repealed Act to the Administrative Appeals Tribunal for review of a decision by the APVMA under that Act in respect of a chemical product but the application had not been disposed of by the Tribunal, the following provisions apply.
- (2) If the application to the Tribunal was made under paragraph 41(1)(b) of the repealed Act for the review of a decision by the APVMA under section 15 of that Act to refuse an application for clearance of the product:
 - (a) the application for clearance of the product is taken to have been an application made under section 10 of the Agvet Code of this jurisdiction for registration of the product; and
 - (b) the APVMA's decision to refuse the application for clearance of the product is taken to have been a decision by the APVMA under Division 2 of Part 2 of that Code to refuse the application for registration of the product; and
 - (c) the application to the Tribunal is taken to have been an application duly made under paragraph 167(1)(a) of that Code for review of that decision by the APVMA to refuse the application for registration of the product; and
 - (d) the Tribunal is to continue to deal with the application for review accordingly.

Section 183

(3) If:

- (a) the application to the Tribunal was made under paragraph 41(1)(a) of the repealed Act for the review of a decision by the APVMA under section 15 of that Act to grant clearance of the product subject to particular conditions; and
- (b) the product is taken by section 172 or 174 of the Agvet Code of this jurisdiction to have been registered by the APVMA subject to those conditions;

the application is taken to have been an application duly made under paragraph 167(1)(b) of that Code for review of a decision of the APVMA under Division 2 of Part 2 of that Code to register the product subject to those conditions and the Tribunal is to continue to deal with the application accordingly.

(4) If:

- (a) the application to the Tribunal was made under paragraph 41(1)(c) of the repealed Act for the review of a decision that the APVMA has made under section 16 of that Act to refuse an application to vary the conditions to which clearance of the product was subject; and
- (b) the product is taken by section 172 or 174 of the Agvet Code of this jurisdiction to have been registered by the APVMA subject to those conditions;

the following paragraphs apply:

- (c) the application to vary the conditions of the clearance of the product is taken to have been an application made under section 27 of that Code for the variation of conditions of the registration of the product;
- (d) the application to the Tribunal is taken to have been an application duly made under paragraph 167(1)(d) of that Code for review of a decision by the APVMA under Division 3 of Part 2 of that Code to refuse the application for the variation of conditions of the registration of the product;
- (e) the Tribunal is to deal with the application for review accordingly.

(5) If:

- (a) the application to the Tribunal was made under paragraph 41(1)(e) of the repealed Act for the review of a

decision that the APVMA made under section 17 of that Act to vary the conditions to which the clearance of the product was subject; and

- (b) the product is taken by section 172 or 174 of the Agvet Code of this jurisdiction to have been registered by the APVMA subject to those conditions;

the following paragraphs apply:

- (c) the product is taken to have had those conditions varied by the APVMA under subsection 29(1) of that Code;
- (d) the application to the Tribunal is taken to have been an application duly made under paragraph 167(1)(e) of that Code for review of the decision by the APVMA to vary those conditions;
- (e) the Tribunal is to deal with the application for review accordingly.

184 Existing notices requiring further information or samples

If, before the commencement of the Agvet Code of this jurisdiction:

- (b) a previous registering authority of this jurisdiction duly gave a notice to a person, under a provision of the law of this jurisdiction to which section 159 of that Code corresponds, in respect of a chemical product to which section 174 of that Code applies or in respect of a label to which section 176 of that Code applies; and
- (c) the person had not complied with the notice before that commencement;

the notice is taken to have been a notice duly given to that person by the APVMA under section 159 of that Code in respect of that product or label, as the case may be, as if that Code had been in force when the notice was given.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

| | |
|--|--|
| ad = added or inserted | o = order(s) |
| am = amended | Ord = Ordinance |
| amdt = amendment | orig = original |
| c = clause(s) | par = paragraph(s)/subparagraph(s) /sub-subparagraph(s) |
| C[x] = Compilation No. x | pres = present |
| Ch = Chapter(s) | prev = previous |
| def = definition(s) | (prev...) = previously |
| Dict = Dictionary | Pt = Part(s) |
| disallowed = disallowed by Parliament | r = regulation(s)/rule(s) |
| Div = Division(s) | reloc = relocated |
| ed = editorial change | renum = renumbered |
| exp = expires/expired or ceases/ceased to have effect | rep = repealed |
| F = Federal Register of Legislation | rs = repealed and substituted |
| gaz = gazette | s = section(s)/subsection(s) |
| LA = <i>Legislation Act 2003</i> | Sch = Schedule(s) |
| LIA = <i>Legislative Instruments Act 2003</i> | Sdiv = Subdivision(s) |
| (md) = misdescribed amendment can be given effect | SLI = Select Legislative Instrument |
| (md not incorp) = misdescribed amendment cannot be given effect | SR = Statutory Rules |
| mod = modified/modification | Sub-Ch = Sub-Chapter(s) |
| No. = Number(s) | SubPt = Subpart(s) |
| | <u>underlining</u> = whole or part not commenced or to be commenced |

Endnote 3—Legislation history

Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|-----------------|--------------|---|---|
| Agricultural and Veterinary Chemicals Code Act 1994 | 47, 1994 | 24 Mar 1994 | 15 Mar 1995 (<i>see</i> s. 2) | |
| Primary Industries and Energy Legislation Amendment Act (No. 2) 1994 | 129, 1994 | 21 Oct 1994 | s. 3: (a) | — |
| Competition Policy Reform Act 1995 | 88, 1995 | 20 July 1995 | s. 77: 6 Nov 1995 (<i>see</i> <i>Gazette</i> 1995, No. S423) | — |
| Primary Industries and Energy Legislation Amendment Act (No. 2) 1996 | 59, 1996 | 20 Nov 1996 | Schedule 3: 15 Mar 1995 | — |
| Primary Industries and Energy Legislation Amendment Act (No. 1) 1997 | 22, 1997 | 7 Apr 1997 | Schedule 1: Royal Assent | — |
| Gene Technology (Consequential Amendments) Act 2000 | 170, 2000 | 21 Dec 2000 | Schedule 1 (items 4–7): 22 June 2001 (<i>see</i> s. 2) | — |
| Corporations (Repeals, Consequentials and Transitionals) Act 2001 | 55, 2001 | 28 June 2001 | ss. 4–14 and Schedule 3 (item 18): 15 July 2001 (<i>see</i> s. 2(3) and <i>Gazette</i> 2001, No. S285) | ss. 4–14 |
| Agriculture, Fisheries and Forestry Legislation Amendment (Application of Criminal Code) Act 2001 | 115, 2001 | 18 Sept 2001 | s. 4 and Schedule 1 (items 38–119): 16 Oct 2001 | s. 4 |

