

# EXPOSURE DRAFT

2010-2011

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT (15/11/2011)
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## **Agricultural and Veterinary Chemicals Legislation Amendment Bill 2011**

**No.     , 2011**

*(Agriculture, Fisheries and Forestry)*

**A Bill for an Act to amend laws relating to  
agricultural and veterinary chemicals, and for  
related purposes**



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1     **A Bill for an Act to amend laws relating to**  
2     **agricultural and veterinary chemicals, and for**  
3     **related purposes**

4     The Parliament of Australia enacts:

5     **1 Short title**

6                     This Act may be cited as the *Agricultural and Veterinary*  
7                     *Chemicals Legislation Amendment Act 2011*.

8     **2 Commencement**

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

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
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<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
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1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
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2. Schedule 1	A single day to be fixed by Proclamation. However, if the provision(s) do not commence before 1 January 2013, they commence on that day.	
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3. Schedule 2	The later of: (a) 1 July 2012; and (b) the day after this Act receives the Royal Assent.	
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4. Schedule 3	At the same time as the provision(s) covered by table item 2.	
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5. Schedule 4	The later of: (a) 1 July 2012; and (b) the day after this Act receives the Royal Assent.	
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6. Schedule 5	At the same time as the provision(s) covered by table item 2.	
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7. Schedule 6	The later of: (a) 1 July 2012; and (b) the day after this Act receives the Royal Assent.	
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8. Schedule 7	The day after this Act receives the Royal Assent.	
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1 Note: This table relates only to the provisions of this Act as originally  
2 enacted. It will not be amended to deal with any later amendments of  
3 this Act.

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

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1 **3 Schedule(s)**

2 Each Act that is specified in a Schedule to this Act is amended or  
3 repealed as set out in the applicable items in the Schedule  
4 concerned, and any other item in a Schedule to this Act has effect  
5 according to its terms.  
6

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## Schedule 1 Decision-making using a risk based framework

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1 **Schedule 1—Decision-making using a risk**  
2 **based framework**  
3

4 *Agricultural and Veterinary Chemicals Code Act 1994*

5 **1 Subsection 3(1) of the Schedule (definition of *relevant***  
6 ***particulars*)**

7 Omit “29(1)(h)”, substitute “29(2B)(a)”.

8 **2 Subparagraph 12(1)(a)(iii) of the Schedule**

9 After “paragraph 14(3)(e)”, insert “and, if applicable, subsection  
10 14(3A)”.

11 **3 Subparagraph 13(1)(a)(iii) of the Schedule**

12 Omit “paragraphs 14(3)(e) and (f)”, substitute “paragraph 14(3)(e) and,  
13 if applicable, subsection 14(3A)”.

14 **4 Subsection 14(1) of the Schedule**

15 Repeal the subsection, substitute:

16 (1) The APVMA must grant an application made under section 10 if:

17 (a) it is satisfied of all the matters referred to in subsection (3);  
18 and

19 (b) in a case where the application is for the registration of a  
20 chemical product and the APVMA considers that a matter  
21 referred to in subsection (3A) is relevant to the application—  
22 it is satisfied of the matter.

23 **5 Subsection 14(3) of the Schedule**

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

25 **6 Subparagraph 14(3)(e)(iii) of the Schedule**

26 Omit “and”.

27 **7 Subparagraph 14(3)(e)(iv) of the Schedule**

28 Repeal the subparagraph.

29 **8 Paragraph 14(3)(f) of the Schedule**

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Decision-making using a risk based framework **Schedule 1**

---

1 Repeal the paragraph.

## 2 **9 After subsection 14(3) of the Schedule**

3 Insert:

4 (3A) For the purposes of paragraph (1)(b), the matters are:

5 (a) that the use of the product in accordance with the instructions  
6 for its use that the APVMA has approved or approves would  
7 not unduly prejudice trade or commerce between Australia  
8 and places outside Australia; and

9 (b) that the use of the product in accordance with the instructions  
10 for its use that the APVMA has approved or approves would  
11 be effective according to criteria determined by the APVMA  
12 for the product.

## 13 **10 Subsections 14(4) and (5) of the Schedule**

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

## 15 **11 Subsection 14(5) of the Schedule**

16 Omit all the words after “subparagraph (3)(e)(ii) or (iii),”, substitute:

17 the APVMA:

18 (a) must have regard to the following matters:

19 (i) the toxicity of the product and its residues in relation to  
20 relevant organisms and ecosystems, including human  
21 beings;

22 (ii) the relevant poison classification of the product under  
23 the law in force in this jurisdiction;

24 (iii) how the product is formulated;

25 (iv) the composition and form of the constituents of the  
26 product;

27 (v) any other matters prescribed by the regulations; and

28 (b) may have regard to one or more of the following matters:

29 (i) the acceptable daily intake of each active constituent  
30 contained in the product;

31 (ii) any dietary exposure assessment prepared under  
32 subsection 82(4) of the *Food Standards Australia New*  
33 *Zealand Act 1991* as a result of any proposed variation  
34 notified under subsection 82(3) of that Act in relation to

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## Schedule 1 Decision-making using a risk based framework

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- 1 the product, and any comments on the assessment given  
2 to the APVMA under subsection 82(4) of that Act;
- 3 (iii) whether any trials or laboratory experiments have been  
4 carried out to determine the residues of the product and,  
5 if so, the results of those trials or experiments and  
6 whether those results show that the residues of the  
7 product will not be greater than limits that the APVMA  
8 has approved or approves;
- 9 (iv) the stability of the product;
- 10 (v) the specifications for containers for the product;
- 11 (vi) such other matters as it thinks relevant.

### 12 **12 Subsection 14(6) of the Schedule**

13 Omit “In satisfying itself for the purposes of subsection (1)”, substitute  
14 “If the APVMA is to satisfy itself for the purposes of  
15 paragraph (3A)(b)”.

### 16 **13 Subsection 14(6) of the Schedule**

17 Omit “as mentioned in paragraph (3)(f)”.

### 18 **14 Subparagraph 14B(1)(b)(i) of the Schedule**

19 Omit “(except subparagraph 14(3)(e)(iv)) or paragraph 14(3)(f)”.

### 20 **15 Before subsection 26A(3) of the Schedule**

21 Insert:

22 (2B) The APVMA must grant an application made under subsection (1)  
23 if:

- 24 (a) it is satisfied of all the matters referred to in subsection (3);  
25 and  
26 (b) in a case where the application relates to a registered  
27 chemical product and the APVMA considers that a matter  
28 referred to in subsection (3A) is relevant to the application—  
29 it is satisfied of the matter.

### 30 **16 Subsection 26A(3) of the Schedule**

31 Omit “Subsection (4) applies if”, substitute “The matters referred to in  
32 paragraph (2B)(a) are the following”.

### 33 **17 Paragraph 26A(3)(a) of the Schedule**

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Decision-making using a risk based framework **Schedule 1**

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1 Omit “registration of a chemical product—the APVMA is satisfied”,  
2 substitute “a registered chemical product—”.

## 3 **18 Subparagraph 26A(3)(a)(iii) of the Schedule**

4 Omit “and”.

## 5 **19 Subparagraph 26A(3)(a)(iv) of the Schedule**

6 Repeal the subparagraph.

## 7 **20 Paragraph 26A(3)(b) of the Schedule**

8 Repeal the paragraph, substitute:

9 (b) in the case of an application that relates to a label for  
10 containers for a chemical product—that the label would  
11 contain adequate instructions relating to the matters referred  
12 to in paragraph 14(3)(g).

## 13 **21 After subsection 26A(3) of the Schedule**

14 Insert:

15 (3A) For the purposes of paragraph (2B)(b), the matters are:

16 (a) that, if those particulars were varied in accordance with the  
17 application, the continued use of, or any other dealing with,  
18 the product in accordance with the instructions for its use or  
19 for such a dealing that the APVMA has approved would not  
20 unduly prejudice trade or commerce between Australia and  
21 places outside Australia; and

22 (b) that, if those particulars were varied in accordance with the  
23 application, the use of the product in accordance with the  
24 instructions for its use that the APVMA has approved would  
25 be effective according to criteria determined by the APVMA  
26 for the product.

## 27 **22 Subsection 26A(4) of the Schedule**

28 Omit “is satisfied, as mentioned in subsection (3)”, substitute “grants  
29 the application”.

## 30 **23 After subsection 26A(4) of the Schedule**

31 Insert:

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## Schedule 1 Decision-making using a risk based framework

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1 (4A) If the APVMA is not satisfied, as mentioned in subsection (2B), it  
2 must refuse the application.

### 3 **24 Subsection 26A(5) of the Schedule**

4 Omit “APVMA is not satisfied, as mentioned in subsection (3)”,  
5 substitute “application is refused”.

### 6 **25 Before subsection 29(1) of the Schedule**

7 Insert:

8 (1A) The APVMA must grant an application made under section 27 if:

- 9 (a) it is satisfied of all the matters referred to in subsection (1);  
10 and  
11 (b) in a case where the application relates to a registered  
12 chemical product and the APVMA considers that a matter  
13 referred to in subsection (1B) is relevant to the application—  
14 it is satisfied of the matter.

### 15 **26 Subsection 29(1) of the Schedule**

16 Omit “If the APVMA is satisfied of”, substitute “The matters referred to  
17 in paragraph (1A)(a) are”.

### 18 **27 Subparagraph 29(1)(e)(iii) of the Schedule**

19 Omit “and”.

### 20 **28 Subparagraph 29(1)(e)(iv) of the Schedule**

21 Repeal the subparagraph.

### 22 **29 Paragraph 29(1)(f) of the Schedule**

23 Repeal the paragraph.

### 24 **30 Paragraph 29(1)(g) of the Schedule**

25 Omit “paragraph 14(3)(g);”, substitute “paragraph 14(3)(g).”.

### 26 **31 Subsection 29(1) of the Schedule**

27 Omit all the words after paragraph (g).

### 28 **32 After subsection 29(1) of the Schedule**

29 Insert:

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1 (1B) For the purposes of paragraph (1A)(b), the matters are:

2 (a) that, if the particulars or conditions were varied in  
3 accordance with the application, the continued use of, or any  
4 other dealing with, the product in accordance with the  
5 instructions for its use or for such a dealing that the APVMA  
6 proposes to approve would not unduly prejudice trade or  
7 commerce between Australia and places outside Australia;  
8 and

9 (b) that, if the particulars or conditions were varied in  
10 accordance with the application, the continued use of, or any  
11 other dealing with, the product in accordance with the  
12 instructions for its use or for such a dealing that the APVMA  
13 proposes to approve would be effective according to criteria  
14 determined by the APVMA for the product.

### 15 **33 Subsection 29(2) of the Schedule**

16 Repeal the subsection, substitute:

17 (2) In satisfying itself for the purposes of paragraph (1)(e), the  
18 APVMA:

19 (a) must have regard to the matters referred to in subsection  
20 14(4), paragraph 14(5)(a) or subsection 14(6), as the case  
21 requires; and

22 (b) may have regard to one or more of the matters referred to in  
23 paragraph 14(5)(b).

### 24 **34 Before subsection 29(3) of the Schedule**

25 Insert:

26 (2B) If the APVMA grants the application, it must:

27 (a) vary the particulars or conditions in the following way:

28 (i) if the application was for a variation of the relevant  
29 particulars or the conditions of the approval of a  
30 constituent or the registration of a product—by entering  
31 in the relevant Record or Register particulars of the  
32 variation and the date on which the entry is made;

33 (ii) if the application was for a variation of the relevant  
34 particulars of the approval of a label—by recording in  
35 the relevant APVMA file the relevant particulars as  
36 varied and the date on which the record is made;

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- 1 (iii) if the application was for a variation of the conditions of  
2 approval of a label—by recording in the file the  
3 conditions as varied; and  
4 (b) give written notice to an approved person stating that the  
5 variation has been made and setting out particulars of the  
6 variation.

### 35 Subsection 29(3) of the Schedule

7 Omit “subsection (1)”, substitute “subsection (1A)”.

### 36 Subparagraph 34(1)(a)(iv) of the Schedule

8 Repeal the subparagraph.

### 37 Paragraph 34(1)(b) of the Schedule

9 Repeal the paragraph, substitute:

- 10 (b) if the reconsideration relates to the registration of a product  
11 and the APVMA considers it relevant—that:  
12 (i) the continued use of, or any other dealing with, the  
13 product in accordance with the instructions for its use or  
14 for such a dealing that the APVMA has approved would  
15 not unduly prejudice trade or commerce between  
16 Australia and places outside Australia; and  
17 (ii) the continued use of the product in accordance with the  
18 instructions for its use that the APVMA has approved  
19 would be effective according to criteria determined by  
20 the APVMA for the product; and  
21  
22  
23

### 38 Subsection 34(2) of the Schedule

24 Omit “(5) or (6), as the case requires”, substitute “paragraph 14(5)(a) or  
25 subsection 14(6), as the case requires, and if the APVMA considers it  
26 relevant, having regard to one or more of the matters referred to in  
27 paragraph 14(5)(b)”.

### 39 Paragraph 34G(1)(a) of the Schedule

28 Omit “29(1)”, substitute “29(1A)”.

### 40 Subsections 41(1) and (2) of the Schedule

29 Repeal the subsections, substitute:

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- 1 (1) The APVMA may suspend or cancel the approval of an active  
2 constituent for a proposed or existing chemical product, or the  
3 registration of a chemical product, if it appears to the APVMA  
4 that:
- 5 (a) having regard to the matters referred to in subsection 14(4) or  
6 paragraph 14(5)(a), as the case requires; and  
7 (b) if the APVMA considers it relevant—having regard to one or  
8 more of the matters referred to in paragraph 14(5)(b);  
9 the continued use of, or any other dealing with, the constituent or  
10 product in accordance with the instructions for its use or for such a  
11 dealing that the APVMA has approved:
- 12 (c) may be an undue hazard to the safety of people exposed to it  
13 during its handling or people using anything containing its  
14 residues; or  
15 (d) may be likely to have an effect that is harmful to human  
16 beings; or  
17 (e) may be likely to have an unintended effect that is harmful to  
18 animals, plants or things or to the environment.
- 19 (2) The APVMA may suspend or cancel the registration of a chemical  
20 product if it appears to the APVMA that:
- 21 (a) the continued use of, or any other dealing with, the product in  
22 accordance with the instructions for its use or for such a  
23 dealing that the APVMA has approved may unduly prejudice  
24 trade or commerce between Australia and places outside  
25 Australia; or  
26 (b) having regard to the matters referred to in subsection 14(6),  
27 the continued use of the product in accordance with the  
28 instructions for its use that the APVMA has approved may  
29 not be effective according to criteria determined by the  
30 APVMA for the product.

## 31 **41 Subparagraph 56C(2)(b)(iii) of the Schedule**

32 Omit “to (e)”, substitute “to (c), and if applicable, the matters  
33 mentioned in paragraphs 56E(1)(d) and (e),”.

## 34 **42 Paragraphs 56E(1)(d) and (e) of the Schedule**

35 Before “would”, insert “if the APVMA considers it relevant—”.

## 36 **43 Before subsection 56U(1) of the Schedule**

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## Schedule 1 Decision-making using a risk based framework

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1           Insert:

2           (1A) The APVMA must grant an application made under section 56S if:

3                 (a) it is satisfied of all the matters referred to in subsection (1);  
4                         and

5                 (b) in a case where the APVMA considers that a matter referred  
6                         to in subsection (1B) is relevant to the application—it is  
7                         satisfied of the matter.

### 8           **44 Subsection 56U(1) of the Schedule**

9                 Omit “If the APVMA is satisfied of”, substitute “The matters referred to  
10                         in paragraph (1A)(a) are”.

### 11           **45 Subparagraph 56U(1)(e)(iii) of the Schedule**

12                 Omit “and”.

### 13           **46 Subparagraphs 56U(1)(e)(iv) and (v) of the Schedule**

14                 Repeal the subparagraphs.

### 15           **47 Paragraph 56U(1)(f) of the Schedule**

16                 Omit “paid;”, substitute “paid.”.

### 17           **48 Subsection 56U(1) of the Schedule**

18                 Omit all the words after paragraph (f).

### 19           **49 After subsection 56U(1) of the Schedule**

20                 Insert:

21                 (1B) For the purposes of paragraph (1A)(b), the matters are:

22                         (a) that, if the particulars or conditions were varied in  
23                                 accordance with the application, the continued use of, or any  
24                                 other dealing with, the product in accordance with  
25                                 instructions contained in the established standard would not  
26                                 unduly prejudice trade or commerce between Australia and  
27                                 places outside Australia; and

28                         (b) that, if the particulars or conditions were varied in  
29                                 accordance with the application, the continued use of, or any  
30                                 other dealing with, the product in accordance with  
31                                 instructions contained in the established standard would be

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1 effective according to criteria determined by the APVMA for  
2 the product.

## 3 **50 Subsection 56U(3) of the Schedule**

4 Omit “In satisfying itself for the purposes of subparagraph (1)(e)(v)”,  
5 substitute “If the APVMA considers it relevant, in satisfying itself for  
6 the purposes of paragraph (1B)(b)”.

## 7 **51 Before subsection 56U(4) of the Schedule**

8 Insert:

9 (3B) If the APVMA grants the application, it must:

- 10 (a) vary the particulars or conditions by entering in the Register  
11 of Chemical Products particulars of the variation and the date  
12 on which the entry is made; and  
13 (b) give written notice to an approved person stating that the  
14 variation has been made and setting out particulars of the  
15 variation.

## 16 **52 Subsection 56U(4) of the Schedule**

17 Omit “subsection (1)”, substitute “subsection (1A)”.

## 18 **53 Subparagraphs 56Z(1)(c)(iv) and (v) of the Schedule**

19 Before “would”, insert “if the APVMA considers it relevant—”.

## 20 **54 Paragraph 56ZF(1)(c) of the Schedule**

21 Omit “environment; or”, substitute “environment.”.

## 22 **55 Paragraph 56ZF(1)(d) of the Schedule**

23 Repeal the paragraph.

## 24 **56 Subsection 56ZF(2) of the Schedule**

25 Repeal the subsection, substitute:

- 26 (2) The APVMA may suspend or cancel the listed registration of a  
27 chemical product if it appears to the APVMA that, having regard to  
28 the matters referred to in subsection 56E(3), the continued use of  
29 the product in accordance with the instructions contained in the  
30 established standard:

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## Schedule 1 Decision-making using a risk based framework

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- 1 (a) may unduly prejudice trade or commerce between Australia  
2 and places outside Australia; or  
3 (b) may not be effective according to criteria determined by the  
4 APVMA for the product.

### 5 **57 Subparagraphs 56ZU(4)(c)(iv) and (v) of the Schedule**

6 Before “would”, insert “if the APVMA considers it relevant—”.

### 7 **58 Paragraph 102(1)(a) of the Schedule**

8 Omit “subsection 14(5) or (6), as the case requires,”, substitute  
9 “paragraph 14(5)(a) or subsection 14(6), as the case requires, and if the  
10 APVMA considers it relevant, having regard to one or more of the  
11 matters referred to in paragraph 14(5)(b),”.

### 12 **59 After subsection 112(1) of the Schedule**

13 Insert:

- 14 (1A) The APVMA must grant the application if:  
15 (a) it is satisfied of all the matters referred to in subsection (2);  
16 and  
17 (b) in a case where the APVMA considers that a matter referred  
18 to in subsection (2A) is relevant to the application—it is  
19 satisfied of the matter.

### 20 **60 Subsection 112(2) of the Schedule**

21 Omit “The APVMA must grant the application if it is satisfied of”,  
22 substitute “The matters referred to in paragraph (1A)(a) are”.

### 23 **61 Paragraph 112(2)(f) of the Schedule**

24 Omit “(5), as the case requires,”, substitute “paragraph 14(5)(a), as the  
25 case requires, and if the APVMA considers it relevant, having regard to  
26 one or more of the matters referred to in paragraph 14(5)(b),”.

### 27 **62 Subparagraph 112(2)(f)(iii) of the Schedule**

28 Omit “and”.

### 29 **63 Subparagraph 112(2)(f)(iv) of the Schedule**

30 Repeal the subparagraph.

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Decision-making using a risk based framework **Schedule 1**

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1 **64 Paragraph 112(2)(g) of the Schedule**

2 Repeal the paragraph.

3 **65 After subsection 112(2) of the Schedule**

4 Insert:

5 (2A) For the purposes of paragraph (1A)(b), the matters are:

6 (a) that, having regard to the matters referred to in subsection  
7 14(4) or paragraph 14(5)(a), as the case requires, and if the  
8 APVMA considers it relevant, having regard to one or more  
9 of the matters referred to in paragraph 14(5)(b), the use of, or  
10 any other dealing with, the product as proposed in the  
11 application for the permit would not unduly prejudice trade  
12 or commerce between Australia and places outside Australia;  
13 and

14 (b) that, having regard to the matters referred to in subsection  
15 14(6), the use of the product as proposed in the application  
16 for the permit would be effective according to criteria  
17 determined by the APVMA for the product.

18 **66 Subsection 112(3) of the Schedule**

19 Omit “subsection (2)”, substitute “subsection (1A)”.

20 **67 Paragraph 118(1)(a) of the Schedule**

21 Omit “(5), as the case requires,”, substitute “paragraph 14(5)(a), as the  
22 case requires, and if the APVMA considers it relevant, having regard to  
23 one or more of the matters referred to in paragraph 14(5)(b),”.

24 **68 Paragraph 119(1)(a) of the Schedule**

25 Omit “(5), as the case requires,”, substitute “paragraph 14(5)(a), as the  
26 case requires, and if the APVMA considers it relevant, having regard to  
27 one or more of the matters referred to in paragraph 14(5)(b),”.

28 **69 Application**

29 (1) The amendments made by this Schedule (other than items 20 and 21)  
30 apply in relation to:

31 (a) an application under Part 2, 2A or 7 of the Schedule to the  
32 *Agricultural and Veterinary Chemicals Code Act 1994* that is  
33 made on or after the day this item commences; and

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## Schedule 1 Decision-making using a risk based framework

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- 1 (b) an application under Part 2 of the Schedule to the  
2 *Agricultural and Veterinary Chemicals Code Act 1994* that is  
3 made before the day this item commences if, on the day this  
4 item commences, a notice has not been given to an approved  
5 person in respect of the application under subsection 11A(2)  
6 of the Schedule to that Act; and
- 7 (c) a reconsideration of an approval or registration under Part 2  
8 of the Schedule to the *Agricultural and Veterinary Chemicals*  
9 *Code Act 1994* if:
- 10 (i) the APVMA has published a notice in respect of the  
11 approval or registration under subsection 32(1) of the  
12 Schedule to that Act before the day this item  
13 commences and, on the day this item commences, the  
14 period for making written submissions has not expired;  
15 or
- 16 (ii) the APVMA gave written notice under subsection 32(2)  
17 of the Schedule to that Act to an interested person or an  
18 approved person before the day this item commences  
19 and, on the day this item commences, the period stated  
20 in the notice has not expired; or
- 21 (iii) the APVMA gives written notice under subsection 32(2)  
22 of the Schedule to that Act to an interested person or an  
23 approved person on or after the day this item  
24 commences; and
- 25 (d) a suspension or cancellation of a registration under section 41  
26 or 56ZF of the Schedule to the *Agricultural and Veterinary*  
27 *Chemicals Code Act 1994* that occurs on or after the day this  
28 item commences; and
- 29 (e) a standard for a chemical product that is submitted to the  
30 Minister for approval under section 56D of the Schedule to  
31 the *Agricultural and Veterinary Chemicals Code Act 1994* on  
32 or after the day this item commences; and
- 33 (f) reserved chemical products about which written material is  
34 given to the Minister under section 56ZU of the Schedule to  
35 the *Agricultural and Veterinary Chemicals Code Act 1994* on  
36 or after the day this item commences; and
- 37 (g) a recall notice that is given on or after the day this item  
38 commences; and
- 39 (h) a suspension or cancellation of a permit that occurs on or  
40 after the day this item commences.
-

# EXPOSURE DRAFT

Decision-making using a risk based framework **Schedule 1**

---

- 1 (2) The amendments made by items 20 and 21 of this Schedule apply in  
2 relation to an application under Part 2 of the Schedule to the  
3 *Agricultural and Veterinary Chemicals Code Act 1994* that is made on  
4 or after the day this item commences.

## 5 **70 Saving of regulations**

- 6 (1) Regulations in force for the purposes of paragraph 14(5)(i) of the old  
7 law continue in force on and after the day this item commences as if  
8 they were regulations in force for the purposes of subparagraph  
9 14(5)(a)(v) of the new law.
- 10 (2) In this item:
- 11 ***new law*** means the Code set out in the Schedule to the *Agricultural and*  
12 *Veterinary Chemicals Code Act 1994*, as amended by this Schedule.
- 13 ***old law*** means the Code set out in the Schedule to the *Agricultural and*  
14 *Veterinary Chemicals Code Act 1994*, as in force immediately before  
15 this item commences.  
16

# EXPOSURE DRAFT

Schedule 2 Continuation of approvals, registrations and listed registrations

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1 **Schedule 2—Continuation of approvals,**  
2 **registrations and listed registrations**  
3

4 *Agricultural and Veterinary Chemicals Code Act 1994*

5 **1 Subsection 3(1) of the Schedule**

6 Insert:

7 *continuation application* means:

- 8 (a) an application for the continuation of the approval of an  
9 active constituent for a proposed or existing chemical  
10 product; or  
11 (b) an application for the continuation of the registration of a  
12 chemical product; or  
13 (c) an application for the continuation of the listed registration of  
14 a chemical product.

15 **2 Subsection 3(1) of the Schedule (paragraph (a) of the**  
16 **definition of *interested person*)**

17 Repeal the paragraph, substitute:

- 18 (a) subject to paragraphs (b), (c) and (d):  
19 (i) in the case of an active constituent—the person (the  
20 *original applicant*) who applied for the approval or, if  
21 the approval has been continued, the continuation of the  
22 approval; and  
23 (ii) in the case of a registered chemical product—the person  
24 (the *original applicant*) who applied for the registration  
25 or, if the registration has been renewed or continued, the  
26 renewal or continuation of the registration (whichever  
27 last occurred); and  
28 (iii) in the case of a registered listed chemical product—the  
29 person (the *original applicant*) who applied for the  
30 listed registration or, if the listed registration has been  
31 renewed or continued, the renewal or continuation of the  
32 registration (whichever last occurred); or

33 **3 After subsection 9(6) of the Schedule**

34 Insert:

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# EXPOSURE DRAFT

Continuation of approvals, registrations and listed registrations **Schedule 2**

---

1 (6A) Division 6A provides for the continuation of approvals and  
2 registrations.

## 3 **4 After subsection 13A(1A) of the Schedule**

4 Insert:

5 (1AA) If:

6 (a) a continuation application is made under section 51A in  
7 relation to a chemical product; and

8 (b) it is likely that, if the relevant approval or registration were  
9 continued, a variation would be required to the Maximum  
10 Residue Limits Standard;

11 the APVMA must notify Food Standards Australia New Zealand of  
12 the application.

## 13 **5 Subparagraph 13A(2)(c)(iii) of the Schedule**

14 After “subsection”, insert “(1AA) or”.

## 15 **6 At the end of subsection 19(2) of the Schedule**

16 Add:

17 ; and (c) the day the approval ends, which must be the last day of a  
18 calendar month; and

19 (d) the year in which a continuation application is required for  
20 the approval to continue, which must be at least 7 years, and  
21 not later than 15 years, after the date of the approval of the  
22 constituent.

## 23 **7 At the end of subsection 20(2) of the Schedule**

24 Add:

25 ; and (c) the day the registration ends, which must be the last day of a  
26 calendar month; and

27 (d) subject to paragraph 23(2)(c), the year in which a  
28 continuation application is required for the registration to  
29 continue, which must be at least 7 years, and not later than 15  
30 years, after the date of the registration of the product.

## 31 **8 At the end of subsection 23(2) of the Schedule**

32 Add:

# EXPOSURE DRAFT

## Schedule 2 Continuation of approvals, registrations and listed registrations

---

1 ; or (c) on the condition that a continuation application may not be  
2 made for the product.

### 3 **9 Subsections 23(3) and (4) of the Schedule**

4 Repeal the subsections, substitute:

- 5 (3) If registration of a chemical product is granted on the condition  
6 mentioned in paragraph (2)(c):
- 7 (a) the registration may only remain in force for a stated period  
8 that is not more than 1 year; and
  - 9 (b) if the conditions of the registration have not been varied  
10 before the end of the stated period, or that period as extended  
11 under this paragraph, so as to remove the condition  
12 mentioned in paragraph (2)(c)—the APVMA may vary the  
13 registration so as to extend the period for which the  
14 registration may remain in force, but for not more than 1  
15 year.

### 16 **10 Subsection 26(2) of the Schedule**

17 After “If”, insert “, because of a notice under subsection (1) or on its  
18 own initiative,”.

### 19 **11 At the end of section 26 of the Schedule**

20 Add:

- 21 (3) If the APVMA changes an entry or record in the Record or  
22 Register relating to a constituent, product or label on its own  
23 initiative, it must notify, in writing, the interested person in relation  
24 to the constituent or product, as the case may be, of the change.

### 25 **12 Subsections 47(1) to (3) of the Schedule**

26 Repeal the subsections, substitute:

- 27 (1) The approval of an active constituent for a proposed or existing  
28 chemical product:
- 29 (a) commences:
    - 30 (i) if it is a continuation of an approval—on the day after  
31 the day the previous approval expires; or
    - 32 (ii) in any other case—on the day the approval is entered in  
33 the Record of Approved Active Constituents; and

# EXPOSURE DRAFT

Continuation of approvals, registrations and listed registrations **Schedule 2**

---

1 (b) expires on the day entered in the Record as the day the  
2 approval ends, unless the approval is cancelled before that  
3 time.

4 (2) The registration of a chemical product:

5 (a) commences:

6 (i) if it is a renewal of a registration—on the day after the  
7 day the previous renewal of the registration expires; or

8 (ii) in any other case—on the day the registration is entered  
9 in the Register of Chemical Products; and

10 (b) expires on the day entered in the Register as the day the  
11 registration or renewed registration ends, unless the  
12 registration is cancelled before that time.

13 Note: See also paragraph 23(2)(c) and subsection 51L(2).

## 14 **13 Paragraph 47(4A)(b) of the Schedule**

15 Omit “subsection 54(2)”, substitute “subsection 54(3)”.

## 16 **14 After subsection 48(2) of the Schedule**

17 Insert:

18 (2A) However, an application for the renewal, or further renewal, as the  
19 case may be, of the registration of a chemical product need not be  
20 made under this section in a year if a continuation application is  
21 required in that year for the registration of the product to continue.

22 Note: See also subsection 51L(2).

## 23 **15 After Division 6 of Part 2 of the Schedule**

24 Insert:

## 25 **Division 6A—Continuation of approvals and registrations**

### 26 **51A Applications that may be made**

27 (1) The interested person in relation to an approved active constituent  
28 for a proposed or existing chemical product may apply to the  
29 APVMA for the continuation of the approval of the constituent.

# EXPOSURE DRAFT

## Schedule 2 Continuation of approvals, registrations and listed registrations

---

- 1 (2) The interested person in relation to a chemical product may apply  
2 to the APVMA for the continuation of the registration of the  
3 product.
- 4 (3) Despite subsection 43(2), an application may be made under this  
5 section during a period when the constituent's approval or the  
6 product's registration is suspended.

### 51B How applications are to be made

- 8 (1) The application must:  
9 (a) be in writing in or to the effect of the approved form; and  
10 (b) contain, or be accompanied by, the information that the  
11 APVMA requires, including information about the relevant  
12 particulars and/or conditions of the approval or registration to  
13 which the application relates; and  
14 (c) be signed by an approved person; and  
15 (d) be accompanied by the prescribed fee (if any); and  
16 (e) be lodged with the APVMA.

17 Note: The APVMA may consent to applications being lodged electronically,  
18 see section 156AA.

- 19 (2) The application must be made:  
20 (a) not earlier than 6 calendar months, and not later than 3  
21 calendar months, before the day the relevant approval or  
22 registration expires in the year that a continuation application  
23 is required; or  
24 (b) subject to subsection (3), within such shorter period as the  
25 APVMA allows.
- 26 (3) In circumstances prescribed by the regulations and upon payment  
27 of the prescribed fee (if any), the APVMA may accept a late  
28 application if the application is made on or before the day the  
29 relevant approval or registration expires in the year that a  
30 continuation application is required.
- 31 (4) The APVMA may, with the written consent of an approved person,  
32 alter the application.
- 33 (5) At any time after an application has been made and before it has  
34 been determined, an approved person may withdraw the

# EXPOSURE DRAFT

Continuation of approvals, registrations and listed registrations **Schedule 2**

---

1 application by giving to the APVMA written notice of the  
2 withdrawal signed by an approved person.

## 3 **51C APVMA to notify approved person of impending expiry**

4 The APVMA must notify an approved person no later than 14 days  
5 before the latest day on which a continuation application is  
6 required if such an application has not been received in relation to  
7 the approval or registration, as the case may be.

## 8 **51D Effect of applications on existing approvals and registrations**

9 If a continuation application is made:

- 10 (a) in the case of an application that relates to the continuation of  
11 an approval—the approval is taken to continue until the  
12 application has been decided; and  
13 (b) in the case of an application that relates to the continuation of  
14 a registration—the registration is taken to continue until the  
15 application has been decided.

