



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

Act No. 41 of 1994 as amended

This compilation was prepared on 6 July 2011
taking into account amendments up to Act No. 46 of 2011

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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**THE CONTENTS TABLE BELOW HAS
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An Act to provide for the collection of a levy on agricultural and veterinary chemical products, and for related purposes

Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994*.

2 Commencement [see Note 1]

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

3 Interpretation

- (1) In this Act, unless the contrary intention appears:

Agency has the same meaning as in the *Financial Management and Accountability Act 1997*.

agricultural chemical product 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*.

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

assessment means an assessment under section 16.

Australia includes any external Territories that are participating Territories.

Australian product means a chemical product that has been manufactured in Australia, but does not include an imported product.

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chemical product means an agricultural chemical product or a veterinary chemical product but does not include such a product that, under the regulations, is exempt from levy.

collecting agency means:

- (a) if an Agency is specified by legislative instrument under section 3A to be the collecting agency—the Agency; or
- (b) if paragraph (a) does not apply—the APVMA.

document includes a book or other record.

give information includes make a statement.

imported product means a chemical product that has been imported into Australia (whether or not the product was manufactured in Australia).

inspector means:

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

interested person, in relation to a registered chemical product, means:

- (a) subject to paragraphs (b), (c) and (d), the person (the **original applicant**) who applied for the registration or, in the case of a chemical product whose registration has been renewed, applied for the renewal, or the last renewal, as the case may be, of the registration; or
- (b) subject to paragraphs (c) and (d), if the original applicant has entered into a contract with another person in relation to the product under which, or as a result of which, the other person will or may apply to the APVMA to have the other person's name entered in the relevant particulars in relation to the product, or to have a label approved in relation to containers for the product, and the other person's name is entered in those relevant particulars, or such a label is approved, on the application of the other person—the other person; or

- (c) if the person who, apart from this paragraph, would be the interested person because of paragraph (a) or (b), was an individual who has died or is an individual whose affairs are being lawfully administered by another person—the legal personal representative of the individual or the person administering his or her affairs, as the case may be; or
- (d) if the person who, apart from this paragraph, would be the interested person because of paragraph (a) or (b), was a body corporate—a successor in law of that body corporate.

jurisdiction means:

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

late payment penalty means late payment penalty payable under section 14.

leviable disposal, in relation to a chemical product, means:

- (a) if the product is an Australian product:
 - (i) if the product is disposed of in Australia by the manufacturer—that disposal of the product; or
 - (ii) if the product is applied by the manufacturer to the manufacturer's own use—that application of the product; or
- (b) if the product is an imported product:
 - (i) if the product is disposed of in Australia by the importer—that disposal of the product; or
 - (ii) if the product is applied by the importer to the importer's own use—that application of the product.

leviable value, in relation to a leviable disposal of a chemical product, means:

- (a) if the leviable disposal was a sale by wholesale of the product by the manufacturer or importer and the parties to the sale were dealing at arm's length—the amount received by the manufacturer or importer in respect of the sale; or
- (b) otherwise—the notional wholesale value of the product at the time of the disposal.

levy means levy, imposed by any Act, that is payable under this Act.

manufacture includes formulate.

6-3] *notional wholesale value*, in relation to a chemical product at a particular time, means the amount that the APVMA collecting agency determines would have been received:

(a) if the product is an Australian product—by the manufacturer; or

(b) if the product is an imported product—by the importer; in respect of the product if, at that time, the product had been sold by the manufacturer or importer, as the case may be, by wholesale to a person with whom the manufacturer or importer was dealing at arm's length.

4-1] ~~*occupier*, in relation to any premises or a part of any premises, means the person in occupation, charge or control of the premises or of that part of the premises, as the case may be.~~

4-2] *participating Territory* has the same meaning as in the *Agricultural and Veterinary Chemicals Act 1994*.

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

~~(a) a building, aircraft, vehicle or vessel; and~~

~~(b) any structure, whether a fixed structure, or a moveable structure such as a tent, and whether on land or the bed of any waters or floating on any waters; and~~

~~(c) a part of premises (including premises of a kind referred to in paragraph (a) or (b)).~~

7-1] ~~*prescribed date for payment*, in relation to any levy that is payable, means:~~

~~(a) if levy is payable because of an assessment that has been made—the date stated in the notice of assessment to be the date by which the levy is to be paid; or~~

~~(b) otherwise:~~

~~(i) if levy is payable under subsection 8(1)—the next 31 July following the end of the relevant calendar year; or~~

~~(ii) if levy is payable under subsection 9(1)—1 September in the relevant calendar year; or~~

- ~~(iii) if levy is payable under subsection 9(1A) — 31 July 2005; or~~
- ~~(iv) if levy is payable under section 10 or 12B — the next 31 December following the end of the relevant financial year.~~

~~Note: — As the levy is paid in arrears, levy might be payable in respect of a chemical product whose registration has ceased.~~

prescribed date for payment, in relation to any levy that is payable, means:

- (a) if levy is payable because of an assessment that has been made—the date stated in the notice of assessment to be the date by which the levy is to be paid; or
- (b) in any other case—the next 31 December following the end of the relevant financial year.

Note: As the levy is paid in arrears, levy might be payable in respect of a chemical product whose registration has ceased.

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~~*rate of levy* has the meaning given by section 11, 12 or 12C, as the case requires.~~

rate of levy has the meaning given by section 12C.

registered, in relation to a jurisdiction, means registered under a registration law of the jurisdiction and, if such a registration law is an Agvet Code of the jurisdiction, includes a listed registration under Part 2A of that Code.

registration law, in relation to a jurisdiction, means:

- (a) if there is an Agvet Code of the jurisdiction that is in force—Part 2 or 2A of that Code, including (to avoid doubt) Part 2 of that Code as it has effect because of the operation of Part 11 of that Code; or
- (b) otherwise—a prescribed law of the jurisdiction;
- and also has an extended meaning as mentioned in subsections (2) and (2A).

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~~*relevant calendar year* means:~~

- ~~(a) in relation to levy payable under subsection 8(1)—the calendar year in which the leviable disposals in respect of which the levy is payable took place; or~~

~~(b) in relation to levy payable under subsection 9(1)—the calendar year in the first 6 months of which the leviable disposals in respect of which the levy is payable took place.~~

relevant financial year means the financial year in which the leviable disposals in respect of which the levy is payable took place.

relevant particulars, in relation to a registered chemical product, 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*.

State includes the Northern Territory.

thing includes a document.

total leviable value, in relation to a chemical product for a particular period, means the sum of the leviable values in respect of the leviable disposals of the product that took place anywhere in Australia during that period.

understatement penalty means understatement penalty payable under section 14A.

veterinary chemical product 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*.

- (2) If, at any time or during any period, a permit is in force in respect of a chemical product under Part 7 of the Agvet Code of a State or of the participating Territories (including, to avoid doubt, a permit that is taken to be in force under Part 7 of such a Code because of the operation of Part 11 of the Code), this Act has effect as if:
- (a) the product were registered under Part 2 of the Code at that time or during that period; and
 - (b) a reference to the person who applied for the registration of the product were a reference to the person who applied for the permit.
- (2A) If, at any time or during any period, a permit is in force in respect of a chemical product under a prescribed law referred to in

paragraph (b) of the definition of *registration law* in subsection (1), this Act has effect as if:

- (a) the product were registered under that law at that time or during that period; and
- (b) a reference to the person who applied for the registration of the product were a reference to the person who applied for the permit.

(2B) If:

- (a) a chemical product was registered at a particular time or during a particular period under a law that is prescribed for the purposes of paragraph (b) of the definition of *registration law* in subsection (1); and
- (b) the product is declared by the regulations to have been, or to be, an excluded chemical product for the purposes of this Act from a time referred to in the regulations that is earlier than that particular time or earlier than the commencement of that particular period;

the product is taken, for the purposes of this Act, not to have been registered under that law at that time or during that period, as the case may be.

