Agricultural and Veterinary Chemicals Legislation Amendment (Operational Efficiency) Bill 2017

No.        , 2017

(Agriculture and Water Resources)

A Bill for an Act to amend the law relating to agricultural and veterinary chemicals, and for related purposes
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A Bill for an Act to amend the law relating to agricultural and veterinary chemicals, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the Agricultural and Veterinary Chemicals Legislation Amendment (Operational Efficiency) Act 2017.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<td>Provisions</td>
<td>Commencement</td>
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<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day this Act receives the Royal Assent.</td>
<td></td>
</tr>
<tr>
<td>2. Schedule 1, Part 1</td>
<td>The day after the end of the period of 3 months beginning on the day this Act receives the Royal Assent.</td>
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<tr>
<td>3. Schedule 1, Part 2</td>
<td>1 July 2018.</td>
<td>1 July 2018</td>
</tr>
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<td>4. Schedule 1, Part 3</td>
<td>The day after the end of the period of 12 months beginning on the day this Act receives the Royal Assent.</td>
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<td>5. Schedule 1,</td>
<td>The day after the end of the period of 3</td>
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No. 2017 Agricultural and Veterinary Chemicals Legislation Amendment (Operational Efficiency) Bill 2017
## Commencement information

<table>
<thead>
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<td>Part 4</td>
<td>months beginning on the day this Act receives the Royal Assent.</td>
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<td>6. Schedule 1, Part 5</td>
<td>The day after this Act receives the Royal Assent.</td>
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<tr>
<td>7. Schedule 1, Part 6</td>
<td>The day after the end of the period of 12 months beginning on the day this Act receives the Royal Assent.</td>
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<td>The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.</td>
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<td>10. Schedule 1, Part 9</td>
<td>The day after the end of the period of 3 months beginning on the day this Act receives the Royal Assent.</td>
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<td>11. Schedule 1, Part 10</td>
<td>The day after this Act receives the Royal Assent.</td>
<td></td>
</tr>
</tbody>
</table>

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Amendments

Part 1—Confidential commercial information

Agricultural and Veterinary Chemicals Code Act 1994

1 Subsection 8F(2) of the Code set out in the Schedule (note)
   Repeal the note.

2 Subsection 8S(2) of the Code set out in the Schedule (note)
   Repeal the note.

3 Paragraphs 8X(1)(a) and (b) of the Code set out in the Schedule
   Repeal the paragraphs.

4 Paragraph 8X(1)(e) of the Code set out in the Schedule
   Omit “(5);”, substitute “(5).”.

5 Paragraphs 8X(1)(f) and (g) of the Code set out in the Schedule
   Repeal the paragraphs.

6 Subsection 34AB(2) of the Code set out in the Schedule (note)
   Repeal the note.

7 Subsection 34AC(2) of the Code set out in the Schedule (note)
   Repeal the note.

8 Application provision
   The amendments made by this Part apply in relation to a notice given
   under subsection 8F(1), 8S(1), 34AB(1) or 34AC(1) of the Code set out
   in the Schedule to the Agricultural and Veterinary Chemicals Code Act
   1994 on or after the commencement of this item.
Part 2—Annual returns and record-keeping

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

9 Subsection 3(1)

Insert:

*active constituent* has the same meaning as in the Agricultural and Veterinary Chemicals Code set out in the Schedule to the Agricultural and Veterinary Chemicals Code Act 1994.

10 After section 34

Insert:

35 Annual returns by interested persons

(1) The interested person in relation to a chemical product who is liable to pay levy in respect of leviable disposals of the product that took place anywhere in Australia at any time during a financial year must give to the APVMA, before 30 November in the next financial year, a return setting out the total quantity of the chemical product covered by those leviable disposals.

Strict liability offence

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

Penalty: 50 penalty units.

Civil penalty

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

Note 1: For monitoring and investigation powers of inspectors in relation to this Act, see Part 7AA of the Agricultural and Veterinary Chemicals (Administration) Act 1992.
Note 2: Division 1 of Part 7AB of the *Agricultural and Veterinary Chemicals (Administration) Act 1992* provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 3: For infringement notices, enforceable undertakings and formal warnings in relation to contraventions of subsection (1), see Divisions 2, 3 and 6 of Part 7AB of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

**Statement to Department**

(4) From the returns given to the APVMA in relation to a financial year, the APVMA must give the Secretary of the Department a statement or statements setting out the total quantities of each active constituent for each chemical product covered by those returns.

**Alternative constitutional bases**

(5) Without limiting its effect apart from this subsection, this section also has the effect it would have if its operation were expressly confined to:

(a) matters relating to census and statistics; or

(b) acts or omissions of corporations to which paragraph 51(xx) of the Constitution applies; or

(c) acts or omissions taking place in the course of, or in relation to, trade or commerce:

(i) between Australia and places outside Australia; or

(ii) among the States; or

(iii) within a Territory, between a State and a Territory or between 2 Territories; or

(d) acts or omissions taking place in a Territory.

(6) A term used in subsection (5) and the Constitution has the same meaning in that subsection as it has in the Constitution.