Agricultural and Veterinary Chemicals Code Act 1994

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Compilation No. 29

Compilation date: 21/10/16

Registered: 27/10/16

Endnotes

Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|--|-----------------|--------------|--|---|
| Agricultural and Veterinary Chemicals Legislation Amendment Act 2003 | 13, 2003 | 8 Apr 2003 | s. 4 and Schedule 1: 8 Oct 2003 | s. 4 |
| as amended by | | | | |
| Statute Law Revision Act 2005 | 100, 2005 | 6 July 2005 | Sch 2 (item 3): 8 Oct 2003 (s 2(1) item 26) | — |
| Agricultural and Veterinary Chemicals Legislation Amendment (Name Change) Act 2004 | 79, 2004 | 23 June 2004 | Schedule 1 (items 132–446): 30 July 2004 (<i>see Gazette</i> 2004, No. GN30) Schedule 2 (item 1): 24 June 2004 | — |
| US Free Trade Agreement Implementation Act 2004 | 120, 2004 | 16 Aug 2004 | Sch 2 (items 1, 3–14–21): 1 Jan 2005 (s 2(1) items 3, 4) | — |
| Agricultural and Veterinary Chemicals Legislation Amendment (Levy and Fees) Act 2005 | 42, 2005 | 1 Apr 2005 | Schedule 1 (items 43–47): Royal Assent | Sch. 1 (item 46) |
| Statute Law Revision Act 2005 | 100, 2005 | 6 July 2005 | Sch 1 (item 4): 8 Oct 2003 (s 2(1) item 5) Sch 1 (item 5): 6 July 2005 (s 2(1) item 6) | — |
| Food Standards Australia New Zealand Amendment Act 2007 | 98, 2007 | 28 June 2007 | Sch 1 (items 72, 73, 77, 78): 1 July 2007 (s 2(1) item 6) | Sch 1 (items 77, 78) |
| Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010 | 103, 2010 | 13 July 2010 | Schedule 6 (items 1, 3, 153): 1 Jan 2011 | — |

Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|--|------------------------|---------------|---|--|
| Agricultural and Veterinary Chemicals Code Amendment Act 2010 | 113, 2010 | 14 July 2010 | 15 July 2010 | Sch. 1 (items 7B, 8) |
| Food Standards Australia New Zealand Amendment Act 2010 | 121, 2010 | 17 Nov 2010 | Schedule 1 (items 2–6): 1 Mar 2011 (<i>see</i> F2011L00312) | Sch. 1 (item 6) |
| Acts Interpretation Amendment Act 2011 | 46, 2011 | 27 June 2011 | Schedule 2 (items 49–51) and Schedule 3 (items 10, 11): 27 Dec 2011 | Sch. 3 (items 10, 11) |
| Industrial Chemicals (Notification and Assessment) Amendment Act 2012 | 147, 2012 | 6 Nov 2012 | Schedule 2 (item 1): Royal Assent | — |
| Agricultural and Veterinary Chemicals Legislation Amendment Act 2013 | 125, 2013 | 29 June 2013 | Sch 1, Sch 2, Sch 3 (items 75–316), Sch 4 and Sch 6 (items 34A–45): 1 July 2014 | — |
| Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014 | 62, 2014 | 30 June 2014 | Sch 13 (items 5–8) and Sch 14: 1 July 2014 (s 2(1) items 7, 14) | Sch 14 |
| as amended by Public Governance and Resources Legislation Amendment Act (No. 1) 2015 | 36, 2015 | 13 Apr 2015 | Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2) | Sch 7 |

Agricultural and Veterinary Chemicals Code Act 1994

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Compilation No. 29

Compilation date: 21/10/16

Registered: 27/10/16

Endnotes

Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
|---|------------------------|---------------|--|--|
| as amended by | | | | |
| Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015 | 126, 2015 | 10 Sept 2015 | Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2) | — |
| Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015 | 126, 2015 | 10 Sept 2015 | Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2) | — |
| Agricultural and Veterinary Chemicals Legislation Amendment (Removing Re-approval and Re-registration) Act 2014 | 91, 2014 | 21 July 2014 | Sch 1 (items 2–70) and Sch 2 (items 1–55, 63): 21 July 2014 (s 2(1) item 2) | Sch 2 (item 63) |
| Statute Law Revision Act (No. 1) 2015 | 5, 2015 | 25 Feb 2015 | Sch 1 (items 2–4) and Sch 3 (items 16–19): 25 Mar 2015 (s 2(1) items 2 and 10) | — |
| Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015 | 126, 2015 | 10 Sept 2015 | Sch 1 (items 8–10): 5 Mar 2016 (s 2(1) item 2) | — |
| Statute Law Revision Act (No. 2) 2015 | 145, 2015 | 12 Nov 2015 | Sch 1 (items 2, 3): 10 Dec 2015 (s 2(1) item 2) | — |
| Statute Law Revision Act (No. 1) 2016 | 4, 2016 | 11 Feb 2016 | Sch 1 (items 4–8): 10 Mar 2016 (s 2(1) item 2) | — |
| Statute Update Act 2016 | 61, 2016 | 23 Sept 2016 | Sch 3 (item 2): 21 Oct 2016 (s 2(1) item 1) | — |

Endnote 3—Legislation history

- (a) The *Agricultural and Veterinary Chemicals Code Act 1994* was amended by the *Primary Industries and Energy Legislation Amendment Act (No. 2) 1994*, subsection 2(2) of which provides as follows:
- (2) The amendments made by this Act to the *Agricultural and Veterinary Chemicals Code Act 1994* commence, or are taken to have commenced, on the same day as that Act, immediately after the commencement of that Act.

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|--|
| s. 3 | am. No. 79, 2004 |
| s. 5 | am. No. 115, 2001 |
| s. 6 | am. No. 79, 2004; No 125, 2013 |
| s. 7 | am No 125, 2013; No 126, 2015 |
| s. 8 | am. No. 79, 2004 |
| s. 9 | ad. No. 13, 2003 am. No. 46, 2011 rep No 125, 2013 |
| Schedule | |
| Table of contents..... | rep No 125, 2013 |
| Part 1 | |
| Division 1 | |
| Division 1 heading..... | ad No 125, 2013 |
| s 1A..... | ad No 125, 2013 |
| s. 3 | am. No. 22, 1997; No. 13, 2003; Nos. 79 and 120, 2004; No. 98, 2007; No. 113, 2010; No. 46, 2011; No. 147, 2012; No 125, 2013; No 91, 2014; No 4, 2016 |
| s 5 | am No 145, 2015 |
| s 5A..... | ad No 125, 2013 |
| s 5B..... | ad No 125, 2013 |
| s 5C..... | ad No 125, 2013 |
| s 5D..... | ad No 125, 2013 |
| Heading to s. 6 | am. No. 79, 2004 |
| s. 6 | am. No. 13, 2003; No. 79, 2004 |
| s 6A..... | ad No 125, 2013 |
| s 6B..... | ad No 125, 2013 rs No 91, 2014 |
| s 6C..... | ad No 125, 2013 |
| s 6D..... | ad No 125, 2013 |

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|---------------------|
| s 6E..... | ad No 125, 2013 |
| s. 7..... | am. No. 103, 2010 |
| s 8A..... | ad. No. 115, 2001 |
| renum s 8AA..... | No 125, 2013 |
| Div 2 | |
| Div 2 of Pt 1..... | ad No 125, 2013 |
| s 8A..... | ad No 125, 2013 |
| | am No 91, 2014 |
| s 8B..... | ad No 125, 2013 |
| | am No 91, 2014 |
| s 8C..... | ad No 125, 2013 |
| s 8D..... | ad No 125, 2013 |
| Div 3 | |
| Div 3 of Pt 1..... | ad No 125, 2013 |
| s 8E..... | ad No 125, 2013 |
| | am No 91, 2014 |
| s 8F..... | ad No 125, 2013 |
| | am No 91, 2014 |
| Note to s 8F(2)..... | ad No 91, 2014 |
| s 8G..... | ad No 125, 2013 |
| s 8H..... | ad No 125, 2013 |
| | am No 91, 2014 |
| s 8J..... | ad No 125, 2013 |
| s 8K..... | ad No 125, 2013 |
| | rep No 91, 2014 |
| Div 4 | |
| Div 4 of Pt 1..... | ad No 125, 2013 |
| s 8L..... | ad No 125, 2013 |
| s 8M..... | ad No 125, 2013 |
| s 8N..... | ad No 125, 2013 |
| s 8P..... | ad No 125, 2013 |