16 Note: See also subsection 43(2).

## 17 **51E Preliminary assessment of applications**

- 18 (1) Within 2 months after an application is made under section 51A,  
19 the APVMA must make a preliminary assessment of the  
20 application.
- 21 (2) If, after making the preliminary assessment, it appears to the  
22 APVMA that:
- 23 (a) the application complies with subsection 51B(1)—the  
24 APVMA must assess the application under section 51F; or  
25 (b) the application does not comply with subsection 51B(1) but  
26 its defects can reasonably be rectified—the APVMA must:
- 27 (i) give an approved person a written notice addressing the  
28 matters in subsection (4); and  
29 (ii) return the application with the notice; or  
30 (c) the application does not comply with subsection 51B(1) and  
31 its defects cannot reasonably be rectified—the APVMA must  
32 refuse the application.

# EXPOSURE DRAFT

## Schedule 2 Continuation of approvals, registrations and listed registrations

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- 1 (3) For the purposes of this Part, an application is taken not to comply  
2 with subsection 51B(1) if:
- 3 (a) in the case of an application that relates to the continuation of  
4 an approval—the information about the relevant particulars  
5 and/or conditions of the approval is not consistent with the  
6 Record; and
- 7 (b) in the case of an application that relates to the continuation of  
8 registration—the information about the relevant particulars  
9 and/or conditions of the registration is not consistent with the  
10 Register.
- 11 (4) For the purpose of paragraph (2)(b), the notice must:
- 12 (a) state that the application does not comply with subsection  
13 51B(1); and
- 14 (b) set out the defects in the application; and
- 15 (c) invite the approved person to rectify the defects in a way  
16 mentioned in paragraph (5)(a) or (b) within 14 days or within  
17 such further period as the APVMA allows.
- 18 (5) If an approved person receives a notice under paragraph (2)(b), the  
19 person may rectify the defects in the application:
- 20 (a) by correcting the original application and lodging it again; or
- 21 (b) by making an application under section 26A to vary the  
22 relevant particulars of the approval or registration to which  
23 the application relates; or
- 24 (c) by making an application under section 27 to vary the  
25 relevant particulars and/or conditions of the approval or the  
26 registration to which the application relates.
- 27 (6) If an approved person lodges an application again, as mentioned in  
28 paragraph (5)(a), a fee is not payable for the re-lodgement.
- 29 (7) If an approved person receives a notice under paragraph (2)(b) and  
30 does not rectify the defects in the application within 14 days or  
31 within such further period as the APVMA allows, the APVMA  
32 must refuse the application.
- 33 (8) If the APVMA refuses an application under this section:
- 34 (a) it must:
- 35 (i) give notice of its decision to the approved person to  
36 whom the application relates; and
-

# EXPOSURE DRAFT

Continuation of approvals, registrations and listed registrations **Schedule 2**

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- 1 (ii) give reasons for the decision; and  
2 (b) it may return the application with the notice.

## 3 **51F Continuation of approvals or registrations**

- 4 (1) The APVMA must continue the approval of an active constituent  
5 for a proposed or existing chemical product or registration of a  
6 chemical product, as the case may be, if:  
7 (a) it is satisfied of all the matters referred to in subsection (2);  
8 and  
9 (b) in a case where the application is for the continuation of  
10 registration of a chemical product and the APVMA considers  
11 that a matter referred to in subsection (3) is relevant to the  
12 application—it is satisfied of the matter.

13 Note: The APVMA must also notify Food Standards Australia New Zealand  
14 if a variation would be required to the Maximum Residue Limits  
15 Standard as a result of an approval or registration being continued, see  
16 subsection 13A(1AA).

- 17 (2) The matters referred to in paragraph (1)(a) are the following:  
18 (a) that the applicant has complied with subsection 51B(1);  
19 (b) that the APVMA has no reason to doubt that the continued  
20 use of the constituent or product in accordance with the  
21 instructions for its use that the APVMA has approved or  
22 approves:  
23 (i) would not be an undue hazard to the safety of people  
24 exposed to it during its handling or people using  
25 anything containing its residues; and  
26 (ii) would not be likely to have an effect that is harmful to  
27 human beings; and  
28 (iii) would not be likely to have an unintended effect that is  
29 harmful to animals, plants or things or to the  
30 environment;  
31 (c) that an amount (including an amount in respect of a tax or  
32 penalty) in respect of the constituent or product payable  
33 (whether by the applicant or by any other person) to the  
34 APVMA under any law in force in any jurisdiction has been  
35 paid.

- 36 (3) For the purposes of paragraph (1)(b), the matters are:

# EXPOSURE DRAFT

## Schedule 2 Continuation of approvals, registrations and listed registrations

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- 1 (a) that the APVMA has no reason to doubt that the use of the  
2 product in accordance with the instructions for its use that the  
3 APVMA has approved or approves would not unduly  
4 prejudice trade or commerce between Australia and places  
5 outside Australia; and  
6 (b) that the APVMA has no reason to doubt that the use of the  
7 product in accordance with the instructions for its use that the  
8 APVMA has approved or approves would be effective  
9 according to criteria determined by the APVMA for the  
10 product.

- 11 (4) In satisfying itself for the purposes of subsection (1), the APVMA  
12 must take into account:  
13 (a) the statements in the application; and  
14 (b) any statements made or information given to the APVMA in  
15 response to a notice given to the applicant under section 159;  
16 and  
17 (c) any statements made or information given to the APVMA as  
18 required by section 160A or 161;  
19 but must not take into account any other statement made or  
20 information given by the applicant.

21 Note: See also section 51H.

### 22 **51G Applicant to be notified whether approval or registration** 23 **continued**

- 24 (1) If the APVMA is satisfied as mentioned in subsection 51F(1) in  
25 relation to an application, it must, as soon as practicable, give  
26 notice to the approved person to whom the application relates  
27 advising:  
28 (a) that the application has been granted; and  
29 (b) the relevant particulars and/or conditions to which the  
30 continued approval or registration is subject; and  
31 (c) the day the approval or registration ends; and  
32 (d) the year in which the next continuation application is  
33 required for the approval or registration to continue.
- 34 (2) If the APVMA is not satisfied as mentioned in subsection 51F(1)  
35 in relation to an application, it must give a notice to the approved  
36 person to whom the application relates that:

# EXPOSURE DRAFT

Continuation of approvals, registrations and listed registrations **Schedule 2**

---

- 1 (a) both:  
2 (i) states that the APVMA proposes to vary the relevant  
3 particulars and/or conditions so that it can be satisfied as  
4 mentioned in that subsection; and  
5 (ii) sets out the details of the proposed variation; or  
6 (b) states that the APVMA proposes to reconsider the approval  
7 or registration under Division 4 of Part 2.
- 8 (3) The APVMA may only vary a condition of the approval of a label  
9 that was imposed under subsection 23A(2).
- 10 (4) The notice must also:  
11 (a) give reasons for the APVMA's proposed course of action;  
12 and  
13 (b) invite the approved person to make a written submission to  
14 the APVMA about the APVMA's proposed course of action.
- 15 (5) If an approved person wishes to make a submission, as invited to  
16 do so by the notice, the approved person must do so within 28 days  
17 after the notice is given, or within such further period as is  
18 specified in the notice.

## 19 **51H Consultation with co-ordinators about proposed variations**

20 If a proposed variation of relevant particulars or conditions, as  
21 mentioned in paragraph 51G(2)(a), would affect any instructions:

- 22 (a) for the use of an active constituent for a proposed or existing  
23 chemical product; or  
24 (b) for the use of a chemical product; or  
25 (c) on a label for containers for a chemical product;

26 the APVMA must not make the variation until it has consulted  
27 each co-ordinator designated for a jurisdiction and taken into  
28 account any recommendations made by the co-ordinators.

## 29 **51J Assessing applications after submission period ends**

- 30 (1) If a submission is received in response to a notice given under  
31 section 51G, the APVMA must reassess the application under  
32 section 51F having regard to the submission.

# EXPOSURE DRAFT

## Schedule 2 Continuation of approvals, registrations and listed registrations

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- 1 (2) After reassessing an application, or if a submission period ends  
2 without a submission being made:
- 3 (a) if the APVMA is satisfied as mentioned in subsection  
4 51F(1)—the APVMA must notify the approved person to  
5 whom the application relates, as mentioned in subsection  
6 51G(1); or
- 7 (b) if the APVMA is not satisfied as mentioned in subsection  
8 51F(1) but is satisfied that the relevant particulars and/or the  
9 conditions of the approval or registration, as the case may be,  
10 can be varied in such a way so that it can be satisfied as  
11 mentioned in that subsection—the APVMA may:
- 12 (i) vary the relevant particulars and/or conditions by  
13 entering in the Record of Approved Active Constituents  
14 or the Register of Chemical Products, as applicable,  
15 particulars of the variation and the date on which the  
16 entry is made; and
- 17 (ii) notify the approved person to whom the application  
18 relates, as mentioned in subsection 51G(1); or
- 19 (c) if the APVMA is not satisfied as mentioned in subsection  
20 51F(1) and did not vary the relevant particulars and/or the  
21 conditions of the approval or registration under paragraph (b)  
22 of this subsection—the APVMA must notify the approved  
23 person to whom the application relates that the APVMA will  
24 be reconsidering the approval or registration under Division 4  
25 of Part 2.
- 26 (3) If paragraph (2)(c) applies in relation to an application and the  
27 APVMA reconsiders the approval or registration to which the  
28 application relates:
- 29 (a) a decision by the APVMA under section 34 to vary the  
30 relevant particulars and/or conditions of the approval or  
31 registration is also taken to be a decision under this Division  
32 to take the same action in relation to the application; and
- 33 (b) a decision by the APVMA under section 40 to suspend the  
34 approval or registration is taken to be a decision to defer  
35 consideration of the application until the period of suspension  
36 ends; and
- 37 (c) a decision by the APVMA under section 40 to cancel the  
38 approval or registration is also taken to be a decision to  
39 refuse the application under this Division.
-

# EXPOSURE DRAFT

Continuation of approvals, registrations and listed registrations **Schedule 2**

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- 1 (4) Despite paragraphs (3)(b) and (c), if:  
2 (a) the suspension of the approval or registration is revoked; or  
3 (b) the cancellation of the approval or registration is revoked;  
4 the APVMA:  
5 (c) is taken to be satisfied as mentioned in subsection 51F(1) in  
6 relation to the application; and  
7 (d) must, as soon as practicable, give notice to the approved  
8 person to whom the application relates under subsection  
9 51G(1).

## 10 **51K How continuation of approval of active constituent is effected**

- 11 The continuation of the approval of an active constituent for a  
12 proposed or existing chemical product takes place by entering in  
13 the Record of Approved Active Constituents:  
14 (a) a statement that the approval has been continued and the date  
15 the approval ends; and  
16 (b) the year in which the next continuation application is  
17 required for the approval to continue, which must be at least  
18 7 years, and not later than 15 years, after the date the last  
19 continuation application was required.

## 20 **51L How continuation of registration of chemical product is effected**

- 21 (1) The continuation of registration of a chemical product takes place  
22 by entering in the Register of Chemical Products:  
23 (a) a statement that the registration has been continued; and  
24 (b) the year in which the next continuation application is  
25 required for the registration to continue, which must be at  
26 least 7 years, and not later than 15 years, after the date the  
27 last continuation application was required.
- 28 (2) If the registration of a chemical product is continued:  
29 (a) the registration of the product is taken to have been renewed  
30 under Division 6 of this Part; and  
31 (b) the APVMA must enter in the Register of Chemical Products  
32 the date the renewed registration ends.

## 33 **16 Section 52 of the Schedule**

34 Repeal the section, substitute:

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# EXPOSURE DRAFT

## Schedule 2 Continuation of approvals, registrations and listed registrations

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1     **52 Publication of notice of approval, registration or continued**  
2     **approval or registration etc.**

3           (1) This section applies if:

- 4                   (a) the APVMA approves an active constituent for a proposed or  
5                   existing chemical product; or  
6                   (b) the APVMA registers a chemical product; or  
7                   (c) the APVMA continues:  
8                           (i) the approval of an active constituent for a proposed or  
9                           existing chemical product; or  
10                           (ii) the registration of a chemical product.

11          (2) The APVMA must:

- 12                   (a) in the case of an approval or continued approval—cause  
13                   notice of the approval to be published in accordance with  
14                   subsection (3); and  
15                   (b) in the case of a registration or continued registration—cause  
16                   notice of the registration to be published in accordance with  
17                   subsection (3), unless the APVMA thinks it unnecessary, in  
18                   the circumstances, to publish such a notice.

19          (3) The notice:

- 20                   (a) is to be published in the *Gazette* and in any other manner that  
21                   the APVMA thinks appropriate; and  
22                   (b) in the case of an approval or registration—must state the  
23                   following:  
24                           (i) that the constituent has been approved or the product  
25                           has been registered, as the case may be;  
26                           (ii) the date of the approval or registration;  
27                           (iii) the date the approval or registration expires; and  
28                   (c) in the case of a continuation of an approval or registration—  
29                   must state the following:  
30                           (i) that the constituent's approval has been continued or the  
31                           product's registration has been continued, as the case  
32                           may be;  
33                           (ii) the date the continued approval or registration expires;  
34                           and  
35                   (d) must contain a brief statement of the conditions of the  
36                   approval or registration that directly regulate the use of the  
37                   constituent or product, as the case may be.
-

# EXPOSURE DRAFT

Continuation of approvals, registrations and listed registrations **Schedule 2**

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- 1 (4) If the registration of a chemical product is continued, the APVMA  
2 may cause to be made publicly available, in an appropriate manner,  
3 a material safety data sheet in respect of the product.

## 4 **17 Section 54 of the Schedule**

5 Repeal the section, substitute:

### 6 **54 Publication of notice of end of approval or registration**

- 7 (1) This section applies if:  
8 (a) the approval of an active constituent for a proposed or  
9 existing chemical product ends and is not continued; or  
10 (b) the registration of a chemical product ends and is not  
11 renewed or continued.
- 12 (2) The APVMA must, as soon as practicable, cause to be published in  
13 the *Gazette*, and in any other manner that it thinks appropriate, a  
14 notice:  
15 (a) stating that the approval or registration has ended; and  
16 (b) setting out the date on which the approval or registration  
17 ended; and  
18 (c) containing instructions for possessing, having custody of,  
19 using or otherwise dealing with the constituent or product;  
20 and  
21 (d) containing a warning of the consequences if a person fails to  
22 comply with the instructions, including a statement of any  
23 period after which it will be an offence against this Code  
24 and/or a contravention of a civil penalty provision to:  
25 (i) possess or have custody of the constituent or product  
26 with the intention of supply; or  
27 (ii) supply the active constituent or product; and  
28 (e) containing any other warnings or explanations in relation to  
29 the constituent or product that the APVMA thinks desirable;  
30 and  
31 (f) containing any other information that the APVMA thinks  
32 appropriate;  
33 unless the APVMA thinks it unnecessary, in the circumstances, to  
34 publish such a notice.

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- 1 (3) If, after the publication of a notice under this section, a person  
2 possesses, has custody of, uses or otherwise deals with the  
3 constituent or product in accordance with the instructions  
4 contained in the notice, the person is taken to have been issued  
5 with a permit to possess, have custody of, use or otherwise deal  
6 with the constituent or product in accordance with those  
7 instructions until:  
8 (a) 2 years after the day on which the relevant approval or  
9 registration ended; or  
10 (b) the APVMA, by notice published in the *Gazette*, declares that  
11 this subsection ceases to apply in respect of the constituent or  
12 product;  
13 whichever first occurs.
- 14 (4) Subject to subsection (5), if:  
15 (a) a notice has been published under this section; and  
16 (b) a person has possession or custody of:  
17 (i) the constituent for the purpose of supply; or  
18 (ii) the product for the purpose of supply;  
19 the person may only possess, have custody of or otherwise deal  
20 with the constituent or product if the possession, custody or dealing  
21 is in accordance with the instructions contained in the notice.
- 22 (5) Subsection (4) does not apply to:  
23 (a) in the case of an active constituent—a possession, custody or  
24 dealing with a constituent if the constituent was an approved  
25 active constituent when the possession, custody or dealing  
26 took place because of its having been approved after the  
27 previous approval had ended; or  
28 (b) in the case of a chemical product—a possession, custody or  
29 dealing with a product if the product was a registered  
30 chemical product or a reserved chemical product when the  
31 possession, custody or dealing took place because of its  
32 having been registered or having become reserved after the  
33 previous registration had ended.
- 34 (6) A person commits an offence if the person contravenes  
35 subsection (4).  
36 Penalty: 300 penalty units.
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1 Note 1: For the physical elements of this offence, see subsection 8A(2) of this  
2 Code.

3 Note 2: A defendant bears an evidential burden in relation to the matter in  
4 subsection (5). See subsection 13.3(3) of the *Criminal Code*.

5 (7) For the purposes of subsection (6), strict liability applies to the  
6 physical element of circumstance in paragraph (4)(a), that the  
7 publishing of the notice was under this section.

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

9 (8) Subsection (4) is a *civil penalty provision*.

10 Note: Part 9A provides for pecuniary penalties for contraventions of civil  
11 penalty provisions.

12 (9) A person who wishes to rely on subsection (5) in proceedings for a  
13 civil penalty order bears an evidential burden in relation to a matter  
14 in that subsection.

15 (10) If a notice is published under this section, the APVMA must:

16 (a) as soon as practicable cause a copy of the notice to be given  
17 to:

18 (i) the interested person in relation to the constituent or  
19 product; or

20 (ii) an approved person; and

21 (b) cause a copy of the notice to be given to any other person  
22 who, in the opinion of the APVMA, should be given notice  
23 of:

24 (i) the ending of the approval or registration, as the case  
25 may be; and

26 (ii) the instructions, warnings and explanations contained in  
27 the notice.

## 28 **18 After subsection 56A(8) of the Schedule**

29 Insert:

30 (8A) Division 8A provides for the continuation of listed registrations.

## 31 **19 At the end of subsection 56M(2) of the Schedule**

32 Add:

33 ; and (c) the day the listed registration ends, which must be the last  
34 day of a calendar month; and

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## Schedule 2 Continuation of approvals, registrations and listed registrations

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- 1 (d) subject to paragraph 56O(2)(c), the year in which a  
2 continuation application is required for the listed registration  
3 to continue, which must be at least 7 years, and not later than  
4 15 years, after the date of the listed registration of the  
5 product.

### 6 **20 At the end of subsection 56O(2) of the Schedule**

- 7 Add:  
8 ; or (c) on the condition that a continuation application may not be  
9 made for the product.

### 10 **21 Subsections 56O(3) and (4) of the Schedule**

11 Repeal the subsections, substitute:

- 12 (3) If the listed registration of a chemical product is granted on the  
13 condition mentioned in paragraph (2)(c):  
14 (a) the listed registration may only remain in force for a stated  
15 period that is not more than 1 year; and  
16 (b) if the conditions of the listed registration have not been  
17 varied before the end of the stated period, or that period as  
18 extended under this paragraph, so as to remove the condition  
19 mentioned in paragraph (2)(c)—the APVMA may vary the  
20 listed registration so as to extend the period for which the  
21 listed registration may remain in force, but for not more than  
22 1 year.

### 23 **22 Subsection 56R(2) of the Schedule**

24 After “If”, insert “, because of a notice under subsection (1) or on its  
25 own initiative,”.

### 26 **23 At the end of section 56R of the Schedule**

- 27 Add:  
28 (3) If the APVMA changes an entry in the Register of Chemical  
29 Products relating to a registered listed chemical product on its own  
30 initiative, it must notify, in writing, the interested person in relation  
31 to the product of the change.

### 32 **24 Subsection 56ZK(1) of the Schedule**

33 Repeal the subsection, substitute:

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Continuation of approvals, registrations and listed registrations **Schedule 2**

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- 1 (1) The listed registration of a chemical product:  
2 (a) commences:  
3 (i) if it is a renewal of a listed registration—on the day  
4 after the day the previous renewal of the listed  
5 registration expires; or  
6 (ii) in any other case—on the day the registration is entered  
7 in the Register of Chemical Products; and  
8 (b) expires on the day entered in the Register as the day the listed  
9 registration or renewed listed registration ends, unless the  
10 listed registration is cancelled before that time.

11 Note: See also paragraph 56O(2)(c) and subsection 56ZNK(2).

## 12 **25 After subsection 56ZL(2) of the Schedule**

13 Insert:

- 14 (2A) However, an application for the renewal, or further renewal, as the  
15 case may be, of the listed registration of a chemical product need  
16 not be made under this section in a year if a continuation  
17 application is required in that year for the listed registration of the  
18 product to continue.

19 Note: See also subsection 56ZNK(2).

## 20 **26 After Division 8 of Part 2A of the Schedule**

21 Insert:

## 22 **Division 8A—Continuation of listed registrations**

### 23 **56ZNA Applications that may be made**

- 24 (1) The interested person in relation to a chemical product may apply  
25 to the APVMA for the continuation of the listed registration of the  
26 product.  
27 (2) Despite subsection 56ZH(2), an application may be made under  
28 this section during a period when the product's listed registration is  
29 suspended.

### 30 **56ZNB How applications are to be made**

- 31 (1) The application must:
-

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## Schedule 2 Continuation of approvals, registrations and listed registrations

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- 1 (a) be in writing in or to the effect of the approved form; and  
2 (b) contain, or be accompanied by, the information that the  
3 APVMA requires, including information about the relevant  
4 particulars and/or conditions of the listed registration to  
5 which the application relates; and  
6 (c) be signed by an approved person; and  
7 (d) be accompanied by the prescribed fee (if any); and  
8 (e) be lodged with the APVMA.

9 Note: The APVMA may consent to applications being lodged electronically,  
10 see section 156AA.

- 11 (2) The application must be made:  
12 (a) not earlier than 6 calendar months, and not later than 3  
13 calendar months, before the day the listed registration expires  
14 in the year that a continuation application is required; or  
15 (b) subject to subsection (3), within such shorter period as the  
16 APVMA allows.
- 17 (3) In circumstances prescribed by the regulations and upon payment  
18 of the prescribed fee (if any), the APVMA may accept a late  
19 application if the application is made on or before the day the listed  
20 registration expires in the year that a continuation application is  
21 required.
- 22 (4) The APVMA may, with the written consent of an approved person,  
23 alter the application.
- 24 (5) At any time after an application has been made and before it has  
25 been determined, an approved person may withdraw the  
26 application by giving to the APVMA written notice of the  
27 withdrawal signed by an approved person.

### 28 **56ZNC APVMA to notify approved person of impending expiry**

29 The APVMA must notify an approved person no later than 14 days  
30 before the latest day on which a continuation application is  
31 required if such an application has not been received in relation to  
32 the listed registration.

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Continuation of approvals, registrations and listed registrations **Schedule 2**

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1 **56ZND Effect of applications on existing listed registrations**

2 If a continuation application is made that relates to the continuation  
3 of a listed registration, the registration is taken to continue until the  
4 application has been decided.

5 Note: See also subsection 56ZH(2).

6 **56ZNE Preliminary assessment of applications**

7 (1) Within 2 months after an application is made under  
8 section 56ZNA, the APVMA must make a preliminary assessment  
9 of the application.

10 (2) If, after making the preliminary assessment, it appears to the  
11 APVMA that:

12 (a) the application complies with subsection 56ZNB(1)—the  
13 APVMA must assess the application under section 56ZNF;  
14 or

15 (b) the application does not comply with subsection 56ZNB(1)  
16 but its defects can reasonably be rectified—the APVMA  
17 must:

18 (i) give an approved person a written notice addressing the  
19 matters in subsection (4); and

20 (ii) return the application with the notice; or

21 (c) the application does not comply with subsection 56ZNB(1)  
22 and its defects cannot reasonably be rectified—the APVMA  
23 must refuse the application.

24 (3) For the purpose of this Part, an application is taken not to comply  
25 with subsection 56ZNB(1) if the information about the relevant  
26 particulars and/or conditions of the registration is not consistent  
27 with the Register.

28 (4) For the purpose of paragraph (2)(b), the notice must:

29 (a) state that the application does not comply with subsection  
30 56ZNB(1); and

31 (b) set out the defects in the application; and

32 (c) invite the approved person to rectify the defects in a way  
33 mentioned in paragraph (5)(a) or (b) within 14 days or within  
34 such further period as the APVMA allows.

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## Schedule 2 Continuation of approvals, registrations and listed registrations

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- 1 (5) If an approved person receives a notice under paragraph (2)(b), the  
2 person may rectify the defects in the application:  
3 (a) by correcting the original application and lodging it again; or  
4 (b) by making an application under section 56T to vary the  
5 relevant particulars and/or conditions of the listed registration  
6 of the chemical product to which the application relates.
- 7 (6) If an approved person lodges an application again, as mentioned in  
8 paragraph (5)(a), a fee is not payable for the re-lodgement.
- 9 (7) If an approved person receives a notice under paragraph (2)(b) and  
10 does not rectify the defects in the application within 14 days or  
11 within such further period as the APVMA allows, the APVMA  
12 must refuse the application.
- 13 (8) If the APVMA refuses an application under this section:  
14 (a) it must:  
15 (i) give notice of its decision to the approved person to  
16 whom the application relates; and  
17 (ii) give reasons for the decision; and  
18 (b) it may return the application with the notice.

### 56ZNF Continuation of listed registrations

- 19
- 20 (1) The APVMA must continue the listed registration of a chemical  
21 product if:  
22 (a) it is satisfied of all the matters referred to in subsection (2);  
23 and  
24 (b) in a case where the APVMA considers that a matter referred  
25 to in subsection (3) is relevant to the application—it is  
26 satisfied of the matter.
- 27 (2) The matters referred to in paragraph (1)(a) are the following:  
28 (a) that the applicant has complied with subsection 56ZNB(1);  
29 (b) that the APVMA has no reason to doubt that the continued  
30 use of, or other dealing with, the product in accordance with  
31 instructions contained in the established standard:  
32 (i) would not be an undue hazard to the safety of people  
33 exposed to it during its handling or people using  
34 anything containing its residues; and

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Continuation of approvals, registrations and listed registrations **Schedule 2**

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- 1 (ii) would not be likely to have an effect that is harmful to  
2 human beings; and  
3 (iii) would not be likely to have an unintended effect that is  
4 harmful to animals, plants or things or to the  
5 environment;  
6 (c) that an amount (including an amount in respect of a tax or  
7 penalty) in respect of the product payable (whether by the  
8 applicant or by any other person) to the APVMA under any  
9 law in force in any jurisdiction has been paid.
- 10 (3) For the purposes of paragraph (1)(b), the matters are:  
11 (a) that the APVMA has no reason to doubt that the use of, or  
12 other dealing with, the product in accordance with  
13 instructions contained in the established standard would not  
14 unduly prejudice trade or commerce between Australia and  
15 places outside Australia; and  
16 (b) that the APVMA has no reason to doubt that the use of, or  
17 other dealing with, the product in accordance with  
18 instructions contained in the established standard would be  
19 effective according to criteria determined by the APVMA for  
20 the product.
- 21 (4) In satisfying itself for the purposes of subsection (2), the APVMA  
22 must take into account:  
23 (a) the statements in the application; and  
24 (b) any statements made or information given to the APVMA in  
25 response to a notice given to the applicant under section 159;  
26 and  
27 (c) any statements made or information given to the APVMA as  
28 required by section 160A or 161;  
29 but must not take into account any other statement made or  
30 information given by the applicant.  
31 Note: See also section 56ZNH.

## 32 **56ZNG Applicant to be notified whether listed registration** 33 **continued**

- 34 (1) If the APVMA is satisfied as mentioned in subsection 56ZNF(1) in  
35 relation to an application, it must, as soon as practicable, give  
36 notice to the approved person to whom the application relates  
37 advising:
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- 1 (a) that the application has been granted; and  
2 (b) the relevant particulars and/or conditions to which the  
3 continued listed registration is subject; and  
4 (c) the day the listed registration ends; and  
5 (d) the year in which the next continuation application is  
6 required for the listed registration to continue.
- 7 (2) If the APVMA is not satisfied as mentioned in subsection  
8 56ZNF(1) in relation to an application, it must give a notice to the  
9 approved person to whom the application relates that:  
10 (a) both:  
11 (i) states that the APVMA proposes to vary the relevant  
12 particulars and/or conditions so that it can be satisfied as  
13 mentioned in that subsection; and  
14 (ii) sets out the details of the proposed variation; or  
15 (b) states that the APVMA proposes to reconsider the listed  
16 registration under Division 6 of Part 2A.
- 17 (3) The notice must also:  
18 (a) give reasons for the APVMA's proposed course of action;  
19 and  
20 (b) invite the approved person to make a written submission to  
21 the APVMA about the APVMA's proposed course of action.
- 22 (4) If an approved person wishes to make a submission, as invited to  
23 do so by the notice, the approved person must do so within 28 days  
24 after the notice is given, or within such further period as is  
25 specified in the notice.

### 56ZNH Consultation with co-ordinators about proposed variations

27 If a proposed variation of relevant particulars and/or conditions, as  
28 mentioned in paragraph 56ZNG(2)(a), would affect any  
29 instructions contained in the established standard for the use of, or  
30 other dealing with, a chemical product, the APVMA must not  
31 make the variation until it has consulted each co-ordinator  
32 designated for a jurisdiction and taken into account any  
33 recommendations made by the co-ordinators.

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## 1 **56ZNJ Assessing applications after submission period ends**

- 2 (1) If a submission is received in response to a notice given under  
3 section 56ZNG, the APVMA must reassess the application under  
4 section 56ZNF having regard to the submission.
- 5 (2) After reassessing an application, or if a submission period ends  
6 without a submission being made:
- 7 (a) if the APVMA is satisfied as mentioned in subsection  
8 56ZNF(1)—the APVMA must notify the approved person to  
9 whom the application relates, as mentioned in subsection  
10 56ZNG(1); or
- 11 (b) if the APVMA is not satisfied as mentioned in subsection  
12 56ZNF(1) but is satisfied that the relevant particulars and/or  
13 the conditions of the listed registration can be varied in such  
14 a way so that it can be satisfied as mentioned in that  
15 subsection—the APVMA may:
- 16 (i) vary the relevant particulars and/or conditions by  
17 entering in the Register of Chemical Products  
18 particulars of the variation and the date on which the  
19 entry is made; and
- 20 (ii) notify the approved person to whom the application  
21 relates, as mentioned in subsection 56ZNG(1); or
- 22 (c) if the APVMA is not satisfied as mentioned in subsection  
23 56ZNF(1) and did not vary the relevant particulars and/or the  
24 conditions of the listed registration under paragraph (b) of  
25 this subsection—the APVMA must notify the approved  
26 person to whom the application relates that the APVMA will  
27 be reconsidering the listed registration under Division 6 of  
28 Part 2A.
- 29 (3) If paragraph (2)(c) applies in relation to an application and the  
30 APVMA reconsiders the listed registration to which the application  
31 relates:
- 32 (a) a decision by the APVMA under section 56Z to vary the  
33 relevant particulars and/or conditions of the listed registration  
34 is also taken to be a decision under this Division to take the  
35 same action in relation to the application; and
- 36 (b) a decision by the APVMA under section 56ZE to suspend the  
37 listed registration is taken to be a decision to defer

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- 1 consideration of the application until the period of suspension  
2 ends; and
- 3 (c) a decision by the APVMA under section 56ZE to cancel the  
4 listed registration is also taken to be a decision to refuse the  
5 application under this Division.
- 6 (4) Despite paragraphs (3)(b) and (c), if the suspension or cancellation  
7 of the listed registration is revoked, the APVMA:
- 8 (a) is taken to be satisfied as mentioned in subsection 56ZNF(1)  
9 in relation to the application; and
- 10 (b) must, as soon as practicable, give notice to the approved  
11 person to whom the application relates under subsection  
12 56ZNG(1).

### 13 **56ZNK How continuation of listed registration of chemical product** 14 **is effected**

- 15 (1) The continuation of listed registration of a chemical product takes  
16 place by entering in the Register of Chemical Products:
- 17 (a) a statement that the listed registration has been continued;  
18 and
- 19 (b) the year in which the next continuation application is  
20 required for the listed registration to continue, which must be  
21 at least 7 years, and not later than 15 years, after the date the  
22 last continuation application was required.
- 23 (2) If the listed registration of a chemical product is continued:
- 24 (a) the listed registration of the product is taken to have been  
25 renewed under Division 8 of this Part; and
- 26 (b) the APVMA must enter in the Register of Chemical Products  
27 the date the renewed registration ends.

### 28 **27 Section 56ZO of the Schedule**

29 Repeal the section, substitute:

### 30 **56ZO Publication of notice of listed registration or continued listed** 31 **registration of chemical product**

- 32 (1) This section applies if:
- 33 (a) the APVMA grants listed registration in respect of a chemical  
34 product; or
-

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- 1 (b) the APVMA continues the listed registration in respect of a  
2 chemical product.
- 3 (2) The APVMA must cause notice of the listed registration to be  
4 published in accordance with subsection (3), unless the APVMA  
5 thinks it unnecessary, in the circumstances, to publish such a  
6 notice.
- 7 (3) The notice:
- 8 (a) is to be published in the *Gazette* and in any other manner that  
9 the APVMA thinks appropriate; and
- 10 (b) in the case of a listed registration—must state the following:
- 11 (i) that the product has been granted listed registration;
- 12 (ii) the date of the listed registration;
- 13 (iii) the date the listed registration expires; and
- 14 (c) in the case of a continuation of listed registration—must state  
15 the following:
- 16 (i) that the product's listed registration has been continued;
- 17 (ii) the date the continued listed registration expires; and
- 18 (d) must contain a brief statement of the conditions of the listed  
19 registration that directly regulate the use of the product.

