

1992

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AGRICULTURAL AND VETERINARY
CHEMICALS (ADMINISTRATION) BILL 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Primary Industries and Energy,
the Hon Simon Crean, MP)



**AGRICULTURAL AND VETERINARY
CHEMICALS (ADMINISTRATION) BILL 1992**

OUTLINE

The purpose of this Bill is to establish the National Registration Authority for Agricultural and Veterinary Chemicals.

In July 1991, the Commonwealth, State and Territory Governments announced the establishment of a National Registration Scheme for agricultural and veterinary chemicals. In June 1992, the Commonwealth Government announced it would establish a statutory authority to undertake its responsibilities for the registration of agricultural and veterinary chemical products.

This Bill will give effect to the Commonwealth's decisions by establishing the National Registration Authority for Agricultural and Veterinary Chemicals. Initially, it will take over the powers and functions of the Australian Agricultural and Veterinary Chemicals Council until the new national registration legislation is considered in the Autumn Sitzings in 1993.

As a statutory authority, the National Registration Authority will have more flexibility, greater independence and responsiveness than is possible for a Department of State.

The legislation provides for the Authority to have eight part-time Directors who are appointed by the Minister. Provision has been made for the appointment by the Board of a Chief Executive Officer and for the acquisition by the Authority of other staff and for the engaging of consultants.

The relationship between the Authority and the Minister will be at a strategic level: the Minister's approval is required for the Authority's corporate and annual operational plans.

Through its annual report, which will be tabled in Parliament and its corporate and annual operational plans, accountability to Parliament, the chemical industry, other stakeholders and the wider community will be ensured.

FINANCIAL IMPACT STATEMENT

As the 1992-93 Budget provided for the establishment of a statutory authority to undertake the Commonwealth's responsibilities for registration of agricultural and veterinary chemicals and for the funding of a compliance program to be undertaken by the States and Northern Territory, this Bill will not have any significant effect on Government expenditure.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

1. Provides for the Bill to be cited as the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

Clause 2 - Commencement

2. This clause provides for the Act to commence on the earlier of either a date to be fixed by Proclamation, or six months after Royal Assent.

3. The Bill's entry into force on Proclamation is to provide flexibility for the passage of the Bill and for those procedures necessary for the establishment of the National Registration Authority for Agricultural and Veterinary Chemicals (NRA), such as the selection of the Board, to be conducted in an orderly manner.

Clause 3 - Object

4. This clause defines the object of the Agricultural and Veterinary Chemicals (Administration) Bill 1992 as being to establish a National Registration Authority to administer the provisions of the *Agricultural and Veterinary Chemicals Act 1988*.

Clause 4 - Interpretation

5. This clause defines certain terms used in subsequent clauses of the Bill.

Clause 5 - Extension to external Territories

6. This clause extends the provisions of the Bill to the same external Territories to which *Agricultural and Veterinary Chemicals Act 1988* applies.

PART 2 - ESTABLISHMENT, FUNCTIONS AND POWERS OF NRA

Clause 6 - Establishment

7. This clause establishes the National Registration Authority for Agricultural and Veterinary Chemicals.

Clause 7 - Functions and powers

8. This clause generally defines the functions and powers of the NRA.
9. Some functions of the NRA are specifically mentioned in the clause, while other functions in relation to the clearance of agricultural and veterinary chemicals are conferred on the NRA by the *Agricultural and Veterinary Chemicals Act 1988* which is proposed for amendment.

Clause 8 - Consultation

10. This clause provides for the NRA to consult widely in the performance of its functions. Consultation may include the chemical industry, scientific community, consumer and environmental organisations together with Government organisations. The NRA may pay expenses associated with the consultations.

Clause 9 - Agreements and arrangements

11. This clause provides for the Minister to enter into agreements and arrangements with a Minister of a State for the performance of certain functions or the exercise of certain powers by the NRA as an agent of the State.