Endnotes

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|---|
| s 8Q..... | ad No 125, 2013 |
| s 8R..... | ad No 125, 2013 |
| Div 5 | |
| Div 5 of Pt 1..... | ad No 125, 2013 |
| s 8S..... | ad No 125, 2013 |
| | am No 91, 2014 |
| Note to s 8S(2)..... | ad No 91, 2014 |
| Div 6 | |
| Div 6 of Pt 1..... | ad No 125, 2013 |
| s 8T..... | ad No 125, 2013 |
| s 8U..... | ad No 125, 2013 |
| s 8V..... | ad No 125, 2013 |
| Div 7 | |
| Div 7 of Pt 1..... | ad No 91, 2014 |
| s 8W..... | ad No 91, 2014 |
| s 8X..... | ad No 91, 2014 |
| Part 2 | |
| Division 1 | |
| s. 9..... | am. No. 13, 2003; No. 79, 2004; No. 113, 2010 |
| | rs No 125, 2013 |
| | am No 91, 2014 |
| Division 2 | |
| Heading to Div. 2..... | rs. No. 13, 2003; No 125, 2013 |
| of Part 2 | |
| s 9A..... | ad No 125, 2013 |
| s. 10..... | am. No. 79, 2004 |
| | rs No 125, 2013 |
| s. 11..... | am. No. 13, 2003; No. 79, 2004; No. 42, 2005 |
| | rs No 125, 2013 |
| s. 11A..... | ad. No. 13, 2003 |
| | am. No. 79, 2004 |

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|--|
| | rep No 125, 2013 |
| Heading to s. 11B..... | am. No. 120, 2004 |
| | rep No 125, 2013 |
| s. 11B..... | ad. No. 120, 2004 |
| | am. No. 120, 2004 |
| | rep No 125, 2013 |
| Heading to s. 12..... | am. No. 79, 2004 |
| | rs No 125, 2013 |
| s. 12..... | rs. No. 13, 2003 |
| | am. No. 79, 2004 |
| | rs No 125, 2013 |
| Heading to s. 13..... | am. No. 79, 2004 |
| | rs No 125, 2013 |
| s. 13..... | rs. No. 13, 2003 |
| | am. No. 79, 2004 |
| | rs No 125, 2013 |
| s. 13A..... | ad. No. 98, 2007 |
| | am. No. 121, 2010 |
| | rep No 125, 2013 |
| s. 14..... | am. No. 170, 2000; No. 13, 2003; No. 79, 2004; No. 121, 2010 |
| | rs No 125, 2013 |
| s. 14A..... | ad. No. 13, 2003 |
| | am. No. 79, 2004 |
| | rs No 125, 2013 |
| | am No 4, 2016 |
| Heading to s. 14B..... | am. No. 120, 2004 |
| | rs No 125, 2013 |
| s. 14B..... | ad. No. 120, 2004 |
| | am. No. 120, 2004; No 125, 2013 |
| Heading to s. 15..... | am. No. 79, 2004 |
| | rs No 125, 2013 |

Endnotes

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|---|
| s. 15 | am. Nos. 79 and 120, 2004; No 125, 2013; No 91, 2014 |
| s. 16 | am No 125, 2013; |
| Heading to s. 17 | am. No. 79, 2004 |
| s. 17 | am. No. 13, 2003; No. 79, 2004; No 125, 2013; No 91, 2014 |
| Note to s 17(4) | ad No 125, 2013 |
| Note to s 17(5) | ad No 125, 2013 |
| Heading to s. 18 | am. No. 79, 2004 |
| s. 18 | am. No. 79, 2004; No 125, 2013; No 91, 2014 |
| Note to s 18(4) | ad No 125, 2013 |
| Note to s 18(5) | ad No 125, 2013 |
| s. 19 | rs. No. 13, 2003 am. No. 79, 2004 rs No 125, 2013 am No 91, 2014 |
| s. 20 | rs. No. 13, 2003 am. No. 79, 2004 rs No 125, 2013 am No 91, 2014 |
| Heading to s. 21 | ad. No. 100, 2005 rs No 125, 2013 |
| s. 21 | rs. No. 13, 2003 am. No. 79, 2004; No. 113, 2010 rs No 125, 2013 |
| s. 22 | am. No. 13, 2003; No. 79, 2004 rs No 125, 2013 |
| Heading to s. 23 | am. No. 113, 2010 rs No 125, 2013 |
| s. 23 | am. No. 79, 2004; No. 113, 2010 rs No 125, 2013 am No 91, 2014 |
| s. 23A..... | ad. No. 113, 2010 |

Endnote 4—Amendment history

| Provision affected | How affected |
|--------------------------------------|---|
| | rep No 125, 2013 |
| s 24 | am. No. 13, 2003; No. 79, 2004 |
| | rep No 125, 2013 |
| s 25 | am. No. 13, 2003; No. 79, 2004 |
| | rep No 125, 2013 |
| s. 26 | am. No. 115, 2001; No. 13, 2003; No. 79, 2004 |
| | rs No 125, 2013 |
| Div 2AA | |
| Div 2AA of Pt 2..... | ad No 91, 2014 |
| s 26AA..... | ad No 91, 2014 |
| s 26AB..... | ad No 91, 2014 |
| s 26AC..... | ad No 91, 2014 |
| s 26AD..... | ad No 91, 2014 |
| Division 2A | |
| hdg to Div 2A of Part 2..... | rs No 91, 2014 |
| Div. 2A of Part 2..... | ad. No. 113, 2010 |
| | rs No 125, 2013 |
| s. 26A..... | ad. No. 113, 2010 |
| | rs No 125, 2013; No 91, 2014 |
| s 26B..... | ad No 125, 2013 |
| | rs No 91, 2014 |
| s 26C..... | ad No 125, 2013 |
| | rs No 91, 2014 |
| hdg to s 26D..... | rs No 91, 2014 |
| s 26D..... | ad No 125, 2013 |
| | am No 91, 2014 |
| Division 3 | |
| Heading to Div. 3 of Part 2 | rs. No. 13, 2003; No 125, 2013 |
| Div 3 of Part 2..... | rs No 125, 2013 |
| s 26E..... | ad No 125, 2013 |