## 20 **28 Section 56ZQ of the Schedule**

21 Repeal the section, substitute:

### 22 **56ZQ Publication of notice of end of listed registration of chemical** 23 **product**

- 24 (1) This section applies if the listed registration of a chemical product  
25 ends and is not renewed or continued.
- 26 (2) The APVMA must, as soon as practicable, cause to be published in  
27 the *Gazette*, and in any other manner that it thinks appropriate, a  
28 notice:
- 29 (a) stating that the listed registration has ended; and
- 30 (b) setting out the date on which the listed registration ended;  
31 and
- 32 (c) containing instructions for possessing, having custody of,  
33 using or otherwise dealing with the product; and

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- 1 (d) containing a warning of the consequences if a person fails to  
2 comply with the instructions, including a statement of any  
3 period after which it will be an offence against this Code  
4 and/or a contravention of a civil penalty provision to:  
5 (i) possess or have custody of the product with the  
6 intention of supply; or  
7 (ii) supply the product; and  
8 (e) containing any other warnings or explanations in relation to  
9 the product that the APVMA thinks desirable; and  
10 (f) containing any other information that the APVMA thinks  
11 appropriate;  
12 unless the APVMA thinks it unnecessary, in the circumstances, to  
13 publish such a notice.
- 14 (3) If, after the publication of a notice under this section, a person  
15 possesses, has custody of, uses or otherwise deals with the product  
16 in accordance with the instructions contained in the notice, the  
17 person is taken to have been issued with a permit to possess, have  
18 custody of, use or otherwise deal with the product in accordance  
19 with those instructions until:  
20 (a) 2 years after the day on which the listed registration ended; or  
21 (b) the APVMA, by notice published in the *Gazette*, declares that  
22 this subsection ceases to apply in respect of the product;  
23 whichever first occurs.
- 24 (4) Subject to subsection (5), if:  
25 (a) a notice has been published under this section; and  
26 (b) a person has possession or custody of the product for the  
27 purpose of supply;  
28 the person may only possess, have custody of or otherwise deal  
29 with the product if the possession, custody or dealing is in  
30 accordance with the instructions contained in the notice.
- 31 (5) Subsection (4) does not apply to a possession, custody or dealing  
32 with a product if the product was a registered listed chemical  
33 product, a registered chemical product or a reserved chemical  
34 product when the possession, custody or dealing took place  
35 because of its having been registered or having become reserved  
36 after the previous listed registration had ended.

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- 1 (6) A person commits an offence if the person contravenes  
2 subsection (4).
- 3 Penalty: 300 penalty units.
- 4 Note 1: For the physical elements of this offence, see subsection 8A(2) of this  
5 Code.
- 6 Note 2: A defendant bears an evidential burden in relation to the matter in  
7 subsection (5). See subsection 13.3(3) of the *Criminal Code*.
- 8 (7) For the purposes of subsection (6), strict liability applies to the  
9 physical element of circumstance in paragraph (4)(a), that the  
10 publishing of the notice was under this section.
- 11 Note: For strict liability, see section 6.1 of the *Criminal Code*.
- 12 (8) Subsection (4) is a ***civil penalty provision***.
- 13 Note: Part 9A provides for pecuniary penalties for contraventions of civil  
14 penalty provisions.
- 15 (9) A person who wishes to rely on subsection (5) in proceedings for a  
16 civil penalty order bears an evidential burden in relation to a matter  
17 in that subsection.
- 18 (10) If a notice is published under this section, the APVMA must cause  
19 a copy of the notice to be given to any person who, in the opinion  
20 of the APVMA, should be given notice of:
- 21 (a) the ending of the listed registration; and  
22 (b) the instructions, warnings and explanations contained in the  
23 notice.

## 29 Subsections 152(2) and (3) of the Schedule

24 Repeal the subsections, substitute:

- 25 (2) Subsection (3) applies if:
- 26 (a) a person who is not a resident of, and does not carry on  
27 business in, Australia fails to do a thing in this jurisdiction in  
28 relation to:  
29 (i) an active constituent for a proposed or existing chemical  
30 product in respect of which that person is the interested  
31 person; or  
32 (ii) a chemical product in respect of which that person is the  
33 interested person; and  
34

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1 (b) the failure of that person to do that thing is an offence against  
2 this Code.

3 (3) The approved person who signed the application for:

4 (a) in the case of an active constituent—the approval or, if the  
5 approval has been continued, the continuation of the  
6 approval; or

7 (b) in the case of a registered chemical product—the registration  
8 or, if the registration has been renewed or continued, the  
9 renewal or continuation of the registration; or

10 (c) in the case of a registered listed chemical product—the listed  
11 registration or, if the listed registration has been renewed or  
12 continued, the renewal or continuation of the registration;

13 is taken to have been under the same liability under this Code as  
14 the person mentioned in subsection (2) to do that thing and, if the  
15 thing is not done by the approved person, is punishable  
16 accordingly.

17 (4) For an offence that arises because of subsection (3), strict liability  
18 applies to paragraphs (2)(a) and (b).

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

### 20 **30 After subparagraph 160A(1)(iii) of the Schedule**

21 Insert:

22 (iia) continuation of the approval of an active constituent for  
23 a proposed or existing chemical product; or

24 (iib) continuation of the registration of a chemical product; or

25 (iic) continuation of the listed registration of a chemical  
26 product; or

### 27 **31 Paragraph 160A(3)(a) of the Schedule**

28 Omit “or (iii)”, substitute “, (iii), (iia), (iib) or (iic)”.

### 29 **32 Paragraph 166(1)(a) of the Schedule**

30 Repeal the paragraph, substitute:

31 (a) a decision (the *original decision*) on a particular matter (the  
32 *relevant matter*) has been made under this Code on behalf of  
33 the APVMA by a member of the staff of the APVMA, other  
34 than a decision under this section, Division 6A of Part 2 or  
35 Division 8A of Part 2A; and

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# EXPOSURE DRAFT

Continuation of approvals, registrations and listed registrations **Schedule 2**

---

1 **33 After paragraph 167(1)(f) of the Schedule**

2 Insert:

- 3 (faa) a decision under Division 6A of Part 2 to refuse a  
4 continuation application;
- 5 (fab) a decision under Division 6A of Part 2 to vary the relevant  
6 particulars and/or conditions of the approval of an active  
7 constituent for a proposed or existing chemical product or the  
8 registration of a chemical product;

9 **34 After paragraph 167(1)(fe) of the Schedule**

10 Insert:

- 11 (fea) a decision under Division 8A of Part 2A to refuse a  
12 continuation application;
- 13 (feb) a decision under Division 8A of Part 2A to vary the relevant  
14 particulars and/or conditions of the listed registration of a  
15 chemical product;

16 **35 Paragraph 167(1)(g) of the Schedule**

17 Omit “or 56ZL(3)”, substitute “, 51B(3), 56ZL(3) or 56ZNB(3)”.

18 **36 Transitional provision—existing approvals and**  
19 **registrations**

- 20 (1) The APVMA must notify an approved person, on or before 2 years after  
21 the day this item commences, in writing, of:
- 22 (a) in the case of the approval of an active constituent for a  
23 proposed or existing chemical product—the day on or before  
24 which a continuation application is required for the approval  
25 to continue; and
- 26 (b) in the case of the registration of a chemical product—the day  
27 on or before which a continuation application is required for  
28 the registration to continue; and
- 29 (c) in the case of the listed registration of a chemical product—  
30 the day on or before which a continuation application is  
31 required for the listed registration to continue.
- 32 (2) The day mentioned in paragraph (1)(a), (b) or (c) for a continuation  
33 application:
- 34 (a) must be the last day of a calendar month; and  
35 (b) must not be:
-

# EXPOSURE DRAFT

## Schedule 2 Continuation of approvals, registrations and listed registrations

---

- 1 (i) before 7 years after the date the approval, registration or  
2 listed registration was granted, as the case may be; or  
3 (ii) later than 15 years after the day this item commences.

### 37 Transitional provision—conditions to remain in force for rest of stated period

- 4  
5  
6 (1) This item applies in relation to a condition that:  
7 (a) applies to:  
8 (i) the approval of an active constituent for a proposed or  
9 existing chemical product; or  
10 (ii) the registration of a chemical product; or  
11 (iii) the listed registration of a chemical product; and  
12 (b) is in force immediately before the day this item commences.
- 13 (2) Despite the amendment of subsection 23(3), and the repeal of  
14 subsection 23(4), of the Schedule to the *Agricultural and Veterinary*  
15 *Chemicals Code Act 1994* made by item 9 of this Schedule, the  
16 condition continues in force for the rest of the period stated in the  
17 condition as if those subsections had not been amended and repealed.
- 18 (3) Despite the amendment of subsection 56O(3), and the repeal of  
19 subsection 56O(4), of the Schedule to the *Agricultural and Veterinary*  
20 *Chemicals Code Act 1994* made by item 21 of this Schedule, the  
21 condition continues in force for the rest of the period stated in the  
22 condition as if those subsections had not been amended and repealed.
- 23 (4) However, the APVMA may not, on or after the day this item  
24 commences, vary the condition so as to extend the period for which the  
25 condition applies.  
26

# EXPOSURE DRAFT

Streamlining processes for giving and receiving information **Schedule 3**  
Electronic communications **Part 1**

---

1 **Schedule 3—Streamlining processes for**  
2 **giving and receiving information**

3 **Part 1—Electronic communications**

4 *Agricultural and Veterinary Chemicals Code Act 1994*

5 **1 Subsection 3(1) of the Schedule**

6 Insert:

7 *electronic signature* has the meaning given by subsection  
8 156AA(7).

9 **2 At the end of subsection 11(1) of the Schedule**

10 Add:

11 Note: The APVMA may consent to applications being lodged electronically,  
12 see section 156AA.

13 **3 At the end of subsection 26A(2) of the Schedule**

14 Add:

15 Note: The APVMA may consent to applications being lodged electronically,  
16 see section 156AA.

17 **4 At the end of subsection 28(1) of the Schedule**

18 Add:

19 Note: The APVMA may consent to applications being lodged electronically,  
20 see section 156AA.

21 **5 At the end of subsection 56J(1) of the Schedule**

22 Add:

23 Note: The APVMA may consent to applications being lodged electronically,  
24 see section 156AA.

25 **6 At the end of subsection 56T(1) of the Schedule**

26 Add:

27 Note: The APVMA may consent to applications being lodged electronically,  
28 see section 156AA.

# EXPOSURE DRAFT

## Schedule 3 Streamlining processes for giving and receiving information

### Part 1 Electronic communications

---

1 **7 At the end of subsection 110(2) of the Schedule**

2 Add:

3 Note: The APVMA may consent to applications being lodged electronically,  
4 see section 156AA.

5 **8 After section 156 of the Schedule**

6 Insert:

7 **156AA Giving information electronically**

- 8 (1) If, under this Code, a person is required or permitted to give the  
9 APVMA information in writing, that requirement is taken to have  
10 been met if:
- 11 (a) the APVMA consents to the information being given  
12 electronically; and
- 13 (b) the person gives the information electronically in accordance  
14 with any requirements mentioned in subsection (3); and
- 15 (c) in a case where this Code requires an approved person's  
16 signature—the information includes an approved person's  
17 electronic signature.
- 18 (2) If, under this Code, a person is required or permitted to give the  
19 APVMA information in writing, the regulations may, despite the  
20 provisions of the Code, require that the information only be given  
21 electronically in accordance with any requirements mentioned in  
22 subsection (3).
- 23 (3) For the purpose of subsections (1) and (2), the APVMA may  
24 require that the information be given, in accordance with particular  
25 information technology requirements, by means of a particular  
26 kind of electronic communication.
- 27 (4) If, under this Code, the APVMA is required or permitted to give a  
28 person information in writing, that requirement is taken to have  
29 been met if:
- 30 (a) the person consents to the information being given  
31 electronically; and
- 32 (b) the APVMA gives the information electronically; and
- 33 (c) where applicable, the information includes the Chief  
34 Executive Officer's electronic signature; and

# EXPOSURE DRAFT

Streamlining processes for giving and receiving information **Schedule 3**  
Electronic communications **Part 1**

---

- 1 (d) in a case where a person's failure to do, or not do, a thing  
2 required by the information given is an offence against this  
3 Code or the contravention of a civil penalty provision—the  
4 APVMA has adequate systems for proving the person  
5 received the information.
- 6 (5) This section applies to a requirement or permission to give  
7 information, whether the expression *give*, *lodge*, *send* or *serve*, or  
8 any other expression, is used.
- 9 (6) For the purposes of this section, *giving information* includes, but is  
10 not limited to, the following:  
11 (a) making or withdrawing an application;  
12 (b) making or lodging a claim;  
13 (c) giving, sending or serving a notification;  
14 (d) giving a report;  
15 (e) making a request;  
16 (f) making a declaration;  
17 (g) lodging or issuing a certificate;  
18 (h) giving a statement of reasons.
- 19 (7) In this section:  
20 *electronic signature* of an approved person means the approved  
21 person's unique identification in an electronic form that is  
22 approved by the APVMA.

## 23 **9 At the end of subsection 159(2) of the Schedule**

24 Add:

25 Note: The APVMA may consent to information or reports being given  
26 electronically, see section 156AA.

## 27 **10 At the end of subsection 160A(7) of the Schedule**

28 Add:

29 Note: The APVMA may consent to information being given electronically,  
30 see section 156AA.

## 31 **11 At the end of subsection 161(3) of the Schedule**

32 Add:

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# EXPOSURE DRAFT

## Schedule 3 Streamlining processes for giving and receiving information

### Part 1 Electronic communications

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1  
2  
3

Note: The APVMA may consent to information being given electronically, see section 156AA.

# EXPOSURE DRAFT

Streamlining processes for giving and receiving information **Schedule 3**  
Other amendments **Part 2**

---

1 **Part 2—Other amendments**

2 *Agricultural and Veterinary Chemicals Code Act 1994*

3 **12 Subsection 3(1) of the Schedule (table items 2 and 3 of the**  
4 **definition of *acknowledge*)**

5 Repeal the items.

6 **13 Subsection 11(3) of the Schedule**

7 Repeal the subsection, substitute:

8 (3) At any time after an application has been made and before it has  
9 been determined, an approved person may withdraw the  
10 application by giving to the APVMA written notice of the  
11 withdrawal signed by an approved person.

12 **14 Subsection 11A(3) of the Schedule**

13 Repeal the subsection.

14 **15 Subsection 11A(4) of the Schedule**

15 Omit “and that the defects in the application cannot reasonably be  
16 rectified, it may reject”, substitute “, it must refuse”.

17 **16 Subsection 11A(5) of the Schedule**

18 Omit “rejects”, substitute “refuses”.

19 **17 Subparagraph 11A(5)(a)(i) of the Schedule**

20 Omit “rejected”, substitute “refused”.

21 **18 Subparagraph 11A(5)(a)(iii) of the Schedule**

22 Repeal the subparagraph.

23 **19 Subsection 11A(6) of the Schedule**

24 Omit “(3)(b) or”.

25 **20 After subsection 14(6) of the Schedule**

26 Insert:

# EXPOSURE DRAFT

## Schedule 3 Streamlining processes for giving and receiving information

### Part 2 Other amendments

---

- 1 (6A) In satisfying itself for the purposes of subsection (1), the APVMA  
2 must take into account:
- 3 (a) the statements in the application; and
  - 4 (b) any statements made or information given to the APVMA in  
5 response to a notice given to the applicant under section 159;  
6 and
  - 7 (c) any statements made or information given to the APVMA as  
8 required by section 160A or 161;
- 9 but must not take into account any other statement made or  
10 information given by the applicant.

#### 21 After subsection 29(2) of the Schedule

12 Insert:

- 13 (2A) In satisfying itself for the purposes of subsection (1A), the  
14 APVMA must take into account:
- 15 (a) the statements in the application; and
  - 16 (b) any statements made or information given to the APVMA in  
17 response to a notice given to the applicant under section 159;  
18 and
  - 19 (c) any statements made or information given to the APVMA as  
20 required by section 160A or 161;
- 21 but must not take into account any other statement made or  
22 information given by the applicant.

#### 22 Subsection 32(5) of the Schedule

23 Repeal the subsection.

#### 23 After subsection 34(2) of the Schedule

25 Insert:

- 26 (2A) The APVMA must take into account:
- 27 (a) any submissions made to the APVMA in response to a notice  
28 published under subsection 32(1); and
  - 29 (b) any submissions made, or information given, to the APVMA  
30 in response to a notice given under subsection 32(2); and
  - 31 (c) any results of trials or experiments given to the APVMA in  
32 response to a notice given under section 33; and  
33

# EXPOSURE DRAFT

Streamlining processes for giving and receiving information **Schedule 3**  
Other amendments **Part 2**

---

- 1 (d) any statements made or information given to the APVMA in  
2 response to a notice given to the interested person or an  
3 approved person under section 159; and  
4 (e) any statements made or information given to the APVMA as  
5 required by section 160A or 161;  
6 but must not take into account any other submission or statement  
7 made or information given by the interested person or an approved  
8 person.

## 24 Subsection 56J(3) of the Schedule

9 Repeal the subsection, substitute:

- 10  
11 (3) At any time after an application has been made and before it has  
12 been determined, an approved person may withdraw the  
13 application by giving to the APVMA a written notice of the  
14 withdrawal signed by an approved person.

## 25 After subsection 56U(3) of the Schedule

15 Insert:

- 16  
17 (3A) In satisfying itself for the purposes of subsection (1A), the  
18 APVMA must take into account:  
19 (a) the statements in the application; and  
20 (b) any statements made or information given to the APVMA in  
21 response to a notice given to the applicant under section 159;  
22 and  
23 (c) any statements made or information given to the APVMA as  
24 required by section 160A or 161;  
25 but must not take into account any other statement made or  
26 information given by the applicant.

## 26 Subsection 56X(6) of the Schedule

27 Repeal the subsection.

## 27 After subsection 56Z(2) of the Schedule

28 Insert:

- 29 (2A) The APVMA must take into account:  
30 (a) any submissions made to the APVMA in response to a notice  
31 published under subsection 56V(1); and  
32  
33

# EXPOSURE DRAFT

## Schedule 3 Streamlining processes for giving and receiving information

### Part 2 Other amendments

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- 1 (b) any submissions made, or information given, to the APVMA  
2 in response to a notice given under subsection 56X(2); and  
3 (c) any results of trials or experiments given to the APVMA in  
4 response to a notice given under section 56Y; and  
5 (d) any statements made or information given to the APVMA in  
6 response to a notice given to the interested person or an  
7 approved person under section 159; and  
8 (e) any statements made or information given to the APVMA as  
9 required by section 160A or 161;  
10 but must not take into account any other submission or statement  
11 made or information given by the interested person or an approved  
12 person.

### 28 Before subsection 112(3) of the Schedule

14 Insert:

- 15 (2B) In satisfying itself for the purposes of subsection (1A), the  
16 APVMA must take into account:  
17 (a) the statements in the application; and  
18 (b) any statements made or information given to the APVMA in  
19 response to a notice given to the applicant under section 159;  
20 and  
21 (c) any statements made or information given to the APVMA as  
22 required by section 160A or 161;  
23 but must not take into account any other statement made or  
24 information given by the applicant.

### 29 Subsection 159(3) of the Schedule

26 Omit all the words after “the APVMA”, substitute “must refuse the  
27 application.”.

### 30 Subsections 159(4) and (5) of the Schedule

29 Repeal the subsections.

### 31 Section 160 of the Schedule

31 Repeal the section, substitute:

### 32 160 Overseas trials and experiments etc.

33 (1) This section applies for the purposes of:

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# EXPOSURE DRAFT

Streamlining processes for giving and receiving information **Schedule 3**  
Other amendments **Part 2**

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- 1 (a) an application under this Code in relation to an active  
2 constituent for a proposed or existing chemical product; or  
3 (b) an application under this Code in relation to a chemical  
4 product (including an application in relation to a label for  
5 containers for a chemical product); or  
6 (c) a continuation application; or  
7 (d) reconsidering the approval of an active constituent for a  
8 proposed or existing chemical product, the registration or  
9 listed registration of a chemical product or the approval of a  
10 label for containers for a chemical product; or  
11 (e) deciding whether to suspend or cancel a permit in respect of  
12 an active constituent for a proposed or existing chemical  
13 product or in respect of a chemical product.
- 14 (2) The APVMA may take account of any of the following:  
15 (a) the results of any trials or experiments already carried out in  
16 a foreign country in relation to an active constituent for a  
17 proposed or existing chemical product, or in relation to a  
18 chemical product or any of its constituents;  
19 (b) any decisions or assessments made by a national regulatory  
20 authority of a foreign country that has national responsibility  
21 relating to the evaluation, registration or control of  
22 agricultural and/or veterinary chemical products;  
23 (c) any information on which a decision or assessment  
24 mentioned in paragraph (b) is based;  
25 to the extent that those results, decisions or assessments are, or that  
26 information is, relevant having regard to any matters the APVMA  
27 thinks appropriate, including any of the matters mentioned in  
28 subsection (3).
- 29 (3) The matters are:  
30 (a) any significant differences in the proposed use of the  
31 constituent, or of the product, in Australia and in that foreign  
32 country; or  
33 (b) any different environmental factors affecting the use of the  
34 constituent, or of the product, in Australia and in that foreign  
35 country; or  
36 (c) any significant additional information relating to the  
37 properties of the constituent, or of the product or of any of its

# EXPOSURE DRAFT

## Schedule 3 Streamlining processes for giving and receiving information

### Part 2 Other amendments

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- 1 constituents, that has become available since the conduct of  
2 those trials or experiments; or  
3 (d) any significant differences in the way decisions or  
4 assessments are made in Australia and by the national  
5 regulatory authority in that foreign country.

### 32 Paragraph 165(2)(a) of the Schedule

- 6 Before “any period”, insert “in the case of a continuation application—  
7 ”.  
8

### 33 After section 165 of the Schedule

9 Insert:  
10

#### 165A Period within which APVMA is to conclude reconsiderations under Division 4 of Part 2

- 11 (1) If the APVMA reconsiders an approval or registration under  
12 Division 4 of Part 2, the APVMA must conclude the  
13 reconsideration within a period stated in, or determined in  
14 accordance with, the regulations.  
15  
16 (2) The APVMA may make a legislative instrument setting out criteria  
17 for working out which period stated in, or determined in  
18 accordance with, the regulations applies in a particular case.  
19  
20 (3) In working out the period within which a reconsideration is to be  
21 concluded, no regard is to be had to:  
22 (a) if the APVMA has given written notice to an interested  
23 person or an approved person under subsection 32(2)—the  
24 period stated in the notice within which information must be  
25 given and submissions may be made; and  
26 (b) if the APVMA has given written notice to an interested  
27 person or an approved person under subsection 33(1)—the  
28 period stated in the notice within which the trials or  
29 laboratory experiments must be conducted and results given  
30 to the APVMA; and  
31 (c) if the APVMA has given written notice to an approved  
32 person under paragraph 51G(2)(a)—the 28 day period after  
33 the notice is given, or such further period as is specified in  
34 the notice, within which submissions may be made.

# EXPOSURE DRAFT

Streamlining processes for giving and receiving information **Schedule 3**  
Other amendments **Part 2**

---

## 165B Period within which APVMA is to conclude reconsiderations under Division 6 of Part 2A

- (1) If the APVMA reconsiders a listed registration under Division 6 of Part 2A, the APVMA must conclude the reconsideration within a period stated in, or determined in accordance with, the regulations.
- (2) The APVMA may make a legislative instrument setting out criteria for working out which period stated in, or determined in accordance with, the regulations applies in a particular case.
- (3) In working out the period within which a reconsideration is to be concluded, no regard is to be had to:
  - (a) if the APVMA has given written notice to an interested person or an approved person under subsection 56X(2)—the period stated in the notice within which information must be given and submissions may be made; and
  - (b) if the APVMA has given written notice to an interested person or an approved person under subsection 56Y(1)—the period stated in the notice within which the trials or laboratory experiments must be conducted and results given to the APVMA; and
  - (c) if the APVMA has given written notice to an approved person under paragraph 56ZNG(2)(a)—the 28 day period after the notice is given, or such further period as is specified in the notice, within which submissions may be made.

## 34 Paragraph 166(1)(b) of the Schedule

Repeal the paragraph, substitute:

- (b) the original decision is:
  - (i) a decision that is reviewable by the Administrative Appeals Tribunal (see section 167); or
  - (ii) a decision under subsection 14(2) that was solely based on either paragraph 14(3)(a) or (b); or
  - (iii) a decision under subsection 29(3) that was solely based on either paragraph 29(1)(a) or (b); or
  - (iv) a decision under subsection 56K(3) that was solely based on either paragraph 56K(1)(a) or (b); or
  - (v) a decision under subsection 56U(4) that was solely based on either paragraph 56U(1)(a) or (b); or

# EXPOSURE DRAFT

## Schedule 3 Streamlining processes for giving and receiving information

### Part 2 Other amendments

---

1 (vi) a decision under subsection 112(3) that was solely based  
2 on either paragraph 112(2)(b) or (c).

#### 3 **35 Paragraphs 167(1)(aa), (ab), (ac) and (ad) of the Schedule**

4 Repeal the paragraphs.

#### 5 **36 At the end of paragraph 167(1)(a) of the Schedule**

6 Add:

7 other than:

8 (i) a decision under subsection 11A(4); or

9 (ii) a decision under subsection 14(2) that was solely based  
10 on either paragraph 14(3)(a) or (b)".

#### 11 **37 Paragraphs 167(1)(ba), (bb) and (bc) of the Schedule**

12 Repeal the paragraphs.

#### 13 **38 At the end of paragraph 167(1)(c) of the Schedule**

14 Add “, other than a decision under subsection 29(3) that was solely  
15 based on either paragraph 29(1)(a) or (b)".

#### 16 **39 At the end of paragraph 167(1)(d) of the Schedule**

17 Add “, other than a decision under subsection 29(3) that was solely  
18 based on either paragraph 29(1)(a) or (b)".

#### 19 **40 At the end of paragraph 167(1)(fa) of the Schedule**

20 Add “, other than a decision under subsection 56K(3) that was solely  
21 based on either paragraph 56K(1)(a) or (b)".

#### 22 **41 At the end of paragraph 167(1)(fc) of the Schedule**

23 Add “, other than a decision under subsection 56U(4) that was solely  
24 based on either paragraph 56U(1)(a) or (b)".

#### 25 **42 At the end of paragraph 167(1)(fd) of the Schedule**

26 Add “, other than a decision under subsection 56U(4) that was solely  
27 based on either paragraph 56U(1)(a) or (b)".

#### 28 **43 At the end of paragraph 167(1)(l) of the Schedule**

29 Add “, other than a decision under subsection 112(3) that was solely  
30 based on either paragraph 112(2)(b) or (c)".

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# EXPOSURE DRAFT

Streamlining processes for giving and receiving information **Schedule 3**  
Other amendments **Part 2**

---

## 44 Paragraph 167(1)(u) of the Schedule

Repeal the paragraph.

## 45 Application

(1) The amendments made by this Part apply in relation to:

- (a) an application under Part 2, 2A or 7 of the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* that is made on or after the day this item commences; and
- (b) an application under Part 2 of the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* that is made before the day this item commences if, on the day this item commences, a notice has not been given to an approved person in respect of the application under subsection 11A(2), (3) or (4) of the Schedule to that Act; and
- (c) a reconsideration of an approval or registration under Part 2 of the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* if the APVMA gives written notice under subsection 32(2) of the Schedule to that Act to an interested person or an approved person on or after the day this item commences; and
- (d) a reconsideration of a listed registration under Part 2A of the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* if:
  - (i) the APVMA has published a notice in respect of the approval or registration under subsection 56V(1) of the Schedule to that Act before the day this item commences and, on the day this item commences, the period for making written submissions has not expired; or
  - (ii) the APVMA gave written notice under subsection 56X(2) of the Schedule to that Act to an interested person or an approved person before the day this item commences and, on the day this item commences, the period stated in the notice has not expired; or
  - (iii) the APVMA gives written notice under subsection 56X(2) of the Schedule to that Act to an interested person or an approved person on or after the day this item commences.

# EXPOSURE DRAFT

## Schedule 3 Streamlining processes for giving and receiving information

### Part 2 Other amendments

---

- 1 (2) The amendments made by this Part apply, 12 months after the day this  
2 item commences, in relation to:
- 3 (a) an application made under Part 2 of the Code set out in the  
4 Schedule to the *Agricultural and Veterinary Chemicals Code*  
5 *Act 1994* before the day this item commences if:
- 6 (i) on or before the day this item commences, a notice has  
7 been given to an approved person in respect of the  
8 application under subsection 11A(2), (3) or (4) of the  
9 Schedule to that Act; and
- 10 (ii) on the day this item commences, the application has not  
11 been determined by the APVMA; and
- 12 (b) a reconsideration of an approval or registration under Part 2  
13 of the Code set out in the Schedule to the *Agricultural and*  
14 *Veterinary Chemicals Code Act 1994* if:
- 15 (i) the APVMA has published a notice in respect of the  
16 approval or registration under subsection 32(1) of the  
17 Schedule to that Act before the day this item  
18 commences and, on the day this item commences, the  
19 period for making written submissions has not expired;  
20 or
- 21 (ii) the APVMA gave written notice under subsection 32(2)  
22 of the Schedule to that Act to an interested person or an  
23 approved person before the day this item commences  
24 and, on the day this item commences, the period stated  
25 in the notice has not expired.  
26

## Schedule 4—Enforcement

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

#### **1 Subsection 3(1) (definition of *occupier*)**

Repeal the definition.

#### **2 Subsection 3(1) (definition of *premises*)**

Repeal the definition.

#### **3 Subsection 15(2) (penalty)**

Repeal the penalty, substitute:

Penalty: 50 penalty units.

#### **4 At the end of subsection 15(2) (after the penalty)**

Add:

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*.

#### **5 Subsections 20(3), (4) and (5)**

Repeal the subsections, substitute:

(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*.

# EXPOSURE DRAFT

## Schedule 4 Enforcement

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

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

### 9 **6 Sections 21 to 32**

10 Repeal the sections.

### 11 **7 Section 35**

12 Repeal the section.

### 13 **8 Subsection 36(1) (penalty)**

14 Repeal the penalty, substitute:

15 Penalty: 50 penalty units.

### 16 **9 At the end of subsection 36(1) (after the penalty)**

17 Add:

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

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

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

## 28 ***Agricultural and Veterinary Chemicals (Administration) Act*** 29 ***1992***

### 30 **10 Section 4**

31 Insert:

32 ***civil penalty order*** has the same meaning as in the Code set out in  
33 the Schedule to the *Agricultural and Veterinary Chemicals Code*  
34 *Act 1994*.

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1 **11 Section 4**

2 Insert:

3 *civil penalty provision* means a provision declared by this Act or  
4 the Collection Act to be a civil penalty provision.

5 **12 Section 4**

6 Insert:

7 *Collection Act* means the *Agricultural and Veterinary Chemical*  
8 *Products (Collection of Levy) Act 1994*.

9 **13 Section 4**

10 Insert:

11 *damage* has the same meaning as in the Code set out in the  
12 Schedule to the *Agricultural and Veterinary Chemicals Code Act*  
13 *1994*.

14 **14 Section 4**

15 Insert:

16 *data* has the same meaning as in the Code set out in the Schedule  
17 to the *Agricultural and Veterinary Chemicals Code Act 1994*.

18 **15 Section 4**

19 Insert:

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

23 **16 Section 4**

24 Insert:

25 *evidential material* means any of the following:

26 (a) a thing with respect to which an offence against this Act or  
27 the Collection Act has been committed or is suspected, on  
28 reasonable grounds, to have been committed;

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- 1 (b) a thing with respect to which a civil penalty provision has  
2 been contravened or is suspected, on reasonable grounds, to  
3 have been contravened;
- 4 (c) a thing that there are reasonable grounds for suspecting will  
5 afford evidence as to the commission of such an offence or  
6 contravention of such a civil penalty provision;
- 7 (d) a thing that there are reasonable grounds for suspecting is  
8 intended to be used for the purpose of committing such an  
9 offence or contravening such a civil penalty provision.

### 10 **17 Section 4**

11 Insert:

12 *investigation powers* has the meaning given by sections 69EBA,  
13 69EBB and 69EBC.

### 14 **18 Section 4**

15 Insert:

16 *investigation warrant* means:

- 17 (a) a warrant issued under section 69EHA; or  
18 (b) a warrant signed by a magistrate under section 69EHB, being  
19 a warrant of the same kind as would have been issued under  
20 section 69EHA.

### 21 **19 Section 4**

22 Insert:

23 *monitoring powers* has the meaning given by sections 69EAC,  
24 69EAD and 69EAE.

### 25 **20 Section 4**

26 Insert:

27 *monitoring warrant* means:

- 28 (a) a warrant issued under section 69EH; or  
29 (b) a warrant signed by a magistrate under section 69EHB, being  
30 a warrant of the same kind as would have been issued under  
31 section 69EH.