Clause 10 - Minister may give directions in exceptional circumstances

12. Subclause (1) empowers the Minister to give directions to the NRA on its functions and exercise of powers and requires the NRA to comply with these directions.
13. Subclause (2) states that the Minister must not give such a direction unless the direction is necessary to avoid conflict between the NRA's performance of its powers and functions and major Government policy. Before issuing a direction under this clause, the Minister is required to give prior notice to the NRA and to give the Chairperson of the NRA an opportunity to discuss the direction with the Minister.
14. Under subclause (3) the Minister is required to publish a notice in the Gazette, giving details of the direction to the NRA and to table that notice in both Houses of Parliament within 15 sitting days after its publication.
15. Subclause (4) states that the Minister may determine not to publish details of a direction made under this clause if such action is considered prejudicial to the national interest of Australia.

Clause 11 - Delegation by NRA

16. This clause empowers the NRA to delegate any of its powers and functions to office holders, committees established under clause 28, an employee of the NRA or a person engaged by the NRA under contract, for the efficient and effective operation of the NRA. In exercising delegated powers, the delegate is subject to the directions of the NRA.

PART 3 - CONSTITUTION AND MEETINGS OF NRA

Clause 12 - NRA is body corporate etc.

17. Subclause (1) provides for the NRA to be a body corporate with perpetual succession, to have a common seal and sue or be sued in its corporate name.

18. Subclause (2) relates to the custody and use of the NRA's common seal.

19. Subclause (3) requires judicial notice to be taken of the common seal of the NRA and where it appears on a document it must be presumed that the document was properly sealed.

Clause 13 - Constitution of NRA

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20. This clause provides for the directorship of the NRA. The NRA is to consist of 8 persons, namely the Chairperson and seven directors. Vacancy or vacancies in the membership of NRA does not affect the performance of its duties or the exercise of its powers.

Clause 14 - Appointment of directors

21. Subclauses (1) provides for directors of the NRA to be appointed by the Minister. The experience of the directors is covered in subclause (2).

22. Subclause (3) validates the appointment of a director despite any defect or irregularity in the appointment process.

Clause 15 - Deputy Chairperson

23. Subclauses (1) and (2) provide that the Minister, following consultation with the Chairperson, may appoint one of the directors as Deputy Chairperson of the NRA.

24. Subclauses (3), (4) and (5) provide for: the appointment to be terminated by the Minister at any time; the Deputy Chairperson ceasing to hold office on

vacating his or her position as a director of the NRA; and for the Deputy Chairperson to resign that office by writing to the Minister.

25. Subclauses (6) and (7) provide for the Deputy Chairperson to act as Chairperson during the absence of the Chairperson or during a vacancy in that office and endow the Deputy Chairperson with all the powers, duties and rights of that office.

26. Subclause (8) validates the actions of a Deputy Chairperson notwithstanding specified irregularities in the appointment.

Clause 16 - Acting appointments

27. Subclause (1) provides for the Minister to appoint a director to act as the Deputy Chairperson.

28. Subclause (2) provides for the acting Deputy Chairperson to have all powers, duties and rights of the Deputy Chairperson.

29. Subclause (3) provides for the Minister to appoint a person to act as a director.

30. Subclause (4) provides for the acting director to have all powers, duties and rights of the director.

31. Subclause (5) provides for the Minister to terminate the appointment of an acting Deputy Chairperson or acting director.

32. Subclauses (6), (7) and (8) provide for: the appointment of an acting Deputy Chairperson to cease if the person ceases to be a director; an acting Deputy Chairperson or acting director resigning their appointment by notifying the Minister; acting appointments are validated notwithstanding specified irregularities in the appointment.

Clause 17 - Term of office

33. This clause specifies a maximum appointment period of 3 years for directors of the NRA but provides that a member is eligible for re-appointment.

34. This provision has the aims of ensuring strong accountability over the performance of the NRA and to ensure that the NRA Board remains vital.

Clause 18 - Directors hold office on a part-time basis

35. Directors will be part-time members of the NRA.

Clause 19 - Remuneration and allowances

36. Subclause (1) provides for the remuneration of directors and members of committees to be determined by the Remuneration Tribunal. If no such determination is in operation, the directors and members are to be paid such remuneration as is prescribed.