- (3) If a change occurs in the legal or equitable ownership of a chemical product, the product is taken to be disposed of at the time of the change by the person who was the legal owner of the product immediately before the change.
- (4) If a chemical product is applied by a person to the person's own use, the product is taken to be disposed of by the person when it is so applied.

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3A Minister may determine collecting agency

- (1) The Minister may, by legislative instrument, specify an Agency to be the collecting agency.
- (2) Before making an instrument specifying an Agency, the Minister must get the written agreement of the Minister responsible for the Agency.

4 Extension to certain external Territories

This Act extends to the external Territories that are participating Territories.

5 Act to bind Crown

- (1) This Act binds the Crown in all its capacities.
- (2) Nothing in this Act renders the Crown in any capacity liable to be prosecuted for an offence.

5A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

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

~~6 Power of APVMA to make certain determinations~~

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6 Power of collecting agency to make certain determinations

- (1) The ~~APVMA~~ collecting agency may do any one or more of the following:
 - (a) by notice in writing to the manufacturer or importer of a chemical product, determine the amount that would have been received by the manufacturer or importer in respect of the product at a particular time as mentioned in the definition of *notional wholesale value* in subsection 3(1);
 - (b) for the purpose of paragraph (a) of the definition of *prescribed date for payment*, by notice published in the *Gazette*, direct that, in relation to levy payable in a particular calendar year or financial year stated in the *Gazette* notice, a reference in a notice of assessment to a date that is specified in the *Gazette* notice is taken instead to be a reference to another date (whether earlier or later) that is specified in the *Gazette* notice;
 - (c) for the purpose of paragraph (b) of the definition of *prescribed date for payment*, by notice published in the *Gazette*, direct that, in relation to levy payable in a particular calendar year or financial year stated in the *Gazette* notice, a

reference in that paragraph to a date that is specified in the *Gazette* notice is taken instead to be a reference to another date (whether earlier or later) that is specified in the *Gazette* notice;

- (d) by notice published in the *Gazette*:
 - (i) specify amounts of levy to which the *Gazette* notice applies; and
 - (ii) direct that, for the purposes of this Act, an amount of such a levy that, apart from the direction, would be required to be paid by a particular date is taken to have been paid by that date if the levy is paid by instalments worked out in accordance with the *Gazette* notice on such dates as are stated in the *Gazette* notice.
- (2) A determination or direction made or given under subsection (1) has effect according to its terms.
- (3) A notice made under paragraph (1)(a) is not a legislative instrument.
- (4) A notice made under paragraph (1)(b), (c) or (d) is a legislative instrument.

7-4] **Part 2—Liability for levy and penalties**

~~**Division 1—Liability for levy from 1 January 1994 to 30 June 2005**~~

~~**8—Liability for levy in respect of disposals during any calendar year from 1994 to 2003**~~

- ~~(1) If a chemical product was registered in any jurisdiction during the whole or any part of the last 6 months of the year beginning on 1 January 1994 or of the last 6 months of a later calendar year ending on or before 31 December 2003 (whether or not the product was also registered in that jurisdiction or any other jurisdiction during the whole or any part of the first 6 months of the year concerned), then, subject to subsection (2), levy is payable in respect of leviable disposals of the product that took place anywhere in Australia at any time during that year.~~
- ~~(2) Levy is not payable under subsection (1) in respect of leviable disposals of a particular chemical product during a calendar year if the total leviable value in respect of the product for that calendar year is less than \$100,000.~~
- ~~(3) Subject to subsection (4), the interested person in relation to the chemical product is liable to pay the levy.~~
- ~~(4) If the chemical product was registered as mentioned in subsection (1) in more than one jurisdiction and different persons are the interested persons in relation to the product in different jurisdictions, those persons are jointly and severally liable to pay the levy.~~

~~**9—Liability for levy in respect of disposals during the first 6 months of any calendar year from 1995 to 2004**~~

~~*Disposals during the first 6 months of any calendar year from 1995 to 2003*~~

- ~~(1) If a chemical product:~~
- ~~(a) was registered in any jurisdiction during the whole or any part of the first 6 months of the year beginning on 1 January~~

~~1995 or of a later calendar year ending on or before
31 December 2003; and~~

~~(b) was not registered in any jurisdiction on 1 July in the year
concerned;~~

~~then, subject to subsection (2), levy is payable in respect of
leviable disposals of the product that took place anywhere in
Australia at any time during those 6 months.~~

~~*Disposals during the first 6 months of 2004*~~

~~(1A) If a chemical product was registered in any jurisdiction during the
whole or any part of the first 6 months of the calendar year
beginning on 1 January 2004 (whether or not the product was also
registered in that jurisdiction or any other jurisdiction during the
whole or any part of the last 6 months of that year), then, subject to
subsection (2), levy is payable in respect of leviable disposals of
the product that took place anywhere in Australia at any time
during those 6 months.~~

~~*Total leviable value must be at least \$50,000*~~

~~(2) Levy is not payable under subsection (1) or (1A) in respect of
leviable disposals of a particular chemical product during the first 6
months of a calendar year if the total leviable value in respect of
the product for those 6 months is less than \$50,000.~~

~~*Who is liable to pay the levy*~~

~~(3) Subject to subsection (4), the interested person in relation to the
chemical product is liable to pay the levy.~~

~~(4) If the chemical product was registered as mentioned in
subsection (1) or (1A) in more than one jurisdiction and different
persons are the interested persons in relation to the product in
different jurisdictions, those persons are jointly and severally liable
to pay the levy.~~

~~**10 Liability for levy in respect of disposals during the 2004-2005 financial year**~~

~~(1) If a chemical product was registered in any jurisdiction during the
whole or any part of the financial year beginning on 1 July 2004,
then, subject to subsection (2), levy is payable in respect of~~

Part 2 Liability for levy and penalties

Division 1 Liability for levy from 1 January 1994 to 30 June 2005

Section 11

~~leviable disposals of the product that took place anywhere in Australia at any time during that year.~~

- ~~(2) Levy is not payable under subsection (1) in respect of leviable disposals of a particular chemical product during the year if the total leviable value in respect of the product for that year is less than \$100,000.~~
- ~~(3) Subject to subsection (4), the interested person in relation to the chemical product is liable to pay the levy.~~
- ~~(4) If the chemical product was registered as mentioned in subsection (1) in more than one jurisdiction and different persons are the interested persons in relation to the product in different jurisdictions, those persons are jointly and severally liable to pay the levy.~~

~~**11 Amount of levy imposed in respect of disposals during any calendar year from 1994 to 2003**~~

- ~~(1) Subject to subsection (2), the amount of the levy that is payable under section 8 in respect of leviable disposals of a particular chemical product during a particular calendar year is the amount worked out using the formula:~~

~~$$\frac{\text{total leviable value in respect of the product for that year} \times \text{rate of levy}}{\text{where:}}$$~~

~~where:~~

~~*rate of levy* means the percentage prescribed by the regulations for the purposes of this section in respect of that year.~~

- ~~(1A) The regulations may prescribe a rate of levy in respect of chemical products having a listed registration under Part 2A of the Agvet Code of a jurisdiction that is a lower rate than the rate of levy prescribed in respect of chemical products registered under Part 2 of that Code.~~
- ~~(2) The total of the amounts of the levy that are payable under section 8 in respect of leviable disposals of a particular chemical product during a particular calendar year is not to exceed:~~
- ~~(a) subject to paragraph (b) — \$19,000; or~~

~~(b) if another amount is prescribed by the regulations for the purposes of this paragraph in respect of that year—that other amount.~~

~~**12 Amount of levy imposed in respect of disposals during the first 6 months of any calendar year from 1995 to 2004**~~

~~*Disposals during the first 6 months of any calendar year from 1995 to 2003*~~

~~(1) Subject to subsection (2), the amount of the levy that is payable under subsection 9(1) in respect of leviable disposals of a particular chemical product during the first 6 months of a particular calendar year is the amount worked out using the formula:~~

$$\frac{\text{total leviable value in respect of the product for those 6 months}}{\times \text{rate of levy}}$$