11 **After section 36**

Insert:
37 Records to be kept by interested persons

(1) The interested person in relation to a chemical product who is liable to pay levy in respect of leviable disposals of the product that took place anywhere in Australia at any time during a financial year must:
   (a) keep any records relating to those disposals that are reasonably necessary to enable the APVMA to find out whether section 35 has been complied with; and
   (b) retain those records for 6 years.

Strict liability offence

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

Penalty: 50 penalty units.

Civil penalty

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

Note 1: For monitoring and investigation powers of inspectors in relation to this Act, see Part 7AA of the Agricultural and Veterinary Chemicals (Administration) Act 1992.

Note 2: Division 1 of Part 7AB of the Agricultural and Veterinary Chemicals (Administration) Act 1992 provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 3: For infringement notices, enforceable undertakings and formal warnings in relation to contraventions of subsection (1), see Divisions 2, 3 and 6 of Part 7AB of the Agricultural and Veterinary Chemicals (Administration) Act 1992.

Alternative constitutional bases

(4) Without limiting its effect apart from this subsection, this section also has the effect it would have if its operation were expressly confined to:
   (a) matters relating to census and statistics; or
   (b) acts or omissions of corporations to which paragraph 51(xx) of the Constitution applies; or
Amendments Schedule 1
Annual returns and record-keeping Part 2

(c) acts or omissions taking place in the course of, or in relation to, trade or commerce:
   (i) between Australia and places outside Australia; or
   (ii) among the States; or
   (iii) within a Territory, between a State and a Territory or between 2 Territories; or
(d) acts or omissions taking place in a Territory.

(5) A term used in subsection (4) and the Constitution has the same meaning in that subsection as it has in the Constitution.

12 Application provision
Sections 35 and 37 of the Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994, as inserted by this Part, apply in relation to leviable disposals that take place in the 2018-19 financial year or in a later financial year.

13 Section 69E
Repeal the section.

14 Subsection 69EA(1) (heading)
Repeal the heading, substitute:

Records relating to compliance with sections 69B and 69C

15 Paragraph 69EA(1)(a)
Omit “69B, 69C and 69E”, substitute “69B and 69C”.

16 Saving provisions
(1) Despite the repeal of section 69E of the Agricultural and Veterinary Chemicals (Administration) Act 1992 made by this Part, that section, as in force immediately before the commencement of this item, continues to apply on and after that commencement in respect of the following:

No. 2017 Agricultural and Veterinary Chemicals Legislation Amendment (Operational Efficiency) Bill 2017
Schedule 1  Amendments

Part 2  Annual returns and record-keeping

(a) the import, manufacture or export of active constituents
referring to in paragraph 69E(1)(a) of that Act that occurred in
the 2017-18 financial year or in an earlier financial year;

(b) the import, manufacture or export of chemical products
referring to in paragraph 69E(1)(b) of that Act that occurred in
the 2017-18 financial year or in an earlier financial year.

(2) Despite the amendments of section 69EA of the Agricultural and
Veterinary Chemicals (Administration) Act 1992 made by this Part, that
section, as in force immediately before the commencement of this item,
continues to apply on and after that commencement in relation to the
keeping and retaining of records in respect of the matters covered by
paragraphs (1)(a) and (b) of this item.

Agricultural and Veterinary Chemicals Legislation Amendment Act, 2017
Part 3—Preliminary assessments

Agricultural and Veterinary Chemicals Code Act 1994

17 Subsection 11(3) of the Code set out in the Schedule

Repeal the subsection, substitute:

(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.

(3A) 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.

18 Subsection 28(3) of the Code set out in the Schedule

Repeal the subsection, substitute:

(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.

(3A) The APVMA must refuse the application if:
Schedule 1 Amendments

Part 3 Preliminary assessments

1. (a) the APVMA is not satisfied that defects in the application can reasonably be rectified; or
2. (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.

19 Application provision

The amendments made by this Part apply in relation to applications lodged under section 10 or 27 of the Code set out in the Schedule to the Agricultural and Veterinary Chemicals Code Act 1994 on or after the commencement of this item.

10 Agricultural and Veterinary Chemicals Legislation Amendment No. 2017
(Operational Efficiency) Bill 2017
Part 4—Variation of relevant particulars and conditions

*Agricultural and Veterinary Chemicals Code Act 1994*

20 At the end of subsection 8S(1) of the Code set out in the Schedule (before the note)

   Add:
   
   ; or (c) varies, under section 29, relevant particulars or conditions in a way other than set out in the application.

21 After paragraph 8S(2)(a) of the Code set out in the Schedule

   Insert:
   
   (b) for notice under paragraph (1)(c)—set out the proposed variation; and

22 Paragraphs 29(1)(b), (c) and (d) of the Code set out in the Schedule

   Omit “in accordance with the application”, substitute “in a particular way (which may not be the same way as set out in the application)”.