37. Subclause (2) provides for prescribed allowances to be paid to directors and members.

38. Subclause (3) states that remuneration or allowances are not to be paid to directors or members of committees who are members of, or candidates for election to, a State Parliament where such payments would make that person ineligible for Parliamentary service. Also a director or member in the full time employ of a State, or State authority is not eligible for remuneration or allowances. However, directors and members are to be reimbursed any expenses incurred in association with their participation on the NRA.

39. Subclause (4) provides that this clause has effect subject to the *Remuneration Tribunal Act 1973*.

40. Subclause (5) defines "Parliament" for the purposes of this clause of the Bill.

Clause 20 - Directors may receive other benefits

41. This clause provides for the Minister to determine salary and allowances for directors in addition to that provided by the Remuneration Tribunal. The determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. Benefits provided are considered necessary by the Minister to assist a director in his or her performance. Benefits are to be paid out of the money of the NRA.

Clause 21 - Leave of absence

42. Subclause (1) makes provision for the Minister to grant the Chairperson leave of absence and to determine the terms and conditions of any such leave.

43. Subclause (2) allows the Chairperson to grant directors leave of absence from the NRA.

Clause 22 - Resignation

44. This clause permits a director to resign by writing to the Minister.

Clause 23 - Disclosure of interests

45. Subclauses (1) and (2) require a director to disclose at a meeting of the NRA, any direct or indirect financial interest in a matter to be considered by the NRA as soon as he or she becomes aware of a potential conflict of interest. All such disclosures must appear in the minutes of the meeting.

46. Subclauses (3), (4), and (5) require a director who has a conflict of interest not to be present during the NRA's consideration of the matter, including consideration of matters without formal meetings.

Clause 24 - Termination of appointment

47. This clause allows the Minister to terminate the appointment of a NRA director for misbehaviour, physical or mental incapacity, or inefficiency or incompetence. The Minister may also terminate an appointment on grounds relating to bankruptcy, failure to disclose interest and unapproved absence from three consecutive meetings.

Clause 25 - Terms and conditions of appointment not provided for by Act

48. Provides for terms and conditions not provided for by the Bill to be determined by the Minister.

Clause 26 - Meetings of NRA

49. Subclause (1) empowers the NRA to determine times and places for its meetings.

50. Subclause (2) empowers the Chairperson to convene meetings of the NRA at any time.

51. Subclause (3) requires the Chairperson to preside at all meetings where he or she is present.

52. Subclause (4) provides for the appointment of a presiding director when the Chairperson and the Deputy Chairperson are not present.

53. Subclause (5) defines a quorum as at least two-thirds of the number of NRA directors. Issues are to be determined by a majority vote with the Chairperson or the presiding director having both a deliberate and a casting vote.

54. Subclause (6) specifies that minutes must be kept of NRA meetings.

55. Subclause (7) permits non-directors to attend meetings of the NRA in an advisory capacity.

56. Subclause (8) permits the NRA to determine the procedures to be followed in relation to its meetings.

57. Subclauses (9) and (10) allow the NRA where it so determines, to hold a meeting by telephone, etc.

Clause 27 - Resolutions without formal meetings

58. This clause provides for the NRA to pass a resolution without having a meeting provided at least two-thirds of the number of directors agree with the resolution.

Clause 28 - Establishment of committees

59. This clause empowers the NRA to establish committees to assist in the performance and exercise of its functions and powers and to abolish those committees as appropriate. The clause also provides for the membership of committees.

Clause 29 - Meetings of committees

60. Subclause (1) provides for the NRA to determine the manner in which a committee is to perform its functions and procedures to be followed at committee meetings.

61. Subclauses (2) and (3) require a committee member to disclose financial interests in a matter being considered and for the disclosure to be recorded in the minutes of the meeting. The member must not, unless the NRA otherwise determines, be present during the committee's determination of the matter.

Clause 30 - Arrangements relating to staff etc.

62. This clause provides for the Chairperson of a committee to arrange for the staff, consultants and facilities of the NRA to be made available to the committee.