Endnotes

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|---|
| s. 27 | am. No. 79, 2004 rs No 125, 2013 am No 91, 2014 |
| s. 28 | am. No. 13, 2003; No. 79, 2004; No. 113, 2010 rs No 125, 2013 |
| s. 28A..... | ad. No. 120, 2004 rep No 125, 2013 |
| Heading to s. 28B..... | am. No. 120, 2004 rep No 125, 2013 |
| s. 28B..... | ad. No. 120, 2004 am. No. 120, 2004 rep No 125, 2013 |
| s. 29 | am. No. 170, 2000; No. 13, 2003; No. 79, 2004; No. 113, 2010 rs No 125, 2013 |
| s 29A..... | ad No 125, 2013 |
| s 29B..... | ad No 125, 2013 am No 91, 2014 |
| Div 3A of Pt 2..... | ad No 125, 2013 rep No 91, 2014 |
| s 29C..... | ad No 125, 2013 rep No 91, 2014 |
| s 29D..... | ad No 125, 2013 rep No 91, 2014 |
| s 29E..... | ad No 125, 2013 rep No 91, 2014 |
| s 29F | ad No 125, 2013 rep No 91, 2014 |
| s 29G..... | ad No 125, 2013 rep No 91, 2014 |
| s 29H..... | ad No 125, 2013 rep No 91, 2014 |

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|--|
| s 29J..... | ad No 125, 2013 rep No 91, 2014 |
| s 29K..... | ad No 125, 2013 rep No 91, 2014 |
| Division 4 | |
| hdg to Div 4 of Pt 2..... | rs No 125, 2013 |
| s 29L..... | ad No 125, 2013 am No 91, 2014 |
| Heading to s. 30..... | am. No. 79, 2004 rs No 125, 2013 |
| s. 30..... | am. No. 79, 2004; No 125, 2013 |
| Heading to s. 31..... | am. No. 79, 2004 |
| s. 31..... | am. No. 13, 2003; No. 79, 2004; No 125, 2013 |
| Heading to s. 32..... | am. No. 79, 2004 rs No 125, 2013 |
| s. 32..... | am. No. 59, 1996; No. 115, 2001; No. 13, 2003; No. 79, 2004; No 125, 2013; No 91, 2014 |
| Heading to s. 33..... | am. No. 79, 2004 rs No 125, 2013 |
| s. 33..... | am. No. 115, 2001; No. 13, 2003; No. 79, 2004; No 125, 2013; No 91, 2014 |
| Heading to s. 34..... | am. No. 79, 2004 rs No 125, 2013 |
| s. 34..... | am. No. 170, 2000; No. 13, 2003; No. 79, 2004; No. 113, 2010 rs No 125, 2013 |
| Note to s. 34(5A)..... | am. No. 79, 2004 rep. No. 113, 2010 |
| s. 34A..... | ad. No. 13, 2003 am. No. 79, 2004; No. 113, 2010 rs No 125, 2013 am No 91, 2014 |
| Note to s. 34A(4)..... | am. No. 79, 2004 |

Endnotes

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|---------------------------------|
| | rep. No. 113, 2010 |
| s 34AA..... | ad No 125, 2013 |
| s 34AB..... | ad No 125, 2013 |
| Note to s 34AB(2)..... | ad No 91, 2014 |
| s 34AC..... | ad No 125, 2013 |
| | am No 91, 2014 |
| Note to s 34AC(2)..... | ad No 91, 2014 |
| s 34AD..... | ad No 125, 2013 |
| | rep No 91, 2014 |
| s 34AE..... | ad No 125, 2013 |
| | rep No 91, 2014 |
| s 34AF..... | ad No 125, 2013 |
| | am No 91, 2014 |
| Division 4A | |
| Div. 4A of Part 2..... | ad. No. 120, 2004 |
| Subdivision A | |
| s. 34B..... | ad. No. 120, 2004 |
| | am. No. 120, 2004 |
| | rep No 125, 2013 |
| s 34F..... | ad No 125, 2013 |
| Subdivision B | |
| hdg to Sdiv B of..... | rs No 125, 2013 |
| Div 4A of Pt 2 | |
| Heading to s. 34C..... | am. No. 120, 2004 |
| | rep No 125, 2013 |
| hdg to s 34G..... | ad No 125, 2013 |
| s. 34C..... | ad. No. 120, 2004 |
| | am. No. 120, 2004; No 125, 2013 |
| Note 2 to s. 34C(1)..... | am. No. 120, 2004 |
| | rep No 125, 2013 |
| s 34G..... | am No 91, 2014 |

Endnote 4—Amendment history

| Provision affected | How affected |
|--------------------------------|--|
| hdg to s 34H..... | ad No 125, 2013 |
| Subdivision C | |
| Sdiv C to Div 4A of Pt 2 | rs No 125, 2013 |
| Subhead. to s. 34D(6)..... | am. No. 120, 2004 rep No 125, 2013 |
| ss. 34D, 34E..... | ad. No. 120, 2004 am. No. 120, 2004 rep No 125, 2013 |
| s 34J..... | ad No 125, 2013 am No 4, 2016 |
| s 34K..... | ad No 125, 2013 |
| s 34L..... | ad No 125, 2013 |
| s 34M..... | ad No 125, 2013 |
| Sdiv D to Div 4A of Pt 2 | rep No 125, 2013 |
| s. 34F | ad. No. 120, 2004 am. No. 120, 2004 rep No 125, 2013 |
| Note 2 to s. 34F(1) | am. No. 120, 2004 rep No 125, 2013 |
| Sdiv E to Div 4A of Pt 2 | rep No 125, 2013 |
| Heading to s. 34G | am. No. 120, 2004 rep No 125, 2013 |
| s. 34G..... | ad. No. 120, 2004 am. No. 120, 2004 rep No 125, 2013 |
| Division 5 | |
| hdg to Div 5 of Pt 2..... | rs No 125, 2013 |
| s 34N..... | ad No 125, 2013 |
| s 34P | ad No 125, 2013 |
| s 35 | am. No. 79, 2004; No 125, 2013 |
| s 35A..... | ad No 125, 2013 |

Endnotes

Endnote 4—Amendment history

| Provision affected | How affected |
|-------------------------------|---|
| s 36 | am. No. 79, 2004 |
| Heading to s. 37 | am. No. 79, 2004 |
| s. 37 | am. No. 13, 2003; No. 79, 2004 rep No 125, 2013 |
| Heading to s. 38 | am. No. 79, 2004 rs No 125, 2013 |
| s. 38 | am. No. 13, 2003; No. 79, 2004; No 125, 2013 |
| s 38A..... | am No 125, 2013 |
| s. 39 | rs. No. 22, 1997 am. No. 79, 2004; No 125, 2013 |
| Note to s 39..... | ad No 125, 2013 |
| s 40 | am. No. 13, 2003; No. 79, 2004; No. 113, 2010 rep No 125, 2013 |
| s 41 | am. No. 13, 2003; No. 79, 2004; No. 113, 2010 rs No 125, 2013 |
| hdg to s 42..... | rs No 125, 2013 |
| s. 42 | am. No. 13, 2003; No. 79, 2004; No 125, 2013 |
| Note to s 42..... | ad No 125, 2013 |
| s 43 | am No 125, 2013; No 91, 2014 |
| s. 44 | am. No. 79, 2004; No 125, 2013 |
| s. 45 | am. No. 13, 2003; No 125, 2013 |
| s. 45A..... | ad. No. 13, 2003 am. No. 79, 2004 rs No 125, 2013 |
| s 45B..... | ad No 125, 2013 |
| s 45C..... | ad No 125, 2013 |
| s. 46 | am. No. 13, 2003; No. 79, 2004; No 125, 2013 |
| Division 6 | |
| hdg to Div 6 of Pt 2..... | rs No 125, 2013 |
| Sdiv A | |
| Sdiv A of Div 6 of Pt 2 | ad No 125, 2013 |