### 32 **21 Section 4**

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1           Insert:

2                     *occupier* has the same meaning as in the Code set out in the  
3                     Schedule to the *Agricultural and Veterinary Chemicals Code Act*  
4                     1994.

## 5   **22 Section 4**

6           Insert:

7                     *person assisting* an inspector:  
8                     (a) in relation to the exercise of monitoring powers—has the  
9                     meaning given by section 69EAF; and  
10                    (b) in relation to the exercise of investigation powers—has the  
11                    meaning given by section 69EBD.

## 12   **23 Section 4**

13           Insert:

14                     *premises* has the same meaning as in the Code set out in the  
15                     Schedule to the *Agricultural and Veterinary Chemicals Code Act*  
16                     1994.

## 17   **24 Section 4**

18           Insert:

19                     *warrant* means a monitoring warrant or an investigation warrant.

## 20   **25 After subsection 11(1)**

21           Insert:

22                     (1A) The APVMA may only delegate its powers under section 130 of  
23                     the Code set out in the Schedule to the *Agricultural and Veterinary*  
24                     *Chemicals Code Act 1994* to an SES employee or acting SES  
25                     employee in the APVMA.

## 26   **26 After paragraph 59(c)**

27           Insert:

28                     (ca) any amounts paid to the APVMA, on behalf of the  
29                     Commonwealth, under section 149A of the Agvet Codes;

## 30   **27 Subsection 69A(1)**

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1 Omit “(1)”.

2 **28 Subsection 69A(2)**

3 Repeal the subsection.

4 **29 Before section 69B**

5 Insert:

6 **Subdivision A—Importation**

7 **30 Subsection 69B(1) (penalty)**

8 Repeal the penalty.

9 **31 Subsection 69B(1A)**

10 Repeal the subsection.

11 **32 At the end of subsection 69B(1B)**

12 Add “and, if subsection (3A) applies, the person is not in breach of any  
13 condition imposed on the exemption”.

14 **33 Subsection 69B(1B) (note)**

15 Repeal the note.

16 **34 Subsections 69B(1C) and (1D)**

17 Repeal the subsections, substitute:

18 (1C) A person commits an offence if the person contravenes  
19 subsection (1). The physical elements of the offence are set out in  
20 that subsection.

21 Penalty: 300 penalty units.

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

24 (1D) For the purposes of subsection (1C), strict liability applies to the  
25 physical element of circumstance in subparagraph (1)(a)(i), that the  
26 active constituent is neither an approved active constituent nor an  
27 exempt active constituent.

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

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1 (1E) For the purposes of subsection (1C), strict liability applies to the  
2 physical element of circumstance in subparagraph (1)(a)(ii), that  
3 the chemical product is neither a registered chemical product nor  
4 an exempt chemical product.

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

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

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

11 (1G) A person who wishes to rely on subsection (1B) in proceedings for  
12 a civil penalty order bears an evidential burden in relation to a  
13 matter in that subsection.

## 14 **35 After subsection 69B(3)**

15 Insert:

16 (3A) An exemption given under subsection (3) may be subject to any  
17 conditions that the APVMA thinks appropriate.

18 (3B) The APVMA may impose a condition, by writing, on an exemption  
19 at any time while the exemption is in force.

## 20 **36 Before section 69CA**

21 Insert:

## 22 **Subdivision B—Provision of information**

## 23 **37 Before section 69C**

24 Insert:

## 25 **Subdivision C—Chemical products etc. subject to international** 26 **agreements**

## 27 **38 Before section 69D**

28 Insert:

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1     **Subdivision D—Exportation**

2     **39 After section 69D**

3             Insert:

4     **Subdivision E—Miscellaneous**

5     **40 Subsection 69E(1) (penalty)**

6             Repeal the penalty.

7     **41 Subsection 69E(2A)**

8             Repeal the subsection, substitute:

9             (2A) A person commits an offence of strict liability if the person  
10             contravenes subsection (1). The physical elements of the offence  
11             are set out in that subsection.

12             Penalty: 50 penalty units.

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

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

16             (2B) Subsection (1) is a *civil penalty provision*.

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

21             (2C) A person who wishes to rely on subsection (2) in proceedings for a  
22             civil penalty order bears an evidential burden in relation to a matter  
23             in that subsection.

24     **42 Subsections 69EA(1) and (1A) (penalties)**

25             Repeal the penalties, substitute:

26             Penalty: 50 penalty units.

27     **43 Division 3 of Part 7A**

28             Repeal the Division, substitute:

1 **Part 7AA—Investigative powers**

2 **Division 1—Monitoring**

3 **Subdivision A—Monitoring powers etc.**

4 **69EAB Powers available to inspectors for monitoring compliance**

5 (1) Subject to subsections (2) and (3), for the purpose of finding out  
6 whether this Act or the Collection Act has been complied with, or  
7 of assessing the correctness of information provided under this Act  
8 or the Collection Act, or of finding out whether levy is payable  
9 under the Collection Act, an inspector may:

- 10 (a) enter any premises; and  
11 (b) exercise the monitoring powers.

12 (2) If premises mentioned in paragraph (1)(a) are a residence, an  
13 inspector may only enter the premises if:

- 14 (a) the premises are used for commercial purposes in relation to  
15 active constituents and/or chemical products, in addition to  
16 residential purposes; and  
17 (b) paragraph (3)(a) or (b) is satisfied.

18 (3) An inspector is not authorised to enter premises under  
19 subsection (1) unless:

- 20 (a) the occupier of the premises has consented to the entry and  
21 the inspector has shown his or her identity card if required by  
22 the occupier; or  
23 (b) the entry is made under a monitoring warrant.

24 **69EAC Monitoring powers—with consent or with warrant**

25 The following are the *monitoring powers* that an inspector may  
26 exercise in relation to premises:

- 27 (a) the power to search the premises and any thing on the  
28 premises;  
29 (b) the power to examine or observe any activity conducted on  
30 the premises;  
31 (c) the power to inspect, examine, take measurements of or  
32 conduct tests on any thing on the premises;

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- 1 (d) the power to take and keep samples of any thing on the  
2 premises;  
3 (e) the power to make any still or moving image or any  
4 recording of the premises or any thing on the premises;  
5 (f) the power to inspect any document on the premises;  
6 (g) the power to take extracts from, or make copies of, any such  
7 document;  
8 (h) the power to take onto the premises such equipment and  
9 materials as the inspector requires for the purpose of  
10 exercising powers in relation to the premises;  
11 (i) the powers set out in subsections 69EAD(1) and (3) and  
12 69EAE(2).

### 13 **69EAD Operating electronic equipment**

- 14 (1) The *monitoring powers* include the power to:  
15 (a) operate electronic equipment on the premises; and  
16 (b) use a disk, tape or other storage device that:  
17 (i) is on the premises; and  
18 (ii) can be used with the equipment or is associated with it.
- 19 (2) The monitoring powers include the powers mentioned in  
20 subsection (3) if information (*relevant data*) is found in the  
21 exercise of the power under subsection (1) that is relevant to  
22 determining whether:  
23 (a) this Act, or the Collection Act, has been, or is being,  
24 complied with; or  
25 (b) information provided under this Act, or the Collection Act, is  
26 correct; or  
27 (c) levy is payable under the Collection Act.
- 28 (3) The powers are as follows:  
29 (a) the power to operate electronic equipment on the premises to  
30 put the relevant data in documentary form and remove the  
31 documents so produced from the premises;  
32 (b) the power to operate electronic equipment on the premises to  
33 transfer the relevant data to a disk, tape or other storage  
34 device that:  
35 (i) is brought to the premises for the exercise of the power;  
36 or
-

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1 (ii) is on the premises and the use of which for that purpose  
2 has been agreed in writing by the occupier of the  
3 premises;  
4 and remove the disk, tape or other storage device from the  
5 premises.

6 (4) An inspector may operate electronic equipment as mentioned in  
7 subsection (1) or (3) only if the inspector believes on reasonable  
8 grounds that the operation of the equipment can be carried out  
9 without damage to the equipment.

10 Note: For compensation for damage to electronic equipment, see  
11 section 69EDE.

## 12 **69EAE Securing evidence of the contravention of a related provision**

13 (1) This section applies if an inspector enters premises under a  
14 monitoring warrant for any or all of the following purposes:

- 15 (a) determining whether this Act, or the Collection Act, has  
16 been, or is being, complied with;  
17 (b) determining whether information provided in compliance or  
18 purported compliance with this Act, or the Collection Act, is  
19 correct;  
20 (c) determining whether levy is payable under the Collection  
21 Act.

22 (2) The *monitoring powers* include the power to secure a thing for a  
23 period not exceeding 24 hours if:

- 24 (a) the thing is found during the exercise of monitoring powers  
25 on the premises; and  
26 (b) an inspector believes on reasonable grounds that the thing  
27 affords evidence of one or more of the following:  
28 (i) the commission of an offence against this Act or the  
29 Collection Act;  
30 (ii) the contravention of a civil penalty provision;  
31 (iii) an offence against the *Crimes Act 1914* or the *Criminal*  
32 *Code* that relates to this Act or the Collection Act; and  
33 (c) the inspector believes on reasonable grounds that:  
34 (i) it is necessary to secure the thing in order to prevent it  
35 from being concealed, lost or destroyed before a warrant  
36 to seize the thing is obtained; and

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- 1 (ii) it is necessary to secure the thing without a warrant  
2 because the circumstances are serious and urgent.
- 3 (3) If an inspector believes on reasonable grounds that the thing needs  
4 to be secured for more than 24 hours, the inspector may apply to a  
5 magistrate for an extension of that period.
- 6 (4) The inspector must give notice to the occupier of the premises, or  
7 another person who apparently represents the occupier, of his or  
8 her intention to apply for an extension. The occupier or other  
9 person is entitled to be heard in relation to that application.
- 10 (5) The provisions of this Part relating to the issue of monitoring  
11 warrants apply, with such modifications as are necessary, to the  
12 issue of an extension.
- 13 (6) The 24-hour period may be extended more than once.

### 69EAF Persons assisting inspectors

#### *Inspectors may be assisted by other persons*

- 15
- 16 (1) When exercising monitoring powers, an inspector may be assisted  
17 by other persons in exercising powers or performing functions or  
18 duties under this Part, if that assistance is necessary and  
19 reasonable. A person giving such assistance is a **person assisting**  
20 the inspector.

#### *Powers, functions and duties of a person assisting the inspector*

- 21
- 22 (2) A person assisting the inspector:  
23 (a) may enter the premises; and  
24 (b) may exercise powers and perform functions and duties under  
25 this Part for the purposes of assisting the inspector to  
26 determine whether:  
27 (i) this Act, or the Collection Act, has been, or is being,  
28 complied with; or  
29 (ii) information provided under this Act, or the Collection  
30 Act, is correct; or  
31 (iii) levy is payable under the Collection Act; and  
32 (c) must do so in accordance with a direction given to the person  
33 assisting by the inspector.

- 1 (3) A power exercised by a person assisting the inspector as mentioned  
2 in subsection (2) is taken for all purposes to have been exercised by  
3 the inspector.
- 4 (4) A function or duty performed by a person assisting the inspector as  
5 mentioned in subsection (2) is taken for all purposes to have been  
6 performed by the inspector.
- 7 (5) If a direction is given under paragraph (2)(c) in writing, the  
8 direction is not a legislative instrument.

9 **69EAG Use of force in executing a warrant**

10 In executing a monitoring warrant, an inspector and a person  
11 assisting the inspector may use such force against things as is  
12 necessary and reasonable in the circumstances.

13 **Subdivision B—Powers of inspectors to ask questions and seek**  
14 **production of documents**

15 **69EAH Inspector may ask questions and seek production of**  
16 **documents**

- 17 (1) This section applies if an inspector enters premises for the purposes  
18 of determining whether:  
19 (a) this Act, or the Collection Act, has been, or is being,  
20 complied with; or  
21 (b) information provided under this Act, or the Collection Act, is  
22 correct; or  
23 (c) levy is payable under the Collection Act.
- 24 (2) If the entry is authorised because the occupier of the premises  
25 consented to the entry, the inspector may ask the occupier to  
26 answer any questions, and produce any document, relating to:  
27 (a) the operation of this Act or the Collection Act; or  
28 (b) the information.
- 29 (3) If the entry is authorised by a monitoring warrant, the inspector  
30 may require any person on the premises to answer any questions,  
31 and produce any document, relating to:  
32 (a) the operation of this Act or the Collection Act; or

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1 (b) the information.

2 *Offence*

3 (4) A person commits an offence if:

4 (a) the person is subject to a requirement under subsection (3);  
5 and

6 (b) the person fails to comply with the requirement.

7 Penalty for contravention of this subsection: 50 penalty units.

### 8 **69EAJ Copying of documents**

9 If a person produces a document to an inspector in accordance with  
10 a requirement under section 69EAH, the inspector may make  
11 copies of, or take extracts from, the document.

## 12 **Division 2—Investigation**

### 13 **Subdivision A—Investigation powers**

#### 14 **69EB Powers available to inspectors to investigate potential** 15 **breaches of this Act and the Collection Act**

16 (1) Subject to subsections (2) and (3), if an inspector has reasonable  
17 grounds for suspecting that there may be evidential material on any  
18 premises, the inspector may:

19 (a) enter the premises; and

20 (b) exercise the investigation powers.

21 (2) If premises mentioned in paragraph (1)(a) are a residence, an  
22 inspector may only enter the premises if:

23 (a) the premises are used for commercial purposes in relation to  
24 active constituents and/or chemical products, in addition to  
25 residential purposes; and

26 (b) paragraph (3)(a) or (b) is satisfied.

27 (3) An inspector is not authorised to enter the premises unless:

28 (a) the occupier of the premises has consented to the entry and  
29 the inspector has shown his or her identity card if required by  
30 the occupier; or

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1 (b) the entry is made under an investigation warrant.

2 Note: If entry to the premises is with the occupier's consent, the inspector  
3 must leave the premises if the consent ceases to have effect, see  
4 section 69ED.

## 5 **69EBA Investigation powers**

6 The following are the *investigation powers* that an inspector may  
7 exercise in relation to premises under section 69EB:

- 8 (a) if entry to the premises is with the occupier's consent—the  
9 power to search the premises and any thing on the premises  
10 for the evidential material the inspector has reasonable  
11 grounds for suspecting may be on the premises;
- 12 (b) if entry to the premises is under an investigation warrant:
- 13 (i) the power to search the premises and any thing on the  
14 premises for the kind of evidential material specified in  
15 the warrant; and
- 16 (ii) the power to seize evidential material of that kind if the  
17 inspector finds it on the premises;
- 18 (c) the power to inspect, examine, take measurements of, and  
19 conduct tests on evidential material referred to in  
20 paragraph (a) or (b);
- 21 (d) the power to take and keep samples of any thing on the  
22 premises;
- 23 (e) the power to make any still or moving image or any  
24 recording of the premises or evidential material referred to in  
25 paragraph (a) or (b);
- 26 (f) the power to take onto the premises such equipment and  
27 materials as the inspector requires for the purpose of  
28 exercising powers in relation to the premises;
- 29 (g) the powers set out in subsections 69EBB(1) and (2) and  
30 section 69EBC.

## 31 **69EBB Operating electronic equipment**

- 32 (1) The *investigation powers* include the power to:
- 33 (a) operate electronic equipment on the premises; and
- 34 (b) use a disk, tape or other storage device that:
- 35 (i) is on the premises; and
- 36 (ii) can be used with the equipment or is associated with it;
-

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- 1 if an inspector has reasonable grounds for suspecting that the  
2 electronic equipment, disk, tape or other storage device is or  
3 contains evidential material.
- 4 (2) The *investigation powers* include the following powers in relation  
5 to evidential material found in the exercise of the power under  
6 subsection (1):
- 7 (a) if entry to the premises is under an investigation warrant—  
8 the power to seize the equipment and the disk, tape or other  
9 storage device referred to in that subsection;
- 10 (b) the power to operate electronic equipment on the premises to  
11 put the evidential material in documentary form and remove  
12 the documents so produced from the premises;
- 13 (c) the power to operate electronic equipment on the premises to  
14 transfer the evidential material to a disk, tape or other storage  
15 device that:
- 16 (i) is brought to the premises for the exercise of the power;  
17 or  
18 (ii) is on the premises and the use of which for that purpose  
19 has been agreed in writing by the occupier of the  
20 premises;  
21 and remove the disk, tape or other storage device from the  
22 premises.
- 23 (3) An inspector may operate electronic equipment as mentioned in  
24 subsection (1) or (2) only if the inspector believes on reasonable  
25 grounds that the operation of the equipment can be carried out  
26 without damage to the equipment.
- 27 Note: For compensation for damage to electronic equipment, see  
28 section 69EDE.
- 29 (4) An inspector may seize equipment or a disk, tape or other storage  
30 device as mentioned in paragraph (2)(a) only if:
- 31 (a) it is not practicable to put the evidential material in  
32 documentary form as mentioned in paragraph (2)(b) or to  
33 transfer the evidential material as mentioned in  
34 paragraph (2)(c); or  
35 (b) possession of the equipment or the disk, tape or other storage  
36 device by the occupier could constitute an offence against a  
37 law of the Commonwealth.
-

1     **69EBC Seizing evidence of related offences and civil penalty**  
2             **provisions**

- 3             (1) This section applies if an inspector enters premises under an  
4             investigation warrant to search for evidential material.
- 5             (2) The *investigation powers* include seizing a thing that is not  
6             evidential material of the kind specified in the warrant if:  
7                 (a) in the course of searching for the kind of evidential material  
8                 specified in the warrant, the inspector finds the thing; and  
9                 (b) the inspector believes on reasonable grounds that the thing  
10                affords evidence of one or more of the following:  
11                     (i) the commission of an offence against this Act or the  
12                     Collection Act;  
13                     (ii) the contravention of a civil penalty provision;  
14                     (iii) an offence against the *Crimes Act 1914* or the *Criminal*  
15                     *Code* that relates to this Act or the Collection Act; and  
16                 (c) the inspector believes on reasonable grounds that it is  
17                 necessary to seize the thing in order to prevent its  
18                 concealment, loss or destruction or to protect the health of the  
19                 public or of any person.
- 20             (3) If an inspector seizes a thing as mentioned in subsection (2), the  
21             *investigation powers* include:  
22                 (a) the power to direct the occupier of the premises or the owner  
23                 of the thing to keep it at the premises, or at other premises  
24                 under the control of the occupier or owner that will, in the  
25                 opinion of the inspector, cause least danger to the health of  
26                 the public or of any person; and  
27                 (b) the power to give any other directions for, or with respect to,  
28                 the detention of the thing.

29     **69EBD Persons assisting inspectors**

30             *Inspectors may be assisted by other persons*

- 31             (1) When exercising investigation powers, an inspector may be  
32             assisted by other persons in exercising powers or performing  
33             functions or duties under this Part, if that assistance is necessary  
34             and reasonable. A person giving such assistance is a *person*  
35             *assisting* the inspector.



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1 and produce any document, relating to evidential material of the  
2 kind specified in the warrant.

- 3 (4) A person commits an offence if:  
4 (a) the person is subject to a requirement under subsection (3);  
5 and  
6 (b) the person fails to comply with the requirement.

7 Penalty for contravention of this subsection: 50 penalty units.

## 8 **69ECA Copying of documents**

9 If a person produces a document to an inspector in accordance with  
10 a requirement under section 69EC, the inspector may make copies  
11 of, or take extracts from, the document.

## 12 **Division 3—Obligations and incidental powers of** 13 **inspectors**

### 14 **69ED Consent**

- 15 (1) Before obtaining the consent of an occupier of premises for the  
16 purposes of paragraph 69EAB(3)(a) or 69EB(3)(a), an inspector  
17 must inform the occupier that the occupier may refuse consent.
- 18 (2) A consent has no effect unless the consent is voluntary.
- 19 (3) A consent may be expressed to be limited to entry during a  
20 particular period. If so, the consent has effect for that period unless  
21 the consent is withdrawn before the end of that period.
- 22 (4) A consent that is not limited as mentioned in subsection (3) has  
23 effect until the consent is withdrawn.
- 24 (5) If an inspector entered premises because of the consent of the  
25 occupier of the premises, the inspector, and any person assisting  
26 the inspector, must leave the premises if the consent ceases to have  
27 effect.

### 28 **69EDA Announcement before entry under warrant**

- 29 (1) Before entering premises under a warrant, an inspector must:
-

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- 1 (a) announce that he or she is authorised to enter the premises;  
2 and  
3 (b) show his or her identity card to the occupier of the premises,  
4 or to another person who apparently represents the occupier,  
5 if the occupier or other person is present at the premises; and  
6 (c) give any person at the premises an opportunity to allow entry  
7 to the premises.
- 8 (2) However, an inspector is not required to comply with  
9 subsection (1) if the inspector believes on reasonable grounds that  
10 immediate entry to the premises is required:  
11 (a) to ensure the safety of a person; or  
12 (b) to ensure that the effective execution of the warrant is not  
13 frustrated.
- 14 (3) If:  
15 (a) an inspector does not comply with subsection (1) because of  
16 subsection (2); and  
17 (b) the occupier of the premises, or another person who  
18 apparently represents the occupier, is present at the premises;  
19 the inspector must, as soon as practicable after entering the  
20 premises, show his or her identity card to the occupier or other  
21 person.

### 69EDB Inspector to be in possession of warrant

- 22 An inspector executing a warrant must be in possession of:  
23 (a) the warrant issued by the magistrate under section 69EH or  
24 69EHA, or a copy of the warrant as so issued; or  
25 (b) the form of warrant completed under subsection 69EHB(6),  
26 or a copy of the form as so completed.  
27

### 69EDC Details of warrant etc. to be given to occupier

- 28 (1) An inspector must comply with subsection (2) if:  
29 (a) a warrant is being executed in relation to premises; and  
30 (b) the occupier of the premises, or another person who  
31 apparently represents the occupier, is present at the premises.  
32
- 33 (2) The inspector executing the warrant must, as soon as practicable:  
34 (a) do one of the following:
-

- 1 (i) if the warrant was issued under section 69EH or  
2 69EHA—make a copy of the warrant available to the  
3 occupier or other person (which need not include the  
4 signature of the issuing officer who issued it);  
5 (ii) if the warrant was signed under section 69EHB—make  
6 a copy of the form of warrant completed under  
7 subsection 69EHB(6) available to the occupier or other  
8 person; and  
9 (b) inform the occupier or other person of the rights and  
10 responsibilities of the occupier or other person under  
11 Division 5 of this Part.

## 12 **69EDD Expert assistance to operate electronic equipment**

- 13 (1) This section applies if an inspector enters premises under a  
14 warrant.

### 15 *Securing equipment*

- 16 (2) An inspector may do whatever is necessary to secure any electronic  
17 equipment that is on the premises if the inspector believes on  
18 reasonable grounds that:  
19 (a) in the case of a monitoring warrant:  
20 (i) there is relevant data on the premises; and  
21 (ii) the relevant data may be accessible by operating the  
22 equipment; and  
23 (iii) expert assistance is required to operate the equipment;  
24 and  
25 (iv) the relevant data may be destroyed, altered or otherwise  
26 interfered with, if the inspector does not take action  
27 under this subsection; and  
28 (b) in the case of an investigation warrant:  
29 (i) there is evidential material of the kind specified in the  
30 warrant on the premises; and  
31 (ii) the evidential material may be accessible by operating  
32 the electronic equipment; and  
33 (iii) expert assistance is required to operate the equipment;  
34 and

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- 1 (iv) the evidential material may be destroyed, altered or  
2 otherwise interfered with, if the inspector does not take  
3 action under this subsection.

4 The equipment may be secured by locking it up, placing a guard or  
5 any other means.

- 6 (3) The inspector must give notice to the occupier of the premises, or  
7 another person who apparently represents the occupier, of:  
8 (a) the inspector's intention to secure the equipment; and  
9 (b) the fact that the equipment may be secured for up to 24  
10 hours.

### 11 *Period equipment may be secured*

- 12 (4) The equipment may be secured until the earlier of the following  
13 happens:  
14 (a) the 24-hour period ends;  
15 (b) the equipment has been operated by the expert.

16 Note: For compensation for damage to electronic equipment, see  
17 section 69EDE.

### 18 *Extensions*

- 19 (5) The inspector may apply to a magistrate for an extension of the  
20 24-hour period, if the inspector believes on reasonable grounds that  
21 the equipment needs to be secured for a longer period.
- 22 (6) Before making the application, the inspector must give notice to  
23 the occupier of the premises, or another person who apparently  
24 represents the occupier, of the inspector's intention to apply for an  
25 extension. The occupier or other person is entitled to be heard in  
26 relation to that application.
- 27 (7) The provisions of this Part relating to the issue of a warrant apply,  
28 with such modifications as are necessary, to the issue of an  
29 extension.
- 30 (8) The 24-hour period may be extended more than once.

### 31 *Definition*

- 32 (9) In this section:
-

- 1                    *relevant data* means information relevant to determining whether:  
2                    (a) this Act, or the Collection Act, has been, or is being,  
3                           complied with; or  
4                    (b) information provided under this Act, or the Collection Act, is  
5                           correct; or  
6                    (c) levy is payable under the Collection Act.

7                    **69EDE Compensation for damage to electronic equipment**

- 8                    (1) This section applies if:  
9                           (a) as a result of equipment being operated as mentioned in this  
10                           Part:  
11                               (i) damage is caused to the equipment; or  
12                               (ii) the data recorded on the equipment is damaged; or  
13                               (iii) programs associated with the use of the equipment, or  
14                               with the use of the data, are damaged or corrupted; and  
15                           (b) the damage or corruption occurs because:  
16                               (i) insufficient care was exercised in selecting the person  
17                               who was to operate the equipment; or  
18                               (ii) insufficient care was exercised by the person operating  
19                               the equipment.
- 20                    (2) The APVMA must pay the owner of the equipment, or the user of  
21                           the data or programs, such reasonable compensation for the  
22                           damage or corruption as the APVMA and the owner or user agree  
23                           on.
- 24                    (3) However, if the owner or user and the APVMA fail to agree, the  
25                           owner or user may institute proceedings in a court of competent  
26                           jurisdiction for such reasonable amount of compensation as the  
27                           court determines.
- 28                    (4) In determining the amount of compensation payable, regard is to  
29                           be had to whether the occupier of the premises, or the occupier's  
30                           employees or agents, if they were available at the time, provided  
31                           any appropriate warning or guidance on the operation of the  
32                           equipment.

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1 **Division 4—Execution of an investigation warrant**  
2 **interrupted**

3 **69EE Completing execution of an investigation warrant after**  
4 **temporary cessation**

- 5 (1) This section applies if an inspector, and all persons assisting, who  
6 are executing an investigation warrant in relation to premises  
7 temporarily cease its execution and leave the premises.
- 8 (2) The inspector, and persons assisting, may complete the execution  
9 of the warrant if:
- 10 (a) the warrant is still in force; and
  - 11 (b) the inspector and persons assisting are absent from the  
12 premises:
    - 13 (i) for not more than 1 hour; or
    - 14 (ii) if there is an emergency situation, for not more than 12  
15 hours or such longer period as allowed by a magistrate  
16 under subsection (5); or
    - 17 (iii) for a longer period if the occupier of the premises  
18 consents in writing.

19 *Application for extension in emergency situation*

- 20 (3) An inspector, or person assisting, may apply to a magistrate for an  
21 extension of the 12-hour period mentioned in  
22 subparagraph (2)(b)(ii) if:
- 23 (a) there is an emergency situation; and
  - 24 (b) the inspector or person assisting believes on reasonable  
25 grounds that the inspector and the persons assisting will not  
26 be able to return to the premises within that period.
- 27 (4) If it is practicable to do so, before making the application, the  
28 inspector or person assisting must give notice to the occupier of the  
29 premises of his or her intention to apply for an extension.

30 *Extension in emergency situation*

- 31 (5) A magistrate may extend the period during which the inspector and  
32 persons assisting may be away from the premises if:  
33 (a) an application is made under subsection (3); and
-

- 1 (b) the magistrate is satisfied, by information on oath or  
2 affirmation, that there are exceptional circumstances that  
3 justify the extension; and  
4 (c) the extension would not result in the period ending after the  
5 warrant ceases to be in force.

6 **69EEA Completing execution of an investigation warrant stopped**  
7 **by court order**

8 An inspector, and any persons assisting, may complete the  
9 execution of an investigation warrant that has been stopped by an  
10 order of a court if:

- 11 (a) the order is later revoked or reversed on appeal; and  
12 (b) the warrant is still in force when the order is revoked or  
13 reversed.

14 **Division 5—Occupier’s rights and responsibilities**

15 **69EF Occupier entitled to observe execution of warrant**

- 16 (1) The occupier of premises to which a warrant relates, or another  
17 person who apparently represents the occupier, is entitled to  
18 observe the execution of the warrant if the occupier or other person  
19 is present at the premises while the warrant is being executed.
- 20 (2) The right to observe the execution of the warrant ceases if the  
21 occupier or other person impedes that execution.
- 22 (3) This section does not prevent the execution of the warrant in 2 or  
23 more areas of the premises at the same time.

24 **69EFA Occupier to provide inspector with facilities and assistance**

- 25 (1) The occupier of premises to which a warrant relates, or another  
26 person who apparently represents the occupier, must provide:  
27 (a) an inspector executing the warrant; and  
28 (b) any person assisting;  
29 with all reasonable facilities and assistance for the effective  
30 exercise of their powers.
- 31 (2) A person commits an offence if:

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- 1 (a) the person is subject to subsection (1); and  
2 (b) the person fails to comply with that subsection.

3 Penalty for contravention of this subsection: 30 penalty units.

### 4 **Division 6—General provisions relating to seizure**

#### 5 **69EG Copies of seized things to be provided**

- 6 (1) Subject to subsection (2), if an inspector who has entered premises  
7 under an investigation warrant seizes:  
8 (a) a document, film, computer file or other thing that can be  
9 readily copied; or  
10 (b) a storage device the information in which can be readily  
11 copied;  
12 the inspector must, if asked to do so by the occupier of the  
13 premises or another person who apparently represents the occupier  
14 and is present when the seizure takes place, give a copy of the  
15 thing or the information to the occupier or other person as soon as  
16 practicable after the seizure.
- 17 (2) However, the inspector is not required to comply with the request  
18 if possession of the document, film, computer file, thing or  
19 information by the occupier or other person could constitute an  
20 offence against a law of the Commonwealth.

#### 21 **69EGA Receipts for seized things**

- 22 (1) An inspector must provide a receipt for a thing that is seized under  
23 an investigation warrant.
- 24 (2) One receipt may cover 2 or more things seized.

#### 25 **69EGB Return of seized things**

- 26 (1) An inspector must take reasonable steps to return a thing seized  
27 under an investigation warrant when the earliest of the following  
28 happens:  
29 (a) the reason for the thing's seizure no longer exists;  
30 (b) it is decided that the thing is not to be used in evidence;  
31 (c) the period of 60 days after the thing's seizure ends.

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1 *Exceptions*

2 (2) Subsection (1):

3 (a) is subject to any contrary order of a court; and

4 (b) does not apply if the thing:

5 (i) is forfeited or forfeitable to the Commonwealth (see  
6 section 69ET); or

7 (ii) is the subject of a dispute as to ownership.

8 (3) The inspector is not required to take reasonable steps to return a  
9 thing because of paragraph (1)(c) if:

10 (a) proceedings in which the thing may be used in evidence were  
11 begun before the end of the 60 days and have not been  
12 completed (including an appeal to a court in relation to those  
13 proceedings); or

14 (b) the inspector may keep the thing because of an order under  
15 section 69EGC; or

16 (c) the inspector is authorised by this Part or by an order of a  
17 court to keep, destroy or dispose of the thing.

18 **69EGC Court of summary jurisdiction may permit a thing to be**  
19 **kept**

20 (1) If:

21 (a) before the end of 60 days after an inspector seizes a thing  
22 under an investigation warrant; or

23 (b) before the end of a period previously stated in an order of a  
24 court under this section in respect of a thing seized by an  
25 inspector as mentioned in paragraph (a);

26 proceedings in which the thing may be used in evidence have not  
27 been brought, the inspector may apply to a court of summary  
28 jurisdiction for an order that he or she may keep the thing for a  
29 further period.

30 (2) Before making the application, the inspector must:

31 (a) take reasonable steps to discover who has an interest in the  
32 retention of the thing; and

33 (b) if it is practicable to do so, notify each person who the  
34 inspector believes has such an interest of the proposed  
35 application.

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1

### *Order to retain thing*

2

(3) A court of summary jurisdiction may order that the thing may continue to be retained for a period specified in the order if the court is satisfied that it is necessary for the thing to continue to be retained:

3

4

5

6

(a) for the purposes of an investigation as to whether:

7

(i) an offence against this Act or the Collection Act has been committed; or

8

9

(ii) a civil penalty provision has been contravened; or

10

(b) for the purposes of an investigation as to whether an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to this Act or the Collection Act has been committed; or

11

12

13

(c) to enable evidence of:

14

(i) an offence mentioned in paragraph (a) or (b) to be secured for the purposes of a prosecution; or

15

16

(ii) a contravention mentioned in paragraph (a) to be secured for the purposes of proceedings for a civil penalty order.

17

18

19

(4) The period specified must not exceed 3 years.