~~where:~~

~~*rate of levy* means the percentage prescribed by the regulations for the purposes of this subsection in respect of those 6 months.~~

~~(1A) The regulations may prescribe a rate of levy in respect of chemical products having a listed registration under Part 2A of the Agvet Code of a jurisdiction that is a lower rate than the rate of levy prescribed in respect of chemical products registered under Part 2 of that Code.~~

~~(2) The total of the amounts of the levy that are payable under subsection 9(1) in respect of leviable disposals of a particular chemical product during the first 6 months of a particular calendar year is not to exceed:~~

~~(a) subject to paragraph (b)—\$9,500; or~~

~~(b) if another amount is prescribed by the regulations for the purposes of this paragraph in respect of those 6 months—that other amount.~~

~~*Disposals during the first 6 months of 2004*~~

~~(3) Subject to subsection (4), the amount of the levy that is payable under subsection 9(1A) in respect of leviable disposals of a particular chemical product during the first 6 months of the~~

Part 2 Liability for levy and penalties

Division 1 Liability for levy from 1 January 1994 to 30 June 2005

Section 12A

~~calendar year beginning on 1 January 2004 is the amount worked out using the formula:~~

$$\frac{\text{Total leviable value in respect of the product for those 6 months}}{\times 0.65\%}$$

- ~~(4) The total of the amounts of the levy that are payable under subsection 9(1A) in respect of leviable disposals of a particular chemical product during those 6 months is not to exceed \$12,500.~~

~~**12A Amount of levy imposed in respect of disposals during the 2004-2005 financial year**~~

- ~~(1) Subject to subsection (2), the amount of the levy that is payable under section 10 in respect of leviable disposals of a particular chemical product during the financial year beginning on 1 July 2004 is the amount worked out using the formula:~~

$$\frac{\text{Total leviable value in respect of the product for the financial year}}{\times 0.65\%}$$

- ~~(2) The total of the amounts of the levy that are payable under section 10 in respect of leviable disposals of a particular chemical product during that year is not to exceed \$25,000.~~

Division 2—Liability for levy for financial years from 1 July 2005

12B Liability for levy in respect of disposals during the 2005-2006 and later financial years

- (1) If a chemical product was registered in any jurisdiction during the whole or any part of the financial year beginning on 1 July 2005 or a later financial year, then levy is payable in respect of leviable disposals of the product that took place anywhere in Australia at any time during that year.
- (2) Subject to subsection (3), the interested person in relation to the chemical product is liable to pay the levy.
- (3) If the chemical product was registered as mentioned in subsection (1) in more than one jurisdiction and different persons are the interested persons in relation to the product in different jurisdictions, those persons are jointly and severally liable to pay the levy.

12C Amount of levy imposed in respect of disposals during the 2005-2006 and later financial years

- (1) The amount of the levy that is payable under section 12B in respect of leviable disposals of a particular chemical product during a financial year is the amount worked out using the formula:

$$\text{Total leviable value in respect of the product for the financial year} \times \text{Rate of levy}$$

where:

rate of levy means the percentage prescribed by the regulations for the purposes of this section in respect of the financial year.

- (2) The regulations may prescribe any of the following:
 - (a) a rate of levy in respect of Part 2A chemical products that is lower than the rate prescribed in respect of Part 2 chemical products;
 - (b) different rates of levy for different volumes of leviable disposals of chemical products that take place during a financial year;

Part 2 Liability for levy and penalties

Division 2 Liability for levy for financial years from 1 July 2005

Section 12C

(c) different rates of levy for different volumes of leviable disposals of Part 2A chemical products that take place during a financial year, that are lower than the rates prescribed for those volumes of leviable disposals of Part 2 chemical products.

(3) In this section:

Part 2A chemical products means chemical products having listed registration under Part 2A of the Agvet Code of a jurisdiction.

Part 2 chemical products means chemical products that are registered under Part 2 of the Agvet Code of a jurisdiction.

Division 3—Other rules relating to the levy

13 Payment of levy

A person who is liable to pay levy in respect of a chemical product must pay the levy on or before the prescribed date for payment of that levy.

Note: If any levy payable in respect of a chemical product is not paid, the Agvet Codes provide that the APVMA may refuse to renew the registration of the product.

14 Late payment penalty

- (1) This section applies if either or both of the following:
- (a) any levy payable by a person under this Part in respect of leviable disposals of a particular chemical product during a period;
 - (b) any understatement penalty payable in respect of the product for the period;

is not wholly paid on or before the prescribed date for payment of the levy, or the date stated under subsection 16(8A), as the case requires.

- (1A) The person immediately becomes liable to pay a late payment penalty of:
- (a) if the total amount of levy and understatement penalty that is unpaid is not more than \$10,000—\$200; or
 - (b) if the total amount of levy and understatement penalty that is unpaid is more than \$10,000—\$400.

- (2) The ~~APVMA~~ **collecting agency** may remit the whole or a part of an amount of late payment penalty.

Note: If any late payment penalty payable in respect of a chemical product is not paid, the Agvet Codes provide that the APVMA may refuse to renew the registration of the product.

14A Understatement penalty

- (1) This section applies if:
- (a) a person mentioned in paragraph 20(1)(a) or (2)(a) (about notices requiring information) gives to the ~~APVMA~~ **collecting agency** under that section information relating to

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the importation, manufacture or disposal of a chemical product during a period; and

- (b) the total leviable value (the *understated value*) in respect of the product for the period worked out on the basis of that information is less than the actual total leviable value in respect of the product for the period.

- (2) The person is liable to pay an understatement penalty in respect of the product for the period of the higher of the following amounts:

- (a) \$100;
(b) 25% of the difference between the actual total leviable value and the understated value.

- (3) The ~~APVMA~~ **collecting agency** may remit the whole or a part of an amount of understatement penalty.

Note: If any understatement penalty payable in respect of a chemical product is not paid, the Agvet Codes provide that the APVMA may refuse to renew the registration of the product.

[6-9]

Part 3—Calculation or assessment of levy

6-10] 15 Calculation of levy by person liable

- (1) If it appears to the ~~APVMA~~ collecting agency that a person may be liable to pay levy in respect of leviable disposals of a chemical product that took place during a particular period, the ~~APVMA~~ collecting agency may, not earlier than the end of that period, by written notice given to the person:
- (a) tell the person the rate of levy payable in respect of chemical products for that period; and
 - (b) require the person:
 - (i) to calculate the total leviable value (if any) in respect of the product for that period and the amount of the levy (if any) that is payable; and
 - (ii) within a period of not less than one month that is stated in the notice, to notify the ~~APVMA~~ collecting agency in writing of the results of the calculations and the basis on which the calculations were made.
- (2) A person must not refuse or fail to comply with a requirement made under subsection (1).

4-3]

Penalty: ~~30 penalty units~~ 50 penalty units

4-4]

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: The Chief Executive Officer of the APVMA may accept an enforceable undertaking in relation to this provision, see Division 2 of Part 7AB of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

Note 3: The APVMA may issue a warning in relation to a contravention of this provision, see Division 4 of Part 7AB of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

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

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

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

Section 16

[6-11]

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

- (3) Subject to subsection (6), a person who has given to the **APVMA collecting agency**, under subparagraph (1)(b)(ii) or this subsection, a notification in writing in respect of the total leviable value (if any) in respect of a chemical product for a period and the amount of the levy (if any) that is payable may make a further calculation of that value and amount in substitution for the value and amount last so calculated and notify the **APVMA collecting agency** of the results of the further calculations and the basis on which the further calculations were made.

[6-12]

- (4) Subject to subsection (6), an amount notified by a person to the **APVMA collecting agency** in accordance with this section as being the amount calculated by the person to be the levy payable in respect of a chemical product for a period or, if more than one amount has been so notified for that period, the amount last notified, is taken to be the amount of levy so payable.