Endnote 4—Amendment history

| Provision affected | How affected |
|---|--|
| s 46A..... | ad No 125, 2013 am No 91, 2014 |
| Sdiv B | |
| hdg to Sdiv B of Div 6 of Pt 2..... | ad No 125, 2013 |
| s 47 | am. No. 13, 2003; No. 113, 2010 rs No 125, 2013 am No 91, 2014 |
| s 47A..... | ad No 125, 2013 rep No 91, 2014 |
| Sdiv C | |
| hdg to Sdiv C of Div 6 of Pt 2 | ad No 125, 2013 rs No 91, 2014 |
| Sdiv C of Div 6 of Pt 2..... | ad No 125, 2013 |
| s 47B..... | ad No 125, 2013 rep No 91, 2014 |
| hdg to s 47C..... | rs No 91, 2014 |
| s 47C..... | ad No 125, 2013 am No 91, 2014 |
| s 47D..... | ad No 125, 2013 rs No 91, 2014 |
| s 47E..... | ad No 125, 2013 am No 91, 2014 |
| Sdiv D | |
| hdg to Sdiv D of..... Div 6 of Pt 2 | ad No 125, 2013 |
| hdg to s 48..... | rs No 125, 2013 |
| s 48 | am. No. 79, 2004; No 125, 2013; No 91, 2014 |
| s 49 | am. No. 13, 2003; No. 79, 2004 rs No 125, 2013 am No 91, 2014 |

Endnotes

Endnote 4—Amendment history

| Provision affected | How affected |
|--------------------------------------|--|
| s 50 | rs No 125, 2013 am No 91, 2014 |
| s. 51 | am. No. 79, 2004 |
| Heading to Div. 7 of Part 2 | rs. No. 79, 2004 rep No 125, 2013 |
| Div 7 of Pt 2..... | rep No 125, 2013 |
| s. 52 | am. No. 79, 2004 rep No 125, 2013 |
| s 53 | am. No. 13, 2003; No. 79, 2004 rep No 125, 2013 |
| s 54 | am. No. 13, 2003; No. 79, 2004 rep No 125, 2013 |
| s. 55 | am. No. 115, 2001; No. 13, 2003; No. 79, 2004 rep No 125, 2013 |
| s. 56 | am. No. 79, 2004 rep No 125, 2013 |
| Part 2A..... | ad. No. 13, 2003 rep No 125, 2013 |
| s. 56A..... | ad. No. 13, 2003 am. No. 79, 2004 rep No 125, 2013 |
| s. 56B..... | ad. No. 13, 2003 rep No 125, 2013 |
| s. 56C..... | ad. No. 13, 2003 am. No. 79, 2004 rep No 125, 2013 |
| Heading to s. 56D | am. No. 79, 2004 rep No 125, 2013 |
| s. 56D..... | ad. No. 13, 2003 am. No. 79, 2004; No. 46, 2011 rep No 125, 2013 |

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|--|
| s 56E..... | ad. No. 13, 2003 am. No. 79, 2004 rep No 125, 2013 |
| s 56F..... | ad. No. 13, 2003 am. No. 79, 2004 rep No 125, 2013 |
| s 56G..... | ad. No. 13, 2003 rep No 125, 2013 |
| s 56H..... | ad. No. 13, 2003 rep No 125, 2013 |
| s 56I..... | ad. No. 13, 2003 am. No. 79, 2004 rep No 125, 2013 |
| s 56J..... | ad. No. 13, 2003 am. No. 79, 2004 rep No 125, 2013 |
| s 56K..... | ad. No. 13, 2003 am. No. 79, 2004 rep No 125, 2013 |
| s. 56L..... | ad. No. 13, 2003 rep No 125, 2013 |
| s. 56M..... | ad. No. 13, 2003 am. No. 79, 2004 rep No 125, 2013 |
| s. 56N..... | ad. No. 13, 2003 rep No 125, 2013 |
| s 56O..... | ad. No. 13, 2003 am. No. 79, 2004 rep No 125, 2013 |
| s 56P..... | ad. No. 13, 2003 am. No. 79, 2004 |

Endnotes

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|---------------------|
| | rep No 125, 2013 |
| s 56Q..... | ad. No. 13, 2003 |
| | am. No. 79, 2004 |
| | rep No 125, 2013 |
| s 56R..... | ad. No. 13, 2003 |
| | am. No. 79, 2004 |
| | rep No 125, 2013 |
| s 56S..... | ad. No. 13, 2003 |
| | am. No. 79, 2004 |
| | rep No 125, 2013 |
| s 56T..... | ad. No. 13, 2003 |
| | am. No. 79, 2004 |
| | rep No 125, 2013 |
| s 56U..... | ad. No. 13, 2003 |
| | am. No. 79, 2004 |
| | rep No 125, 2013 |
| Heading to s. 56V..... | am. No. 79, 2004 |
| | rep No 125, 2013 |
| s. 56V..... | ad. No. 13, 2003 |
| | am. No. 79, 2004 |
| | rep No 125, 2013 |
| Heading to s. 56W..... | am. No. 79, 2004 |
| | rep No 125, 2013 |
| s. 56W..... | ad. No. 13, 2003 |
| | am. No. 79, 2004 |
| | rep No 125, 2013 |
| Heading to s. 56X..... | am. No. 79, 2004 |
| | rep No 125, 2013 |
| s. 56X..... | ad. No. 13, 2003 |
| | am. No. 79, 2004 |
| | rep No 125, 2013 |

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|--|
| Heading to s. 56Y | am. No. 79, 2004 rep No 125, 2013 |
| s. 56Y..... | ad. No. 13, 2003 am. No. 79, 2004 rep No 125, 2013 |
| Heading to s. 56Z..... | am. No. 79, 2004 rep No 125, 2013 |
| s. 56Z..... | ad. No. 13, 2003 am. No. 79, 2004 rep No 125, 2013 |
| s 56ZA | ad. No. 13, 2003 am. No. 79, 2004 rep No 125, 2013 |
| s 56ZB | ad. No. 13, 2003 am. No. 79, 2004 rep No 125, 2013 |
| Heading to s. 56ZC | am. No. 79, 2004 rep No 125, 2013 |
| s. 56ZC | ad. No. 13, 2003 am. No. 79, 2004 rep No 125, 2013 |
| Heading to s. 56ZD..... | am. No. 79, 2004 rep No 125, 2013 |
| s. 56ZD | ad. No. 13, 2003 am. No. 79, 2004 rep No 125, 2013 |
| s 56ZE..... | ad. No. 13, 2003 am. No. 79, 2004 rep No 125, 2013 |
| s 56ZF..... | ad. No. 13, 2003 am. No. 79, 2004 |

