

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AGRICULTURAL AND VETERINARY

CHEMICALS (CONSEQUENTIAL AMENDMENTS) BILL 1993

EXPLANATORY MEMORANDUM

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



**AGRICULTURAL AND VETERINARY CHEMICALS**  
**(CONSEQUENTIAL AMENDMENTS) BILL 1993**

**OUTLINE**

1. The Bill makes amendments to the Agricultural and Veterinary Chemicals (Administration) Act 1992 and the Copyright Act 1968 which are necessary as a consequence of the introduction of the Agricultural and Veterinary Chemicals Bill 1993 and the Agricultural and Veterinary Chemicals Code Bill 1993, and the repealing of the Agricultural and Veterinary Chemicals Act 1988.
2. In particular, the functions of the National Registration Authority for Agricultural and Veterinary Chemicals (NRA), which were mostly taken over from the former Australian Agricultural and Veterinary Chemicals Council and therefore contained in the to be repealed Agricultural and Veterinary Chemicals Act 1988 are, by this Bill, now being incorporated in the Administration Act.
3. The Administration Act is also being amended to include certain controls over the importation, manufacture and exportation of agvet chemicals by enabling the NRA to monitor the import, manufacture and export of unregistered agvet chemicals and unapproved active constituents. Because these are functions for which the Commonwealth can constitutionally enact laws, they have been included as amendments to the Administration Act rather than included in the Code Bill.
4. The Bill also makes some consequential amendments to the Copyright Act 1968 to confirm that the reproduction of a label for an agvet chemical product is not an infringement of any copyright subsisting under Part III or section 92 of the Copyright Act.

**FINANCIAL IMPACT STATEMENT**

5. The Bill will not have any impact on Government expenditure.

**NOTES ON CLAUSES****PART 1 - PRELIMINARY****Clause 1 - Short title**

6. When enacted the Bill may be cited as the Agricultural and Veterinary Chemicals (Consequential Amendments) Act 1993.

**Claus 2 - Commencement**

7. The Bill will commence on the same day as the Agricultural and Veterinary Chemicals Bill.

**PART 2 - AMENDMENTS OF THE AGRICULTURAL AND VETERINARY  
CHEMICALS (ADMINISTRATION) ACT****Claus 3 - Principal Act**

8. In this Part "Principal Act" means the Agricultural and Veterinary Chemicals (Administration) Act 1992.

**Clause 4 - Interpretation**

9. Subclause (1) amends section 4 of the Principal Act by omitting the definition of "certificate of clearance".
10. Subclause (2) amends section 4 of the Principal Act by inserting definitions for "inspector" and "participating Territory". Participating Territory means the Australian Capital Territory or another Territory that is declared by the regulations to be a participating Territory.
11. Subclause (3) amends section 4 of Principal Act by omitting the definitions of "chemical product", "State" and "Territory" substituting the following definitions:
- "chemical product" - has the same meaning as in the Agvet Code of the participating Territories and refers to either an agricultural and/or veterinary chemical product
  - "State" - includes the Northern Territory
  - "Territory" - does not include the Northern Territory;"

**Clause 5 - Repeal of section and substitution of new section:**

12. This clause repeals section 5 of the Principal Act and substitutes the following new section 5:

**"Extension to external Territories**

5. This Act extends to every external Territory that is a participating Territory."

**Clause 6 - Functions and powers**

13. This clause provides that section 7 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections relating to the functions and powers of the NRA:

"(1) - The NRA has such functions and powers as are conferred on it by or under this Act or the Agvet Code, or the Agvet Regulations, of the participating Territories.

(1A) - The functions of the NRA include the following:

- (a) to assess the suitability for sale in Australia of active constituents for proposed chemical products, chemical products and labels for containers for chemical products;
- (b) to provide information to the Governments and authorities of the Commonwealth, the States and the participating Territories about approved constituents for proposed or existing chemical products, registered chemical products and approved labels for such products and to co-operate with those Governments and authorities on matters relating to the management and control of chemical products;
- (c) to keep records and statistics of approvals and registrations granted, and permits and licences issued, by it under the Agvet Codes;
- (d) to evaluate the effects of the use of chemical products in the States and participating Territories;
- (e) to co-operate with Governments and authorities of the Commonwealth, the States and the participating Territories for the purpose of facilitating a consistent approach to the assessment and control of chemicals;