- (5) Subject to subsection (6), if a notification by a person to the **APVMA collecting agency** in accordance with this section or, if more than one notification has been made, the last such notification, states that the calculations made by the person show that no levy is payable in respect of a particular chemical product for a period, no levy is payable by the person in respect of that product for that period.

- (6) Subsections (3), (4) and (5) do not apply in relation to a chemical product in respect of a period if the **APVMA collecting agency** has made or makes an assessment as to whether any levy is payable in respect of that product for that period.

[6-13]

~~16 Assessment of levy by APVMA~~

16 Assessment of levy by collecting agency

[6-14]

Assessment of levy

- (1) The **APVMA collecting agency** may make an assessment as to whether any levy is payable in respect of leviable disposals of a particular chemical product during a particular period.

- (2) An assessment may be made before, on or after the date that, apart from the assessment, would be the prescribed date for payment of the levy and whether or not any payment has been made on account of the levy.
- (3) An assessment is to state the total leviable value (if any) in respect of the product for the period concerned and the amount of the levy (if any) payable.
- (4) An assessment may be based on any information in the possession of the APVMA *or, if an Agency is specified by legislative instrument under section 3A, the Agency*, whether obtained as a result of the making of a requirement under this Act or otherwise.
- (5) The ~~APVMA~~-collecting agency must give written notice of an assessment:
- (a) if any levy is assessed to be payable—to the person who it considers is liable to pay the levy; or
 - (b) if no levy is assessed to be payable—to the person who, if levy had been payable, it considers would have been liable to pay the levy.
- (6) A notice of assessment must contain particulars of any determination made by the ~~APVMA~~-collecting agency under paragraph 6(1)(a).
- (7) If any levy is payable, the notice must state the date by which the levy is to be paid.
- (8) The date to be so stated must not be earlier than whichever is the later of the following dates:
- (a) the date that, apart from the assessment, would be the prescribed date for payment of the levy;
 - (b) the 21st day after the day on which the notice is given.

Assessment to include details of understatement penalty

- (8A) If any understatement penalty is also payable in respect of the product for the period concerned, the notice must state:
- (a) the amount of understatement penalty payable; and
 - (b) the date by which the penalty is to be paid (which is to be the same as the date stated under subsection (7)).

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Reconsideration and review of assessments

- (9) A notice of an assessment must include a statement to the effect of section 18.
- (10) A failure to comply with subsection (9) does not affect the validity of the assessment.
- (11) An assessment is taken to be a decision for the purposes of the *Administrative Appeals Tribunal Act 1975*.

Notice of assessment is conclusive evidence of the due making of the assessment

- (12) The production of a notice of assessment, or of a document purporting to be a copy of a notice of assessment, signed on behalf of the ~~APVMA by the Chief Executive Officer of the APVMA~~ **collecting agency by the Chief Executive Officer of the Agency** or a delegate of the Chief Executive Officer is conclusive evidence of the due making of the assessment and, except in proceedings under section 18 on a review or appeal relating to the assessment, that the amount and all the particulars of the assessment are correct.

[6-17]

[6-18] **17 Fresh assessments**

- (1) Subject to subsection (2), if the ~~APVMA~~ **collecting agency** is satisfied that an assessment was incorrect, the ~~APVMA~~ **collecting agency** may make a fresh assessment under section 16 in substitution for the incorrect assessment, even though levy or understatement penalty may have been paid in respect of the incorrect assessment.
- (2) A fresh assessment may:
 - (a) if the incorrect assessment was based on false or misleading information given to the APVMA ~~or to an inspector~~, **an Agency specified by legislative instrument under section 3A or an inspector**—be made at any time; or
 - (b) otherwise—be made only within 4 years from the date on which levy became payable under the incorrect assessment.

[6-19]

6-20 18 **Reconsideration and review of assessments**

- (1) A person who is affected by an assessment made by the **APVMA collecting agency** may, if dissatisfied with the assessment, by written notice given to the **APVMA collecting agency** within 21 days after the day on which the person first received notice of the assessment, or within any further period that the **APVMA collecting agency** allows, request the **APVMA collecting agency** to reconsider the assessment.
- (2) The person must set out in the request reasons for making the request.
- (3) Upon receipt of the request, the **APVMA collecting agency** must reconsider the assessment and, subject to subsection (4), may confirm or revoke the assessment or vary the assessment in any manner that it thinks fit.
- (4) If the **APVMA collecting agency** does not confirm, revoke or vary an assessment before the end of 21 days after the day on which it received the request under subsection (1) to reconsider the assessment, it is taken, at the end of that period, to have confirmed the assessment under subsection (3).
- (5) If the **APVMA collecting agency** confirms, revokes or varies an assessment before the end of the period referred to in subsection (4), it must, by written notice given to the person making the request, tell the person the result of the reconsideration of the assessment and the reasons for confirming, varying or revoking the assessment, as the case may be.
- (6) A failure to comply with subsection (5) does not affect the validity of the confirmation, revocation or variation.
- (7) Applications may be made to the Administrative Appeals Tribunal for review of assessments of the **APVMA collecting agency** that have been confirmed or varied under subsection (3).
- (8) If, as a result of an application made under paragraph 33(b), the Administrative Appeals Tribunal has reviewed a determination made by the **APVMA collecting agency** under paragraph 6(1)(a) in relation to a chemical product as at a particular time, the Tribunal is not entitled to alter the determination as so reviewed by it when

Section 18A

it is reviewing an assessment to which the determination is relevant.

- (9) If an assessment is taken, because of subsection (4), to be confirmed, section 29 of the *Administrative Appeals Tribunal Act 1975* applies as if the prescribed time for making application for review of the assessment were the period beginning on the day on which the assessment is taken to be confirmed and ending on the 28th day after that day.
- (10) If a request is made under subsection (1) in respect of an assessment, section 41 of the *Administrative Appeals Tribunal Act 1975* applies as if the making of the request were the making of an application to the Administrative Appeals Tribunal for a review of the assessment.

[6-22]

18A Reporting obligations of collecting agency

- (1) This section applies if an Agency is specified by legislative instrument under section 3A to be the collecting agency.
- (2) In relation to a particular period, the Agency must notify the APVMA, in writing, of the following:
 - (a) the leviable disposals of a chemical product that took place during the period;
 - (b) the total leviable value (if any) in respect of the product for that period and the amount of the levy (if any) that was payable;
 - (c) any assessment made by the Agency as to whether any levy was payable in respect of leviable disposals of the chemical product during the period;
 - (d) the amounts of levy, late payment penalty or understatement penalty collected by the Agency during the period;
 - (e) if the prescribed date for payment of levy falls within the period—the amounts of levy that have not been paid on or before the prescribed date;
 - (f) if late payment penalty or understatement penalty is payable during the period—any amounts of late payment penalty or understatement penalty that have not been paid;
 - (g) if the amounts of any levy, late payment penalty or understatement penalty overpaid by a person have been

- credited during the period against a liability of the person to pay another such amount under the Act—the amount credited and the person in relation to whom the amount was credited;
- (h) if the whole or part of the liability to pay an amount of levy, late payment penalty or understatement penalty has been waived during the period—the amount that has been waived and the person in relation to whom the amount was waived;
 - (i) if the total amount of levy, late payment penalty or understatement penalty was rounded during the period—the amount of levy, late payment penalty or understatement penalty payable, the amount as rounded and the person in relation to whom the amount was rounded.
- (3) The Agency must notify the APVMA in such form, and by such time after the end of the period, as the APVMA requires.

18B APVMA may request information from collecting agency

- (1) This section applies if an Agency is specified by legislative instrument under section 3A to be the collecting agency.
- (2) The APVMA may request the collecting agency to provide any information it has acquired under this Act if the APVMA considers that the information is or may be required to enable:
 - (a) the APVMA to perform functions, or exercise powers, under the *Agricultural and Veterinary Chemicals (Administration) Act 1992* or the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*; or
 - (b) the Chief Executive Officer of the APVMA to perform his or her functions, or exercise his or her powers, under the *Agricultural and Veterinary Chemicals (Administration) Act 1992* or the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*.
- (3) The Agency must respond to the APVMA in such form, and by such time, as the APVMA requires.