20

### **69EGD Disposal of things**

21

(1) The APVMA may dispose of a thing seized under an investigation warrant if:

22

23

(a) an inspector has taken reasonable steps to return the thing to a person; and

24

25

(b) either:

26

(i) the inspector has been unable to locate the person; or

27

(ii) the person has refused to take possession of the thing.

28

29

(2) The APVMA may dispose of the thing in such manner as it considers appropriate.

1 **Division 7—Applying for warrants etc.**

2 **69EH Monitoring warrants**

3 *Application for warrant*

- 4 (1) An inspector may apply to a magistrate for a monitoring warrant  
5 under this section in relation to premises.

6 *Issue of warrant*

- 7 (2) The magistrate may issue the warrant if the magistrate is satisfied,  
8 by information on oath or affirmation, that it is reasonably  
9 necessary that one or more inspectors should have access to the  
10 premises for the purpose of determining whether:  
11 (a) this Act, or the Collection Act, has been, or is being,  
12 complied with; or  
13 (b) information provided under this Act, or the Collection Act, is  
14 correct; or  
15 (c) levy is payable under the Collection Act.
- 16 (3) However, the magistrate must not issue the warrant unless the  
17 inspector or some other person has given to the magistrate, either  
18 orally or by affidavit, such further information (if any) as the  
19 magistrate requires concerning the grounds on which the issue of  
20 the monitoring warrant is being sought.

21 *Content of warrant*

- 22 (4) The monitoring warrant must:  
23 (a) describe the premises to which the warrant relates; and  
24 (b) state that the warrant is issued under this section; and  
25 (c) state the purpose for which the warrant is issued; and  
26 (d) authorise one or more inspectors (whether or not named in  
27 the warrant) from time to time while the warrant remains in  
28 force:  
29 (i) to enter the premises; and  
30 (ii) to exercise the monitoring powers in relation to the  
31 premises; and  
32 (e) state whether entry is authorised to be made at any time of  
33 the day or during specified hours of the day; and
-

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1 (f) specify the day (not more than 6 months after the issue of the  
2 warrant) the warrant ceases to be in force.

3 (5) If the application for the warrant is made under section 69EHB,  
4 this section applies as if paragraph (4)(f) required the warrant to  
5 specify the period for which the warrant is to remain in force,  
6 which must not be more than 48 hours.

### 7 **69EHA Investigation warrants**

#### 8 *Application for warrant*

9 (1) An inspector may apply to a magistrate for an investigation warrant  
10 under this section in relation to premises.

#### 11 *Issue of warrant*

12 (2) The magistrate may issue the investigation warrant if the  
13 magistrate is satisfied, by information on oath or affirmation, that  
14 there are reasonable grounds for suspecting that there is, or there  
15 may be within the next 72 hours, evidential material on the  
16 premises.

17 (3) However, the magistrate must not issue the investigation warrant  
18 unless the inspector or some other person has given to the  
19 magistrate, either orally or by affidavit, such further information (if  
20 any) as the magistrate requires concerning the grounds on which  
21 the issue of the warrant is being sought.

#### 22 *Content of warrant*

23 (4) The investigation warrant must:  
24 (a) state the offence or offences, or civil penalty provision or  
25 civil penalty provisions, to which the warrant relates; and  
26 (b) describe the premises to which the warrant relates; and  
27 (c) state that the warrant is issued under this section; and  
28 (d) specify the kinds of evidential material that are to be  
29 searched for under the warrant; and  
30 (e) state that the evidential material specified may be seized  
31 under the warrant; and  
32 (f) state that any thing found in the course of executing the  
33 warrant that the person executing the warrant believes on

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- 1 reasonable grounds to be evidence of one or more of the  
2 following:
- 3 (i) the commission of an offence against this Act or the  
4 Collection Act;
  - 5 (ii) the contravention of a civil penalty provision;
  - 6 (iii) an offence against the *Crimes Act 1914* or the *Criminal*  
7 *Code* that relates to this Act or the Collection Act;
- 8 may be seized under the warrant; and
- 9 (g) name one or more inspectors; and
  - 10 (h) authorise the inspectors named in the warrant:
    - 11 (i) to enter the premises; and
    - 12 (ii) to exercise the powers set out in Divisions 2, 3 and 4 of  
13 this Part in relation to the premises; and
  - 14 (i) state whether entry is authorised to be made at any time of  
15 the day or during specified hours of the day; and
  - 16 (j) specify the day (not more than 1 week after the issue of the  
17 warrant) the warrant ceases to be in force.
- 18 (5) If the application for the warrant is made under section 69EHB,  
19 this section applies as if:
- 20 (a) subsection (2) referred to 48 hours rather than 72 hours; and
  - 21 (b) paragraph (4)(j) required the warrant to specify the period for  
22 which the warrant is to remain in force, which must not be  
23 more than 48 hours.

## 24 **69EHB Warrants by telephone, fax etc.**

### 25 *Application for warrant*

- 26 (1) An inspector may apply to a magistrate by telephone, fax or other  
27 electronic means for a warrant in relation to premises:
- 28 (a) in an urgent case; or
  - 29 (b) if the delay that would occur if an application were made in  
30 person would frustrate the effective execution of the warrant.
- 31 (2) The magistrate may require communication by voice to the extent  
32 that it is practicable in the circumstances.
- 33 (3) Before applying for a warrant, the inspector must:
-

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- 1 (a) in the case of a monitoring warrant—prepare an information  
2 of the kind mentioned in subsection 69EH(2); and  
3 (b) in the case of an investigation warrant—prepare an  
4 information of the kind mentioned in subsection 69EHA(2);  
5 in relation to the premises that sets out the grounds on which the  
6 warrant is sought. If it is necessary to do so, the inspector may  
7 apply for the warrant before the information is sworn or affirmed.

8 *Magistrate may complete and sign warrant*

- 9 (4) The magistrate may complete and sign the same warrant that would  
10 have been issued under section 69EH or 69EHA if the magistrate is  
11 satisfied that there are reasonable grounds for doing so:  
12 (a) after considering the terms of the information; and  
13 (b) after receiving such further information (if any) as the  
14 magistrate requires concerning the grounds on which the  
15 issue of the warrant is being sought.
- 16 (5) After completing and signing the warrant, the magistrate must  
17 inform the inspector, by telephone, fax or other electronic means,  
18 of:  
19 (a) the terms of the warrant; and  
20 (b) the day and time the warrant was signed.

21 *Obligations on inspector*

- 22 (6) The inspector must then do the following:  
23 (a) complete a form of warrant in the same terms as the warrant  
24 completed and signed by the magistrate;  
25 (b) state on the form the following:  
26 (i) the name of the magistrate;  
27 (ii) the day and time the warrant was signed;  
28 (c) send the following to the magistrate:  
29 (i) the form of warrant completed by the inspector;  
30 (ii) the information referred to in subsection (3), which  
31 must have been duly sworn or affirmed.
- 32 (7) The inspector must comply with paragraph (6)(c) by the end of the  
33 day after the earlier of the following:  
34 (a) the day the warrant ceases to be in force;

1 (b) the day the warrant is executed.

2 *Magistrate to attach documents together*

3 (8) The magistrate must attach the documents provided under  
4 paragraph (6)(c) to the warrant signed by the magistrate.

5 **69EHC Authority of warrant**

6 (1) A form of warrant duly completed under subsection 69EHB(6) is  
7 authority for the same powers as are authorised by the warrant  
8 signed by the magistrate under subsection 69EHB(4).

9 (2) In any proceedings, a court is to assume (unless the contrary is  
10 proved) that an exercise of power was not authorised by a warrant  
11 under section 69EHB if:

12 (a) it is material, in those proceedings, for the court to be  
13 satisfied that the exercise of power was authorised by that  
14 section; and

15 (b) the warrant signed by the inspector authorising the exercise  
16 of the power is not produced in evidence.

17 **69EHD Offence relating to warrants by telephone, fax etc.**

18 An inspector must not:

19 (a) state in a document that purports to be a form of warrant  
20 under section 69EHB the name of a magistrate unless that  
21 magistrate signed the warrant; or

22 (b) state on a form of warrant under that section a matter that, to  
23 the inspector's knowledge, departs in a material particular  
24 from the terms of the warrant signed by the magistrate under  
25 that section; or

26 (c) purport to execute, or present to another person, a document  
27 that purports to be a form of warrant under that section that  
28 the inspector knows departs in a material particular from the  
29 terms of a warrant signed by a magistrate under that section;  
30 or

31 (d) purport to execute, or present to another person, a document  
32 that purports to be a form of warrant under that section where  
33 the inspector knows that no warrant in the terms of the form  
34 of warrant has been completed and signed by a magistrate; or

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1 (e) give to a magistrate a form of warrant under that section that  
2 is not the form of warrant that the inspector purported to  
3 execute.

4 Penalty: Imprisonment for 2 years.

### 5 **Division 8—Powers of magistrates**

#### 6 **69EJ Powers of issuing officers**

##### 7 *Powers conferred personally*

- 8 (1) A power conferred on a magistrate by this Part is conferred on the  
9 magistrate:  
10 (a) in a personal capacity; and  
11 (b) not as a court or a member of a court.

##### 12 *Powers need not be accepted*

- 13 (2) The magistrate need not accept the power conferred.

##### 14 *Protection and immunity*

- 15 (3) A magistrate exercising a power conferred by this Part has the  
16 same protection and immunity as if the magistrate were exercising  
17 the power:  
18 (a) as the court of which the magistrate is a member; or  
19 (b) as a member of the court of which the magistrate is a  
20 member.

#### 21 **44 Division 4 of Part 7A (heading)**

22 Repeal the heading.

#### 23 **45 Before section 69EP**

24 Insert:

1 **Part 7AB—Enforcement**

2 **Division 1—Civil penalties**

3 **69EK Civil penalty orders**

4 Division 2 of Part 9A of the Code set out in the Schedule to the  
5 *Agricultural and Veterinary Chemicals Code Act 1994* has effect  
6 as if:

- 7 (a) a provision declared by this Act or the Collection Act to be a  
8 civil penalty provision were a provision declared by the Code  
9 to be a civil penalty provision; and  
10 (b) section 145CC of the Code applied to proceedings for a civil  
11 penalty order against a person for a contravention of a  
12 provision declared by this Act or the Collection Act to be a  
13 civil penalty provision.

14 **Division 2—Enforceable undertakings**

15 **69EL Acceptance of undertakings**

- 16 (1) The Chief Executive Officer may accept any of the following  
17 undertakings:  
18 (a) a written undertaking given by a person that the person will,  
19 in order to comply with a provision of this Act or the  
20 Collection Act, take specified action;  
21 (b) a written undertaking given by a person that the person will,  
22 in order to comply with a provision of this Act or the  
23 Collection Act, refrain from taking specified action;  
24 (c) a written undertaking given by a person that the person will  
25 take specified action directed towards ensuring one or more  
26 of the following:  
27 (i) that the person does not commit an offence against this  
28 Act or the Collection Act;  
29 (ii) that the person does not contravene a civil penalty  
30 provision;  
31 (iii) that the person is unlikely to commit an offence against  
32 this Act or the Collection Act, or to contravene a civil  
33 penalty provision, in the future.

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- 1 (2) The undertaking must be expressed to be an undertaking under this  
2 section.
- 3 (3) The person may withdraw or vary the undertaking at any time, but  
4 only with the written consent of the Chief Executive Officer.
- 5 (4) The Chief Executive Officer's consent is not a legislative  
6 instrument.
- 7 (5) The Chief Executive Officer may, by written notice given to the  
8 person, cancel the undertaking.
- 9 (6) The APVMA must publish the undertaking on the APVMA's  
10 website.

### 11 **69ELA Enforcement of undertakings**

- 12 (1) If:  
13 (a) a person has given an undertaking under section 69EL; and  
14 (b) the undertaking has not been withdrawn or cancelled; and  
15 (c) the Chief Executive Officer considers that the person has  
16 breached the undertaking;  
17 the APVMA may, on behalf of the Commonwealth, apply to a  
18 court of competent jurisdiction for an order under subsection (2).
- 19 (2) If the court is satisfied that the person has breached the  
20 undertaking, the court may make any or all of the following orders:  
21 (a) an order directing the person to comply with the undertaking;  
22 (b) an order directing the person to pay to the Commonwealth an  
23 amount up to the amount of any financial benefit that the  
24 person has obtained directly or indirectly and that is  
25 reasonably attributable to the breach;  
26 (c) any order that the court considers appropriate directing the  
27 person to compensate any other person who has suffered loss  
28 or damage as a result of the breach;  
29 (d) any other order that the court considers appropriate.

1 **Division 3—Substantiation notices**

2 **69EM APVMA may require claims to be substantiated etc.**

- 3 (1) This section applies if a person has made a claim or representation  
4 in relation to:
- 5 (a) the import, or possible import, of a chemical product by the  
6 person or another person; or
  - 7 (b) the export of a chemical product by the person or another  
8 person.
- 9 (2) The APVMA may give the person who made the claim or  
10 representation a written notice that requires the person to do either  
11 or both of the following:
- 12 (a) give information and/or produce documents to the APVMA  
13 that could be capable of substantiating or supporting the  
14 claim or representation;
  - 15 (b) give information and/or produce documents to the APVMA  
16 that are of a kind specified in the notice;
- 17 within 21 days after the notice is given to the person who made the  
18 claim or representation.
- 19 (3) Any kind of information or documents that the APVMA specifies  
20 under paragraph (2)(b) must be a kind that the APVMA is satisfied  
21 is relevant to substantiating or supporting the claim or  
22 representation.
- 23 (4) The notice must:
- 24 (a) name the person to whom it is given; and
  - 25 (b) specify the claim or representation to which it relates; and
  - 26 (c) explain the effect of sections 69EMA and 69EMB.
- 27 (5) The notice may relate to more than one claim or representation that  
28 the person has made.
- 29 (6) This section does not apply to a person who made the claim or  
30 representation if the person:
- 31 (a) made the claim or representation by publishing it on behalf of  
32 another person in the course of carrying on a business of  
33 providing information; and

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- 1 (b) does not have a commercial relationship with the other  
2 person other than for the purpose of:  
3 (i) publishing claims or representations promoting, or  
4 apparently intended to promote, the other person's  
5 business or other activities; or  
6 (ii) the other person supplying goods or services.

### 7 **69EMA Compliance with substantiation notices**

- 8 (1) A person given a substantiation notice under section 69EM must  
9 comply with the notice:  
10 (a) within the period specified in the notice; or  
11 (b) within such further time as the APVMA allows under  
12 subsection (3).
- 13 (2) A person given a substantiation notice under section 69EM may  
14 apply to the APVMA for further time to comply with the notice.  
15 An application must be in writing and made within 21 days after  
16 the notice is given to the person.
- 17 (3) The APVMA may, by written notice given to the person, extend  
18 the period within which the person must comply with the notice.
- 19 (4) Despite subsection (1), an individual may refuse or fail to give  
20 particular information or produce a particular document in  
21 compliance with a substantiation notice on the ground that the  
22 information, or production of the document, might tend to  
23 incriminate the individual or to expose the individual to a penalty.

### 24 **69EMB Failure to comply with substantiation notice**

- 25 A person commits an offence if:  
26 (a) the person is given a notice under section 69EM; and  
27 (b) the person fails to comply with the notice:  
28 (i) within the period specified in the notice; or  
29 (ii) if the APVMA has allowed the person further time  
30 under subsection 69EMA(3)—within such further time.
- 31 Penalty: 50 penalty units.

1 **Division 4—Warning notices**

2 **69EN APVMA may issue a warning notice**

3 The APVMA may issue a formal warning to a person if the  
4 APVMA has reasonable grounds to suspect that the person's  
5 conduct may contravene this Act or the Collection Act.

6 **Division 5—Miscellaneous**

7 **46 Subsections 69EP(6) and 69EP(7) (penalties)**

8 Repeal the penalties, substitute:

9 Penalty: 50 penalty units.

10 **47 Section 69EQ**

11 Before “this Part”, insert “Part 7A, 7AA or”.

12 **48 Section 69ER**

13 Repeal the section, substitute:

14 **69ER False or misleading information or document**

- 15 (1) A person commits an offence if, for the purposes of, or in  
16 connection with, the making of a decision by the APVMA as to  
17 whether it should give a consent under section 69B, the person:
- 18 (a) gives information (whether orally or in writing) that the  
19 person knows to be false or misleading in a material  
20 particular; or
  - 21 (b) produces a document that the person knows to be false or  
22 misleading in a material particular without:
    - 23 (i) indicating to the person to whom the document is  
24 produced that it is false or misleading and the respect in  
25 which it is false or misleading; and
    - 26 (ii) providing correct information to that person if the  
27 person producing the document is in possession of, or  
28 can reasonably acquire, the correct information.

29 Penalty: 300 penalty units.

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- 1 (2) A person commits an offence if, in compliance or purported  
2 compliance with a requirement made by an inspector under  
3 Part 7A, Part 7AA or this Part or for the purposes of, or in  
4 connection with, any provision of Part 7A (other than section 69B),  
5 Part 7AA or this Part, the person:  
6 (a) gives information (whether orally or in writing) that the  
7 person knows to be false or misleading in a material  
8 particular; or  
9 (b) produces a document that the person knows to be false or  
10 misleading in a material particular without:  
11 (i) indicating to the person to whom the document is  
12 produced that it is false or misleading and the respect in  
13 which it is false or misleading; and  
14 (ii) providing correct information to that person if the  
15 person producing the document is in possession of, or  
16 can reasonably acquire, the correct information.

17 Penalty: 60 penalty units.

### 18 **49 Subsections 69ET(1), 69EU(1) and 69EU(3)**

19 Before “this Part”, insert “Part 7A, 7AA or”.

### 20 **50 Paragraph 69EU(5)(a)**

21 Before “this Part”, insert “Part 7A, 7AA or”.

### 22 **51 Subsection 69F(2)**

23 Omit “particular”.

## 24 ***Agricultural and Veterinary Chemicals Code Act 1994***

### 25 **52 Subsection 3(1) of the Schedule**

26 Insert:

27 *agvet law* means:

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

1 **53 Subsection 3(1) of the Schedule**

2 Insert:

3 *agvet penalty provision* means:

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

10 **54 Subsection 3(1) of the Schedule**

11 Insert:

12 *business premises* means premises that:

- 13 (a) are used for, or in connection with, the supply of an active  
14 constituent for a proposed or existing chemical product or a  
15 chemical product; and  
16 (b) are open to the public on a regular basis.

17 **55 Subsection 3(1) of the Schedule**

18 Insert:

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

20 **56 Subsection 3(1) of the Schedule**

21 Insert:

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

24 **57 Subsection 3(1) of the Schedule**

25 Insert:

26 *counterfeit active constituent* has the meaning given by subsection  
27 95A(2).

28 **58 Subsection 3(1) of the Schedule**

29 Insert:

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1                    *counterfeit chemical product* has the meaning given by subsection  
2                    95B(2).

### 3                    **59 Subsection 3(1) of the Schedule**

4                    Insert:

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

### 7                    **60 Subsection 3(1) of the Schedule**

8                    Insert:

9                    *data* includes:

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

### 12                    **61 Subsection 3(1) of the Schedule**

13                    Insert:

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

### 17                    **62 Subsection 3(1) of the Schedule**

18                    Insert:

19                    *evidential material* means any of the following:

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

### 32                    **63 Subsection 3(1) of the Schedule**

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1           Insert:

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

## 5       **64 Subsection 3(1) of the Schedule**

6           Insert:

7                     *investigation powers* has the meaning given by sections 132A,  
8                     132B and 132C.

## 9       **65 Subsection 3(1) of the Schedule**

10          Insert:

11                    *investigation warrant* means:

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

## 16       **66 Subsection 3(1) of the Schedule**

17          Insert:

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

## 20       **67 Subsection 3(1) of the Schedule**

21          Insert:

22                    *monitoring warrant* means:

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

## 27       **68 Subsection 3(1) of the Schedule**

28          Insert:

29                    *person assisting* an inspector:

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

### 69 Subsection 3(1) of the Schedule

5  
6 Insert:

7 *warrant* means a monitoring warrant or an investigation warrant.

### 70 Section 8A of the Schedule

8  
9 Before “Chapter 2”, insert “(1)”.

### 71 At the end of section 8A of the Schedule

10  
11 Add:

- 12 (2) For the purposes of applying Chapter 2 of the *Criminal Code* to an  
13 offence in a provision referred to in column 1 of an item in the  
14 following table, the physical elements of the offence are set out in  
15 the provision referred to in column 2 of the item:  
16

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#### Physical elements for certain offences

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Item	Column 1 Offence	Column 2 Provision setting out physical elements of the offence
1	section 32	subsection 32(3)
2	section 33	subsection 33(2)
3	section 45A	subsection 45A(6)
4	section 54	subsection 54(4)
5	section 55	subsection 55(4)
6	section 56ZQ	subsection 56ZQ(4)
7	section 74	subsection 74(1)
8	section 75	subsection 75(1)
9	section 76	subsection 76(1)
10	section 77	subsection 77(1)
11	section 78	subsection 78(1)
12	section 79	subsection 79(1)

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Enforcement **Schedule 4**

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**Physical elements for certain offences**

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<b>Item</b>	<b>Column 1 Offence</b>	<b>Column 2 Provision setting out physical elements of the offence</b>
13	section 79A	subsection 79A(1)
14	section 79B	subsection 79B(1)
15	section 80	subsection 80(1)
16	section 81	subsection 81(1)
17	section 83	subsection 83(1)
18	section 84	subsection 84(1)
19	section 85	subsection 85(1)
20	section 86	subsection 86(2)
21	section 87	subsection 87(2)
22	section 88	subsection 88(2)
23	section 89	subsection 89(1)
24	section 91	subsection 91(1)
25	section 91A	subsection 91A(1)
26	section 92	subsection 92(1)
27	section 95A	subsection 95A(1)
28	section 95B	subsection 95B(1)
29	section 99	subsection 99(5)
30	section 105	subsection 105(1)
31	section 116A	subsection 116A(1)
32	section 121	subsection 121(1)
33	section 121A	subsection 121A(1)
34	section 121B	subsection 121B(1)
35	section 160A	subsection 160A(2)
36	section 161	subsection 161(1)

1

2 **72 Subsection 23(1) of the Schedule**

3 Repeal the subsection, substitute:

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- 1 (1) The approval of an active constituent for a proposed or existing  
2 chemical product or the registration of a chemical product is  
3 subject to:  
4 (a) the conditions prescribed by the regulations (whether or not  
5 the conditions are prescribed at the time approval or  
6 registration is granted); and  
7 (b) any conditions imposed on the approval or registration that  
8 the APVMA thinks appropriate.

- 9 (1A) The conditions prescribed by the regulations may be expressed to  
10 apply in relation to:  
11 (a) a particular active constituent or chemical product; or  
12 (b) a class of active constituents or chemical products; or  
13 (c) all active constituents or chemical products.

### 14 **73 Subsection 32(3) of the Schedule (penalty)**

15 Repeal the penalty.

### 16 **74 Subsection 32(3A) of the Schedule**

17 Repeal the subsection.

### 18 **75 After subsection 32(4) of the Schedule**

19 Insert:

- 20 (4A) A person commits an offence of strict liability if the person  
21 contravenes subsection (3).

22 Penalty: 120 penalty units.

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

24 Note 2: For the physical elements of this offence, see subsection 8A(2) of this  
25 Code.

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

- 28 (4B) Subsection (3) is a *civil penalty provision*.

29 Note: Part 9A provides for pecuniary penalties for contraventions of civil  
30 penalty provisions.

- 31 (4C) A person who wishes to rely on subsection (4) in proceedings for a  
32 civil penalty order bears an evidential burden in relation to a matter  
33 in that subsection.

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1 **76 Subsection 33(2) of the Schedule (penalty)**

2 Repeal the penalty.

3 **77 Subsection 33(2A) of the Schedule**

4 Repeal the subsection.

5 **78 After subsection 33(3) of the Schedule**

6 Insert:

7 (3A) A person commits an offence of strict liability if the person  
8 contravenes subsection (2).

9 Penalty: 120 penalty units.

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

11 Note 2: For the physical elements of this offence, see subsection 8A(2) of this  
12 Code.

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

15 (3B) Subsection (2) is a *civil penalty provision*.

16 Note: Part 9A provides for pecuniary penalties for contraventions of civil  
17 penalty provisions.

18 (3C) A person who wishes to rely on subsection (3) in proceedings for a  
19 civil penalty order bears an evidential burden in relation to a matter  
20 in that subsection.

21 **79 After section 35 of the Schedule**

22 Insert:

23 **35A Suspension or cancellation of approval or registration if**  
24 **imminent risk to public health etc.**

25 The APVMA may suspend or cancel:

26 (a) the approval of an active constituent for a proposed or  
27 existing chemical product; or

28 (b) the registration of a chemical product;

29 if the APVMA considers that doing so is necessary to prevent  
30 imminent risk to public health or occupational health or safety.

31 Note: Section 43 deals with the effect of suspension of approval or  
32 registration.

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1 **80 After section 38 of the Schedule**

2 Insert:

3 **38A Suspension or cancellation of approval or registration for**  
4 **providing false or misleading information**

- 5 (1) The APVMA may suspend or cancel the approval of an active  
6 constituent for a proposed or existing chemical product if:  
7 (a) the interested person in relation to the constituent or an  
8 approved person has made a statement or given information:  
9 (i) in or in connection with an application for approval of  
10 the constituent; or  
11 (ii) in or in connection with a continuation application in  
12 respect of the constituent; or  
13 (iii) in response to a notice given to the person under  
14 section 159; or  
15 (iv) as required by section 160A or 161; and  
16 (b) the statement or information was false or misleading in a  
17 material particular.
- 18 (2) The APVMA may suspend or cancel the registration of a chemical  
19 product if:  
20 (a) the interested person in relation to the product or an approved  
21 person has made a statement or given information:  
22 (i) in or in connection with an application for registration  
23 of the product; or  
24 (ii) in or in connection with a continuation application in  
25 respect of the product; or  
26 (iii) in response to a notice given to the person under  
27 section 159; or  
28 (iv) as required by section 160A or 161; and  
29 (b) the statement or information was false or misleading in a  
30 material particular.
- 31 (3) Before taking action under subsection (1) or (2), the APVMA  
32 must:  
33 (a) inform the interested person and approved person, by written  
34 notice, that the APVMA proposes to suspend or cancel the  
35 approval, or suspend or cancel the registration, as the case

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1                                    may be, and set out the reasons for the proposed suspension  
2                                    or cancellation; and

3                                    (b) give the person a reasonable opportunity to make  
4                                    submissions to the APVMA in relation to the proposed  
5                                    suspension or cancellation.

6                                    (4) The APVMA is not to make a decision relating to the proposed  
7                                    suspension or cancellation, as the case may be, until it has had  
8                                    regard to any submissions the person makes under  
9                                    paragraph (3)(b).

10                                   (5) A written notice under subsection (3) must specify the period of  
11                                   the suspension.

12                                   Note:        Section 43 deals with the effect of suspension of approval or  
13                                   registration.

## 14        **81 Subsection 45A(6) of the Schedule (penalty)**

15                                   Repeal the penalty.

## 16        **82 Subsection 45A(7) of the Schedule**

17                                   Repeal the subsection.

## 18        **83 At the end of section 45A of the Schedule**

19                                   Add:

20                                   (9) A person commits an offence if the person contravenes  
21                                   subsection (6).

22                                   Penalty: 300 penalty units.

23                                   Note 1:     For the physical elements of this offence, see subsection 8A(2) of this  
24                                   Code.

25                                   Note 2:     A defendant bears an evidential burden in relation to the matter in  
26                                   subsection (8). See subsection 13.3(3) of the *Criminal Code*.

27                                   (10) For the purposes of subsection (9), strict liability applies to the  
28                                   physical element of circumstance in paragraph (6)(a), that the  
29                                   notice is a notice given to the person under this section.

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

31                                   (11) Subsection (6) is a *civil penalty provision*.

32                                   Note:        Part 9A provides for pecuniary penalties for contraventions of civil  
33                                   penalty provisions.

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1 (12) A person who wishes to rely on subsection (8) in proceedings for a  
2 civil penalty order bears an evidential burden in relation to a matter  
3 in that subsection.

### 4 **84 Subsection 55(4) of the Schedule**

5 Omit “subsection (5)”, substitute “subsections (5) and (6)”.

### 6 **85 Subsection 55(4) of the Schedule (penalty)**

7 Repeal the penalty.

### 8 **86 Subsection 55(6) of the Schedule**

9 Omit “It is a defence to a prosecution of a person for an offence against  
10 subsection (4)”, substitute “Subsection (4) does not apply”.

### 11 **87 Subsection 55(6A) of the Schedule**

12 Repeal the subsection, substitute:

13 (6A) A person commits an offence if the person contravenes  
14 subsection (4).

15 Penalty: 300 penalty units.

16 Note 1: For the physical elements of this offence, see subsection 8A(2) of this  
17 Code.

18 Note 2: A defendant bears an evidential burden in relation to the matter in  
19 subsection (5). See subsection 13.3(3) of the *Criminal Code*.

20 Note 3: A defendant bears a legal burden in relation to the matter in  
21 subsection (6). See section 13.4 of the *Criminal Code*.

22 (6B) For the purposes of subsection (6A), strict liability applies to the  
23 physical element of circumstance in paragraph (4)(a), that the  
24 publishing of the notice was under this section.

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

26 (6C) Subsection (4) is a *civil penalty provision*.

27 Note: Part 9A provides for pecuniary penalties for contraventions of civil  
28 penalty provisions.

29 (6D) A person who wishes to rely on subsection (5) in proceedings for a  
30 civil penalty order bears an evidential burden in relation to a matter  
31 in that subsection.

1 (6E) A person who wishes to rely on subsection (6) in proceedings for a  
2 civil penalty order bears the burden of proving the existence of a  
3 matter in that subsection.

4 **88 Subsection 74(1) of the Schedule (penalty)**

5 Repeal the penalty.

6 **89 Subsection 74(1) of the Schedule (note)**

7 Repeal the note.

8 **90 Subsection 74(3) of the Schedule**

9 Omit “It is a defence to a prosecution of a person for an offence against  
10 subsection (1)”, substitute “Subsection (1) does not apply”.

11 **91 Subsection 74(3) of the Schedule (note)**

12 Repeal the note.

13 **92 After subsection 74(3) of the Schedule**

14 Insert:

15 (3A) A person commits an offence if the person contravenes  
16 subsection (1).

17 Penalty: 200 penalty units.

18 Note 1: For the physical elements of this offence, see subsection 8A(2) of this  
19 Code.

20 Note 2: A defendant bears an evidential burden in relation to the matters in  
21 paragraphs (1)(a) to (d). See subsection 13.3(3) of the *Criminal Code*.

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

24 (3B) Subsection (1) is a *civil penalty provision*.

25 Note: Part 9A provides for pecuniary penalties for contraventions of civil  
26 penalty provisions.

27 (3C) A person who wishes to rely on any of paragraphs (1)(a) to (d) in  
28 proceedings for a civil penalty order bears an evidential burden in  
29 relation to a matter in those paragraphs.

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1 (3D) A person who wishes to rely on subsection (3) in proceedings for a  
2 civil penalty order bears the burden of proving the existence of a  
3 matter in that subsection.

### 4 **93 Subsection 75(1) of the Schedule (penalty)**

5 Repeal the penalty.

### 6 **94 Subsection 75(1) of the Schedule (note)**

7 Repeal the note.

### 8 **95 After subsection 75(1) of the Schedule**

9 Insert:

10 (1A) Subsection (1) does not apply if the person proves that, at the  
11 relevant time, the person did not know, and could not reasonably  
12 be expected to have known, that the chemical product was not a  
13 registered chemical product, a registered listed chemical product or  
14 a reserved chemical product.

15 (1B) A person commits an offence if the person contravenes  
16 subsection (1).

17 Penalty: 200 penalty units.

18 Note 1: For the physical elements of this offence, see subsection 8A(2) of this  
19 Code.

20 Note 2: A defendant bears an evidential burden in relation to the matters in  
21 paragraphs (1)(a) to (c). See subsection 13.3(3) of the *Criminal Code*.

22 Note 3: A defendant bears a legal burden in relation to the matter in  
23 subsection (1A). See section 13.4 of the *Criminal Code*.

24 (1C) Subsection (1) is a *civil penalty provision*.

25 Note: Part 9A provides for pecuniary penalties for contraventions of civil  
26 penalty provisions.

27 (1D) A person who wishes to rely on any of paragraphs (1)(a) to (c) in  
28 proceedings for a civil penalty order bears an evidential burden in  
29 relation to a matter in those paragraphs.

30 (1E) A person who wishes to rely on subsection (1A) in proceedings for  
31 a civil penalty order bears the burden of proving the existence of a  
32 matter in that subsection.

1 **96 Subsection 75(3) of the Schedule**

2 Repeal the subsection.

3 **97 Subsection 76(1) of the Schedule (penalty)**

4 Repeal the penalty.

5 **98 Subsection 76(1) of the Schedule (note)**

6 Repeal the note.

7 **99 After subsection 76(1) of the Schedule**

8 Insert:

9 (1A) Subsection (1) does not apply if the person proves that, when the  
10 person supplied the constituent, or caused or permitted the  
11 constituent to be supplied, as the case may be, the person did not  
12 know, and could not reasonably be expected to have known, that  
13 the active constituent was not an approved active constituent.

14 (1B) A person commits an offence if the person contravenes  
15 subsection (1).