- (f) in co-operation with Governments and authorities of the Commonwealth, the States and the participating Territories, to develop codes of practice, standards and guidelines for, and to recommend precautions to be taken in connection with, the manufacture, export, import, sale, handling, possession, storage, disposal and use of chemical products in the States and participating Territories;
  - (g) to collect, interpret, disseminate and publish information relating to chemical products and their use;
  - (h) to encourage and facilitate the application and use of results of evaluation and testing of chemical products;
  - (i) to exchange information relating to chemical products and their use with overseas and international bodies having functions similar to the NRA's functions;
  - (j) when requested by the Minister, or on its own initiative, to report to or to advise the Minister on any matter relating to chemical products or arising in the course of the performance of its functions;
  - (k) to encourage and facilitate the introduction of uniform national procedures for control of the use of chemical products;
  - (l) to fund, and co-operate in, a program designed to ensure that active constituents for proposed or existing chemical products, chemical products, and labels for containers for chemical products, comply with the Agvet Codes and the Agvet Regulations.
  - (1B) - Expressions to be used in subsection (1A) have the same meanings as in the Code set out in the Schedule to the Agricultural and Veterinary Chemicals Code Act 1993."
14. Subclause (2) provides that section 7 of the Principal Act is amended by inserting after paragraph (3)(d) the following paragraph:
- "(da) make available to the public, either without charge or upon payment of a fee to the NRA, manuals, reports, lists of requirements and other documents."

15. Subclause (3) provides that section 7 of the Principal Act is further amended by adding the following subclause:

"(4) In the performance of its functions and the exercise of its powers, the NRA is to have regard to the Commonwealth Government's policy in relation to the principle of ecologically sustainable development and, in particular, to the need to use, conserve and enhance the community's resources so that ecological processes, on which life depends, are maintained, and the total quality of life, now and in the future, can be increased".

**Clause 7 - Insertion of new section**

16. This clause provides that after section 7 of the Principal Act the following new section is inserted:

"Annual publication of standards for certain residues of chemical products

7A (1) The NRA must publish, in an appropriate matter, in each calendar year approved standards for residues of chemical products in protected commodities.

(2) In this section:

'protected commodity' means

- (a) any substance or thing of a kind used or capable of being used as a 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 agricultural commodity; or
- (d) any animal feed; or
- (e) any other prescribed substance or thing; or
- (f) any substance or thing that is capable of being made into anything referred to in a preceding paragraph;

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

**Claus 8 - Consultation**

17. Clause 8 amends section 8 of the Principal Act by inserting clause 1A which provides for the NRA to be able to make available information or samples in respect to an active constituent, chemical product or label to a person, body or Government for the purpose of seeking information or advice.

**Claus 9 - Insertion of new section**

18. This clause amends the Principal Act by inserting clause 9A after section 9 of the Principal Act:

"NRA to comply with policies of Governments of Commonwealth, States and participating Territories

"9A. In the performance of its functions and the exercise of its powers the NRA must comply with any policies of the Governments of the Commonwealth, the States and the participating Territories that are determined under any agreement entered into between those Governments for the purpose of the this Act and the Agvet Codes."

**Clause 10 - Minister may give directions**

19. This clause amends section 10 of the Principal Act by omitting paragraph (2)(a) and substituting the following paragraph:

"(a) the Minister is satisfied that it is necessary to give the direction to the NRA in order to ensure that, in performing its functions, or exercising its powers, the NRA complies with policies of the Governments of the Commonwealth, the States and the participating Territories that are determined under an agreement referred to in section 9A; and"

**Clause 11 - Meetings of NRA**

20. This clause amends section 26 of the Principal Act by adding at the end the following subsection:

"(11) Subsections (1) to (5) and (8) apply to a hearing held by the NRA as if it were a meeting of the NRA."

**Claus 12 - Duties**

21. This clause amends section 32 of the Principal Act by adding at the end of subsection (1) "and, subject to subsection (2), may exercise any of the powers and functions of the NRA".

**Clause 13 - Delegation by the Chief Executive Officer**

22. This clause amends section 44 of the Principal Act by adding at the end "including, to avoid doubt, any powers and functions of the Chief Executive Officer under subsection 32(1)".

**Clause 14 - Staff to be made available to the NRA**

23. This clause amends section 46 of the Principal Act by omitting subsection (2) and substituting the following subsection:

"(2) The NRA may make arrangement with:

(a) the appropriate authority or officer of:

- (i) the Government of a State or Territory or of a foreign country; or
- (ii) an authority of such a Government; or
- (iii) an organisation; or

(b) another person

under which the Government, authority, organisation or person may make officers or employees available to the NRA to perform services in connection with the performance or exercise of any of its functions or powers."