Part 4—Enforcement

19 Levy, late payment penalty and understatement penalty recovered as debts

- (1) Any levy that has not been paid on or before the prescribed date for payment of the levy, or any late payment penalty or understatement penalty that is payable, is:
 - (a) a debt due to the Commonwealth; and
 - (b) payable to the APVMA on behalf of the Commonwealth; and
 - (c) may be sued for and recovered by the APVMA.
- (2) The APVMA must pay to the Commonwealth any amounts of levy, late payment penalty or understatement penalty received by it.

[6-23]

~~20 APVMA may require information about disposals of chemical products~~

20 APVMA or collecting agency may require information about disposals of chemical products

[7-5]

- (1) For the purpose of determining whether levy under Part 2 (~~other than section 9~~) is payable in respect of a chemical product for a calendar year or a financial year, the APVMA may, ~~or, if a collecting agency is specified by legislative instrument under section 3A to be the collecting agency, the collecting agency may~~ not earlier than the end of the year, give written notice to any one or more of the following:
 - (a) the person, or any of the persons, by whom any such levy would be payable;
 - (b) if the product is an imported product and the person referred to in paragraph (a) is not, or none of the persons referred to in that paragraph is, the importer—the importer;
 - (c) if the product is an Australian product and the person referred to in paragraph (a) is not, or none of the persons referred to in that paragraph is, the manufacturer—the manufacturer;requiring the person to whom the notice is given to give to the APVMA ~~or the collecting agency, as the case may be,~~ within a

[6-25]

period stated in the notice that is not less than one month after the notice is given, any information relating to the importation, manufacture or disposal of the product during the year that is necessary to work out the total leviable value in respect of the product for the year.

Note: A person might be liable for an understatement penalty if the total leviable value worked out on the basis of information given under this subsection is less than the actual total leviable value: see section 14A.

6-26

- ~~(2) For the purpose of determining whether levy under section 9 is payable in respect of a chemical product for the first 6 months of a calendar year, the APVMA may, not earlier than 1 July in the calendar year, give written notice to any one or more of the following:~~
- ~~(a) the person, or any of the persons, by whom any such levy would be payable;~~
 - ~~(b) if the product is an imported product and the person referred to in paragraph (a) is not, or none of the persons referred to in that paragraph is, the importer—the importer;~~
 - ~~(c) if the product is an Australian product and the person referred to in paragraph (a) is not, or none of the persons referred to in that paragraph is, the manufacturer—the manufacturer;~~

~~requiring the person to whom the notice is given to give to the APVMA, within a period stated in the notice that is not less than one month after the notice is given, any information relating to the importation, manufacture or disposal of the product during those 6 months that is necessary to work out the total leviable value in respect of the product for those 6 months.~~

~~Note: A person might be liable for an understatement penalty if the total leviable value worked out on the basis of information given under this subsection is less than the actual total leviable value: see section 14A.~~

4-5

- (2) To avoid doubt, the APVMA may give a written notice under subsection (1) even if an Agency is specified by legislative instrument under section 3A to be the collecting agency.

- ~~(3) A person must not refuse or fail to comply with a requirement made under subsection (1) or (2).~~

~~Penalty: 30 penalty units.~~

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

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

~~(5) An offence under subsection (3) is an offence of strict liability.~~

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

(3) A person commits an offence of strict liability if the person contravenes subsection (1). The physical elements of the offence are set out in that subsection.

Penalty: 50 penalty units.

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

Note 1: Division 2 of Part 9A of the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* provides for pecuniary penalties for contraventions of civil penalty provisions, see section 69EK of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

Note 2: For monitoring and investigation powers of inspectors in relation to this Act, see Part 7AA of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

[4-6]

~~**21 Searches to monitor compliance with Act**~~

~~(1) Subject to this section, to the extent that it is reasonably necessary to do so for the purpose of finding out whether levy is payable under this Act, an inspector, with any necessary help, may enter, at any time during ordinary working hours on any day, any premises that the inspector has reasonable cause to believe are premises at which any thing relating to the importation, manufacture or disposal of chemical products is kept and may do any one or more of the following:~~

- ~~(a) search the premises and any thing found at the premises;~~
- ~~(b) inspect any document kept at the premises;~~
- ~~(c) seize any such document and remove it from the premises.~~

~~(2) An inspector may not, under subsection (1), enter premises that are a residence unless the occupier of the premises has consented to the entry.~~

- ~~(3) An inspector may not exercise any powers under subsection (1) in relation to premises if:~~
- ~~(a) the occupier of the premises has required the inspector to produce his or her identity card for inspection by the occupier; and~~
 - ~~(b) the inspector fails to comply with the requirement.~~

~~22 Offence-related searches and seizures~~

- ~~(1) If an inspector has reasonable grounds for suspecting that there may be at any premises a particular thing that may be evidence of the commission of an offence against this Act, the inspector may:~~
- ~~(a) with the consent of the occupier of the premises; or~~
 - ~~(b) under a warrant issued under section 24;~~
- ~~enter the premises and:~~
- ~~(c) search the premises for the thing; and~~
 - ~~(d) if the thing is found — seize the thing.~~
- ~~(2) If, in the course of searching, under a warrant issued under section 24, for a particular thing in relation to a particular offence, an inspector finds another thing that the inspector believes, on reasonable grounds, to be:~~
- ~~(a) a thing that may be evidence of the commission of the offence, although not the thing stated in the warrant; or~~
 - ~~(b) a thing that may be evidence of the commission of another offence against this Act;~~
- ~~and the inspector believes, on reasonable grounds, that it is necessary to seize the other thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or the other offence, the warrant is taken to authorise the inspector to seize the other thing.~~

~~23 Power of inspector to require information or documents~~

- ~~(1) Subject to subsection (2), an inspector who has entered premises under this Act may, to the extent that it is reasonably necessary for the purpose of finding out whether levy is payable under this Act, require a person to give information to the inspector and to produce any documents requested by the inspector.~~

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~~(2) An inspector is not entitled to make a requirement of a person under subsection (1) unless the inspector produces his or her identity card for inspection by the person.~~

~~(3) A person must not refuse or fail to comply with a requirement made under subsection (1).~~

~~Penalty: 30 penalty units.~~

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

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

~~(5) An offence under subsection (3) is an offence of strict liability.~~

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

~~24 Offence-related warrants~~

~~(1) An inspector may apply to a magistrate for a warrant under this section in relation to particular premises.~~

~~(2) Subject to subsection (3), a magistrate may issue the warrant in accordance with the prescribed form if he or she is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or may be within the next 72 hours, at the premises a particular thing that may be evidence of the commission of an offence against this Act.~~

~~(3) A magistrate must not issue a warrant under subsection (2) unless the informant or some other person has given to the magistrate, either orally or by affidavit, any further information that the magistrate requires about the grounds on which the issue of the warrant is being sought.~~

~~(4) The warrant must:~~

~~(a) state the nature of the offence; and~~

~~(b) state the purpose for which the warrant is issued; and~~

~~(c) authorise an inspector named in the warrant, with any help, and using any force, that is necessary and reasonable, to enter the premises and exercise the powers referred to in paragraphs 22(1)(c) and (d) in respect of the thing; and~~

- ~~(d) state whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and~~
- ~~(e) state a day, not later than 7 days after the day of issue of the warrant, upon which the warrant ceases to have effect.~~