Endnotes

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------------------|---------------------|
| | rep No 125, 2013 |
| s 56ZG | ad. No. 13, 2003 |
| | am. No. 79, 2004 |
| | rep No 125, 2013 |
| s. 56ZH | ad. No. 13, 2003 |
| | rep No 125, 2013 |
| s 56ZI..... | ad. No. 13, 2003 |
| | am. No. 79, 2004 |
| | rep No 125, 2013 |
| s 56ZJ | ad. No. 13, 2003 |
| | am. No. 79, 2004 |
| | rep No 125, 2013 |
| s. 56ZK | ad. No. 13, 2003 |
| | rep No 125, 2013 |
| s 56ZL..... | ad. No. 13, 2003 |
| | am. No. 79, 2004 |
| | rep No 125, 2013 |
| s 56ZM..... | ad. No. 13, 2003 |
| | am. No. 79, 2004 |
| | rep No 125, 2013 |
| s. 56ZN | ad. No. 13, 2003 |
| | rep No 125, 2013 |
| Heading to Div. 9 of Part 2A | rs. No. 79, 2004 |
| | rep No 125, 2013 |
| s 56ZO | ad. No. 13, 2003 |
| | am. No. 79, 2004 |
| | rep No 125, 2013 |
| s 56ZP..... | ad. No. 13, 2003 |
| | am. No. 79, 2004 |
| | rep No 125, 2013 |

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|--|
| s 56ZQ | ad. No. 13, 2003 am. No. 79, 2004 rep No 125, 2013 |
| s 56ZR | ad. No. 13, 2003 am. No. 79, 2004 rep No 125, 2013 |
| s 56ZS | ad. No. 13, 2003 am. No. 79, 2004 rep No 125, 2013 |
| s 56ZT | ad. No. 13, 2003 am. No. 79, 2004 rep No 125, 2013 |
| Part 2B | |
| Part 2B | ad. No. 13, 2003 |
| s. 56ZU | ad. No. 13, 2003 am. No. 79, 2004; No 125, 2013 |
| Part 3 | |
| Division 1 | |
| s. 57 | am. No. 22, 1997; No. 79, 2004; No 125, 2013 |
| Division 2 | |
| Heading to s. 58 | am. No. 79, 2004 |
| s. 58 | am. Nos. 79 and 120, 2004 rep No 125, 2013 |
| Heading to s. 59 | am. No. 22, 1997 |
| s. 59 | am. No. 59, 1996; No. 22, 1997; No. 13, 2003; No. 79, 2004; No 125, 2013; No 91, 2014 |
| Note to s 59(1) | ad No 125, 2013 rep No 91, 2014 |
| Heading to s. 60 | am. No. 79, 2004 rs No 125, 2013 |
| s. 60 | am. No. 22, 1997; No. 79, 2004; No 125, 2013 |

Endnotes

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|---|
| hdg to s 61..... | rs No 125, 2013 |
| s. 61 | am. No. 22, 1997; No. 115, 2001; No. 79, 2004; No 125, 2013 |
| Division 3 | |
| s 62 | am. No. 79, 2004; No 125, 2013 |
| s 63 | am. No. 79, 2004 |
| s 64 | am. No. 79, 2004 |
| s. 68 | am. No. 79, 2004 |
| s. 69 | am. No. 22, 1997; No. 55, 2001; No. 79, 2004; No 125, 2013 |
| s. 70 | am. No. 115, 2001; No. 79, 2004; No 125, 2013 |
| s 71 | am No 125, 2013 |
| Part 4 | |
| Division 1 | |
| s. 72 | am. No. 22, 1997; No. 13, 2003; No 125, 2013 |
| Division 2 | |
| Heading to s. 74..... | am. No. 115, 2001 |
| s. 74 | am. No. 115, 2001; No. 79, 2004; No 125, 2013 |
| Note to s. 74(1) | ad. No. 115, 2001 rep No 125, 2013 |
| Note to s. 74(3) | ad. No. 115, 2001 |
| Heading to s. 75 | am. No. 115, 2001 rs. No. 13, 2003; No 125, 2013 |
| s. 75 | am. No. 115, 2001; No. 13, 2003; No. 79, 2004; No 125, 2013 |
| Note to s. 75(1) | ad. No. 115, 2001 rep No 125, 2013 |
| Note to s. 75(3) | ad. No. 115, 2001 |
| s. 76 | am. No. 79, 2004; No 125, 2013 |
| Note to s. 76(1) | ad. No. 115, 2001 rep No 125, 2013 |
| Note to s. 76(3) | ad. No. 115, 2001 |
| s 77 | am No 125, 2013 |
| Note to s. 77(1) | ad. No. 115, 2001 |

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|---|
| | rep No 125, 2013 |
| Note to s. 77(2) | ad. No. 115, 2001 |
| Heading to s. 78 | rs. No. 13, 2003; No 125, 2013 |
| s. 78 | am. No. 13, 2003; No. 79, 2004; No 125, 2013 |
| Note to s. 78(1) | ad. No. 115, 2001 |
| | rep No 125, 2013 |
| Note to s. 78(3) | ad. No. 115, 2001 |
| s 79 | am No 125, 2013 |
| Note to s. 79(1) | ad. No. 115, 2001 |
| | rep No 125, 2013 |
| Note to s. 79(2) | ad. No. 115, 2001 |
| s 79A..... | ad. No. 13, 2003 |
| | rep No 125, 2013 |
| s 79B..... | ad. No. 13, 2003 |
| | am No 125, 2013 |
| Heading to s. 80 | rs. No. 13, 2003 |
| s. 80 | am. No. 13, 2003; No 125, 2013 |
| Note to s. 80(1) | ad. No. 115, 2001 |
| | rep No 125, 2013 |
| Note to s. 80(2) | ad. No. 115, 2001 |
| Heading to s. 81 | rs. No. 13, 2003 |
| s. 81 | am. No. 13, 2003; No. 79, 2004; No. 113, 2010; No 125, 2013 |
| Note to s. 81(1) | ad. No. 115, 2001 |
| | rep. No. 13, 2003 |
| Note to s. 81(2) | ad. No. 115, 2001 |
| s. 82 | am. No. 115, 2001 |
| | rep No 125, 2013 |
| Note to s. 82(2) | ad. No. 115, 2001 |
| | rep No 125, 2013 |
| s. 83 | am. No. 115, 2001; No 125, 2013 |
| s. 83A..... | ad. No. 13, 2003 |

Endnotes

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|---|
| | rep No 125, 2013 |
| s. 84 | am. No. 115, 2001; No. 13, 2003; No. 79, 2004; No 125, 2013 |
| s. 85 | am. No. 115, 2001; No 125, 2013 |
| s. 86 | am. No. 115, 2001; No. 13, 2003 |
| | rs. No. 113, 2010 |
| | am No 125, 2013; No 91, 2014 |
| s. 87 | am. No. 115, 2001; No. 13, 2003; No 125, 2013 |
| s. 87A..... | ad. No. 13, 2003 |
| | rep No 125, 2013 |
| s. 88 | am. No. 13, 2003; No 125, 2013 |
| Note to s. 88(2) | ad. No. 115, 2001 |
| | rep No 125, 2013 |
| Note to s. 88(3) | ad. No. 115, 2001 |
| s. 89 | am. No. 115, 2001; No. 79, 2004; No 125, 2013 |
| Division 3 | |
| s. 89A..... | ad. No. 13, 2003 |
| | am No 125, 2013; No 91, 2014 |
| s. 90 | am. No. 115, 2001; No 125, 2013 |
| s. 91 | am. No. 115, 2001; No. 79, 2004; No 125, 2013; No 5, 2015 |
| s. 92 | am. No. 115, 2001; No 125, 2013 |
| Division 4 | |
| s. 93 | am. No. 79, 2004 |
| s 94 | am. No. 115, 2001; No 125, 2013 |
| s 95 | am. No. 115, 2001; No 125, 2013 |
| Part 5 | |
| s. 97 | am. No. 115, 2001; No. 13, 2003; No. 79, 2004; No 125, 2013 |
| s 98 | am No 125, 2013 |
| | ed C29 |
| hdg to s 99..... | rs No 125, 2013; No 91, 2014 |
| s. 99 | am. No. 115, 2001; No. 13, 2003; No. 79, 2004; No. 100, 2005; No 125, 2013; No 91, 2014 |