PART 4 - CHIEF EXECUTIVE OFFICER

Clause 31 - Chief Executive Officer

63. This clause establishes the position of Chief Executive Officer of the NRA.

Clause 32 - Duties

64. This clause specifies that the duty of the Chief Executive Officer is to manage the NRA in accordance with the policies and directions of the NRA and that anything done by the Chief Executive Officer is deemed to have been done by the NRA.

Clause 33 - Appointment

65. The Chief Executive Officer is to be appointed by the NRA. Directors are ineligible for appointment as Chief Executive Officer. The appointment of a person as Chief Executive Officer is valid despite an irregularity in the appointment process.

Clause 34 - Term of appointment

66. This clause specifies that the Chief Executive Officer holds office for a period not exceeding five years, but is eligible for re-appointment.

Clause 35 - Remuneration and allowances

67. Subclauses (1) and (2) provide for the remuneration of the Chief Executive Officer to be determined by the Remuneration Tribunal. If a remuneration has not been so determined it is to be determined by the NRA. Allowances paid to the Chief Executive Officer are to be determined by the NRA.

68. Subclause (3) provides for the Minister to approve determinations made by the NRA.

69. Subclause (4) provides that this clause has effect subject to the *Remuneration Tribunal Act 1973*.

Clause 36 - Chief Executive Officer may receive other benefits

70. Subclauses (1) and (2) provide that the Chief Executive Officer may be provided with additional remuneration and allowances as the NRA determines. The determination to be approved by the Minister.

71. Subclause (3) lists the benefits in respect of which a determination can be made by the NRA.

Clause 37 - Terms and conditions of appointment

72. Terms and conditions of office, including remuneration and allowances, for the Chief Executive Officer, are to be determined by the NRA and approved by the Minister.

Clause 38 - Chief Executive Officer not to engage in other paid employment

73. This clause prevents the Chief Executive Officer from engaging in any paid work outside the NRA unless the NRA approves such an arrangement.

Clause 39 - Leave of absence for recreation

74. This clause provides for the Chief Executive Officer to have recreation leave as determined by the Remuneration Tribunal.

Clause 40 - Leave of absence for other purposes

75. The Chairperson of the NRA may, with the written approval of the Minister, grant the Chief Executive Officer leave of absence (other than recreation leave) on terms and conditions determined by the NRA.

Clause 41 - Resignation

76. The Chief Executive Officer may resign by writing to the Chairperson of the NRA.

Clause 42 - Disclosure of interests

77. This clause requires the Chief Executive Officer to disclose all direct or indirect financial interests in any business or body corporate to the Chairperson of the NRA.

Clause 43 - Acting Chief Executive Officer

78. This clause provides for the appointment of an acting Chief Executive Officer for a period not exceeding twelve months during a vacancy in that office or during the absence of the Chief Executive Officer. The actions of an acting Chief Executive Officer are validated by this clause despite an irregularity in his or her appointment for certain specified reasons.

Clause 44 - Delegation by the Chief Executive Officer

79. This clause provides for the Chief Executive Officer to delegate in writing his or her powers and functions to a person employed by the NRA.

PART 5 - EMPLOYEES AND CONSULTANTS

Clause 45 - Employees

80. This clause allows the NRA to employ staff as considered necessary to perform its functions. Staff will be employed on such terms and conditions as are determined by the NRA. No staff member is to be employed on terms and conditions more favourable than those applying to the office of Chief Executive Officer.

Clause 46 - Staff to be made available to the NRA

81. This clause provides for the NRA to be able to obtain the services of staff of Commonwealth departments and authorities and State/Territory staff. Staff to be under the direction of the Chief Executive Officer.

Clause 47 - Consultants

82. This clause empowers the NRA to engage suitably qualified persons as consultants and to determine appropriate terms and conditions of such engagements.

Clause 48 - Human resources development program

83. This clause requires the NRA to develop and implement a human resources development program. Officers of the NRA exercising powers in relation to the employment of staff must have regard to that program.