**Clause 15 - Approval of corporate plan**

24. This clause amends section 51 of the Principal Act by omitting from paragraph (1)(b) "Agricultural and Veterinary Chemicals Act 1988" and substituting "Agvet Codes".

**Clause 16 - Appropriation of money**

25. This clause amends section 58 of the Principal Act by omitting paragraph (2)(a) and substituting the following paragraphs:

"(a) fees received by the Commonwealth under the Agricultural and Veterinary Chemicals Act 1988 or under the Agvet Codes or Agvet Regulations; and

(aa) any amounts of levy or late payment penalty paid into the Consolidated Revenue Fund under any Act relating to the collection of a levy imposed in respect of the disposal of chemical products; and".

**Clause 17 - Insertion of new Part:**

26. This clause inserts a new Part which comprises the following Part, Divisions and clauses:



PART 7A - IMPORTATION, MANUFACTURE AND EXPORTATION OF  
CHEMICALS

Division 1 - Interpretation

Clause 69A - Interpretation

27. This clause explains that definitions in this Part have the same meanings as in the Code set out in the Schedule to the Agricultural and Veterinary Chemicals Code Bill 1993, unless the contrary intention appears. Also in this Part "inspector" has the meaning given by clause 4.

Division 2 - Importation, manufacture and exportation

Clause 69B - Importation offence

28. Unless written consent is obtained from the NRA, it is an offence under subclause (1), without reasonable excuse, to import into Australia active constituents that are not approved or exempt or a chemical product that is not registered or exempt. It is also an offence to arrange for the importation into Australia of such an active constituent or chemical product on behalf of another person who is neither a resident or carrying on business in Australia. The maximum penalty for an offence is \$30,000.
29. Subclause (2) defines 'exempt active constituent' and 'exempt chemical product' for the purposes of subclause (1).
30. Subclause (3) provides that the NRA may, by writing, exempt on active constituent from the operation of subclause (1).
31. Subclause (4) states that if the importation of an active constituent or chemical product is prohibited under subclause (1), and the NRA notifies the Comptroller - General of Customs in writing that the NRA wishes the Customs Act 1901 to apply to that importation, the constituent or product is taken to be a prohibited import for the purposes of that Act.
32. It is recognised that the provision "without reasonable excuse" places the onus of proof of matters of excuse on the person charged. This is considered appropriate given that the matters of possible excuse are unlimited and would be peculiarly within the knowledge of the person charged, and the prosecution could not reasonably be expected to disprove their existence.

Clause 69C - International obligation on import, manufacture or export of active constituents or chemical products

33. Subclause (1) provides that if active constituents or chemical products are the subject of a prescribed international agreement, the regulations may prohibit the importation into, manufacture in, or exportation from, Australia of the constituent or product, either absolutely or subject to conditions prescribed.
34. Subclause (2) states that a regulation prescribing conditions or restrictions must not be made under subclause (1) unless the NRA has published in the Gazette, and in any other manner that it thinks appropriate, a notice identifying the agreement and listing the name or names by which the constituent or product is known to the public and requiring all persons who manufacture, export or import the constituent or product to give the NRA information in the approved form about movements of the constituent or product into or out of Australia. A period of 30 days since the notice was published must elapse before regulations can be made.
35. Subclause (3) states that the NRA may inform a country, or the appropriate authority or international organisation, of movements into or out of Australia of an active constituent or chemical product specified in regulations made for the purposes of subsection(1).
36. Subclause (4) enables the NRA to give the information referred to under subclause (3) in such terms and on such conditions as the NRA thinks fit, having regard to the requirements of the relevant international agreement and the interest of any person in maintaining confidentiality in relation to movements of the constituent or product.
37. Subclause (5) makes it an offence to import, manufacture, or export an active constituent or chemical product in contravention of a condition or restriction prescribed by such regulation, without reasonable excuse. The maximum penalty for an offence is \$30,000.
38. It is recognised that the provision "without reasonable excuse" places the onus of proof of matters of excuse on the person charged. This is considered appropriate given that the matters of possible excuse are unlimited and would be peculiarly within the knowledge of the person charged, and the prosecution could not reasonably be expected to disprove their existence.