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|---|
| Part 6 | |
| s. 100 | am. No. 88, 1995; No. 79, 2004; No. 103, 2010 |
| Heading to s. 101 | rs. No. 13, 2003; No 125, 2013 |
| s. 101 | am. No. 13, 2003; No. 79, 2004; No 125, 2013 |
| s. 102 | am. No. 13, 2003; No. 79, 2004; No 125, 2013 |
| Heading to s. 103 | rs. No. 13, 2003 |
| s. 103 | am. No. 59, 1996; No. 13, 2003; No. 79, 2004; No. 113, 2010; No 125, 2013 |
| s. 104 | am. No. 79, 2004; No 125, 2013 |
| s. 105 | am. No. 115, 2001; No 125, 2013 |
| Heading to s. 106 | am. No. 103, 2010 |
| s. 106 | am. No. 103, 2010 |
| Part 7 | |
| s. 108 | am. No. 13, 2003; No 125, 2013 |
| s. 109 | am. No. 13, 2003; No 125, 2013; No 5, 2015 |
| hdg to s. 110..... | rs No 125, 2013 |
| s. 110 | am. No. 79, 2004; No 125, 2013 |
| s. 110A..... | ad No 125, 2013 |
| s. 111 | am. No. 13, 2003; No. 79, 2004; No 125, 2013 |
| Heading to s. 112 | am. No. 79, 2004 rs No 125, 2013 |
| s. 112 | am. No. 13, 2003; No. 79, 2004; No 125, 2013 |
| s. 112A..... | ad No 125, 2013 |
| s. 113 | am. No. 79, 2004 |
| hdg to s. 114..... | rs No 125, 2013 |
| s. 114 | am. No. 170, 2000; No. 79, 2004; No 125, 2013 |
| s. 115 | am. No. 79, 2004; No 125, 2013 |
| Note to s. 115(5)..... | ad No 125, 2013 |
| hdg to s. 116..... | rs No 125, 2013 |
| s. 116 | am No 125, 2013 |
| note to s. 116(3C) | am No 91, 2014 |

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Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|--|
| s 117 | am. No. 79, 2004; No 125, 2013 |
| s 117A..... | ad No 125, 2013 |
| hdg to s 118..... | rs No 125, 2013 |
| s 118 | am. No. 79, 2004; No 125, 2013 |
| hdg to s 119..... | rs No 125, 2013 |
| s 119 | am. No. 79, 2004; No 125, 2013 |
| s 119A..... | ad No 125, 2013 |
| s 119B..... | ad No 125, 2013 |
| Part 8 | |
| s. 120 | am. No. 79, 2004; No 125, 2013 |
| s. 120A..... | ad. No. 13, 2003 am No 125, 2013; No 91, 2014 |
| s. 121 | am. No. 115, 2001; No. 79, 2004; No 125, 2013; No 91, 2014 |
| s. 122 | am. No. 13, 2003; No. 79, 2004; No 125, 2013 |
| s. 123 | am. No. 79, 2004; No 125, 2013 |
| s. 124 | am. No. 13, 2003; No. 79, 2004 rep No 125, 2013 |
| s. 126 | am. No. 79, 2004; No 125, 2013 |
| s. 127 | am. No. 13, 2003; No. 79, 2004; No 125, 2013 |
| s. 128 | am. No. 79, 2004 |
| Part 9 | |
| hdg to Pt 9..... | rs No 125, 2013 |
| Div 1 | |
| s 129 | rs No 125, 2013 |
| Div 2 | |
| Div 2 of Pt 9..... | rs No 125, 2013 |
| Sdiv A | |
| s 130 | rs No 125, 2013 |
| s 130A..... | ad No 125, 2013 |
| Sdiv B | |
| s 130B..... | ad No 125, 2013 |

Endnote 4—Amendment history

| Provision affected | How affected |
|--|--|
| s 130C..... | ad No 125, 2013 |
| Division 3 | |
| hdg to Div 3 of Pt 9..... | rs No 125, 2013 |
| Sdiv A | |
| hdg to Sdiv A of Div 3 of..... Pt 9 | ad No 125, 2013 |
| s. 131 | am. No. 115, 2001; No. 79, 2004 rs No 125, 2013 |
| s 131AA..... | ad No 125, 2013 |
| s 131A..... | ad No 125, 2013 |
| s 131B..... | ad No 125, 2013 |
| s 131C..... | ad No 125, 2013 |
| s 131D..... | ad No 125, 2013 |
| s 131E..... | ad No 125, 2013 |
| Sdiv B | |
| Subdiv B of Div 3 of Pt 9..... | ad No 125, 2013 |
| s 131F..... | ad No 125, 2013 |
| s 131G..... | ad No 125, 2013 am No 5, 2015 |
| Div 4 | |
| Div 4 of Pt 9..... | ad No 125, 2013 |
| Sdiv A | |
| s. 132 | am. No. 79, 2004 rs No 125, 2013 |
| s 132A..... | ad No 125, 2013 |
| s 132B..... | ad No 125, 2013 |
| s 132C..... | ad No 125, 2013 |
| s 132D..... | ad No 125, 2013 |
| s 132E..... | ad No 125, 2013 |
| s 132F..... | ad No 125, 2013 |
| Sdiv B | |

Endnotes

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|-------------------------------------|
| s 132G..... | ad No 125, 2013 |
| s 132H..... | ad No 125, 2013 |
| Div 5 | |
| hdg to Div 5 of Pt 9..... | ad No 125, 2013 |
| s 133 | rs No 125, 2013 |
| s 134 | am No 125, 2013 |
| s 135 | rs No 125, 2013 |
| s 136 | rs No 125, 2013 |
| s 137 | rs No 125, 2013 |
| s. 138 | am. No. 79, 2004 rs No 125, 2013 |
| Div 6 | |
| Div 6 of Pt 9..... | ad No 125, 2013 |
| s 138A..... | ad No 125, 2013 |
| s 138B..... | ad No 125, 2013 |
| Div 7 | |
| Div 7 of Pt 9..... | ad No 125, 2013 |
| s 138C..... | ad No 125, 2013 |
| s 138D..... | ad No 125, 2013 |
| Div 8 | |
| hdg to Div 8 of Pt 9..... | ad No 125, 2013 |
| s 139 | am No 125, 2013 |
| s 139A..... | ad No 125, 2013 |
| s 140 | am No 125, 2013; No 62, 2014 |
| hdg to s 141..... | rs No 125, 2013 |
| s 141 | am No 125, 2013 |
| s 141A..... | ad No 125, 2013 |
| Heading to s. 142 | am. No. 79, 2004 |
| s. 142 | am. No. 79, 2004; No 125, 2013 |
| Div 9 | |
| Div 9 of Pt 9..... | ad No 125, 2013 |