~~25 Announcement before entry~~

- ~~(1) Subject to subsection (2), an inspector who is authorised to enter premises under a warrant issued under section 24 or a person helping such an inspector must, before any person enters the premises under the warrant:
 - ~~(a) announce that he or she is authorised by the warrant to enter the premises; and~~
 - ~~(b) give any person at the premises an opportunity to allow entry to the premises.~~~~
- ~~(2) The inspector or a person helping the inspector is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure:
 - ~~(a) the safety of a person (including the inspector and any person helping the inspector); or~~
 - ~~(b) that the effective execution of the warrant is not frustrated.~~~~

~~26 Details of warrant to be given to occupier~~

- ~~(1) If a warrant under section 24 in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the inspector or a person helping the inspector must make a copy of the warrant available to the occupier or other person.~~
- ~~(2) The inspector must identify himself or herself to the person at the premises.~~
- ~~(3) The copy of the warrant referred to in subsection (1) need not include the signature of the magistrate who issued the warrant.~~

~~27 Use of equipment to examine or process things~~

- ~~(1) An inspector who enters premises under section 21 or 22 or a person helping the inspector may bring to the premises any~~
-

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~~equipment reasonably necessary for the examination or processing of things found at the premises in order to determine whether they are things that may be seized under that section.~~

~~(2) If:~~

~~(a) it is not practicable to examine or process the things at the premises; or~~

~~(b) the occupier of the premises consents in writing;~~

~~the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized under section 21 or 22, as the case may be.~~

~~(3) If things containing electronically stored information are moved to another place for the purpose of examination or processing under subsection (2), the inspector must, if it is practicable to do so:~~

~~(a) tell the occupier the address of the place and the time at which the examination or processing will be carried out; and~~

~~(b) allow the occupier or a representative of the occupier to be present during the examination or processing.~~

~~(4) The inspector or a person helping the inspector may operate equipment already at the premises to carry out the examination or processing of a thing found at the premises in order to determine whether it is a thing that may be seized under section 21 or 22, as the case may be, if the inspector or person helping believes on reasonable grounds that:~~

~~(a) the equipment is suitable for the examination or processing; and~~

~~(b) the examination or processing can be carried out without damage to the equipment or the thing.~~

~~28 Use of electronic equipment at premises~~

~~(1) Subject to subsection (4), if a thing found at premises that an inspector has entered under section 21 or 22 is or includes records of information in a written or electronic form, the inspector or a person helping the inspector may operate, or the inspector may require the occupier or an employee of the occupier who is present to operate, equipment at the premises to see whether:~~

~~(a) the equipment; or~~

- ~~(b) a disk, tape or other storage device that:~~
- ~~(i) is at the premises; and~~
 - ~~(ii) can be used with, or is associated with, the equipment;~~
- ~~contains records that are relevant to determining whether levy is payable under this Act or an offence against this Act has been committed, as the case requires.~~
- ~~(2) If the inspector or a person helping the inspector, after equipment at the premises is operated, finds that the equipment contains records of that kind or that a disk, tape or other storage device at the premises contains records of that kind, he or she may:~~
- ~~(a) seize the equipment or the disk, tape or other storage device;~~
 - ~~or~~
 - ~~(b) if the records can, by using facilities at the premises, be put in documentary form—operate the facilities to put the records in that form and seize the documents so produced; or~~
 - ~~(c) if the records can be transferred to a disk, tape or other storage device:~~
 - ~~(i) that is brought to the premises; or~~
 - ~~(ii) that is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;~~
 - ~~—operate the equipment or other facilities to copy the records to the storage device and remove the storage device from the premises.~~
- ~~(3) An inspector or person helping an inspector may seize equipment under paragraph (2)(a) only if:~~
- ~~(a) it is not practicable to put the relevant records in documentary form as mentioned in paragraph (2)(b) or to copy the records as mentioned in paragraph (2)(c); or~~
 - ~~(b) possession by the occupier of the equipment could constitute an offence.~~
- ~~(4) An inspector or a person helping an inspector must not operate equipment for the purpose mentioned in subsection (1) unless the inspector or person helping believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.~~

~~29 Compensation for damage to electronic equipment~~

- ~~(1) If:~~
- ~~(a) equipment is damaged because of being operated as mentioned in section 27 or 28; and~~
 - ~~(b) the damage was caused as a result of:~~
 - ~~(i) insufficient care being exercised in selecting the person who was to operate the equipment; or~~
 - ~~(ii) insufficient care being exercised by the person operating the equipment;~~
- ~~the APVMA must pay compensation for the damage to the owner of the equipment.~~
- ~~(2) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and the employees and agents of the occupier, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.~~

~~30 Copies of seized things to be provided~~

- ~~(1) Subject to subsection (2), if an inspector who has entered premises under section 21 or 22 seizes:~~
- ~~(a) a document, film, computer file or other thing that can be readily copied; or~~
 - ~~(b) a storage device the information in which can be readily copied;~~
- ~~the inspector must, if requested to do so by the occupier of the premises or another person who apparently represents the occupier and is present when the seizure takes place, give a copy of the thing or the information to the occupier or other person as soon as practicable after the seizure.~~
- ~~(2) Subsection (1) does not apply if:~~
- ~~(a) the thing that has been seized was seized under paragraph 28(2)(b) or (c); or~~
 - ~~(b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence.~~

~~31 Return of things that are seized~~

- ~~(1) If an inspector seizes a thing under section 21 or 22, the inspector must take reasonable steps to return it if the reason for its seizure no longer exists.~~
- ~~(2) If the thing has not been returned before the end of 60 days after its seizure, the inspector must take reasonable steps to return it unless:
 - ~~(a) proceedings in which the thing may be used in evidence were begun before the end of the 60 days and the proceedings (including an appeal to a court in relation to the proceedings) have not been completed; or~~
 - ~~(b) the inspector may keep the thing because of an order under section 32; or~~
 - ~~(c) the inspector is authorised by this Act or by an order of a court to keep, destroy or dispose of the thing.~~~~
- ~~(3) If the thing is required to be returned, it must be returned to the person from whom it was seized or, if that person is not entitled to possess it, to the owner.~~
- ~~(4) If there is a dispute as to the ownership of the thing, the inspector may keep it until the dispute is resolved.~~
- ~~(5) This section has effect subject to section 32.~~

~~32 Court of summary jurisdiction may permit a thing to be kept~~

- ~~(1) If:
 - ~~(a) before the end of 60 days after an inspector seizes a thing under section 21 or 22; or~~
 - ~~(b) before the end of a period previously stated in an order of a court under this section in respect of a thing seized by an inspector as mentioned in paragraph (a);~~proceedings in which the thing may be used in evidence have not been brought, the inspector may apply to a court of summary jurisdiction for an order that he or she may keep the thing for a further period.~~
- ~~(2) If the court is satisfied that it is necessary for the inspector to continue to keep the thing:~~

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- ~~(a) for the purposes of an investigation as to whether an offence has been committed; or~~
- ~~(b) to enable evidence of an offence to be secured for the purposes of a prosecution;~~
- ~~the court may order that the inspector may keep the thing for a period stated in the order.~~
- ~~(3) If the court thinks that notice of the application should be given to any person, it may require such a notice to be given before it hears the application.~~

6-27] **Part 5—Miscellaneous**

~~**33 Administrative Appeals Tribunal may review certain decisions by APVMA**~~

33 Administrative Appeals Tribunal may review certain decisions by collecting agency

An application may be made to the Administrative Appeals Tribunal for review of:

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- (b) a decision of the ~~APVMA~~ collecting agency determining an amount under paragraph 6(1)(a); or
- (c) a decision of the ~~APVMA~~ collecting agency under subsection 14(2) or 14A(3) remitting, or refusing to remit, the whole or part of an amount of late payment penalty or understatement penalty; or
- (d) a decision of the ~~APVMA~~ collecting agency allowing, or refusing to allow, a further period for the making of a request under subsection 18(1).