## Clause 69D - Export of chemical products

39. Subclause (1) states that where a person has applied in writing to export a chemical product to a foreign country, the NRA may provide that country, or the person with a certificate setting out the findings of the NRA in relation to matters that are required to be established for the purposes of the product's export.
40. Subclause (2) enables the NRA to inform bodies in other countries with functions similar to its own, that a particular chemical product which is proposed to be exported to that country, has had its registration refused, suspended or cancelled, or that the registration of the product has been made subject to conditions, and the reasons for the action taken.

## Clause 69E - Annual Returns

41. This clause requires a person who imports, manufactures or exports active constituents (including active constituents contained in formulated chemical products) to give a return to the NRA setting out the respective quantities imported, manufactured or exported during the financial year. The penalty for an offence is \$3,000. A minimum total annual quantity to be reported may be prescribed by regulations.

## Clause 69EA - Keeping of records

42. This clause states that a person who imports, manufactures or exports an active constituent or a chemical product must keep records relating to the action that are reasonably necessary to enable the NRA to find out whether clauses 69B, 69C and 69E have been complied with. Such records must be retained for 6 years. The maximum penalty for failing to comply with this clause is \$3,000.

Division 3 - Powers of entry, search and seizure.

Clause 69EB - Searches to monitor compliance with Part

43. This clause gives an inspector the power to enter and inspect, for the purposes of ensuring compliance with this Part, any premises at which agricultural and/or veterinary chemical products, their active constituents and/or relevant records are believed to be kept.
44. Subclause (1) sets out the powers and obligations of the inspector. For example, the inspector has the right to search any part of the premises and inspect the contents, including documents, during ordinary working hours. He or she may take photographs (including video recordings), collect samples, open containers, and seize things.
45. Subclause (2) requires an inspector to issue a receipt for any thing sampled or seized.
46. Subclauses (3) and (4) provide that an inspector may not enter a residence without the consent of the occupier, and must produce an identity card when requested to do so by the occupier. If the inspector fails to produce an identity card, he or she may not exercise any powers under subclause (1).
47. Subclause (5) provides that if a direction given by an inspector is inconsistent with a direction given by an inspector on a previous occasion, the occupier must follow the more recent direction to the extent of the inconsistency.
48. Subclause (6) provides that a person must not, "without reasonable excuse" refuse or fail to comply with a direction given by an inspector. The maximum penalty for an offence is \$3000. It is recognised that the provision "without reasonable excuse" places the onus of proof of matters of excuse on the person charged. This is considered appropriate given that the matters of possible excuse are unlimited and would be peculiarly within the knowledge of the person charged, and the prosecution could not reasonably be expected to disprove their existence.

#### Clause 69EC - Offence-related searches and seizures

49. This clause provides that if an inspector has reasonable grounds for suspecting the commission of an offence against this Part at a particular premises, he or she may enter and search the premises for evidence of the offence, either with the consent of the occupier or under a warrant issued under clause 69ED. If any evidence is found the inspector may take photographs (including video recordings) of the premises or evidence, take samples of the evidence or seize it.
50. If during the course of an inspection under a warrant, the inspector finds evidence of the offence that is not stated in the warrant, or evidence of another offence not stated in the warrant, he or she may seize that evidence where there are reasonable grounds for doing so.

#### Clause 69ED - Offence-related warrants

51. This clause sets out the conditions under which a magistrate may issue a warrant to enter and search a premises where there are reasonable grounds for suspecting that evidence exists of an offence against this Part.
52. Subclauses (2) and (3) provide that the magistrate must be satisfied, by information provided on oath, that there are reasonable grounds for suspecting that such evidence exists at the premises, or that it may be there within the next 72 hours. Furthermore, the magistrate must be provided with any additional information required, either orally or by affidavit, about the grounds on which the warrant is being sought.
53. Subclause (4) describes the information that must be contained in the warrant. The warrant must state the nature of the offence and the purpose for which it is issued. It must authorise a nominated inspector, with any help and using any reasonable force that is necessary, to enter the premises and exercise the powers described in clause 69EC. The warrant must also indicate the time of day when the entry is authorised (eg at any time of day or night, or during stated hours), and state the date on which the warrant ceases to have effect (not more than 7 days after the date of issue).

Clause 69EE - Announcement before entry

54. This clause requires that where an inspector is authorised to enter premises under a warrant issued under clause 69ED, the inspector or person helping must announce that he or she has a warrant to enter the premises, and give any person at the premises an opportunity to allow entry, before any member of the inspection team enters the premises.
55. However, the inspection team does not have to comply with this requirement if there are reasonable grounds for believing that immediate entry is required to ensure human safety (including that of any member of the inspection team), or the effective execution of the warrant.