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|---|
| s 143 | rs No 125, 2013 |
| s 143A..... | ad No 125, 2013 |
| s 143B..... | ad No 125, 2013 |
| s 143C..... | ad No 125, 2013 |
| s 143D..... | ad No 125, 2013 |
| s 143E..... | ad No 125, 2013 |
| Div 10 | |
| Div 10 of Pt 9..... | ad No 125, 2013 |
| s 143F | ad No 125, 2013 |
| s. 144 | am. No. 115, 2001 rep No 125, 2013 |
| Pt 9A | |
| Pt 9A..... | ad No 125, 2013 |
| Div 1 | |
| s. 145 | rs. No. 13, 2003 am. No. 79, 2004 rs No 125, 2013 |
| Div 2 | |
| Sdiv A | |
| s 145A..... | ad No 125, 2013 |
| s 145AA..... | ad No 125, 2013 |
| s 145AB..... | ad No 125, 2013 |
| s 145AC..... | ad No 125, 2013 |
| s 145AD..... | ad No 125, 2013 |
| s 145AE..... | ad No 125, 2013 |
| s 145AF | ad No 125, 2013 |
| s 145AG..... | ad No 125, 2013 |
| Sdiv B | |
| s 145B..... | ad No 125, 2013 |
| s 145BA..... | ad No 125, 2013 |
| s 145BB | ad No 125, 2013 |

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Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|---------------------|
| s 145BC | ad No 125, 2013 |
| Sdiv C | |
| s 145C | ad No 125, 2013 |
| s 145CA | ad No 125, 2013 |
| s 145CB | ad No 125, 2013 |
| s 145CC | ad No 125, 2013 |
| s 145CD | ad No 125, 2013 |
| s 145CE | ad No 125, 2013 |
| s 145CF | ad No 125, 2013 |
| s 145CG | ad No 125, 2013 |
| Div 3 | |
| s 145DA | ad No 125, 2013 |
| s 145DB | ad No 125, 2013 |
| s 145DC | ad No 125, 2013 |
| s 145DD | ad No 125, 2013 |
| s 145DE | ad No 125, 2013 |
| s 145DF | ad No 125, 2013 |
| Div 4 | |
| s 145E | ad No 125, 2013 |
| s 145EA | ad No 125, 2013 |
| Div 5 | |
| s 145F | ad No 125, 2013 |
| s 145FA | ad No 125, 2013 |
| s 145FB | ad No 125, 2013 |
| s 145FC | ad No 125, 2013 |
| Div 6 | |
| s 145G | ad No 125, 2013 |
| s 145GA | ad No 125, 2013 |
| s 145GB | ad No 125, 2013 |
| Div 7 | |
| s 145H | ad No 125, 2013 |

Endnote 4—Amendment history

| Provision affected | How affected |
|----------------------------|--|
| | am No 62, 2014 |
| Div 8 | |
| s 145J..... | ad No 125, 2013 |
| hdg to Div 4 of Pt 9..... | rep No 125, 2013 |
| Div 9 | |
| hdg to Div 9 of Pt 9A..... | ad No 125, 2013 |
| s 146 | rs No 125, 2013 |
| s 146A..... | ad No 91, 2014 |
| s 147 | rs No 125, 2013 |
| s 148 | rep No 125, 2013 |
| s. 149 | am. No. 13, 2003; No. 79, 2004; No 125, 2013; No 61, 2016 |
| s 149A..... | ad No 125, 2013 |
| | am No 62, 2014 |
| s. 150 | am. No. 79, 2004 |
| s 151 | am No 5, 2015 |
| s. 152 | am. No. 115, 2001; No. 13, 2003; No 125, 2013 |
| Part 10 | |
| s. 154 | am. No. 79, 2004 |
| s. 156 | rs. No. 59, 1996 |
| | am. No. 79, 2004 |
| s 156A..... | ad No 125, 2013 |
| s. 157 | am. No. 79, 2004; No 125, 2013 |
| s. 158 | am. No. 79, 2004 |
| | rep. No. 113, 2010 |
| Heading to s. 159 | rs. No. 13, 2003 |
| | am. No. 79, 2004 |
| s. 159 | am. No. 129, 1994; No. 13, 2003; No. 79, 2004; No 125, 2013; No 91, 2014 |
| Note to s 159(2)..... | ad No 125, 2013 |
| hdg to s 160..... | rs No 125, 2013 |
| s. 160 | am. No. 13, 2003; No. 79, 2004; No 125, 2013 |
| Heading to s. 160A | am. No. 79, 2004 |

Endnotes

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|---|
| s. 160A..... | ad. No. 13, 2003 am. No. 79, 2004; No 125, 2013; No 4, 2016 |
| Note to s 160A(7) | ad No 125, 2013 |
| Heading to s. 161 | am. No. 79, 2004 |
| s. 161 | am. No. 13, 2003; No. 79, 2004; No 125, 2013 |
| Note to s 161(3)..... | ad No 125, 2013 |
| s. 162 | am. No. 115, 2001; No. 13, 2003; No. 79, 2004; No. 113, 2010; No 125, 2013 |
| Note to s. 162(7) | ad. No. 115, 2001 |
| hdg to s 163..... | rs No 125, 2013 |
| s. 163 | am. No. 79, 2004; No 125, 2013 |
| s 163A..... | ad No 125, 2013 am No 126, 2015 |
| s 165B..... | ad No 125, 2013 |
| s. 164 | am. No. 79, 2004; No. 42, 2005; No 125, 2013; No 91, 2014 |
| Heading to s. 165 | am. No. 79, 2004 |
| s. 165 | am. No. 79, 2004; No. 42, 2005; No 125, 2013; No 91, 2014 |
| s 165A..... | ad No 125, 2013 |
| hdg to s 166..... | rs No 125, 2013 |
| s. 166 | am. No. 79, 2004; No 125, 2013; No 91, 2014 |
| hdg to s 167..... | rs No 125, 2013 |
| s. 167 | am. No. 22, 1997; No. 13, 2003; Nos. 79 and 120, 2004; No. 113, 2010; No 125, 2013; No 91, 2014; No 145, 2015 |
| Heading to s. 169 | am. No. 79, 2004 |
| s. 169 | am. No. 79, 2004; No 125, 2013 |
| s. 170A..... | ad. No. 79, 2004 am No 125, 2013 |
| Part 11 | |
| s 172 | am. No. 79, 2004 |
| s 173 | am. No. 79, 2004 rep No 125, 2013 |

Endnote 4—Amendment history

| Provision affected | How affected |
|---------------------------|--|
| s 174 | am. No. 79, 2004 |
| s 175 | am. No. 79, 2004 rep No 125, 2013 |
| s 176 | am. No. 79, 2004 |
| s 177 | am. No. 79, 2004 rep No 125, 2013 |
| s. 178 | am. No. 13, 2003; No. 79, 2004; No 125, 2013 |
| s. 179 | am. No. 79, 2004 rep No 125, 2013 |
| s. 180 | am. No. 59, 1996; No. 79, 2004; No 125, 2013 |
| s 181 | am. No. 79, 2004 |
| s 182 | am. No. 79, 2004 rep No 125, 2013 |
| s 183 | am. No. 79, 2004 |
| s 184 | am. No. 79, 2004; No 125, 2013 |

Endnote 5—Editorial changes

In preparing this compilation for registration, the following kinds of editorial change(s) were made under the *Legislation Act 2003*.

Kind of editorial change

Change to typeface

Details of editorial change

This compilation was editorially changed to update all occurrences of the words *prima facie* in italics to regular font.