16 Penalty: 300 penalty units.

17 Note 1: For the physical elements of this offence, see subsection 8A(2) of this  
18 Code.

19 Note 2: A defendant bears an evidential burden in relation to the matters in  
20 paragraphs (1)(a) to (c). See subsection 13.3(3) of the *Criminal Code*.

21 Note 3: A defendant bears a legal burden in relation to the matter in  
22 subsection (1A). See section 13.4 of the *Criminal Code*.

23 (1C) Subsection (1) is a *civil penalty provision*.

24 Note: Part 9A provides for pecuniary penalties for contraventions of civil  
25 penalty provisions.

26 (1D) A person who wishes to rely on any of paragraphs (1)(a) to (c) in  
27 proceedings for a civil penalty order bears an evidential burden in  
28 relation to a matter in those paragraphs.

29 (1E) A person who wishes to rely on subsection (1A) in proceedings for  
30 a civil penalty order bears the burden of proving the existence of a  
31 matter in that subsection.

32 **100 Subsection 76(3) of the Schedule**

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# EXPOSURE DRAFT

## Schedule 4 Enforcement

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1 Repeal the subsection.

### 2 **101 Section 77 of the Schedule**

3 Repeal the section, substitute:

#### 4 **77 Supply of approved active constituents in contravention of** 5 **conditions of approval**

6 (1) A person must not supply, or cause or permit to be supplied, an  
7 approved active constituent for a proposed or existing chemical  
8 product whose approval is subject to conditions unless the supply:

9 (a) is in accordance with the conditions; or

10 (b) is authorised by a permit.

11 (2) Subsection (1) does not apply if the person proves that, when the  
12 person supplied the constituent, or caused or permitted the  
13 constituent to be supplied, as the case may be, the person did not  
14 know, and could not reasonably be expected to have known, that  
15 the approval of the constituent was subject to the conditions  
16 referred to in that subsection.

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

19 Penalty: 300 penalty units.

20 Note 1: For the physical elements of this offence, see subsection 8A(2) of this  
21 Code.

22 Note 2: A defendant bears an evidential burden in relation to the matters in  
23 paragraphs (1)(a) and (b). See subsection 13.3(3) of the *Criminal*  
24 *Code*.

25 Note 3: A defendant bears a legal burden in relation to the matter in  
26 subsection (2). See section 13.4 of the *Criminal Code*.

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

28 Note: Part 9A provides for pecuniary penalties for contraventions of civil  
29 penalty provisions.

30 (5) A person who wishes to rely on paragraph (1)(a) or (b) in  
31 proceedings for a civil penalty order bears an evidential burden in  
32 relation to a matter in that paragraph.

# EXPOSURE DRAFT

Enforcement **Schedule 4**

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1 (6) A person who wishes to rely on subsection (2) in proceedings for a  
2 civil penalty order bears the burden of proving the existence of a  
3 matter in that subsection.

## 4 **102 Subsection 78(1) of the Schedule (penalty)**

5 Repeal the penalty.

## 6 **103 Subsection 78(1) of the Schedule (note)**

7 Repeal the note.

## 8 **104 After subsection 78(1) of the Schedule**

9 Insert:

10 (1A) Subsection (1) does not apply if the person proves that, when the  
11 chemical product was supplied, or caused or permitted to be  
12 supplied, as the case may be, the person did not know, and could  
13 not reasonably be expected to have known, that the product was  
14 not a registered chemical product, a registered listed chemical  
15 product or a reserved chemical product.

16 (1B) A person commits an offence if the person contravenes  
17 subsection (1).

18 Penalty: 300 penalty units.

19 Note 1: For the physical elements of this offence, see subsection 8A(2) of this  
20 Code.

21 Note 2: A defendant bears an evidential burden in relation to the matters in  
22 paragraphs (1)(a) to (c). See subsection 13.3(3) of the *Criminal Code*.

23 Note 3: A defendant bears a legal burden in relation to the matter in  
24 subsection (1A). See section 13.4 of the *Criminal Code*.

25 (1C) Subsection (1) is a *civil penalty provision*.

26 Note: Part 9A provides for pecuniary penalties for contraventions of civil  
27 penalty provisions.

28 (1D) A person who wishes to rely on any of paragraphs (1)(a) to (c) in  
29 proceedings for a civil penalty order bears an evidential burden in  
30 relation to a matter in those paragraphs.

31 (1E) A person who wishes to rely on subsection (1A) in proceedings for  
32 a civil penalty order bears the burden of proving the existence of a  
33 matter in that subsection.

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# EXPOSURE DRAFT

## Schedule 4 Enforcement

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1     **105 Subsection 78(3) of the Schedule**

2             Repeal the subsection.

3     **106 Sections 79 to 80 of the Schedule**

4             Repeal the sections, substitute:

5     **79 Supply of registered chemical products in contravention of**  
6             **conditions of registration**

7             (1) A person must not supply, or cause or permit to be supplied, a  
8                 registered chemical product whose registration is subject to  
9                 conditions unless the supply:

10                 (a) is in accordance with the conditions; or

11                 (b) is authorised by a permit.

12             (2) Subsection (1) does not apply if the person proves that, when the  
13                 person supplied the chemical product, or caused or permitted the  
14                 product to be supplied, as the case may be, the person did not  
15                 know, and could not reasonably be expected to have known, that  
16                 the registration of the product was subject to the conditions  
17                 referred to in that subsection.

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

20             Penalty: 300 penalty units.

21             Note 1: For the physical elements of this offence, see subsection 8A(2) of this  
22                 Code.

23             Note 2: A defendant bears an evidential burden in relation to the matters in  
24                 paragraphs (1)(a) and (b). See subsection 13.3(3) of the *Criminal*  
25                 Code.

26             Note 3: A defendant bears a legal burden in relation to the matter in  
27                 subsection (2). See section 13.4 of the *Criminal Code*.

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

29             Note: Part 9A provides for pecuniary penalties for contraventions of civil  
30                 penalty provisions.

31             (5) A person who wishes to rely on paragraph (1)(a) or (b) in  
32                 proceedings for a civil penalty order bears an evidential burden in  
33                 relation to a matter in that paragraph.

- 1 (6) A person who wishes to rely on subsection (2) in proceedings for a  
2 civil penalty order bears the burden of proving the existence of a  
3 matter in that subsection.

4 **79A Supply of registered listed chemical products in contravention**  
5 **of conditions of listed registration**

- 6 (1) A person must not supply, or cause or permit to be supplied, a  
7 registered listed chemical product whose listed registration is  
8 subject to conditions unless the supply:

- 9 (a) is in accordance with the conditions; or  
10 (b) is authorised by a permit.

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

13 Penalty: 300 penalty units.

14 Note 1: For the physical elements of this offence, see subsection 8A(2).

15 Note 2: A defendant bears an evidential burden in relation to the matters in  
16 paragraphs (1)(a) and (b). See subsection 13.3(3) of the *Criminal*  
17 *Code*.

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

19 Note: Part 9A provides for pecuniary penalties for contraventions of civil  
20 penalty provisions.

- 21 (4) A person who wishes to rely on paragraph (1)(a) or (b) in  
22 proceedings for a civil penalty order bears an evidential burden in  
23 relation to a matter in that paragraph.

24 **79B Supply of reserved chemical products contrary to conditions**  
25 **specified in the regulations**

- 26 (1) A person must not supply, or cause or permit to be supplied, a  
27 reserved chemical product unless the supply:

- 28 (a) is in accordance with the conditions specified in regulations  
29 made for the purposes of section 56ZU that relate to the  
30 product; or

- 31 (b) is authorised by a permit.

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

# EXPOSURE DRAFT

## Schedule 4 Enforcement

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- 1                   Penalty: 300 penalty units.
- 2                   Note 1:    For the physical elements of this offence, see subsection 8A(2) of this  
3                   Code.
- 4                   Note 2:    A defendant bears an evidential burden in relation to the matters in  
5                   paragraphs (1)(a) and (b). See subsection 13.3(3) of the *Criminal*  
6                   *Code*.
- 7                   (3) For the purposes of subsection (2), strict liability applies to the  
8                   physical element of circumstance in paragraph (1)(a), that the  
9                   conditions relating to the product were specified in regulations  
10                  made for the purposes of section 56ZU.
- 11                  Note:       For strict liability, see section 6.1 of the *Criminal Code*.
- 12                  (4) Subsection (1) is a *civil penalty provision*.
- 13                  Note:       Part 9A provides for pecuniary penalties for contraventions of civil  
14                  penalty provisions.
- 15                  (5) A person who wishes to rely on paragraph (1)(a) or (b) in  
16                  proceedings for a civil penalty order bears an evidential burden in  
17                  relation to a matter in that paragraph.

### 80 Supply of chemical products without a label

- 18
- 19                  (1) A person must not supply, or cause or permit to be supplied, a  
20                  chemical product in a container that does not have a label attached  
21                  to it.
- 22                  (2) Subsection (1) does not apply if the supply is authorised by a  
23                  permit.
- 24                  (3) Subsection (1) does not apply if the person proves that, when the  
25                  chemical product was supplied, or caused or permitted to be  
26                  supplied, as the case may be, in the container, the person did not  
27                  know, and could not reasonably be expected to have known, that  
28                  the container did not have a label attached to it.
- 29                  (4) A person commits an offence if the person contravenes  
30                  subsection (1).
- 31                  Penalty: 300 penalty units.
- 32                  Note 1:    For the physical elements of this offence, see subsection 8A(2) of this  
33                  Code.

# EXPOSURE DRAFT

Enforcement **Schedule 4**

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

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

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

6 Note: Part 9A provides for pecuniary penalties for contraventions of civil  
7 penalty provisions.

8 (6) A person who wishes to rely on subsection (2) in proceedings for a  
9 civil penalty order bears an evidential burden in relation to a matter  
10 in that subsection.

11 (7) A person who wishes to rely on subsection (3) in proceedings for a  
12 civil penalty order bears the burden of proving the existence of a  
13 matter in that subsection.

## 14 **107 Subsection 81(1) of the Schedule (penalty)**

15 Repeal the penalty.

## 16 **108 Subsection 81(2) of the Schedule**

17 Omit “It is a defence to a prosecution of a person for an offence against  
18 subsection (1)”, substitute “Subsection (1) does not apply”.

## 19 **109 Subsection 81(2) of the Schedule (note)**

20 Repeal the note.

## 21 **110 At the end of section 81 of the Schedule**

22 Add:

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

25 Penalty: 300 penalty units.

26 Note 1: For the physical elements of this offence, see subsection 8A(2) of this  
27 Code.

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

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

32 (5) Subsection (1) is a *civil penalty provision*.

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# EXPOSURE DRAFT

## Schedule 4 Enforcement

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

3 (6) A person who wishes to rely on subsection (2) in proceedings for a  
4 civil penalty order bears the burden of proving the existence of a  
5 matter in that subsection.

6 (7) A person who wishes to rely on subsection (3) in proceedings for a  
7 civil penalty order bears an evidential burden in relation to a matter  
8 in that subsection.

### 9 **111 Subsections 82(1) and (3) of the Schedule**

10 Omit “paragraph 131(1)(f)”, substitute “paragraph 132A(e)”.

### 11 **112 Subsection 83(1) of the Schedule (penalty)**

12 Repeal the penalty.

### 13 **113 Subsection 83(2) of the Schedule**

14 Repeal the subsection, substitute:

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

17 Penalty: 300 penalty units.

18 Note: For the physical elements of this offence, see subsection 8A(2).

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

20 Note: Part 9A provides for pecuniary penalties for contraventions of civil  
21 penalty provisions.

### 22 **114 Subsection 84(1) of the Schedule (penalty)**

23 Repeal the penalty.

### 24 **115 Subsection 84(3) of the Schedule (note)**

25 Repeal the note.

### 26 **116 Subsection 84(4) of the Schedule**

27 Repeal the subsection, substitute:

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

# EXPOSURE DRAFT

Enforcement **Schedule 4**

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1 Penalty: 300 penalty units.

2 Note 1: For the physical elements of this offence, see subsection 8A(2) of this  
3 Code.

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

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

7 Note: Part 9A provides for pecuniary penalties for contraventions of civil  
8 penalty provisions.

9 (6) A person who wishes to rely on subsection (3) in proceedings for a  
10 civil penalty order bears an evidential burden in relation to a matter  
11 in that subsection.

## 12 **117 Subsection 85(1) of the Schedule (penalty)**

13 Repeal the penalty.

## 14 **118 Subsection 85(3) of the Schedule (note)**

15 Repeal the note.

## 16 **119 Subsections 85(4) and (5) of the Schedule**

17 Repeal the subsections, substitute:

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

20 Penalty: 300 penalty units.

21 Note 1: For the physical elements of this offence, see subsection 8A(2) of this  
22 Code.

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

25 (5) For the purposes of subsection (4), strict liability applies to the  
26 physical element of circumstance in subsection (1), that it is the  
27 regulations that require an expiry date to be contained on a label  
28 attached to a container of the product.

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

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

31 Note: Part 9A provides for pecuniary penalties for contraventions of civil  
32 penalty provisions.

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# EXPOSURE DRAFT

## Schedule 4 Enforcement

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- 1 (7) A person who wishes to rely on subsection (3) in proceedings for a  
2 civil penalty order bears an evidential burden in relation to a matter  
3 in that subsection.

### 4 **120 Section 86 of the Schedule**

5 Repeal the section, substitute:

### 6 **86 Labels not to be detached etc.**

- 7 (1) This section applies if:  
8 (a) a label attached to a container of a chemical product contains  
9 any relevant particular identical to any relevant particular  
10 contained on an approved label for containers for the product;  
11 or  
12 (b) a label attached to a container of a chemical product contains  
13 any relevant particular identical to any matter required by an  
14 established standard for the product to be included on a label  
15 for containers for the product.
- 16 (2) A person must not do any of the following:  
17 (a) detach or otherwise remove the label;  
18 (b) cause or permit the label to be detached or otherwise  
19 removed;  
20 (c) alter, deface, obliterate or destroy a relevant particular  
21 contained on the label;  
22 (d) cause or permit a relevant particular contained on the label to  
23 be altered, defaced, obliterated or destroyed;  
24 (e) attach another label to, or endorse anything upon, the  
25 container that has the effect of expressly or impliedly  
26 negating, varying or in any way detracting from, qualifying  
27 or minimising the purport or effect of a relevant particular  
28 contained on the label;  
29 (f) cause or permit another label to be attached to the container  
30 that has the effect of expressly or impliedly negating, varying  
31 or in any way detracting from, qualifying or minimising the  
32 purport or effect of, a relevant particular contained on the  
33 label;  
34 (g) cause or permit anything to be endorsed upon the container  
35 that has the effect of expressly or impliedly negating, varying  
36 or in any way detracting from, qualifying or minimising the

# EXPOSURE DRAFT

Enforcement **Schedule 4**

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1                                   purport or effect of, a relevant particular contained on the  
2                                   label.

3                   (3) Paragraphs (2)(c) and (d) do not apply if the alteration, defacing,  
4                   obliviation or destruction of the relevant particular is done by the  
5                   destruction or disposal of the chemical product without otherwise  
6                   contravening this Code.

7                   (4) A person commits an offence if the person contravenes  
8                   subsection (2).

9                   Penalty: 300 penalty units.

10                  Note 1: For the physical elements of this offence, see subsection 8A(2).

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

13                  (5) Subsection (2) is a *civil penalty provision*.

14                  Note: Part 9A provides for pecuniary penalties for contraventions of civil  
15                  penalty provisions.

16                  (6) A person who wishes to rely on subsection (3) in proceedings for a  
17                  civil penalty order bears an evidential burden in relation to a matter  
18                  in that subsection.

## 19   **121 Subsection 87(2) of the Schedule (penalty)**

20                  Repeal the penalty.

## 21   **122 Subsection 87(3) of the Schedule (note)**

22                  Repeal the note.

## 23   **123 Subsection 87(4) of the Schedule**

24                  Repeal the subsection, substitute:

25                  (4) A person commits an offence if the person contravenes  
26                  subsection (2).

27                  Penalty: 300 penalty units.

28                  Note 1: For the physical elements of this offence, see subsection 8A(2) of this  
29                  Code.

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

32                  (5) Subsection (2) is a *civil penalty provision*.

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# EXPOSURE DRAFT

## Schedule 4 Enforcement

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

3 (6) A person who wishes to rely on subsection (3) in proceedings for a  
4 civil penalty order bears an evidential burden in relation to a matter  
5 in that subsection.

### 6 **124 Subsection 88(2) of the Schedule (penalty)**

7 Repeal the penalty.

### 8 **125 Subsection 88(2) of the Schedule (note)**

9 Repeal the note.

### 10 **126 Subsection 88(3) of the Schedule**

11 Omit “It is a defence to a prosecution of a person for an offence against  
12 subsection (2) if the defendant”, substitute “Subsection (2) does not  
13 apply if the person”.

### 14 **127 Subsection 88(3) of the Schedule**

15 Omit “the defendant did”, substitute “the person did”.

### 16 **128 Subsection 88(3) of the Schedule (note)**

17 Repeal the note.

### 18 **129 At the end of section 88 of the Schedule**

19 Add:

20 (4) A person commits an offence if the person contravenes  
21 subsection (2).

22 Penalty: 60 penalty units.

23 Note 1: For the physical elements of this offence, see subsection 8A(2) of this  
24 Code.

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

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

30 (5) Subsection (2) is a *civil penalty provision*.

# EXPOSURE DRAFT

Enforcement **Schedule 4**

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

3 (6) A person who wishes to rely on paragraphs (2)(c) and (d) in  
4 proceedings for a civil penalty order bears an evidential burden in  
5 relation to the matters in those paragraphs.

6 (7) A person who wishes to rely on subsection (3) in proceedings for a  
7 civil penalty order bears the burden of proving the existence of a  
8 matter in that subsection.

## 9 **130 Subsection 89(1) of the Schedule (penalty)**

10 Repeal the penalty.

## 11 **131 Subsections 89(6) and (7) of the Schedule**

12 Repeal the subsections, substitute:

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

15 Penalty: 60 penalty units.

16 Note: For the physical elements of this offence, see subsection 8A(2).

17 (7) For the purposes of subsection (6), strict liability applies to the  
18 physical element of circumstance in paragraph (1)(f), that the  
19 particular qualities concerned were prescribed by the regulations  
20 for the purposes of that paragraph.

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

22 (8) Subsection (1) is a *civil penalty provision*.

23 Note: Part 9A provides for pecuniary penalties for contraventions of civil  
24 penalty provisions.

## 25 **132 Section 91 of the Schedule**

26 Repeal the section, substitute:

## 27 **91 Supply of date-controlled chemical product—labelling** 28 **requirements**

29 (1) A person must not supply, or cause or permit to be supplied, a  
30 date-controlled chemical product in a container that does not have  
31 attached to it an approved label containing:

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# EXPOSURE DRAFT

## Schedule 4 Enforcement

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- 1 (a) a matter that the APVMA has approved as sufficient to  
2 enable the APVMA to identify the date of manufacture of the  
3 product; and  
4 (b) the expiry date required to be contained on the label as a  
5 condition of the registration of the product.
- 6 (2) Subsection (1) does not apply to the extent that the person's  
7 conduct is otherwise authorised by a permit.
- 8 (3) A person commits an offence if the person contravenes  
9 subsection (1).
- 10 Penalty: 120 penalty units.
- 11 Note 1: For the physical elements of this offence, see subsection 8A(2) of this  
12 Code.
- 13 Note 2: A defendant bears an evidential burden in relation to the matter in  
14 subsection (2). See subsection 13.3(3) of the *Criminal Code*.
- 15 (4) For the purposes of subsection (3), strict liability applies to:  
16 (a) the physical element of circumstance in paragraph (1)(a), that  
17 the APVMA approved the matter as sufficient to enable the  
18 APVMA to identify the date of manufacture of the product;  
19 and  
20 (b) the physical element of circumstance in paragraph (1)(b), that  
21 an expiry date was required to be contained on the label as a  
22 condition of the registration of the product.
- 23 Note: For strict liability, see section 6.1 of the *Criminal Code*.
- 24 (5) Subsection (1) is a ***civil penalty provision***.
- 25 Note: Part 9A provides for pecuniary penalties for contraventions of civil  
26 penalty provisions.
- 27 (6) A person who wishes to rely on subsection (2) in proceedings for a  
28 civil penalty order bears an evidential burden in relation to a matter  
29 in that subsection.

### 91A Supply of date-controlled chemical product after expiry date

- 31 (1) If the container of a date-controlled chemical product has attached  
32 to it a label containing an expiry date, a person must not, after that  
33 date, supply, or cause or permit to be supplied, the product that is  
34 in the container unless:

- 1 (a) the person is authorised to do so by a permit; or  
2 (b) the person does so on a date that, despite the date on the  
3 label, is earlier than the date that is required to be contained  
4 on the label as a condition of the registration of the product.

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

7 Penalty: 120 penalty units.

8 Note: For the physical elements of this offence, see subsection 8A(2).

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

10 Note: Part 9A provides for pecuniary penalties for contraventions of civil  
11 penalty provisions.

### 12 **133 Subsection 92(2) of the Schedule (penalty)**

13 Repeal the penalty.

### 14 **134 Subsection 92(3) of the Schedule**

15 Repeal the subsection, substitute:

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

18 Penalty: 120 penalty units.

19 Note 1: For the physical elements of this offence, see subsection 8A(2) of this  
20 Code.

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

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

24 Note: Part 9A provides for pecuniary penalties for contraventions of civil  
25 penalty provisions.

- 26 (5) A person who wishes to rely on subsection (2) in proceedings for a  
27 civil penalty order bears an evidential burden in relation to a matter  
28 in that subsection.

### 29 **135 At the end of Part 4 of the Schedule**

30 Add:

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# EXPOSURE DRAFT

1 **Division 5—Counterfeit active constituents and chemical**  
2 **products**

3 **95A Dealing with counterfeit active constituents**

- 4 (1) A person must not manufacture or supply a counterfeit active  
5 constituent.
- 6 (2) An active constituent for a chemical product is a *counterfeit active*  
7 *constituent* if any of the following contain a false representation of  
8 a matter listed in subsection (3):
- 9 (a) the label or presentation of the active constituent;
- 10 (b) any document or record relating to the active constituent or  
11 its manufacture;
- 12 (c) any advertisement for the active constituent.
- 13 (3) The matters are as follows:
- 14 (a) the identity or name of the active constituent;
- 15 (b) the concentration, composition or purity of the active  
16 constituent;
- 17 (c) the source, manufacturer or place of manufacture of the  
18 active constituent.
- 19 (4) A person commits an offence if the person contravenes  
20 subsection (1).

21 Penalty: 300 penalty units.

22 Note: For the physical elements of this offence, see subsection 8A(2).

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

24 Note: Part 9A provides for pecuniary penalties for contraventions of civil  
25 penalty provisions.

26 **95B Dealing with counterfeit chemical products**

- 27 (1) A person must not manufacture or supply a chemical product that  
28 is counterfeit.
- 29 (2) A chemical product is a *counterfeit chemical product* if any of the  
30 following contain a false representation of a matter listed in  
31 subsection (3):

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- 1 (a) the label or presentation of the product;  
2 (b) any document or record relating to the product or its  
3 manufacture;  
4 (c) any advertisement for the product.
- 5 (3) The matters are as follows:  
6 (a) the identity or name of the product;  
7 (b) the formulation, composition or design specification of the  
8 product;  
9 (c) the presence or absence of any active constituent of the  
10 product;  
11 (d) the concentration, composition or purity of any active  
12 constituent of the product;  
13 (e) the strength or size of the product (other than the size of any  
14 pack in which the product is contained);  
15 (f) the source, manufacturer or place of manufacture of the  
16 product.
- 17 (4) A person commits an offence if the person contravenes  
18 subsection (1).
- 19 Penalty: 300 penalty units.
- 20 Note: For the physical elements of this offence, see subsection 8A(2).
- 21 (5) Subsection (1) is a *civil penalty provision*.
- 22 Note: Part 9A provides for pecuniary penalties for contraventions of civil  
23 penalty provisions.

## 24 **95C Relief for dealing with counterfeit active constituents and** 25 **counterfeit chemical products**

- 26 (1) If:  
27 (a) proceedings for the contravention of section 95A or 95B are  
28 brought against a person in a court of competent jurisdiction;  
29 and  
30 (b) in the proceedings it appears to the court that the person has,  
31 or may have, contravened the section but that:  
32 (i) the person has a reasonable excuse; and  
33 (ii) having regard to all the circumstances of the case, the  
34 person ought fairly to be excused for the contravention;
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- 1 the court may relieve the person either wholly or partly from a  
2 liability to which the person would otherwise be subject, or that  
3 might otherwise be imposed on the person, because of the  
4 contravention.
- 5 (2) If a person thinks that proceedings for the contravention of  
6 section 95A or 95B will or may be begun against the person, the  
7 person may apply to a court of competent jurisdiction for relief.
- 8 (3) On an application under subsection (2), the court may grant relief  
9 under subsection (1) as if proceedings had been begun in the court.
- 10 (4) For the purposes of subsection (2) as applying for the purposes of a  
11 case tried by a judge with a jury:  
12 (a) a reference in that subsection to a court is a reference to the  
13 judge; and  
14 (b) the relief that may be granted includes withdrawing the case  
15 in whole or in part from the jury and directing judgement to  
16 be entered for the person on such terms as to costs as the  
17 judge thinks appropriate.

### 18 *Exception*

- 19 (5) This section does not apply to civil proceedings against a person  
20 for:  
21 (a) manufacturing a counterfeit active constituent in Australia; or  
22 (b) manufacturing a counterfeit chemical product in Australia.

### 23 **136 Subsection 97(1) of the Schedule**

24 Omit “paragraph 131(1)(c) or 132(1)(d)”, substitute “section 131A or  
25 132A”.

### 26 **137 Subsection 97(7) of the Schedule**

27 Omit “section 131 or 132”, substitute “an investigation warrant”.

### 28 **138 Subsection 97(7) of the Schedule**

29 Omit “paragraph 131(1)(c) or 132(1)(d)”, substitute “section 131A or  
30 132A”.

### 31 **139 Subsection 98(6) of the Schedule**

32 Omit “section 131 or 132”, substitute “an investigation warrant”.

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1 **140 Subsection 98(6) of the Schedule**

2 Omit “paragraph 131(1)(c) or 132(1)(d)”, substitute “section 131A or  
3 132A”.

4 **141 Subsection 99(5) of the Schedule (penalty)**

5 Repeal the penalty.

6 **142 Subsections 99(5A) and (5B) of the Schedule**

7 Repeal the subsections, substitute:

8 (5A) A person commits an offence of strict liability if the person  
9 contravenes subsection (5).

10 Penalty: 120 penalty units.

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

12 Note 2: For the physical elements of this offence, see subsection 8A(2) of this  
13 Code.

14 (5B) Subsection (5) is a *civil penalty provision*.

15 Note: Part 9A provides for pecuniary penalties for contraventions of civil  
16 penalty provisions.

17 **143 Subsection 105(1) of the Schedule (penalty)**

18 Repeal the penalty.

19 **144 Subsections 105(2) and (3) of the Schedule**

20 Repeal the subsections, substitute:

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

23 Penalty: 120 penalty units.

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

25 Note 2: For the physical elements of this offence, see subsection 8A(2) of this  
26 Code.

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

28 Note: Part 9A provides for pecuniary penalties for contraventions of civil  
29 penalty provisions.

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1 **145 Section 109 of the Schedule (paragraph (a) of the**  
2 **definition of *permit*)**

3 Omit “or 91”, substitute “, 91, 91A, 121A or 121B”.

4 **146 At the end of section 109 of the Schedule**

5 Add:

6 ; or (c) a contravention of a civil penalty provision mentioned in  
7 section 74, 75, 76, 77, 78, 79, 79A, 79B, 80, 81, 84, 85, 87,  
8 91, 121A or 121B.

9 **147 At the end of subsection 112(2)**

10 Add:

11 ; (j) if the application is for a permit to do, or omit to do, any  
12 thing which would, apart from the permit, be an offence  
13 against section 121A or 121B or a contravention of the civil  
14 penalty provision referred to in either of those sections—that  
15 there are exceptional circumstances that justify granting the  
16 application.

17 **148 Subsection 114(1)**

18 Omit “The APVMA”, substitute “Subject to subsection (1B), the  
19 APVMA”.

20 **149 After subsection 114(1A)**

21 Insert:

22 (1B) The APVMA may only decide, on its own initiative, to issue a  
23 permit that would authorise a person to do, or omit to do, any thing  
24 which would, apart from the permit, be an offence against  
25 section 121A or 121B or a contravention of the civil penalty  
26 provision referred to in either of those sections if the APVMA is  
27 satisfied that there are exceptional circumstances that justify  
28 issuing the permit.

29 **150 Subsection 115(1) of the Schedule**

30 After “section 119”, insert “, 119A or 119B”.

31 **151 After section 116 of the Schedule**

32 Insert:

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1 **116A Breach of condition of permit**

2 (1) A person who is the holder of a permit must not contravene a  
3 condition of the permit.

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

6 Penalty: 300 penalty units.

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

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

10 **152 Section 118 of the Schedule (heading)**

11 Repeal the heading, substitute:

12 **118 Suspension—general grounds**

13 **153 After section 118 of the Schedule**

14 Insert:

15 **118A Suspension—imminent risk to public health etc.**

16 (1) The APVMA may, by written notice to the holder of a permit,  
17 suspend the permit if the APVMA considers that doing so is  
18 necessary to prevent:

19 (a) imminent risk to public health or occupational health or  
20 safety; or

21 (b) imminent risk to animal welfare; or

22 (c) imminent risk of impact on trade or commerce between  
23 Australia and places outside Australia.

24 (2) A written notice under subsection (1) must specify the period of  
25 the suspension.

26 **118B Suspension—providing false or misleading information**

27 (1) The APVMA may suspend a permit if:

28 (a) the holder of the permit has made a statement or given  
29 information:

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- 1 (i) in or in connection with an application for the permit; or  
2 (ii) in response to a notice given to the person under  
3 section 159; or  
4 (iii) as required by section 160A or 161; and  
5 (b) the statement or information was false or misleading in a  
6 material particular.
- 7 (2) Before taking action under subsection (1), the APVMA must:  
8 (a) inform the holder of the permit, by written notice, of the  
9 proposed suspension, and set out the reasons for it; and  
10 (b) give the holder a reasonable opportunity to make submissions  
11 to the APVMA in relation to the proposed suspension.
- 12 (3) The APVMA is not to make a decision relating to the proposed  
13 suspension until it has had regard to any submissions the person  
14 makes under paragraph (2)(b).
- 15 (4) A written notice under subsection (2) must specify the period of  
16 the suspension.

### 17 **154 Section 119 of the Schedule (heading)**

18 Repeal the heading, substitute:

### 19 **119 Cancellation—general grounds**

### 20 **155 Subsection 119(2) of the Schedule**

21 After “subsection 118(2)”, insert “or 118B(1)”.

### 22 **156 After section 119 of the Schedule**

23 Insert:

### 24 **119A Cancellation—imminent risk to public health etc.**

- 25 (1) The APVMA may, by written notice to the holder of a permit,  
26 cancel the permit if the APVMA considers that doing so is  
27 necessary to prevent:  
28 (a) imminent risk to public health or occupational health or  
29 safety; or  
30 (b) imminent risk to animal welfare; or

1 (c) imminent risk of impact on trade or commerce between  
2 Australia and places outside Australia.

3 (2) A written notice under subsection (1) must specify when the  
4 cancellation takes effect.

5 (3) A permit may be cancelled even though it is suspended.

## 6 **119B Cancellation—providing false or misleading information**

7 (1) The APVMA may cancel a permit if:

8 (a) the holder of the permit has made a statement or given  
9 information:

10 (i) in or in connection with an application for the permit; or

11 (ii) in response to a notice given to the person under  
12 section 159; or

13 (iii) as required by section 160A or 161; and

14 (b) the statement or information was false or misleading in a  
15 material particular.

16 (2) Before taking action under subsection (1), the APVMA must:

17 (a) inform the holder of the permit, by written notice, of the  
18 proposed cancellation, and set out the reasons for it; and

19 (b) give the holder a reasonable opportunity to make submissions  
20 to the APVMA in relation to the proposed cancellation.

21 (3) The APVMA is not to make a decision relating to the proposed  
22 cancellation until it has had regard to any submissions the person  
23 makes under paragraph (2)(b).

24 (4) A written notice under subsection (2) must specify when the  
25 cancellation is to take effect.

26 (5) A permit may be cancelled even though it is suspended.

## 27 **157 Subsection 120(3) of the Schedule**

28 Repeal the subsection.

## 29 **158 Section 121 of the Schedule**

30 Repeal the section, substitute:

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### 1 121 Manufacture of prohibited chemical products

2 (1) A person must not carry out a step in the manufacture of a  
3 prohibited chemical product at premises in this jurisdiction.

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

6 Penalty: 240 penalty units.

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

8 Note 2: For the physical elements of this offence, see subsection 8A(2) of this  
9 Code.

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

11 Note: Part 9A provides for pecuniary penalties for contraventions of civil  
12 penalty provisions.

### 13 121A Manufacture of chemical products

14 (1) A person must not carry out a step in the manufacture of a  
15 chemical product at premises in this jurisdiction unless:

16 (a) under the regulations, the product is an exempt product or the  
17 person is an exempt person in relation to the manufacture of  
18 the product; or

19 (b) the person is the holder of a licence that:

20 (i) is in force; and

21 (ii) authorises the carrying out of that step in relation to the  
22 product at those premises; or

23 (c) the person has been issued with a permit that authorises the  
24 carrying out of that step in relation to the product at those  
25 premises.