Clause 69EF - Details of warrant to be given to occupier

56. This clause requires an inspector executing a warrant, or person helping, to give a copy of the warrant to either the occupier or his/her representative if they are present at the premises when the entry is effected. The copy of the warrant need not include the signature of the magistrate who issued the warrant. The inspector must identify himself or herself to the person at the premises.

Clause 69EG - Use of equipment to examine or process things

57. This clause allows the inspector, or a person helping the inspector, to bring onto the premises being inspected any equipment reasonably necessary for the examination or the processing of things found at the premises, in order to determine whether they are things that may be seized.
58. Subclauses (2) and (3) allow things to be moved to another place for examination or processing if it is not practicable to examine or process them at the premises, or if the occupier of the premises consents in writing. If things containing electronically-stored information are moved to another place for examination or processing, the inspector must, where practicable, tell the occupier when and where the examination or processing will be carried out, and allow the occupier (or his/her representative) to be present during the examination or processing.
59. Subclause (4) allows the inspector or a helper to operate equipment already at the premises, for these purposes, provided he or she has reasonable grounds for believing that the equipment is suitable for the examination or processing, and that it can be

carried out without damage to the equipment or the thing being examined/processed.

Clause 69EH - Use of electronic equipment at premises

60. This clause allows an inspector or a helper entering premises under clause 69EB or 69EC, to operate equipment found on the premises to see whether the equipment, or any associated data storage device found on the premises, contains records that are relevant to the investigation. If necessary the inspector can require the occupier, or an employee of the occupier, to operate the equipment.
61. Subclause (2) allows the inspecting team to seize any equipment or storage device found to contain relevant records. They may use the equipment at the premises to produce a documentary form of the records if appropriate, or transfer the records to a disk, tape or other storage device that has either been brought to the premises or supplied with a written agreement by the occupier.
62. Subclause (3) provides that equipment may be seized only if it is not practicable to transfer the records to documentary form or some other suitable storage device, or if possession of the equipment by the occupier is an offence.
63. Subclause (4) provides that an inspector or helper must not operate the equipment unless he or she believes on reasonable grounds that the equipment can be operated without damage.

Clause 69EI - Compensation for damage to electronic equipment

64. This clause provides that the NRA must pay compensation for any damage to the owner of the equipment used under clause 69EG or 69EH if the damage was caused, under the circumstances, by insufficient care being taken in selecting the person to operate the equipment, or if the operator exercised insufficient care in operating it.
65. Subclause (2) states that in determining the amount of compensation payable, due regard must be taken of whether the occupier or his/her employees were present at the time, and if present, the extent to which they had provided any warnings or guidance as to the operation of the equipment under the circumstances.

Clause 69EJ - Copies of seized things to be given

66. This clause requires the inspector who has entered a premises under clause 69EB or 69EC and seized material or records that can readily be copied, to give a copy of the seized material, if so requested, to the occupier or a representative of the occupier who was present when the material was seized.
67. This requirement does not apply if the original material, from which the seized records were copied, is left on the premises, or if possession by the occupier of the seized material could be an offence.

Clause 69EK - Return of things that are seized

68. This clause requires an inspector who has seized material under clause 69EB or 69EC to take reasonable steps to return the material once the reason for its seizure no longer exists, unless subclause (2), or the provisions in clauses 69EL or 69ET apply.
69. Subclause (2) requires that the material must be returned within 60 days unless any of the provisions listed in the subclause apply.
70. If the material is to be returned, it must be returned to the person from whom it was seized, or to the owner, whichever is applicable. If there is any dispute over ownership, the inspector may keep the material until the dispute is resolved.

Clause 69EL - Court of summary jurisdiction may permit a thing to be kept

71. This clause provides that where proceedings, in which seized material may be used in evidence, have not been brought either before the original 60 day time limit or before the end of a period previously specified in a court order of this nature, a court of summary jurisdiction may allow an inspector to keep evidence for a further specified period.
72. Subclause (2) provides that a court may extend the time necessary to retain evidence so as to allow an inspector time to carry out further investigation as to whether an offence has been committed, or to allow evidence of an offence to be secured pending prosecution.
73. Subclause (3) states that if the court thinks that notice of the application should be given to any person, then it may require that such notice be given before it hears the application.