23 After paragraph 167(1)(c) of the Code set out in the Schedule

   Insert:
   
   (ca) a decision under subsection 29(1) to vary relevant particulars or conditions in a way other than set out in the application for variation;

24 Application provision

   The amendments made by this Part apply in relation to an application lodged under section 27 of the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* on or after the commencement of this item.
Schedule 1  Amendments

Part 5  Notification about variation to Maximum Residue Limits Standard

Part 5—Notification about variation to Maximum Residue Limits Standard

Agricultural and Veterinary Chemicals Code Act 1994

25 Paragraph 8E(2)(c) of the Code set out in the Schedule

Repeal the paragraph, substitute:

(c) be given to Food Standards Australia New Zealand before the approval, registration, variation or permit is given, made or issued.

26 Application provision

The amendment made by this Part applies in relation to notifications on or after the commencement of this item.
Part 6—Variation of label approval while approval suspended

Agricultural and Veterinary Chemicals Code Act 1994

27 Subsection 43(2) of the Code set out in the Schedule

Omit “An”, substitute “Subject to this section, an”.

28 At the end of section 43 of the Code set out in the Schedule

Add:

(4) A suspension under section 36 or subsection 41(2) of the approval of a label for containers for a chemical product does not prevent:
   (a) the lodging of a notice under section 26AB of one or more notifiable variations of the relevant particulars of the approval or the dealing with the notice; or
   (b) an application being made under section 26B for one or more prescribed variations of the relevant particulars of the approval or the dealing with the application; or
   (c) an application being made under subsection 27(1) for variation of the relevant particulars of the approval or the dealing with the application; or
   (d) a variation under section 29A of the relevant particulars of the approval.

(5) A notice referred to in paragraph (4)(a), an application referred to in paragraph (4)(b) or (c) or a variation referred to in paragraph (4)(d) must be in relation to the reasons for the suspension of the approval.

29 Subsection 45A(2) of the Code set out in the Schedule

Omit “subsection (1)”, substitute “paragraph (1)(a)”. 

No. 2017 Agricultural and Veterinary Chemicals Legislation Amendment (Operational Efficiency) Bill 2017
Schedule 1 Amendments

Part 6 Variation of label approval while approval suspended

30 Paragraph 45A(2)(b) of the Code set out in the Schedule

Omit “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—”.

31 Application provision

The amendments made by this Part apply in relation to a suspension or cancellation made on or after the commencement of this item.
Part 7—Expiry date

Agricultural and Veterinary Chemicals Code Act 1994

32 Section 3 of the Code set out in the Schedule (definition of expiry date)

Omit “month and year after which the contents should”, substitute “date after which the contents must”.

33 Application provision

The amendment made by this Part applies in relation to a supply referred to in subsection 85(1) or 91(1) or (2) of the Code set out in the Schedule to the Agricultural and Veterinary Chemicals Code Act 1994 that occurs on or after the commencement of this item.
Part 8—Antimicrobial resistance

Agricultural and Veterinary Chemicals Code Act 1994

34 After subparagraph 5A(2)(a)(i) of the Code set out in the Schedule

Insert:

(ia) the potential for human exposure to antimicrobial resistant microorganisms resulting from the use of the constituent;

35 After subparagraph 5A(3)(a)(i) of the Code set out in the Schedule

Insert:

(ia) the potential for human exposure to antimicrobial resistant microorganisms resulting from the use of the product;
Part 9—False and misleading information

Agricultural and Veterinary Chemicals (Administration) Act 1992

36 At the end of section 69ER

Add:

(3) A person must not, in compliance or purported compliance with a requirement made by an inspector under Part 7A, Part 7AA or this Part or for the purposes of, or in connection with, any provision of Part 7A, Part 7AA or this Part:
(a) give information (whether orally or in writing) that the person knows to be false or misleading in a material particular; or
(b) produce 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.

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

Note: Division 1 provides for pecuniary penalties for contraventions of civil penalty provisions.

Agricultural and Veterinary Chemicals Code Act 1994

37 Before subsection 146(1) of the Code set out in the Schedule

Insert:
Offences

38 At the end of section 146 of the Code set out in the Schedule

Add:

Civil penalty

(3) A person must not, 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:

(a) give information (whether orally or in writing) that the person knows to be false or misleading in a material particular; or

(b) produce 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.

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

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

39 Application provision

The amendments made by this Part apply in relation to information given, or a document produced, on or after the commencement of this item.
Part 10—Other amendments

Agricultural and Veterinary Chemicals (Administration) Act 1992

40 Part 7B

Repeal the Part.

41 Saving provision

Despite the repeal of Part 7B of the Agricultural and Veterinary Chemicals (Administration) Act 1992 made by this Part, section 69EZ of that Act, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to an approval referred to in that section that was given before that commencement.

Agricultural and Veterinary Chemicals Code Act 1994

42 Subparagraph 8A(a)(v) of the Code set out in the Schedule

Omit “subparagraph.”, substitute “subparagraph; and”.

43 Subsection 46(1) of the Code set out in the Schedule

Omit “relevant file”, substitute “relevant APVMA file”.

44 Paragraph 51(c) of the Code set out in the Schedule

Omit “relevant file”, substitute “relevant APVMA file”.

No.  , 2017 Agricultural and Veterinary Chemicals Legislation Amendment (Operational Efficiency) Bill 2017