34 Self-incrimination

- (1) A person is not excused from giving information or producing a document under this Act on the ground that the information or the production of the document might tend to incriminate the person or expose the person to a penalty.
- (2) However, if the person is a natural person:
 - (a) the giving of the information or the production of the document; and
 - (b) any information, document or thing obtained as a direct or indirect consequence of the giving of the information or the production of the document;

is not admissible in evidence against the person in a criminal proceeding, or any other proceeding for the recovery of a penalty, other than a proceeding under section 137.1 or 137.2 of the *Criminal Code* (about false or misleading information or documents) that relates to the giving of the information or the production of the document.

4-7] **35 Copying of documents**

~~If an inspector seizes a document under section 21 or 22, or a person produces a document to an inspector in accordance with a requirement under subsection 23(1), the inspector may make copies of, or take extracts from, the document.~~

36 Applicant for registration of chemical product to keep records

- (1) A person who applies for registration, or the renewal of registration, of a chemical product, or imports a chemical product into, or manufactures a chemical product in, Australia must:
- (a) keep any records relating to the importation, manufacture or disposal of the product that may be necessary to work out the total leviable value in respect of the product for any period in respect of which levy may be payable in respect of leviable disposals of the product; and
 - (b) retain those records for 6 years.

4-8]

Penalty: ~~30 penalty units.~~ 50 penalty units

4-9]

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: The Chief Executive Officer of the APVMA may accept an enforceable undertaking in relation to this provision, see Division 2 of Part 7AB of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

Note 2: The APVMA may issue a warning in relation to a contravention of this provision, see Division 4 of Part 7AB of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

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

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

38 Exemptions from liability for damages

No action, suit or other proceeding for damages lies against the Commonwealth, the APVMA, or any other Commonwealth authority, or a person who is or has been an officer or employee of the Commonwealth, of the APVMA or of any other Commonwealth authority, or is or has been a ~~delegate of the APVMA~~ ~~delegate of the APVMA~~ or of any other Agency, a director of the APVMA, a consultant to the APVMA or an

6-29]

inspector, for or in relation to anything done or omitted to be done in good faith in the performance or purported performance of any function, or the exercise or purported exercise of any power, conferred by this Act.

6-30 } **38A Refund of overpayments**

- (1) The ~~APVMA~~-collecting agency may credit an amount of levy, late payment penalty or understatement penalty that has been overpaid by a person against a liability of the person to pay another such amount under this Act.
- (2) The APVMA must refund the amount to the person to the extent that it is not credited.

6-31 } **38B Waiver of amounts**

The ~~APVMA~~-collecting agency may waive, up to a maximum of \$100, the whole or a part of the liability to pay an amount of levy, late payment penalty or understatement penalty.

6-32 }

Note: If the ~~APVMA~~-collecting agency waives the whole or a part of the liability to pay an amount, this is a permanent bar to recovering that amount.

38C Rounding of amounts

If the total amount of levy, late payment penalty and understatement penalty payable by a person in respect of a chemical product for a period is not exactly divisible by \$2, the ~~APVMA~~ collecting agency may round the amount down to the nearest amount that is exactly divisible by \$2.

6-33 }

6-34 }

38D Costs and expenses of collecting agency

If an Agency is specified by legislative instrument under section 3A to be the collecting agency, the APVMA:

- (a) must pay the Agency for the costs and expenses incurred by the Agency in relation to collecting levy, late payment penalty or understatement penalty under this Act; and
- (b) may debit the Australian Pesticides and Veterinary Medicines Special Account for this purpose.

Section 38E

38E Delegation

The Chief Executive Officer of an Agency may, by writing, delegate his or her power under subsection 16(12) to:

- (a) if the Agency is the APVMA—an SES employee or acting SES employee in the APVMA; or
- (b) if the Agency is specified by legislative instrument under section 3A to be the collecting agency—an SES employee or acting SES employee in the Agency.

39 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

[6-35]

and, in particular, prescribing the way in which notices may be given by or to the APVMA or, if a collecting agency is specified by legislative instrument under section 3A to be the collecting agency, the collecting agency, or both, under this Act.

[7-6]

- (2) The percentage that may be prescribed by the regulations for the purposes of section ~~11, 12 or~~ 12C must not exceed 2%.

Table of Acts

THE FOLLOWING HAS NOT BEEN UPDATED IN COMPILATIONS COMPLETED FOR THE BETTER REGULATION REFORM PROCESS.

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

Note 1

The *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994* as shown in this compilation comprises Act No. 41, 1994 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994</i>	41, 1994	15 Mar 1994	15 Mar 1995 (see s. 2)	
<i>Agricultural and Veterinary Chemical Products (Collection of Levy) Amendment Act 1994</i>	72, 1994	21 June 1994	(a)	—
<i>Primary Industries and Energy Legislation Amendment Act 1994</i>	94, 1994	29 June 1994	S. 11: (b)	—
<i>Primary Industries and Energy Legislation Amendment Act (No. 1) 1995</i>	36, 1995	12 Apr 1995	S. 3: Royal Assent (c)	—
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Ss. 1–3 and Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419)
<i>Agriculture, Fisheries and Forestry Legislation Amendment (Application</i>	115, 2001	18 Sept 2001	16 Oct 2001	S. 4

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

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>of Criminal Code) Act 2001</i>				
<i>Agricultural and Veterinary Chemicals Legislation Amendment Act 2003</i>	13, 2003	8 Apr 2003	S. 4 and Schedules 1–3: 8 Oct 2003 Remainder: Royal Assent	—
<i>Agricultural and Veterinary Chemicals Legislation Amendment (Name Change) Act 2004</i>	79, 2004	23 June 2004	Schedule 1 (items 470–483, 485, 487–491): 30 July 2004 Schedule 1 (items 484, 486): (d)	S. 2(1) (am. by 42, 2005, Sch. 1 [item 49])
as amended by				
<i>Agricultural and Veterinary Chemicals Legislation Amendment (Levy and Fees) Act 2005</i>	42, 2005	1 Apr 2005	Schedule 1 (item 49): (da) Schedule 1 (items 51, 53): (da)	—
<i>Financial Framework Legislation Amendment Act 2005</i>	8, 2005	22 Feb 2005	S. 4 and Schedule 1 (items 75, 496): Royal Assent	S. 4 and Sch. 1 (item 496)
<i>Agricultural and Veterinary Chemicals Legislation Amendment (Levy and Fees) Act 2005</i>	42, 2005	1 Apr 2005	Schedule 1 (items 1–27, 29, 31–40): Royal Assent Schedule 1 (items 28, 30): (e)	Sch. 1 (item 22)
<i>Acts Interpretation Amendment Act 2011</i>	46, 2011	27 June 2011	Schedule 2 (item 44) and Schedule 3 (items 10, 11): [see Note 2 and Table A]	Sch. 3 (items 10, 11)

Act Notes

- (a) (1) If the commencement of the *Agricultural and Veterinary Chemical Products (Collection of Interim Levy) Act 1994* is fixed by a Proclamation published in the *Gazette*, this Act commences on the same day as the *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994*, immediately after the commencement of that last mentioned Act.
- The *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994* came into operation on 15 March 1995.
- (b) The *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994* was amended by section 11 only of the *Primary Industries and Energy Legislation Amendment Act 1994*, subsection 2(4) of which provides as follows:
- (4) The amendment of the *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994* made by the Schedule commences or is taken to have commenced immediately after the commencement of the *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994*.
- The *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994* came into operation on 15 March 1995.
- (c) The *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994* was amended by section 3 only of the *Primary Industries and Energy Legislation Amendment Act (No. 1) 1995*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (d) Subsection 2(1) (items 9 and 11) of the *Agricultural and Veterinary Chemicals Legislation Amendment (Name Change) Act 2004* provides as follows:
- (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.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
9. Schedule 1, item 484	The later of: (a) the time the provision(s) covered by table item 2 commence; and (b) immediately after the commencement of item 75 of Schedule 1 to the <i>Financial Framework Legislation Amendment Act 2005</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	22 February 2005 (paragraph (b) applies)