Clause 69EM - Warrants may be granted by telephone in urgent circumstances

74. This clause allows an inspector to apply for a warrant under subclause 69ED(1) by telephone if the situation is considered urgent.
75. Subclause (2) provides that before applying for a telephone warrant, an inspector must prepare the necessary information setting out the reasons for the issue of the warrant, as required under subclause 69ED(2). If necessary, the inspector may apply for the warrant before the information is sworn.
76. Subclauses (3) and (4) provides that if a magistrate is satisfied that there are reasonable grounds for issuing the warrant, he or she must complete and sign a warrant as would normally be done under clause 69ED. The magistrate must then notify the inspector of the terms of the warrant, and the date and time at which it was signed, and write on the warrant the reasons why it was granted. The inspector must then complete a form of warrant in the terms notified by the magistrate, and write on it the name of the magistrate, as well as the date and time at which the warrant was signed.
77. Subclauses (5) and (6) require the inspector to send to the magistrate the completed form of warrant together with the information duly sworn in connection with the warrant. This must be done not later than the day after the warrant ended or was executed, whichever is the earlier. The magistrate must then attach these documents to the signed warrant, and deal with them in the same way as a normal warrant would be dealt with in accordance with clause 69ED.
78. Subclause (7) states that, provided the warrant is completed in accordance with subclause (4), and is in accordance with the terms of the warrant signed by the magistrate, a form of warrant provides authority for any entry, search, seizure and the giving of directions that the signed warrant authorises.
79. Subclause (8) provides that if it is necessary in any proceedings for a court to be satisfied that an entry, search, seizure or direction given was authorised by a telephone warrant, the signed warrant must be produced in evidence, otherwise the court must assume that the action taken was not authorised by a warrant, unless the contrary can be proved.

Clause 69EN - Power of inspector to require information or documents

80. This clause gives an inspector who has entered premises under the Division, power to require a person to give information and to produce any documents referred to by the inspector. The information or documents must be reasonably necessary for the purposes of the investigation, and the inspector cannot make such a request if unable to show his or her identity card to the person at the time.
81. Subclause (3) provides that a person must not, without reasonable excuse, refuse or fail to comply with a requirement to provide an inspector with information or documents. The maximum penalty for an offence is \$3000. It is recognised that the provision "without reasonable excuse" places the onus of proof of matters of excuse on the person charged. This is considered appropriate given that the matters of excuse are unlimited and would be peculiarly within the knowledge of the person charged, and the prosecution could not reasonably be expected to disprove their existence.

Clause 69EO - False or misleading information or document

82. This clause makes it an offence for a person to give false or misleading information (whether oral or in writing).
83. It is also an offence for a person to produce a document that the person knows to be false or misleading without:
  - . indicating so and the respect in which it is false or misleading; and
  - . providing correct information, if that person is in possession of the correct information or can reasonably acquire it.
84. The maximum penalty for an offence is \$3000.

## Division 4 - Miscellaneous

## Clause 69EP - Hearings

85. This clause allows the NRA to hold hearings for purposes relating to any of its functions or powers. Such hearings will normally be held in public, although subclause (4) allows the NRA to direct that any part of the hearing be held in private and to determine who may attend, having regard to the confidential nature of submissions or evidence or for any other reason.
86. Before a hearing, the NRA must publish both in the Gazette and in such other manner as it thinks appropriate, a notice setting out the time and place of the hearing.
87. Subclauses (5) and (6) allow the NRA to prohibit or restrict the publication of submissions or evidence, or of matters contained in submissions, evidence or documents produced at a hearing, regardless of whether the hearing is held in public or private. The maximum penalty for an offence is \$2000. It is recognised that the provision "without reasonable excuse" places the onus of proof of a matter of excuse on the person charged. This is considered appropriate given that the matters of excuse are unlimited and would be peculiarly within the knowledge of the person charged, and the prosecution could not reasonably be expected to disprove their existence.
88. Subclause (7) provides that if the NRA directs that a part of a hearing be held in private, a person must not, "without reasonable excuse", be present at that hearing unless authorised to be there. The maximum penalty for an offence is \$2000. It is recognised that the provision "without reasonable excuse" places the onus of proof of a matter of excuse on the person charged. This is considered appropriate given that the matters of excuse are unlimited and would be peculiarly within the knowledge of the person charged, and the prosecution could not reasonably be expected to disprove their existence.
89. Subclauses (8) and (9) allow the NRA to receive submissions at a hearing from persons who are likely, in its opinion, to be able to help it in the matter to which the hearing relates. Evidence is to be submitted in a form determined by the NRA, hearings are to be conducted with as little formality as possible, and the NRA is not bound by the rules of evidence.