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

28 Penalty: 240 penalty units.

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

30 Note 2: For the physical elements of this offence, see subsection 8A(2) of this  
31 Code.

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

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

## 3 **121B Compliance with conditions of licence**

4 (1) A person who is the holder of a licence must not contravene a  
5 condition of the licence unless the person has been issued with a  
6 permit that authorises the conduct that would contravene the  
7 condition of the licence.

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

10 Penalty: 120 penalty units.

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

12 Note 2: For the physical elements of this offence, see subsection 8A(2) of this  
13 Code.

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

15 Note: Part 9A provides for pecuniary penalties for contraventions of civil  
16 penalty provisions.

## 17 **159 Subparagraph 123(1)(c)(ii) of the Schedule**

18 Repeal the subparagraph, substitute:

19 (ii) has failed, in the 5 year period before the application  
20 was made, to observe a manufacturing principle in  
21 connection with the manufacture of chemical products.

## 22 **160 Paragraph 126(3)(a) of the Schedule**

23 After “health or safety,”, insert “imminent risk to animal welfare,”.

## 24 **161 Paragraph 127(1)(c) of the Schedule**

25 Repeal the paragraph, substitute:

26 (c) the holder has failed, in the 5 year period before the notice  
27 was given, to comply with a manufacturing principle in  
28 connection with the manufacture of chemical products; or

## 29 **162 Subsection 127(2) of the Schedule**

30 After “health or safety,”, insert “an imminent risk to animal welfare,”.

## 31 **163 Part 9 of the Schedule (heading)**

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1 Repeal the heading, substitute:

### 2 **Part 9—Investigative powers**

#### 3 **164 Section 129 of the Schedule**

4 Repeal the section, substitute:

#### 5 **129 Explanation of Part**

6 (1) This Part contains powers:

7 (a) to gather information; and

8 (b) to search premises with or, in some cases, without a warrant  
9 to find out whether either or both of the following apply:

10 (i) an offence against an agvet law has been committed;

11 (ii) an agvet penalty provision has been contravened.

12 (2) It also contains various ancillary provisions.

#### 13 **165 Division 2 of Part 9 of the Schedule**

14 Repeal the Division, substitute:

### 15 **Division 2—Requiring people to attend, give information** 16 **and produce documents or things**

#### 17 **Subdivision A—Notices by the APVMA**

#### 18 **130 Notice to approved person or interested person**

19 (1) For the purposes of this Code, the APVMA may, by notice in  
20 writing, require an approved person or interested person to do one  
21 or more of the following:

22 (a) give the information specified in the notice;

23 (b) produce the documents or things specified in the notice;

24 (c) appear before an inspector specified in the notice to answer  
25 any questions put by the inspector;

26 if the APVMA has reasonable grounds to believe that the person is  
27 capable of giving the information, producing the documents or  
28 things, or answering the questions.

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- 1 (2) The APVMA may require that information to be provided under  
2 paragraph (1)(a) is to be provided in writing or verified on oath.
- 3 (3) The inspector may require that answers under paragraph (1)(c) be  
4 given on oath, and for that purpose the inspector may administer an  
5 oath.
- 6 (4) The notice must:  
7 (a) be served on the person; and  
8 (b) be signed by the Chief Executive Officer; and  
9 (c) if paragraph (1)(a) or (b) applies—specify the period within  
10 which the person must comply with the notice; and  
11 (d) if paragraph (1)(c) applies—both:  
12 (i) specify the time and place at which the person must  
13 appear; and  
14 (ii) state that the person may be accompanied by a lawyer;  
15 and  
16 (e) set out the effect of sections 130B and 130C.
- 17 (5) The period specified under paragraph (4)(c) must be at least 14  
18 days after the notice is served on the person.
- 19 (6) The person must comply with the notice within the time specified  
20 in the notice, or within such further time as the APVMA allows.
- 21 Note: Failure to comply with a notice is an offence, see section 130B.

## 22 **130A APVMA may retain documents and things**

- 23 (1) If a document or thing is produced to the APVMA in accordance  
24 with a notice served under section 130, the APVMA:  
25 (a) may take possession of, and may make copies of, the  
26 document or thing, or take extracts from the document; and  
27 (b) may retain possession of the document or thing for such  
28 period as is necessary:  
29 (i) for the purposes of this Code; or  
30 (ii) for the purposes of an investigation to which the  
31 document or thing relates; or  
32 (iii) to enable evidence to be secured for the purposes of a  
33 prosecution or proceedings for a civil penalty order.

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- 1 (2) While the APVMA retains the document or thing, it must allow a  
2 person who would otherwise be entitled to inspect the document or  
3 view the thing to do so at the times that the person would  
4 ordinarily be able to do so.

### 5 **Subdivision B—Offence and related provisions**

#### 6 **130B Failure to comply with notice etc.**

- 7 (1) A person commits an offence if:  
8 (a) the person is served with a notice under section 130; and  
9 (b) the notice requires the person to:  
10 (i) give information; or  
11 (ii) produce documents or things;  
12 specified in the notice; and  
13 (c) the person fails to comply with the notice:  
14 (i) within the period specified in the notice; or  
15 (ii) if the APVMA has allowed the person further time  
16 under subsection 130(5)—within such further time.

17 Penalty: 30 penalty units or imprisonment for 6 months, or both.

- 18 (2) A person commits an offence if:  
19 (a) the person is served with a notice under section 130; and  
20 (b) the notice requires the person to appear before an inspector to  
21 answer questions put by the inspector; and  
22 (c) the person fails to comply with the notice.

23 Penalty: 30 penalty units or imprisonment for 6 months, or both.

- 24 (3) A person commits an offence if:  
25 (a) the person is required to take an oath; and  
26 (b) the person refuses or fails to comply with the requirement.

27 Penalty: 30 penalty units or imprisonment for 6 months, or both.

- 28 (4) A person commits an offence if:  
29 (a) the person is served with a notice under section 130; and  
30 (b) the notice requires the person to appear before an inspector to  
31 answer questions put by the inspector; and

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1 (c) the person refuses or fails to answer a question put by the  
2 inspector.

3 Penalty: 30 penalty units or imprisonment for 6 months, or both.

## 4 **130C Self-incrimination etc.**

5 (1) A person is not excused from:

6 (a) giving information; or

7 (b) producing a document or thing; or

8 (c) answering a question asked by an inspector;

9 in relation to a notice under section 130 on the ground that doing  
10 so might tend to incriminate the person or expose the person to a  
11 penalty.

12 (2) However, in the case of an individual, none of the following:

13 (a) the information or answer given;

14 (b) the document or thing produced;

15 (c) the giving of the information or the answer, or the producing  
16 of the document or thing;

17 (d) any information, document or thing obtained as a direct or  
18 indirect consequence of giving the information or answer, or  
19 producing the document or thing;

20 is admissible in evidence against the individual in:

21 (e) criminal proceedings, other than:

22 (i) proceedings for an offence against section 130B or 146;  
23 or

24 (ii) proceedings for an offence against section 137.1 or  
25 137.2 of the *Criminal Code* (which deal with false or  
26 misleading information or documents) that relates to  
27 this Code; or

28 (iii) proceedings for an offence against section 149.1 of the  
29 *Criminal Code* (which deals with obstruction of  
30 Commonwealth public officials) that relates to this  
31 Code; and

32 (f) civil proceedings for a contravention of a civil penalty  
33 provision.

## 34 **166 Division 3 of Part 9 of the Schedule (heading)**

35 Repeal the heading, substitute:

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1 **Division 3—Monitoring**

2 **Subdivision A—Monitoring powers etc.**

3 **167 Sections 131 to 133 of the Schedule**

4 Repeal the sections, substitute:

5 **131 Powers available to inspectors for monitoring compliance**

6 (1) Subject to subsections (2) and (3), for the purpose of finding out  
7 whether an agvet law has been complied with or of assessing the  
8 correctness of information provided under an agvet law, an  
9 inspector may:

10 (a) do both of the following:

11 (i) enter any premises;

12 (ii) exercise the monitoring powers; or

13 (b) do both of the following:

14 (i) enter a public area of business premises when the  
15 premises are open to the public;

16 (ii) exercise the powers set out in section 131D.

17 (2) If premises mentioned in paragraph (1)(a) are a residence, an  
18 inspector may only enter the premises if:

19 (a) the premises are used for commercial purposes in relation to  
20 active constituents and/or chemical products, in addition to  
21 residential purposes; and

22 (b) paragraph (3)(a) or (b) is satisfied.

23 (3) An inspector is not authorised to enter premises under  
24 paragraph (1)(a) unless:

25 (a) the occupier of the premises has consented to the entry and  
26 the inspector has shown his or her identity card if required by  
27 the occupier; or

28 (b) the entry is made under a monitoring warrant.

29 Note: If entry to the premises is with the occupier's consent, the inspector  
30 must leave the premises if the consent ceases to have effect, see  
31 section 133.

1 **131A Monitoring powers—with consent or with warrant**

2 The following are the *monitoring powers* that an inspector may  
3 exercise in relation to premises:

- 4 (a) the power to search the premises and any thing on the  
5 premises;
- 6 (b) the power to examine or observe any activity conducted on  
7 the premises;
- 8 (c) the power to inspect, examine, take measurements of or  
9 conduct tests on any thing on the premises;
- 10 (d) the power to take and keep samples of any thing on the  
11 premises;
- 12 (e) the power to make any still or moving image or any  
13 recording of the premises or any thing on the premises;
- 14 (f) the power to inspect any document on the premises;
- 15 (g) the power to take extracts from, or make copies of, any such  
16 document;
- 17 (h) the power to destroy or make harmless, or give directions for  
18 the destruction or making harmless of, a chemical product at  
19 the premises;
- 20 (i) the power to take onto the premises such equipment and  
21 materials as the inspector requires for the purpose of  
22 exercising powers in relation to the premises;
- 23 (j) the powers set out in subsections 131B(1) and (3) and  
24 131C(2).

25 **131B Operating electronic equipment**

- 26 (1) The *monitoring powers* include the power to:
- 27 (a) operate electronic equipment on the premises; and  
28 (b) use a disk, tape or other storage device that:
- 29 (i) is on the premises; and  
30 (ii) can be used with the equipment or is associated with it.
- 31 (2) The *monitoring powers* include the powers mentioned in  
32 subsection (3) if information (*relevant data*) is found in the  
33 exercise of the power under subsection (1) that is relevant to  
34 determining whether:
- 35 (a) an agvet law has been, or is being, complied with; or  
36 (b) information provided under an agvet law is correct.
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- 1 (3) The powers are as follows:  
2 (a) the power to operate electronic equipment on the premises to  
3 put the relevant data in documentary form and remove the  
4 documents so produced from the premises;  
5 (b) the power to operate electronic equipment on the premises to  
6 transfer the relevant data to a disk, tape or other storage  
7 device that:  
8 (i) is brought to the premises for the exercise of the power;  
9 or  
10 (ii) is on the premises and the use of which for that purpose  
11 has been agreed in writing by the occupier of the  
12 premises;  
13 and remove the disk, tape or other storage device from the  
14 premises.
- 15 (4) An inspector may operate electronic equipment as mentioned in  
16 subsection (1) or (3) only if the inspector believes on reasonable  
17 grounds that the operation of the equipment can be carried out  
18 without damage to the equipment.
- 19 Note: For compensation for damage to electronic equipment, see  
20 section 138.

### 21 **131C Securing evidence of the contravention of a related provision**

- 22 (1) This section applies if an inspector enters premises under a  
23 monitoring warrant for either or both of the following purposes:  
24 (a) determining whether an agvet law has been, or is being,  
25 complied with;  
26 (b) determining whether information provided in compliance or  
27 purported compliance with an agvet law is correct.
- 28 (2) The *monitoring powers* include the power to secure a thing for a  
29 period not exceeding 24 hours if:  
30 (a) the thing is found during the exercise of monitoring powers  
31 on the premises; and  
32 (b) an inspector believes on reasonable grounds that the thing  
33 affords evidence of:  
34 (i) the commission of an offence against an agvet law or  
35 the contravention of an agvet penalty provision or both;  
36 or

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- 1 (ii) an offence against the *Crimes Act 1914* or the *Criminal*  
2 *Code* that relates to an agvet law; and  
3 (c) the inspector believes on reasonable grounds that:  
4 (i) it is necessary to secure the thing in order to prevent it  
5 from being concealed, lost or destroyed before a warrant  
6 to seize the thing is obtained; and  
7 (ii) it is necessary to secure the thing without a warrant  
8 because the circumstances are serious and urgent.
- 9 (3) If an inspector believes on reasonable grounds that the thing needs  
10 to be secured for more than 24 hours, the inspector may apply to a  
11 magistrate for an extension of that period.
- 12 (4) The inspector must give notice to the occupier of the premises, or  
13 another person who apparently represents the occupier, of his or  
14 her intention to apply for an extension. The occupier or other  
15 person is entitled to be heard in relation to that application.
- 16 (5) The provisions of this Part relating to the issue of monitoring  
17 warrants apply, with such modifications as are necessary, to the  
18 issue of an extension.
- 19 (6) The 24-hour period may be extended more than once.

## 20 **131D Exercise of powers in public areas of business premises**

- 21 (1) For the purpose of finding out whether an agvet law has been  
22 complied with or of assessing the correctness of information  
23 provided under an agvet law, an inspector may:  
24 (a) enter a public area of business premises when the premises  
25 are open to the public; and  
26 (b) exercise the following powers:  
27 (i) purchase any chemical product that is available for sale;  
28 (ii) inspect or collect written information, advertising or any  
29 other document that is available, or made available, to  
30 the public;  
31 (iii) discuss product features with any person.
- 32 (2) Subsection (1) does not affect any right of the occupier of business  
33 premises to refuse to allow an inspector to enter, or remain on, the  
34 premises.

# EXPOSURE DRAFT

## Schedule 4 Enforcement

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1     **131E Persons assisting inspectors**

2                     *Inspectors may be assisted by other persons*

3             (1) When exercising monitoring powers, an inspector may be assisted  
4             by other persons in exercising powers or performing functions or  
5             duties under this Part, if that assistance is necessary and  
6             reasonable. A person giving such assistance is a **person assisting**  
7             the inspector.

8                     *Powers, functions and duties of a person assisting the inspector*

- 9             (2) A person assisting the inspector:
- 10                 (a) may enter premises; and
- 11                 (b) may exercise powers and perform functions and duties under  
12                 this Part for the purposes of assisting the inspector to  
13                 determine whether:
- 14                         (i) an agvet law has been, or is being, complied with; or
- 15                         (ii) information provided under an agvet law is correct; and
- 16                 (c) must do so in accordance with a direction given to the person  
17                 assisting by the inspector.
- 18             (3) A power exercised by a person assisting the inspector as mentioned  
19             in subsection (2) is taken for all purposes to have been exercised by  
20             the inspector.
- 21             (4) A function or duty performed by a person assisting the inspector as  
22             mentioned in subsection (2) is taken for all purposes to have been  
23             performed by the inspector.
- 24             (5) If a direction is given under paragraph (2)(c) in writing, the  
25             direction is not a legislative instrument.

26     **131F Use of force in executing a warrant**

27                     In executing a monitoring warrant, an inspector and a person  
28                     assisting the inspector may use such force against things as is  
29                     necessary and reasonable in the circumstances.

1 **Subdivision B—Powers of inspectors to ask questions and seek**  
2 **production of documents**

3 **131G Inspector may ask questions and seek production of**  
4 **documents**

- 5 (1) This section applies if an inspector enters premises for the purposes  
6 of determining whether:  
7 (a) an agvet law has been, or is being, complied with; or  
8 (b) information provided under an agvet law is correct.
- 9 (2) If the entry is authorised because the occupier of the premises  
10 consented to the entry, the inspector may ask the occupier to  
11 answer any questions, and produce any document, relating to:  
12 (a) the operation of an agvet law; or  
13 (b) the information.
- 14 (3) If the entry is authorised by a monitoring warrant, the inspector  
15 may require any person on the premises to answer any questions,  
16 and produce any document, relating to:  
17 (a) the operation of an agvet law; or  
18 (b) the information.

19 *Offence*

- 20 (4) A person commits an offence if:  
21 (a) the person is subject to a requirement under subsection (3);  
22 and  
23 (b) the person fails to comply with the requirement.

24 Penalty for contravention of this subsection: 50 penalty units.

25 **131H Copying of documents**

26 If a person produces a document to an inspector in accordance with  
27 a requirement under section 131G, the inspector may make copies  
28 of, or take extracts from, the document.

# EXPOSURE DRAFT

1 **Division 4—Investigation**

2 **Subdivision A—Investigation powers**

3 **132 Powers available to inspectors to investigate potential breaches**  
4 **of an agvet law**

- 5 (1) Subject to subsections (2) and (3), if an inspector has reasonable  
6 grounds for suspecting that there may be evidential material on any  
7 premises, the inspector may:  
8 (a) enter the premises; and  
9 (b) exercise the investigation powers; and  
10 (c) exercise the powers mentioned in subsection 132D(2).
- 11 (2) If the premises are a residence, an inspector may only enter the  
12 premises if:  
13 (a) the premises are used for commercial purposes in relation to  
14 active constituents and/or chemical products, in addition to  
15 residential purposes; and  
16 (b) paragraph (3)(a) or (b) is satisfied.
- 17 (3) An inspector is not authorised to enter the premises unless:  
18 (a) the occupier of the premises has consented to the entry and  
19 the inspector has shown his or her identity card if required by  
20 the occupier; or  
21 (b) the entry is made under an investigation warrant.

22 Note: If entry to the premises is with the occupier's consent, the inspector  
23 must leave the premises if the consent ceases to have effect, see  
24 section 133.

25 **132A Investigation powers**

26 The following are the *investigation powers* that an inspector may  
27 exercise in relation to premises under section 132:

- 28 (a) if entry to the premises is with the occupier's consent—the  
29 power to search the premises and any thing on the premises  
30 for the evidential material the inspector has reasonable  
31 grounds for suspecting may be on the premises;  
32 (b) if entry to the premises is under an investigation warrant:

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- 1 (i) the power to search the premises and any thing on the  
2 premises for the kind of evidential material specified in  
3 the warrant; and  
4 (ii) the power to seize evidential material of that kind if the  
5 inspector finds it on the premises;  
6 (c) the power to inspect, examine, take measurements of, and  
7 conduct tests on evidential material referred to in  
8 paragraph (a) or (b);  
9 (d) the power to make any still or moving image or any  
10 recording of the premises or evidential material referred to in  
11 paragraph (a) or (b);  
12 (e) the power to open any container at the premises for the  
13 purpose of inspecting, or taking a sample of, its contents  
14 provided that the container is resealed after the inspection is  
15 made or the sample is taken;  
16 (f) the power to destroy or make harmless, or give directions for  
17 the destruction or making harmless of, a chemical product at  
18 the premises;  
19 (g) the power to take onto the premises such equipment and  
20 materials as the inspector requires for the purpose of  
21 exercising powers in relation to the premises;  
22 (h) the powers set out in subsections 132B(1) and (2) and  
23 section 132C.

## 24 **132B Operating electronic equipment**

- 25 (1) The *investigation powers* include the power to:  
26 (a) operate electronic equipment on the premises; and  
27 (b) use a disk, tape or other storage device that:  
28 (i) is on the premises; and  
29 (ii) can be used with the equipment or is associated with it;  
30 if an inspector has reasonable grounds for suspecting that the  
31 electronic equipment, disk, tape or other storage device is or  
32 contains evidential material.  
33 (2) The *investigation powers* include the following powers in relation  
34 to evidential material found in the exercise of the power under  
35 subsection (1):

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- 1 (a) if entry to the premises is under an investigation warrant—  
2 the power to seize the equipment and the disk, tape or other  
3 storage device referred to in that subsection;
- 4 (b) the power to operate electronic equipment on the premises to  
5 put the evidential material in documentary form and remove  
6 the documents so produced from the premises;
- 7 (c) the power to operate electronic equipment on the premises to  
8 transfer the evidential material to a disk, tape or other storage  
9 device that:
- 10 (i) is brought to the premises for the exercise of the power;  
11 or
- 12 (ii) is on the premises and the use of which for that purpose  
13 has been agreed in writing by the occupier of the  
14 premises;
- 15 and remove the disk, tape or other storage device from the  
16 premises.
- 17 (3) An inspector may operate electronic equipment as mentioned in  
18 subsection (1) or (2) only if the inspector believes on reasonable  
19 grounds that the operation of the equipment can be carried out  
20 without damage to the equipment.
- 21 Note: For compensation for damage to electronic equipment, see  
22 section 138.
- 23 (4) An inspector may seize equipment or a disk, tape or other storage  
24 device as mentioned in paragraph (2)(a) only if:
- 25 (a) it is not practicable to put the evidential material in  
26 documentary form as mentioned in paragraph (2)(b) or to  
27 transfer the evidential material as mentioned in  
28 paragraph (2)(c); or
- 29 (b) possession of the equipment or the disk, tape or other storage  
30 device by the occupier could constitute an offence against a  
31 law of this jurisdiction.

### 132C Seizing evidence of related offences and civil penalty provisions

- 32 (1) This section applies if an inspector enters premises under an  
33 investigation warrant to search for evidential material.
- 34  
35

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- 1 (2) The *investigation powers* include seizing a thing that is not  
2 evidential material of the kind specified in the warrant if:  
3 (a) in the course of searching for the kind of evidential material  
4 specified in the warrant, the inspector finds the thing; and  
5 (b) the inspector believes on reasonable grounds that the thing  
6 affords evidence of:  
7 (i) the commission of an offence against an agvet law or  
8 the contravention of an agvet penalty provision or both;  
9 or  
10 (ii) an offence against the *Crimes Act 1914* or the *Criminal*  
11 *Code* that relates to an agvet law; and  
12 (c) the inspector believes on reasonable grounds that it is  
13 necessary to seize the thing in order to prevent its  
14 concealment, loss or destruction or to protect the health of the  
15 public or of any person.
- 16 (3) If an inspector seizes a thing as mentioned in subsection (2), the  
17 *investigation powers* include:  
18 (a) the power to direct the occupier of the premises or the owner  
19 of the thing to keep it at the premises, or at other premises  
20 under the control of the occupier or owner that will, in the  
21 opinion of the inspector, cause least danger to the health of  
22 the public or of any person; and  
23 (b) the power to give any other directions for, or with respect to,  
24 the detention of the thing.

## 25 **132D Supervisory powers of seized things**

- 26 (1) If:  
27 (a) an inspector seizes a thing under section 132A or 132C; and  
28 (b) the inspector is authorised by the APVMA to exercise powers  
29 under this section;  
30 the inspector may do one or more of the things mentioned in  
31 subsection (2).
- 32 (2) The things are:  
33 (a) if the seizure related to a substance and the inspector suspects  
34 that this Code has not been complied with in respect of any  
35 of its constituents, or in respect of the concentration,  
36 composition or purity of any of its active constituents—

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## Schedule 4 Enforcement

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- 1 supervise the reformulation of the substance so as to ensure  
2 compliance with this Code; and
- 3 (b) if the seizure related to a substance and its container and the  
4 inspector suspects that this Code has not been complied with  
5 in respect of the container—supervise the placing of the  
6 substance in a container so that there is compliance with this  
7 Code; and
- 8 (c) if the seizure related to a substance and its container and the  
9 inspector suspects that this Code has not been complied with  
10 in respect of the label attached to the container—supervise  
11 the attaching to the container of a label so that there is  
12 compliance with this Code.

### 13 **132E Persons assisting inspectors**

14 *Inspectors may be assisted by other persons*

- 15 (1) When exercising investigation powers, an inspector may be  
16 assisted by other persons in exercising powers or performing  
17 functions or duties under this Part, if that assistance is necessary  
18 and reasonable. A person giving such assistance is a **person**  
19 **assisting** the inspector.

20 *Powers, functions and duties of a person assisting the inspector*

- 21 (2) A person assisting the inspector:  
22 (a) may enter premises; and  
23 (b) may exercise powers and perform functions and duties under  
24 this Part in relation to evidential material; and  
25 (c) must do so in accordance with a direction given to the person  
26 assisting by the inspector.
- 27 (3) A power exercised by a person assisting the inspector as mentioned  
28 in subsection (2) is taken for all purposes to have been exercised by  
29 the inspector.
- 30 (4) A function or duty performed by a person assisting the inspector as  
31 mentioned in subsection (2) is taken for all purposes to have been  
32 performed by the inspector.
- 33 (5) If a direction is given under paragraph (2)(c) in writing, the  
34 direction is not a legislative instrument.

1 **132F Use of force in executing a warrant**

2 In executing an investigation warrant, an inspector and a person  
3 assisting the inspector may use such force against things as is  
4 necessary and reasonable in the circumstances.

5 **Subdivision B—Powers of inspectors to ask questions and seek**  
6 **production of documents**

7 **132G Inspector may ask questions and seek production of**  
8 **documents**

- 9 (1) This section applies if an inspector enters premises to search for  
10 evidential material.
- 11 (2) If the entry is authorised because the occupier of the premises  
12 consented to the entry, the inspector may ask the occupier to  
13 answer any questions, and produce any document, relating to  
14 evidential material.
- 15 (3) If the entry is authorised by an investigation warrant, the inspector  
16 may require any person on the premises to answer any questions,  
17 and produce any document, relating to evidential material of the  
18 kind specified in the warrant.
- 19 (4) A person commits an offence if:  
20 (a) the person is subject to a requirement under subsection (3);  
21 and  
22 (b) the person fails to comply with the requirement.

23 Penalty for contravention of this subsection: 50 penalty units.

24 **132H Copying of documents**

25 If a person produces a document to an inspector in accordance with  
26 a requirement under section 132G, the inspector may make copies  
27 of, or take extracts from, the document.

# EXPOSURE DRAFT

1 **Division 5—Obligations and incidental powers of**  
2 **inspectors**

3 **133 Consent**

- 4 (1) Before obtaining the consent of an occupier of premises for the  
5 purposes of paragraph 131(3)(a) or 132(3)(a), an inspector must  
6 inform the occupier that the occupier may refuse consent.
- 7 (2) A consent has no effect unless the consent is voluntary.
- 8 (3) A consent may be expressed to be limited to entry during a  
9 particular period. If so, the consent has effect for that period unless  
10 the consent is withdrawn before the end of that period.
- 11 (4) A consent that is not limited as mentioned in subsection (3) has  
12 effect until the consent is withdrawn.
- 13 (5) If an inspector entered premises because of the consent of the  
14 occupier of the premises, the inspector, and any person assisting  
15 the inspector, must leave the premises if the consent ceases to have  
16 effect.

17 **168 Subsection 134(1) of the Schedule**

18 Repeal the subsection, substitute:

- 19 (1) Before entering premises under a warrant, an inspector must:  
20 (a) announce that he or she is authorised to enter the premises;  
21 and  
22 (b) show his or her identity card to the occupier of the premises,  
23 or to another person who apparently represents the occupier,  
24 if the occupier or other person is present at the premises; and  
25 (c) give any person at the premises an opportunity to allow entry  
26 to the premises.

27 **169 Subsection 134(2) of the Schedule**

28 Omit “or a person helping the inspector”.

29 **170 Paragraph 134(2)(a) of the Schedule**

30 Omit “person helping the inspector”, substitute “person assisting”.

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# EXPOSURE DRAFT

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1 **171 At the end of section 134 of the Schedule**

2 Add:

3 (3) If:

- 4 (a) an inspector does not comply with subsection (1) because of  
5 subsection (2); and  
6 (b) the occupier of the premises, or another person who  
7 apparently represents the occupier, is present at the premises;  
8 the inspector must show his or her identity card to the occupier or  
9 other person as soon as practicable after entering the premises.

10 **172 Sections 135 to 138 of the Schedule**

11 Repeal the sections, substitute:

12 **135 Inspector to be in possession of warrant**

13 An inspector executing a warrant must be in possession of:

- 14 (a) the warrant issued by the magistrate under section 143 or  
15 143A or a copy of the warrant as so issued; or  
16 (b) the form of warrant completed under subsection 143B(6) or a  
17 copy of the form as so completed.

18 **136 Details of warrant etc. to be given to occupier**

19 (1) An inspector must comply with subsection (2) if:

- 20 (a) a warrant is being executed in relation to premises; and  
21 (b) the occupier of the premises, or another person who  
22 apparently represents the occupier, is present at the premises.

23 (2) The inspector must, as soon as practicable:

- 24 (a) do one of the following:  
25 (i) if the warrant was issued under section 143 or 143A—  
26 make a copy of the warrant available to the occupier or  
27 other person (which need not include the signature of  
28 the magistrate who issued it);  
29 (ii) if the warrant was signed under section 143B—make a  
30 copy of the form of warrant completed under subsection  
31 143B(6) available to the occupier or other person; and

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## Schedule 4 Enforcement

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- 1 (b) inform the occupier or other person of the rights and  
2 responsibilities of the occupier or other person under  
3 Division 7 of this Part.

### 4 **137 Expert assistance to operate electronic equipment**

- 5 (1) This section applies if an inspector enters premises under a  
6 warrant.

#### 7 *Securing equipment*

- 8 (2) An inspector may do whatever is necessary to secure any electronic  
9 equipment that is on the premises if the inspector believes on  
10 reasonable grounds that:

- 11 (a) in the case of a monitoring warrant:

- 12 (i) there is relevant data on the premises; and  
13 (ii) the relevant data may be accessible by operating the  
14 equipment; and  
15 (iii) expert assistance is required to operate the equipment;  
16 and  
17 (iv) the relevant data may be destroyed, altered or otherwise  
18 interfered with, if the inspector does not take action  
19 under this subsection; and

- 20 (b) in the case of an investigation warrant:

- 21 (i) there is evidential material of the kind specified in the  
22 warrant on the premises; and  
23 (ii) the evidential material may be accessible by operating  
24 the electronic equipment; and  
25 (iii) expert assistance is required to operate the equipment;  
26 and  
27 (iv) the evidential material may be destroyed, altered or  
28 otherwise interfered with, if the inspector does not take  
29 action under this subsection.

30 The equipment may be secured by locking it up, placing a guard or  
31 any other means.

- 32 (3) The inspector must give notice to the occupier of the premises, or  
33 another person who apparently represents the occupier, of:

- 34 (a) the inspector's intention to secure the equipment; and
-

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- 1 (b) the fact that the equipment may be secured for up to 24  
2 hours.

3 *Period equipment may be secured*

- 4 (4) The equipment may be secured until the earlier of the following  
5 happens:  
6 (a) the 24-hour period ends;  
7 (b) the equipment has been operated by the expert.

8 Note: For compensation for damage to electronic equipment, see  
9 section 138.

10 *Extensions*

- 11 (5) The inspector may apply to a magistrate for an extension of the  
12 24-hour period, if the inspector believes on reasonable grounds that  
13 the equipment needs to be secured for a longer period.
- 14 (6) Before making the application, the inspector must give notice to  
15 the occupier of the premises, or another person who apparently  
16 represents the occupier, of the inspector's intention to apply for an  
17 extension. The occupier or other person is entitled to be heard in  
18 relation to that application.
- 19 (7) The provisions of this Part relating to the issue of a warrant apply,  
20 with such modifications as are necessary, to the issue of an  
21 extension.
- 22 (8) The 24-hour period may be extended more than once.

23 *Definition*

- 24 (9) In this section:

25 *relevant data* means information relevant to determining whether:  
26 (a) an agvet law has been, or is being, complied with; or  
27 (b) information provided under an agvet law is correct.

28 **138 Compensation for damage to electronic equipment**

- 29 (1) This section applies if:  
30 (a) as a result of electronic equipment being operated as  
31 mentioned in this Part:
-

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## Schedule 4 Enforcement

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- 1 (i) damage is caused to the equipment; or  
2 (ii) the data recorded on the equipment is damaged; or  
3 (iii) programs associated with the use of the equipment, or  
4 with the use of the data, are damaged or corrupted; and  
5 (b) the damage or corruption occurs because:  
6 (i) insufficient care was exercised in selecting the person  
7 who was to operate the equipment; or  
8 (ii) insufficient care was exercised by the person operating  
9 the equipment.
- 10 (2) The APVMA must pay the owner of the equipment, or the user of  
11 the data or programs, such reasonable compensation for the  
12 damage or corruption as the APVMA and the owner or user agree  
13 on.
- 14 (3) However, if the owner or user and the APVMA fail to agree, the  
15 owner or user may institute proceedings in a court of competent  
16 jurisdiction for such reasonable amount of compensation as the  
17 court determines.
- 18 (4) In determining the amount of compensation payable, regard is to  
19 be had to whether the occupier of the premises, or the occupier's  
20 employees or agents, if they were available at the time, provided  
21 any appropriate warning or guidance on the operation of the  
22 equipment.

## 23 **Division 6—Execution of an investigation warrant** 24 **interrupted**

### 25 **138A Completing execution of an investigation warrant after** 26 **temporary cessation**

- 27 (1) This section applies if an inspector, and all persons assisting, who  
28 are executing an investigation warrant in relation to premises  
29 temporarily cease its execution and leave the premises.
- 30 (2) The inspector, and persons assisting, may complete the execution  
31 of the warrant if:  
32 (a) the warrant is still in force; and  
33 (b) the inspector and persons assisting are absent from the  
34 premises:

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Enforcement **Schedule 4**

---

- 1 (i) for not more than 1 hour; or  
2 (ii) if there is an emergency situation, for not more than 12  
3 hours or such longer period as allowed by a magistrate  
4 under subsection (5); or  
5 (iii) for a longer period if the occupier of the premises  
6 consents in writing.