Clause 49 - Merit principle to apply

84. Staff will be employed on the basis of merit.

PART 6 - CORPORATE AND ANNUAL OPERATIONAL PLANS

Clause 50 - Development of corporate plan

85. This clause requires the NRA to provide the Minister, before 1 May 1993 and 1 May in each subsequent calendar year, with a corporate plan setting out its goals for at least three years. The plan must define strategies designed to achieve the NRA's goals and indicators developed by the NRA to enable assessment of its performance. The plan should also incorporate the NRA's human resources development program.

Clause 51 - Approval of corporate plan

86. This clause allows the Minister to approve or request a variation to the NRA's corporate plan. Revised plans must be resubmitted for Ministerial approval. A plan takes effect at the commencement of the period to which the plan relates, or on receipt of Ministerial approval, whichever is the later.

Clause 52 - Variation of corporate plan by NRA

87. The NRA cannot make substantial variations to its corporate plan without Ministerial approval. Under this clause the Minister may approve or reject a proposal from the NRA to vary its corporate plan. The NRA can make minor variations without Ministerial approval but should inform the Minister of any such changes as soon as practicable.

Clause 53 - Variation at request of Minister

88. This clause empowers the Minister to request a variation to the NRA's corporate plan at any time. The Bill stipulates how such Ministerial requests should be handled by the NRA.

Clause 54 - Date of effect of variations

89. Variations to a corporate plan, approved by the Minister in accordance with clauses 52 and 53 come into force on the day the Minister's advice is received by the NRA. A minor variation to an approved plan comes into force on the day the NRA makes the variation.

Clause 55 - Development of annual operational plan

90. This clause requires the NRA to prepare annual operational plans which specify how, in the specific year in question, the NRA intends to achieve the objectives detailed in the corporate plan and, what initiatives it intends to introduce to fulfil its obligations under the human resource development program. The plan will also provide performance indicators to enable the assessment of the particular actions outlined in the annual operational plan. The NRA must submit an annual operational plan to the Minister before 1 June 1993 and before 1 June in each subsequent calendar year.

Clause 56 - Approval of annual operational plan

91. This clause empowers the Minister to approve or request a variation to an annual operational plan. Revised plans must be resubmitted for Ministerial approval. Annual operational plans are to come into force at the commencement of the period in question, or on receipt of the Minister's approval, whichever is the later.

Clause 57 - Variation of annual operational plan

92. Provisions in clauses 52, 53 and 54 relating to the variation of corporate plans also apply to the variation of annual operational plans.

PART 7 - FINANCE**Clause 58 - Appropriation of money**

93. This clause provides that the NRA be provided with such money as is appropriated by Parliament and any amounts paid as fees or by a State to the Commonwealth for the purpose of the NRA.

Clause 59 - When payments to be made to NRA

94. The Minister for Finance may give directions concerning amounts and time of payment.

Clause 60 - Money of NRA

95. This clause provides the money of the NRA which consists of money appropriated by Parliament, payments from the States, and any other money (excluding trust money) paid to the NRA.

Clause 61 - Estimates

96. Subclauses (1) and (2) provide for the NRA to prepare estimates in accordance with the directions and at such time as the Minister directs. Estimates not to be submitted later than the time specified by the Minister.

97. Subclauses (3) and (4) provide that money of the NRA must be spent in accordance with the estimates, except with the Minister's consent. All directions, consent or approval in respect of estimates to be in writing.

Clause 62 - Expenditure of money of the NRA

98. This clause specifies the circumstances under which the NRA can expend its money.

Clause 63 - Borrowing of money

99. This clause allows the NRA to borrow money, including foreign currency. The NRA is empowered to borrow up to \$500,000 and beyond that limit any borrowings must be on such terms and conditions as approved by the Treasurer.

Clause 64 - Guarantee of borrowings

100. This clause empowers the Treasurer to enter into a contract to guarantee repayment of borrowings by the NRA. Various provisions that may be incorporated into such contracts are included in the Bill.