Act Notes

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
11. Schedule 1, item 486	The later of: (a) the time the provision(s) covered by table item 2 commence; and (b) immediately after the commencement of item 75 of Schedule 1 to the <i>Financial Framework Legislation Amendment Act 2005</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	22 February 2005 (paragraph (b) applies)
(da) Subsection 2(1) (items 7, 9 and 11) of the <i>Agricultural and Veterinary Chemicals Legislation Amendment (Levy and Fees) Act 2005</i> provides as follows: (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.		
Provision(s)	Commencement	Date/Details
7. Schedule 1, items 48 and 49	Immediately after the commencement of section 2 of the <i>Agricultural and Veterinary Chemicals Legislation Amendment (Name Change) Act 2004</i> .	23 June 2004
9. Schedule 1, item 51	At the same time as the commencement of item 484 of Schedule 1 to the <i>Agricultural and Veterinary Chemicals Legislation Amendment (Name Change) Act 2004</i> . However, the provision(s) do not commence at all if that item does not commence.	22 February 2005
11. Schedule 1, item 53	At the same time as the commencement of item 486 of Schedule 1 to the <i>Agricultural and Veterinary Chemicals Legislation Amendment (Name Change) Act 2004</i> . However, the provision(s) do not commence at all if that item does not commence.	22 February 2005
(e) Subsection 2(1) (items 3 and 5) of the <i>Agricultural and Veterinary Chemicals Legislation Amendment (Levy and Fees) Act 2005</i> provides as follows: (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.		

Act Notes

Provision(s)	Commencement	Date/Details
3. Schedule 1, item 28	Immediately after the commencement of item 75 of Schedule 1 to the <i>Financial Framework Legislation Amendment Act 2005</i> . However, if that item commences on or before the day on which this Act receives the Royal Assent, the provision(s) do not commence at all.	Does not commence
5. Schedule 1, item 30	Immediately after the commencement of item 75 of Schedule 1 to the <i>Financial Framework Legislation Amendment Act 2005</i> . However, if that item commences on or before the day on which this Act receives the Royal Assent, the provision(s) do not commence at all.	Does not commence

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
S. 3	am. Nos. 72 and 94, 1994; No. 36, 1995; No. 115, 2001; No. 13, 2003; No. 79, 2004; No. 42, 2005
S. 5A	ad. No. 115, 2001
Heading to s. 6.....	am. No. 79, 2004
S. 6	am. No. 36, 1995; No. 79, 2004; No. 42, 2005
S. 7	rep. No. 72, 1994
Part 2	
Heading to Part 2.....	rs. No. 42, 2005
Division 1	
Heading to Div. 1 of Part 2.....	ad. No. 42, 2005
Heading to s. 8.....	am. No. 42, 2005
S. 8	am. No. 42, 2005
Heading to s. 9.....	am. No. 42, 2005
Subhead. to s. 9(1)	ad. No. 42, 2005
Subhead. to s. 9(2)	ad. No. 42, 2005
Subhead. to s. 9(3)	ad. No. 42, 2005
S. 9	am. No. 42, 2005
S. 10	rep. No. 72, 1994 ad. No. 42, 2005
Heading to s. 11.....	am. No. 42, 2005
S. 11	am. No. 13, 2003
Heading to s. 12.....	am. No. 42, 2005
Subhead. to s. 12(1)	ad. No. 42, 2005
S. 12	am. No. 13, 2003; No. 42, 2005
S. 12A	ad. No. 42, 2005
Division 2	
Div. 2 of Part 2.....	ad. No. 42, 2005
Ss. 12B, 12C.....	ad. No. 42, 2005
Division 3	
Heading to Div. 3 of Part 2.....	ad. No. 42, 2005
Note to s. 13.....	am. No. 79, 2004
S. 14	am. No. 72, 1994; No. 36, 1995; No. 79, 2004; No. 42, 2005
Note to s. 14(2)	am. No. 79, 2004 rep. No. 42, 2005
S. 14A	ad. No. 42, 2005
Part 3	
S. 15	am. No. 115, 2001; No. 79, 2004

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Heading to s. 16.....	am. No. 79, 2004
Subhead. to s. 16(1)	ad. No. 42, 2005
Subhead. to s. 16(9)	ad. No. 42, 2005
Subhead. to s. 16(12)	ad. No. 42, 2005
S. 16	am. No. 79, 2004; No. 42, 2005
S. 17	am. No. 79, 2004 rs. No. 42, 2005
S. 18	am. No. 79, 2004; No. 42, 2005
Part 4	
Heading to s. 19.....	am. No. 42, 2005
S. 19	am. No. 79, 2004 rs. No. 8, 2005 am. No. 79, 2004; No. 42, 2005
Heading to s. 20.....	am. No. 79, 2004
S. 20	am. No. 72, 1994; No. 36, 1995; No. 115, 2001; No. 79, 2004; No. 42, 2005
Note to s. 20(1)	ad. No. 42, 2005
Note to s. 20(2)	ad. No. 42, 2005
S. 23	am. No. 115, 2001
S. 29	am. No. 79, 2004
Part 5	
Heading to s. 33.....	am. No. 79, 2004
S. 33	am. No. 79, 2004; No. 42, 2005
S. 34	rs. No. 42, 2005
S. 36	am. No. 115, 2001
S. 37	rep. No. 137, 2000
S. 38	am. No. 79, 2004
Ss. 38A–38C.....	ad. No. 42, 2005
S. 39	am. No. 72, 1994; No. 79, 2004; No. 42, 2005

Note 2

Note 2

Acts Interpretation Amendment Act 2011 (No. 46, 2011)

The following amendment commences on 27 December 2011 unless proclaimed earlier:

Schedule 2

44 Subsection 3(1) (definition of *document*)

Repeal the definition.

As at 6 July 2011 the amendment is not incorporated in this compilation.

Table A

Table A

Application, saving or transitional provisions

Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000 (No. 137, 2000)

Schedule 2

418 Transitional—pre-commencement offences

- (1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:
- (a) an offence committed before the commencement of this item; or
 - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
 - (c) any matter connected with, or arising out of, such proceedings;
- as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

419 Transitional—pre-commencement notices

If:

- (a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
 - (b) any or all of those other provisions are repealed by this Schedule; and
 - (c) the first-mentioned provision is amended by this Schedule;
- the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.

Table A

Agriculture, Fisheries and Forestry Legislation Amendment (Application of Criminal Code) Act 2001 (No. 115, 2001)

4 Application of amendments

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Financial Framework Legislation Amendment Act 2005 (No. 8, 2005)

4 Saving of matters in Part 2 of Schedule 1

- (1) If:
 - (a) a decision or action is taken or another thing is made, given or done; and
 - (b) the thing is taken, made, given or done under a provision of a Part 2 Act that had effect immediately before the commencement of this Act;then the thing has the corresponding effect, for the purposes of the Part 2 Act as amended by this Act, as if it had been taken, made, given or done under the Part 2 Act as so amended.

- (2) In this section:

Part 2 Act means an Act that is amended by an item in Part 2 of Schedule 1.

Schedule 1

496 Saving provision—Finance Minister’s determinations

If a determination under subsection 20(1) of the *Financial Management and Accountability Act 1997* is in force immediately before the commencement of this item, the determination continues in force as if it were made under subsection 20(1) of that Act as amended by this Act.

Table A

Agricultural and Veterinary Chemicals Legislation Amendment (Levy and Fees) Act 2005 (No. 42, 2005)

Schedule 1

22 Application of items 20 and 21

- (1) The amendment made by item 20 applies to late payment penalties imposed after the commencement of the item.
- (2) The amendment made by item 21 applies to notices given under section 20 after the commencement of the item.

Acts Interpretation Amendment Act 2011 (No. 46, 2011)

The following provisions commence on 27 December 2011 unless proclaimed earlier:

Schedule 3

10 Saving—appointments

The amendments made by Schedule 2 do not affect the validity of an appointment that was made under an Act before the commencement of this item and that was in force immediately before that commencement.

11 Transitional regulations

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments and repeals made by Schedules 1 and 2.