Clause 69EQ - Self-incrimination to be a reasonable excuse for non-compliance with requirement

90. This clause states that it is a reasonable excuse for a person to refuse or fail to give information, produce a document or do any other thing that the person is required to do under this Part, if such action is likely to incriminate that person.

Clause 69ER - Copying of documents

91. This clause allows an inspector to make copies of, or take extracts from, any document seized under clause 69EC or produced under subclause 69EN(1).

Clause 69ES - Evidential certificates

92. This clause states that, for the purposes of any legal or administrative proceeding associated with this Part, a certificate that makes a statement regarding a matter referred to in subclause (3) will be considered as evidence of that matter, if it is signed by the Chief Executive Officer of the NRA or a staff member of the NRA who is authorised to sign such certificates.
93. Subclause (3) lists those matters that may be stated in such a certificate.
94. Subclause (4) states that a document purporting to be a certificate of this kind, will be treated as such and considered to be duly given, unless the contrary is proved.

Clause 69ET - Forfeiture

95. This clause states that if a person is convicted of an offence against this Part in respect of any 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 NRA. Any material forfeited in this way becomes the property of the NRA and may be dealt with or disposed of in any manner that the NRA considers appropriate.

Clause 69EU - Conduct by directors, servants and agents

96. This clause states that a body corporate is legally responsible for the conduct of its directors, servants or agents in respect to an offence against this Part. The same applies to an individual who employs servants or agents to carry out the provisions of this Part.

97. Subclause (1) states that in proceedings against a body corporate for an offence against the Code, any conduct engaged in by a director, servant 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, will be considered as conduct undertaken by the body corporate.
98. The body corporate will also be held responsible if it can be proved that its directors intentionally, knowingly or recklessly engaged in the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the relevant conduct to occur.
99. The same principle applies if a servant or agent of the body corporate, whose duties are such that his or her conduct may fairly be assumed to represent the body corporate's policy, intentionally, knowingly or recklessly engaged in the relevant conduct, or expressly, tacitly or impliedly authorised or permitted it to occur.
100. Subclause (2) provides that the body corporate will not be held responsible if it can prove that it exercised due diligence to prevent the relevant conduct.
101. Subclauses (3) and (4) extend, in principle, the same responsibilities to an individual who engages servants or agents in respect to the provisions of this Part.
102. Subclause (5) provides that an individual cannot be imprisoned if convicted for an offence against this Part because of things done by his or her servants or agents.
103. Subclause (6) states that any reference to "engaging in conduct" in this clause includes a reference to "failing or refusing to engage in conduct".

**Clause 18 - Insertion of new sections:**

104. This clause amends the Principal Act by inserting before section 70 of Part 8 the following clauses:

**Clause 69F - Appointment of inspectors**

105. This clause provides that the NRA may appoint members of its staff, persons appointed or employed under the Public Service Act 1922, or other appropriately qualified persons, to be inspectors for the purposes of a relevant law referred to in the instrument of appointment. Such appointments must be made in writing.

106. Subclause (2) provides that the Chief Executive Officer of the NRA may authorise officers of certain Commonwealth and State Departments, administrative unit or authority to exercise the powers and perform the functions of inspector.
107. Subclause (3) states that for the purposes of sections 70 to 76 of the Crimes Act 1914, an inspector appointed by the NRA is considered a Commonwealth Officer.
108. Subclause (4) provides that the NRA must cause to be provided to each person appointed as an inspector, an identity card which states the person's name and the fact that the person is an inspector for the purposes of the relevant law. The identity card must also have attached to it a recent photograph of the person, taken within 3 years before the identity card is issued.
109. Under subclause (5), a person who ceases to be an inspector must return his or her identity card to the NRA as soon as practicable, unless there is a reasonable excuse for not doing so. The maximum penalty for failing to do so is \$100.
110. It is recognised that the provision "without reasonable excuse" places the onus of proof of matters of excuse on the person charged. This is considered appropriate given that the matters of excuse are unlimited and would be peculiarly within the knowledge of the person charged, and the prosecution could not reasonably be expected to disprove their existence.
111. Subclause (6) explains that for the purposes of this clause, the term "relevant law" means either this Act (ie the Agricultural and Veterinary Chemicals (Administration) Act 1992), the Agvet Codes, or any other Act providing for the collection of a levy imposed in respect of the disposal of chemical products.