Clause 65 - Borrowing not otherwise permitted

101. The NRA cannot borrow money other than as provided for in this Part of the Bill.

Clause 66 - NRA may give security

102. This clause empowers the NRA to give security over all or part of its assets in meeting its obligations arising from borrowings, including reimbursement to the Commonwealth for any payments made pursuant to a guarantee made under clause 64.

Clause 67 - Exemption from tax

103. The NRA is not liable to pay any government taxes other than Commonwealth sales tax.

Clause 68 - Annual report of NRA

104. This clause provides that the NRA's annual report include certain provisions detailed in the *Audit Act 1901*. It also specifies other provisions which must be reported in the annual report including an assessment of operations; particulars of variation to corporate and annual operational plans; significant purchases and disposals of real property; and borrowings during the year.

Clause 69 - Trust money

105. Subclause (1) provides that the NRA may receive trust money for a purpose consistent with its functions. Trust moneys to be held in accounts in accordance with certain provisions of *Audit Act 1901*. The NRA must act only in accordance with its powers and duties as trustee and only invest trust money in an authorised and lawful manner.

106. Subclause (2) specifies certain provisions of the *Audit Act 1901* which are to apply in respect to trust money.

PART 8 - MISCELLANEOUS

Clause 70 - Acts done by NRA

107. This clause declares that certain persons can sign certificates receivable as *prima facie* evidence upon mere production. Also states the means by which a named person is authorised to sign certificates.

Clause 71 - Delegation by Minister

108. Subclause (1) provides for the Minister to delegate to a member of the Department of Primary Industries and Energy the powers conferred on the Minister under this Bill, the *Agricultural and Veterinary Chemicals Act 1988* or a law of a State relating to agricultural and veterinary chemicals.

109. Subclause (2) provides that the delegate is subject to the Minister's direction.

Clause 72 - Delegation by Treasurer

110. This clause provides that the Treasurer may delegate his powers under this Bill to an officer in the Department of the Treasury.

Clause 73 - Regulations

111. This clause empowers the Governor-General to make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

PART 9 - TRANSITIONAL PROVISIONS

Clause 74 - Staff

112. This clause provides that staff employed under the *Public Service Act 1922* and who are transferred to the NRA will continue to be engaged on the same terms and conditions until the NRA determines otherwise. Unions are to be fully consulted in respect of the NRA determining terms and conditions of employment.

Clause 75 - Transfers of certain assets to NRA

113. Subclauses (1) and (2) provide that the Minister or the Commonwealth may transfer certain assets from the Commonwealth to the NRA.

114. Subclauses (3) and (4) provide that rights of the Commonwealth in respect of debt, liability or obligation concerning an asset are transferred to the NRA. Also, the NRA is to substitute for the Commonwealth in respect of proceedings pending in a court concerning an asset.

Clause 76 - Agreements etc. - Minister may make arrangements

115. This clause provides for the Minister to declare that a specified agreement or instruments entered into by the Commonwealth in respect of agricultural and veterinary chemicals has effect by substituting the NRA for the Commonwealth.

Clause 77 - Estimates

116. This clause provides for estimates to be prepared for the part of a financial year remaining upon commencement of the NRA unless the Minister directs otherwise.

Clause 78 - Money paid in advance to Commonwealth

117. This clause provides that fees paid to the Commonwealth for the evaluation of agricultural and veterinary chemical products may be transferred to the NRA where the evaluation is performed by the NRA. The Minister to determine amount payable to the NRA.

Clause 79 - Rights in respect of services and facilities formerly provided by Department

118. This clause provides that the right of the Commonwealth in respect of certain services and facilities is transferred to the NRA as determined by the Minister for Primary Industries and Energy and the Minister for Finance. Proceedings commenced in a Court by the Commonwealth may be continued by the NRA.

Clause 80 - Delegations

119. This clause enables existing delegations from the Australian Agricultural and Veterinary Chemicals Council to continue enforce until the NRA determines otherwise under clause 11.

Clause 81 - Annual report and financial statements

120. This clause provides for annual reports and financial statements to be prepared for the part of the financial year from commencement of the NRA to 30 June.