#### Clause 69G - Approval of analysts

112. This clause allows the NRA to appoint persons, whom it considers to have appropriate qualifications and experience, as "approved analysts" for the purposes of the Agvet Codes. The appointment must be in writing and under the common seal of the NRA.
113. Subclause (2) requires the NRA to publish the name and business address of each approved analyst in the Gazette.

Clause 69H - Exemptions from liability for damages

114. This clause provides that the Commonwealth, the NRA or any other Commonwealth authority, and certain listed persons, cannot be held liable for any loss or injury suffered, either directly or indirectly, because of:
- . the handling of an approved active constituent, a registered chemical product, or an active constituent or a chemical product for which a permit has been issued or given by the NRA; or
  - . an inability to use, or use in a particular way, an active constituent or a chemical product which the NRA has refused to approve or register, or in respect to which the NRA has refused to issue a permit allowing it to be used, or used in a particular way, or the NRA has cancelled or suspended the approval or registration; or
  - . the implementation of a step in the manufacturing process of a chemical product, which has been licensed by the NRA; or
  - . an inability to carry out, or to carry out in a particular manner or at a particular premises, a step in the manufacturing process of a chemical product, which the NRA has refused to licence, or the NRA has cancelled or suspended the licence.
115. Subclause (2) states that if an action, suit or other proceeding in relation to any loss or injury, directly or indirectly suffered because of the importation, manufacture, supply or handling of:
- . an approved active constituent or a registered chemical product; or
  - . an active constituent or a chemical product, the use of which is subject to a permit or exemption from the NRA; or
  - . a chemical product manufactured by a process or at a premises licensed by the NRA;
  - . is brought against a person responsible for the importation, manufacture, supply or handling of that chemical product, it is not a defence to that action, suit or other proceeding that the NRA had approved the active constituent, registered the product, issued a permit or given an exemption in relation to either the active constituent or product, or licensed a step in the manufacturing process of the product.
116. Subclause (3) provides that this section does not affect section 75AL of the Trade Practices Act 1974.

117. Subclause (4) explains that expressions used in this clause have the same meaning as in the Agvet Code set out in the Schedule to the Agricultural and Veterinary Chemicals Code Bill 1993.

Clause 69J - Documents or substances held by NRA at commencement of Agvet Codes

118. This clause states that any documents or substances that were in the possession or custody of the NRA under the Agricultural and Veterinary Chemicals Act 1988 immediately before the repeal of that Act, are taken to be in the possession or custody of the NRA under the Agvet Codes.

#### Clause 19 - Delegation by Minister

119. This clause amends section 71 of the Principal Act by replacing paragraph (1)(a) with the following paragraph:

"(a) the powers conferred on the Minister under this Act, the Agricultural and Veterinary Chemicals Act 1993, the Agricultural and Veterinary Chemicals Code Act 1993 or the Agvet Codes or the Agvet Regulations; or"

#### Clause 20 - Agreements etc. - Minister may make arrangements

120. This clause amends section 76 of the Principal Act by omitting the words "agricultural or veterinary" from paragraph (b).

### **PART 3 - CONSEQUENTIAL AMENDMENTS OF THE COPYRIGHT ACT 1968**

#### Clause 21 - Principal Act

121. This clause explains that in this Part, "Principal Act" means the Copyright Act 1968.

#### Clause 22 - Interpretation

122. This clause amends section 10 of the Principal Act by inserting the following definitions in subsection(1):

" 'approved label' means a label approved under:

- (a) Part 2 of the Agvet Code of a State or of the Northern Territory; or
- (b) Part 2 of the Agvet Code of the participating territories within the meaning of the Agricultural and Veterinary Chemicals Act 1993;



'chemical product' has the same meaning as in the Schedule to the Agricultural and Veterinary Chemicals Code Act 1993.".

**Clause 23 - Insertion of new section**

123. This clause amends the Principal Act by inserting after section 44A in Division 3 of Part III:

"Reproduction of writing on approved label for containers for chemical product

44B. The reproduction on a label for a container for a chemical product of any writing contained on an approved label is not to be an infringement of any copyright subsisting under this Part in relation to that writing.".

**Clause 24 - Insertion of new section**

124. This clause amends the Principal Act by inserting clause 112B after section 112A in Division 6 of Part IV:

"Reproduction of writing on approved label for containers for chemical product

112B. The reproduction on a label for a container for a chemical product of any writing contained on an approved label is not to be an infringement of any copyright subsisting under section 92 in relation to that writing.".