7 *Application for extension in emergency situation*

- 8 (3) An inspector, or person assisting, may apply to a magistrate for an  
9 extension of the 12-hour period mentioned in  
10 subparagraph (2)(b)(ii) if:  
11 (a) there is an emergency situation; and  
12 (b) the inspector or person assisting believes on reasonable  
13 grounds that the inspector and the persons assisting will not  
14 be able to return to the premises within that period.
- 15 (4) If it is practicable to do so, before making the application, the  
16 inspector or person assisting must give notice to the occupier of the  
17 premises of his or her intention to apply for an extension.

18 *Extension in emergency situation*

- 19 (5) A magistrate may extend the period during which the inspector and  
20 persons assisting may be away from the premises if:  
21 (a) an application is made under subsection (3); and  
22 (b) the magistrate is satisfied, by information on oath or  
23 affirmation, that there are exceptional circumstances that  
24 justify the extension; and  
25 (c) the extension would not result in the period ending after the  
26 warrant ceases to be in force.

27 **138B Completing execution of an investigation warrant stopped by**  
28 **court order**

- 29 An inspector, and any persons assisting, may complete the  
30 execution of an investigation warrant that has been stopped by an  
31 order of a court if:  
32 (a) the order is later revoked or reversed on appeal; and  
33 (b) the warrant is still in force when the order is revoked or  
34 reversed.

# EXPOSURE DRAFT

1 **Division 7—Occupier’s rights and responsibilities**

2 **138C Occupier entitled to observe execution of warrant**

- 3 (1) The occupier of premises to which a warrant relates, or another  
4 person who apparently represents the occupier, is entitled to  
5 observe the execution of the warrant if the occupier or other person  
6 is present at the premises while the warrant is being executed.
- 7 (2) The right to observe the execution of the warrant ceases if the  
8 occupier or other person impedes that execution.
- 9 (3) This section does not prevent the execution of the warrant in 2 or  
10 more areas of the premises at the same time.

11 **138D Occupier to provide inspector with facilities and assistance**

- 12 (1) The occupier of premises to which a warrant relates, or another  
13 person who apparently represents the occupier, must provide:  
14 (a) an inspector executing the warrant; and  
15 (b) any person assisting;  
16 with all reasonable facilities and assistance for the effective  
17 exercise of their powers.
- 18 (2) A person commits an offence if:  
19 (a) the person is subject to subsection (1); and  
20 (b) the person fails to comply with that subsection.
- 21 Penalty for contravention of this subsection: 30 penalty units.

22 **Division 8—General provisions relating to seizure**

23 **173 Subsection 139(1) of the Schedule**

24 Omit “section 131 or 132”, substitute “an investigation warrant”.

25 **174 Subsection 139(2) of the Schedule**

26 Repeal the subsection, substitute:

- 27 (2) However, the inspector is not required to comply with the request  
28 if possession of the document, film, computer file, thing or

1 information by the occupier or other person could constitute an  
2 offence against a law of this jurisdiction.

### 3 **175 After section 139 of the Schedule**

4 Insert:

#### 5 **139A Receipts for seized things**

6 (1) An inspector must provide a receipt for a thing that is seized under  
7 an investigation warrant.

8 (2) One receipt may cover 2 or more things seized.

### 9 **176 Subsection 140(1) of the Schedule**

10 Repeal the subsection, substitute:

11 (1) An inspector must take reasonable steps to return a thing seized  
12 under an investigation warrant when the earliest of the following  
13 happens:

- 14 (a) the reason for the thing's seizure no longer exists;
- 15 (b) it is decided that the thing is not to be used in evidence;
- 16 (c) the period of 60 days after the thing's seizure ends.

17 *Exception*

18 (1A) Subsection (1):

- 19 (a) is subject to any contrary order of a court; and
- 20 (b) does not apply if the thing:
  - 21 (i) is forfeited or forfeitable to the Commonwealth (see
  - 22 section 150); or
  - 23 (ii) is the subject of a dispute as to ownership.

### 24 **177 Subsection 140(2) of the Schedule**

25 Omit all the words before paragraph (a), substitute:

26 (2) The inspector is not required to take reasonable steps to return a  
27 thing because of paragraph (1)(c) if:

### 28 **178 Subsections 140(4) and (5) of the Schedule**

29 Repeal the subsections.

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1 **179 Paragraph 141(1)(a) of the Schedule**

2 Omit “section 131 or 132”, substitute “an investigation warrant”.

3 **180 Subsections 141(2) and (3) of the Schedule**

4 Repeal the subsections, substitute:

5 (2) Before making the application, the inspector must:

6 (a) take reasonable steps to discover who has an interest in the  
7 retention of the thing; and

8 (b) if it is practicable to do so, notify each person who the  
9 inspector believes has such an interest of the proposed  
10 application.

11 *Order to retain thing*

12 (3) A court of summary jurisdiction may order that the thing may  
13 continue to be retained for a period specified in the order if the  
14 court is satisfied that it is necessary for the thing to continue to be  
15 retained:

16 (a) for the purposes of an investigation as to whether an offence  
17 against an agvet law has been committed or an agvet penalty  
18 provision has been contravened; or

19 (b) for the purposes of an investigation as to whether an offence  
20 against the *Crimes Act 1914* or the *Criminal Code* that relates  
21 to an agvet law has been committed; or

22 (c) to enable evidence of:

23 (i) an offence mentioned in paragraph (a) or (b) to be  
24 secured for the purposes of a prosecution; or

25 (ii) a contravention mentioned in paragraph (a) to be  
26 secured for the purposes of proceedings for a civil  
27 penalty order.

28 (4) The period specified must not exceed 3 years.

29 **181 After section 141 of the Schedule**

30 Insert:

1 **141A Disposal of things**

- 2 (1) The APVMA may dispose of a thing seized under an investigation  
3 warrant if:  
4 (a) an inspector has taken reasonable steps to return the thing to  
5 a person; and  
6 (b) either:  
7 (i) the inspector has been unable to locate the person; or  
8 (ii) the person has refused to take possession of the thing.  
9 (2) The APVMA may dispose of the thing in such manner as it  
10 considers appropriate.

11 **182 Subsection 142(1) of the Schedule**

12 Omit “paragraph 131(1)(i)”, substitute “paragraph 131A(h) or 132A(f)”.

13 **183 Subsection 142(2) of the Schedule**

14 Omit “subsection 132(3)”, substitute “subsection 132D(2)”.

15 **184 After subsection 142(4) of the Schedule**

16 Insert:

- 17 (4A) Any expense incurred by the APVMA under section 141A in  
18 disposing of a thing is a debt due to the APVMA by the owner of  
19 the thing.

20 **185 Sections 143 to 145 of the Schedule**

21 Repeal the sections, substitute:

22 **Division 9—Applying for warrants etc.**

23 **143 Monitoring warrants**

24 *Application for warrant*

- 25 (1) An inspector may apply to a magistrate for a monitoring warrant  
26 under this section in relation to premises.

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1

### *Issue of warrant*

2

(2) The magistrate may issue the warrant if the magistrate is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more inspectors should have access to the premises for the purpose of determining whether:

3

4

5

6

7

(a) an agvet law has been, or is being, complied with; or

(b) information provided under an agvet law is correct.

8

9

10

11

12

(3) However, the magistrate must not issue the warrant unless the inspector or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the monitoring warrant is being sought.

13

### *Content of warrant*

14

(4) The monitoring warrant must:

15

(a) describe the premises to which the warrant relates; and

16

(b) state that the warrant is issued under this section; and

17

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

18

(d) authorise one or more inspectors (whether or not named in the warrant) from time to time while the warrant remains in force:

19

20

21

(i) to enter the premises; and

22

(ii) to exercise the powers set out in Divisions 3 and 5 of this Part in relation to the premises; and

23

24

(e) state whether entry is authorised to be made at any time of the day or during specified hours of the day; and

25

26

(f) specify the day (not more than 6 months after the issue of the warrant) the warrant ceases to be in force.

27

28

(5) If the application for the warrant is made under section 143B, this section applies as if paragraph (4)(f) required the warrant to specify the period for which the warrant is to remain in force, which must not be more than 48 hours.

29

30

31

# EXPOSURE DRAFT

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1 **143A Investigation warrants**

2 *Application for warrant*

- 3 (1) An inspector may apply to a magistrate for an investigation warrant  
4 under this section in relation to premises.

5 *Issue of warrant*

- 6 (2) The magistrate may issue the investigation warrant if the  
7 magistrate is satisfied, by information on oath or affirmation, that  
8 there are reasonable grounds for suspecting that there is, or there  
9 may be within the next 72 hours, evidential material on the  
10 premises.
- 11 (3) However, the magistrate must not issue the investigation warrant  
12 unless the inspector or some other person has given to the  
13 magistrate, either orally or by affidavit, such further information (if  
14 any) as the magistrate requires concerning the grounds on which  
15 the issue of the warrant is being sought.

16 *Content of warrant*

- 17 (4) The investigation warrant must:
- 18 (a) state the offence or offences, or civil penalty provision or  
19 civil penalty provisions, to which the warrant relates; and
- 20 (b) describe the premises to which the warrant relates; and
- 21 (c) state that the warrant is issued under this section; and
- 22 (d) specify the kinds of evidential material that are to be  
23 searched for under the warrant; and
- 24 (e) state that the evidential material specified may be seized  
25 under the warrant; and
- 26 (f) state that any thing found in the course of executing the  
27 warrant that the person executing the warrant believes on  
28 reasonable grounds to be evidence of:
- 29 (i) the commission of an offence against an agvet law or  
30 the contravention of an agvet penalty provision or both;  
31 or
- 32 (ii) an offence against the *Crimes Act 1914* or the *Criminal*  
33 *Code* that relates to an agvet law;  
34 may be seized under the warrant; and

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## Schedule 4 Enforcement

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- 1 (g) name one or more inspectors; and  
2 (h) authorise the inspectors named in the warrant:  
3 (i) to enter the premises; and  
4 (ii) to exercise the powers set out in Divisions 4, 5 and 6 of  
5 this Part in relation to the premises; and  
6 (i) state whether entry is authorised to be made at any time of  
7 the day or during specified hours of the day; and  
8 (j) specify the day (not more than 1 week after the issue of the  
9 warrant) the warrant ceases to be in force.
- 10 (5) If the application for the warrant is made under section 143B, this  
11 section applies as if:  
12 (a) subsection (2) referred to 48 hours rather than 72 hours; and  
13 (b) paragraph (4)(j) required the warrant to specify the period for  
14 which the warrant is to remain in force, which must not be  
15 more than 48 hours.

### 16 **143B Warrants by telephone, fax etc.**

#### 17 *Application for warrant*

- 18 (1) An inspector may apply to a magistrate by telephone, fax or other  
19 electronic means for a warrant in relation to premises:  
20 (a) in an urgent case; or  
21 (b) if the delay that would occur if an application were made in  
22 person would frustrate the effective execution of the warrant.
- 23 (2) The magistrate may require communication by voice to the extent  
24 that it is practicable in the circumstances.
- 25 (3) Before applying for a warrant, the inspector must:  
26 (a) in the case of a monitoring warrant—prepare an information  
27 of the kind mentioned in subsection 143(2); and  
28 (b) in the case of an investigation warrant—prepare an  
29 information of the kind mentioned in subsection 143A(2);  
30 in relation to the premises that sets out the grounds on which the  
31 warrant is sought. If it is necessary to do so, the inspector may  
32 apply for the warrant before the information is sworn or affirmed.

# EXPOSURE DRAFT

Enforcement **Schedule 4**

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1

## *Magistrate may complete and sign warrant*

2

- (4) The magistrate may complete and sign the same warrant that would have been issued under section 143 or 143A if the magistrate is satisfied that there are reasonable grounds for doing so:

3

4

5

(a) after considering the terms of the information; and

6

(b) after receiving such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought.

7

8

9

- (5) After completing and signing the warrant, the magistrate must inform the inspector, by telephone, fax or other electronic means, of:

10

11

12

(a) the terms of the warrant; and

13

(b) the day and time the warrant was signed.

14

## *Obligations on inspector*

15

- (6) The inspector must then do the following:

16

(a) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate;

17

18

(b) state on the form the following:

19

(i) the name of the magistrate;

20

(ii) the day and time the warrant was signed;

21

(c) send the following to the magistrate:

22

(i) the form of warrant completed by the inspector;

23

(ii) the information referred to in subsection (3), which must have been duly sworn or affirmed.

24

25

- (7) The inspector must comply with paragraph (6)(c) by the end of the day after the earlier of the following:

26

27

(a) the day the warrant ceases to be in force;

28

(b) the day the warrant is executed.

29

## *Magistrate to attach documents together*

30

- (8) The magistrate must attach the documents provided under paragraph (6)(c) to the warrant signed by the magistrate.

31

# EXPOSURE DRAFT

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1     **143C Authority of warrant**

- 2             (1) A form of warrant duly completed under subsection 143B(6) is  
3             authority for the same powers as are authorised by the warrant  
4             signed by the magistrate under subsection 143B(4).
- 5             (2) In any proceedings, a court is to assume (unless the contrary is  
6             proved) that an exercise of power was not authorised by a warrant  
7             under section 143B if:
- 8                 (a) it is material, in those proceedings, for the court to be  
9                 satisfied that the exercise of power was authorised by that  
10                section; and
- 11               (b) the warrant signed by the inspector authorising the exercise  
12               of the power is not produced in evidence.

13     **143D Offence relating to warrants by telephone, fax etc.**

14             An inspector must not:

- 15                 (a) state in a document that purports to be a form of warrant  
16                 under section 143B the name of a magistrate unless that  
17                 magistrate signed the warrant; or
- 18                 (b) state on a form of warrant under that section a matter that, to  
19                 the inspector's knowledge, departs in a material particular  
20                 from the terms of the warrant signed by the magistrate under  
21                 that section; or
- 22                 (c) purport to execute, or present to another person, a document  
23                 that purports to be a form of warrant under that section that  
24                 the inspector knows departs in a material particular from the  
25                 terms of a warrant signed by a magistrate under that section;  
26                 or
- 27                 (d) purport to execute, or present to another person, a document  
28                 that purports to be a form of warrant under that section where  
29                 the inspector knows that no warrant in the terms of the form  
30                 of warrant has been completed and signed by a magistrate; or
- 31                 (e) give to a magistrate a form of warrant under that section that  
32                 is not the form of warrant that the inspector purported to  
33                 execute.

34             Penalty: Imprisonment for 2 years.

1 **143E Effect of warrant**

2 If a warrant is issued under the Agvet Code of a jurisdiction other  
3 than this jurisdiction, the warrant has effect and may be executed in  
4 this jurisdiction as if the warrant had been issued under this Code.

5 **Division 10—Powers of magistrates**

6 **143F Powers of issuing officers**

7 *Powers conferred personally*

- 8 (1) A power conferred on a magistrate by this Part is conferred on the  
9 magistrate:  
10 (a) in a personal capacity; and  
11 (b) not as a court or a member of a court.

12 *Powers need not be accepted*

- 13 (2) The magistrate need not accept the power conferred.

14 *Protection and immunity*

- 15 (3) A magistrate exercising a power conferred by this Part has the  
16 same protection and immunity as if the magistrate were exercising  
17 the power:  
18 (a) as the court of which the magistrate is a member; or  
19 (b) as a member of the court of which the magistrate is a  
20 member.

21 **186 Division 4 of Part 9 of the Schedule (heading)**

22 Repeal the heading.

23 **187 Before section 146 of the Schedule**

24 Insert:

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1 **Part 9A—Enforcement**

2 **Division 1—Preliminary**

3 **145 Explanation of Part**

4 This Part contains provisions for the enforcement of this Code,  
5 including provisions relating to the following:

- 6 (a) the use of civil penalties to enforce civil penalty provisions;  
7 (b) the use of infringement notices to enforce certain strict  
8 liability offences and civil penalty provisions;  
9 (c) the acceptance and enforcement of undertakings to comply  
10 with provisions;  
11 (d) the use of injunctions in the enforcement of provisions;  
12 (e) the issue of substantiation notices in relation to certain claims  
13 and representations;  
14 (f) the giving of enforceable directions in relation to suspected  
15 contraventions;  
16 (g) the issue of formal warnings in relation to suspected  
17 contraventions;  
18 (h) other ancillary matters.

19 **Division 2—Civil penalty orders**

20 **Subdivision A—Obtaining a civil penalty order**

21 **145A Civil penalty orders**

22 *Application for order*

- 23 (1) The APVMA may, on behalf of the Commonwealth, apply to a  
24 court of competent jurisdiction for an order that a person, who is  
25 alleged to have contravened a civil penalty provision, pay the  
26 Commonwealth a pecuniary penalty.
- 27 (2) The APVMA must make the application within 6 years of the  
28 alleged contravention.

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1 *Court may order person to pay pecuniary penalty*

2 (3) If the court is satisfied that the person has contravened the civil  
3 penalty provision, the court may order the person to pay to the  
4 Commonwealth such pecuniary penalty for the contravention as the  
5 court determines to be appropriate.

6 Note: Section 145AA sets out the maximum penalty that the court may order  
7 the person to pay.

8 (4) An order under subsection (3) is a *civil penalty order*.

9 *Determining pecuniary penalty*

- 10 (5) In determining the pecuniary penalty, the court may take into  
11 account all relevant matters, including:
- 12 (a) the nature and extent of the contravention; and
  - 13 (b) the nature and extent of any loss or damage suffered because  
14 of the contravention; and
  - 15 (c) the circumstances in which the contravention took place; and
  - 16 (d) whether the person has previously been found by a court to  
17 have engaged in any similar conduct; and
  - 18 (e) the extent to which the person has cooperated with the  
19 authorities; and
  - 20 (f) if the person is a body corporate:
    - 21 (i) the level of the employees, officers or agents of the  
22 body corporate involved in the contravention; and
    - 23 (ii) whether the body corporate exercised due diligence to  
24 avoid the contravention; and
    - 25 (iii) whether the body corporate had a corporate culture  
26 conducive to compliance.

27 **145AA Maximum penalties for contravention of civil penalty**  
28 **provisions**

29 *Penalty for body corporate*

- 30 (1) The pecuniary penalty payable under section 145A by a body  
31 corporate for a contravention of a civil penalty provision must not  
32 exceed 5 times the amount of the maximum monetary penalty that  
33 could be imposed by a court if the body corporate were convicted

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1 of an offence constituted by conduct that is the same as the conduct  
2 constituting the contravention.

3 *Penalty for person other than body corporate*

4 (2) The pecuniary penalty payable under section 145A by a person  
5 other than a body corporate for a contravention of a civil penalty  
6 provision must not exceed 3 times the amount of the maximum  
7 monetary penalty that could be imposed by a court if the person  
8 were convicted of an offence constituted by conduct that is the  
9 same as the conduct constituting the contravention.

### 10 **145AB Civil enforcement of penalty**

11 (1) A pecuniary penalty is a debt payable to the Commonwealth.  
12 (2) The Commonwealth may enforce a civil penalty order as if it were  
13 an order made in civil proceedings against a person to recover a  
14 debt due by the person. The debt arising from the order is taken to  
15 be a judgement debt.

### 16 **145AC Conduct contravening more than one civil penalty provision**

17 (1) If conduct constitutes a contravention of 2 or more civil penalty  
18 provisions, proceedings may be instituted under this Division  
19 against a person in relation to the contravention of any one or more  
20 of those provisions.  
21 (2) However, the person is not liable to more than one pecuniary  
22 penalty under this Division in relation to the same conduct.

### 23 **145AD Multiple contraventions**

24 (1) A court may make a single civil penalty order against a person for  
25 multiple contraventions of a civil penalty provision if proceedings  
26 for the contraventions are founded on the same facts, or if the  
27 contraventions form, or are part of, a series of contraventions of the  
28 same or a similar character.

29 Note: For continuing contraventions of civil penalty provisions, see  
30 section 145C.

- 1 (2) However, the penalty must not exceed the sum of the maximum  
2 penalties that could be ordered if a separate penalty were ordered  
3 for each of the contraventions.

4 **145AE Proceedings may be heard together**

5 A court may direct that 2 or more proceedings for civil penalty  
6 orders be heard together.

7 **145AF Civil evidence and procedure rules for civil penalty orders**

8 A court must apply the rules of evidence and procedure for civil  
9 matters when hearing and determining an application for a civil  
10 penalty order.

11 **145AG Contravening a civil penalty provision is not an offence**

12 A contravention of a civil penalty provision is not an offence.

13 **Subdivision B—Civil proceedings and criminal proceedings**

14 **145B Civil proceedings after criminal proceedings**

15 A court may not make a civil penalty order against a person for a  
16 contravention of a civil penalty provision if the person has been  
17 convicted of an offence constituted by conduct that is the same, or  
18 substantially the same, as the conduct constituting the  
19 contravention.

20 **145BA Criminal proceedings during civil proceedings**

- 21 (1) Proceedings for a civil penalty order against a person for a  
22 contravention of a civil penalty provision are stayed if:  
23 (a) criminal proceedings are commenced or have already been  
24 commenced against the person for an offence; and  
25 (b) the offence is constituted by conduct that is the same, or  
26 substantially the same, as the conduct alleged to constitute  
27 the contravention.
- 28 (2) The proceedings for the order (the *civil proceedings*) may be  
29 resumed if the person is not convicted of the offence. Otherwise,  
30 the civil proceedings are dismissed.
-

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1 **145BB Criminal proceedings after civil proceedings**

2 Criminal proceedings may be commenced against a person for  
3 conduct that is the same, or substantially the same, as conduct that  
4 would constitute a contravention of a civil penalty provision  
5 regardless of whether a civil penalty order has been made against  
6 the person in relation to the contravention.

7 **145BC Evidence given in civil proceedings not admissible in**  
8 **criminal proceedings**

- 9 (1) Evidence of information given, or evidence of production of  
10 documents, by an individual is not admissible in criminal  
11 proceedings against the individual for an offence if:  
12 (a) the individual previously gave the evidence or produced the  
13 documents in proceedings for a civil penalty order against the  
14 individual for an alleged contravention of a civil penalty  
15 provision (whether or not the order was made); and  
16 (b) the conduct alleged to constitute the offence is the same, or  
17 substantially the same, as the conduct alleged to constitute  
18 the contravention.
- 19 (2) However, subsection (1) does not apply to criminal proceedings in  
20 relation to the falsity of the evidence given by the individual in the  
21 proceedings for the civil penalty order.

22 **Subdivision C—Miscellaneous**

23 **145C Continuing contraventions of civil penalty provisions**

- 24 (1) If an act or thing is required under a civil penalty provision to be  
25 done:  
26 (a) within a particular period; or  
27 (b) before a particular time;  
28 then the obligation to do that act or thing continues until the act or  
29 thing is done (even if the period has expired or the time has  
30 passed).
- 31 (2) A person who contravenes a civil penalty provision that requires an  
32 act or thing to be done:  
33 (a) within a particular period; or

- 1 (b) before a particular time;  
2 commits a separate contravention of that provision in respect of  
3 each day during which the contravention occurs (including the day  
4 the relevant civil penalty order is made or any later day).

## 5 **145CA Ancillary contravention of civil penalty provisions**

- 6 (1) A person must not:  
7 (a) attempt to contravene a civil penalty provision; or  
8 (b) aid, abet, counsel or procure a contravention of a civil  
9 penalty provision; or  
10 (c) induce (by threats, promises or otherwise) a contravention of  
11 a civil penalty provision; or  
12 (d) be in any way, directly or indirectly, knowingly concerned in,  
13 or party to, a contravention of a civil penalty provision; or  
14 (e) conspire with others to effect a contravention of a civil  
15 penalty provision.

### 16 *Civil penalty*

- 17 (2) A person who contravenes subsection (1) in relation to a civil  
18 penalty provision is taken to have contravened the provision.

## 19 **145CB Mistake of fact**

- 20 (1) A person is not liable to have a civil penalty order made against the  
21 person for a contravention of a civil penalty provision if:  
22 (a) at or before the time of the conduct constituting the  
23 contravention, the person:  
24 (i) considered whether or not facts existed; and  
25 (ii) was under a mistaken but reasonable belief about those  
26 facts; and  
27 (b) had those facts existed, the conduct would not have  
28 constituted a contravention of the civil penalty provision.
- 29 (2) For the purposes of subsection (1), a person may be regarded as  
30 having considered whether or not facts existed if:  
31 (a) the person had considered, on a previous occasion, whether  
32 those facts existed in the circumstances surrounding that  
33 occasion; and

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1 (b) the person honestly and reasonably believed that the  
2 circumstances surrounding the present occasion were the  
3 same, or substantially the same, as those surrounding the  
4 previous occasion.

5 (3) A person who wishes to rely on subsection (1) or (2) in  
6 proceedings for a civil penalty order bears an evidential burden in  
7 relation to that matter.

### 8 **145CC State of mind**

9 (1) In proceedings for a civil penalty order against a person for a  
10 contravention of a civil penalty provision (other than subsection  
11 145CA(1)), it is not necessary to prove:

- 12 (a) the person's intention; or
- 13 (b) the person's knowledge; or
- 14 (c) the person's recklessness; or
- 15 (d) the person's negligence; or
- 16 (e) any other state of mind of the person.

17 (2) Subsection (1) of this section does not affect the operation of  
18 section 145CB (mistake of fact).

### 19 **145CD Liability of body corporate for actions by employees, agents 20 or officers**

21 If an element of a civil penalty provision is done by an employee,  
22 agent or officer of a body corporate acting within the actual or  
23 apparent scope of his or her employment, or within his or her  
24 actual or apparent authority, the element must also be attributed to  
25 the body corporate.

### 26 **145CE Liability of executive officers**

27 (1) An executive officer of a body corporate contravenes this  
28 subsection if:

- 29 (a) the body corporate contravenes a civil penalty provision; and
- 30 (b) the officer knew that the contravention would occur; and
- 31 (c) the officer was in a position to influence the conduct of the  
32 body in relation to the contravention; and

1 (d) the officer failed to take all reasonable steps to prevent the  
2 contravention.

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

4 **145CF Establishing whether an executive officer took reasonable**  
5 **steps to prevent the contravention of a civil penalty**  
6 **provision**

7 (1) For the purposes of section 145CE, in determining whether an  
8 executive officer of a body corporate failed to take all reasonable  
9 steps to prevent the contravention of a civil penalty provision, a  
10 court is to have regard to:

11 (a) what action (if any) the officer took towards ensuring that the  
12 body's employees, agents and contractors have a reasonable  
13 knowledge and understanding of the requirements to comply  
14 with this Code, in so far as those requirements affect the  
15 employees, agents or contractors concerned; and

16 (b) what action (if any) the officer took when he or she became  
17 aware that the body was contravening this Code.

18 (2) This section does not, by implication, limit the generality of  
19 section 145CE.

20 **Division 3—Infringement notices**

21 **145D Enforceable provisions**

22 (1) The following provisions are *enforceable* under this Division:

23 (a) an offence prescribed by the regulations;

24 (b) a civil penalty provision prescribed by the regulations.

25 (2) For the purpose of paragraph (1)(a), the regulations may only  
26 prescribe an offence against this Code that is an offence of strict  
27 liability.

28 **145DA When an infringement notice may be given**

29 (1) If an inspector has reasonable grounds to believe that a person has  
30 contravened a provision enforceable under this Division, the  
31 inspector may give the person an infringement notice for the  
32 alleged contravention.

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- 1 (2) The infringement notice must be given within 12 months after the  
2 day the contravention is alleged to have taken place.
- 3 (3) A single infringement notice must relate only to a single  
4 contravention of a single provision enforceable under this Division.
- 5 (4) If a single provision can constitute both a civil penalty provision  
6 and an offence provision, the infringement notice must relate to the  
7 provision as an offence provision.

### 8 **145DB Matters to be included in an infringement notice**

- 9 (1) An infringement notice must:
- 10 (a) be identified by a unique number; and
- 11 (b) state the day it is given; and
- 12 (c) state the name of the person to whom the notice is given; and
- 13 (d) state the name of the person who gave the notice; and
- 14 (e) give brief details of the alleged contravention, including:
- 15 (i) the provision that was allegedly contravened; and
- 16 (ii) the maximum penalty that a court could impose for the  
17 contravention; and
- 18 (iii) the time (if known) and day of, and the place of, the  
19 alleged contravention; and
- 20 (f) state the amount that is payable under the notice; and
- 21 (g) give an explanation of how payment of the amount is to be  
22 made; and
- 23 (h) state that, if the person to whom the notice is given pays the  
24 amount within 28 days after the day the notice is given, then  
25 (unless the notice is withdrawn):
- 26 (i) if the provision is an offence provision and does not also  
27 constitute a civil penalty provision—the person will not  
28 be liable to be prosecuted in a court for the alleged  
29 contravention; or
- 30 (ii) if the provision is an offence provision that can also  
31 constitute a civil penalty provision—the person is not  
32 liable to be prosecuted in a court, and proceedings  
33 seeking a civil penalty order will not be brought, in  
34 relation to the alleged contravention; or

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- 1 (iii) if the provision is a civil penalty provision—  
2 proceedings seeking a civil penalty order will not be  
3 brought in relation to the alleged contravention; and  
4 (i) state that payment of the amount is not an admission of guilt  
5 or liability; and  
6 (j) state that the person may apply to the APVMA to have the  
7 period in which to pay the amount extended; and  
8 (k) state that the person may choose not to pay the amount and, if  
9 the person does so:  
10 (i) if the provision is an offence provision and does not also  
11 constitute a civil penalty provision—the person may be  
12 prosecuted in a court for the alleged contravention; or  
13 (ii) if the provision is an offence provision and can also  
14 constitute a civil penalty provision—the person may be  
15 prosecuted in a court, or proceedings seeking a civil  
16 penalty order may be brought, in relation to the alleged  
17 contravention; or  
18 (iii) if the provision is a civil penalty provision—  
19 proceedings seeking a civil penalty order may be  
20 brought in relation to the alleged contravention; and  
21 (l) set out how the notice can be withdrawn; and  
22 (m) state that if the notice is withdrawn:  
23 (i) if the provision is an offence provision and does not also  
24 constitute a civil penalty provision—the person may be  
25 prosecuted in a court for the alleged contravention; or  
26 (ii) if the provision is an offence provision and can also  
27 constitute a civil penalty provision—the person may be  
28 prosecuted in a court, or proceedings seeking a civil  
29 penalty order may be brought, in relation to the alleged  
30 contravention; or  
31 (iii) if the provision is a civil penalty provision—  
32 proceedings seeking a civil penalty order may be  
33 brought in relation to the alleged contravention; and  
34 (n) state that the person may make written representations to the  
35 APVMA seeking the withdrawal of the notice.
- 36 (2) For the purposes of paragraph (1)(f), the amount to be stated in the  
37 notice for the alleged contravention of the provision must be equal  
38 to:  
39 (a) in the case of an individual—the lesser of:
-

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- 1 (i) 12 penalty units; and  
2 (ii) one-fifth of the maximum penalty that a court could  
3 impose on the individual for that contravention; and  
4 (b) in the case of a body corporate—the lesser of:  
5 (i) 60 penalty units; and  
6 (ii) one-fifth of the maximum penalty that a court could  
7 impose on the body corporate for that contravention.
- 8 (3) The regulations may, subject to subsection (2), provide for a scale  
9 of amounts that may apply for an alleged contravention.

### 10 **145DC Extension of time to pay amount**

- 11 (1) A person to whom an infringement notice has been given may  
12 apply to the APVMA for an extension of the period referred to in  
13 paragraph 145DB(1)(h).
- 14 (2) If the application is made before the end of that period, the  
15 APVMA may, in writing, extend that period. The APVMA may do  
16 so before or after the end of that period.
- 17 (3) If the APVMA extends that period, a reference in this Division to  
18 the period referred to in paragraph 145DB(1)(h) is taken to be a  
19 reference to that period so extended.
- 20 (4) If the APVMA does not extend that period, a reference in this  
21 Division to the period referred to in paragraph 145DB(1)(h) is  
22 taken to be a reference to the period that ends on the later of the  
23 following days:  
24 (a) the day that is the last day of the period referred to in  
25 paragraph 145DB(1)(h);  
26 (b) the day that is 7 days after the day the person was given  
27 notice of the APVMA's decision not to extend.
- 28 (5) The APVMA may extend the period more than once under  
29 subsection (2).

1 **145DD Withdrawal of an infringement notice**

2 *Representations seeking withdrawal of notice*

- 3 (1) A person to whom an infringement notice has been given may  
4 make written representations to the APVMA seeking the  
5 withdrawal of the notice.

6 *Withdrawal of notice*

- 7 (2) The APVMA may withdraw an infringement notice given to a  
8 person (whether or not the person has made written representations  
9 seeking the withdrawal).

- 10 (3) When deciding whether or not to withdraw an infringement notice  
11 (the **relevant infringement notice**), the APVMA:

12 (a) must take into account any written representations seeking  
13 the withdrawal that were given by the person to the APVMA;  
14 and

15 (b) may take into account the following:

16 (i) whether a court has previously imposed a penalty on the  
17 person for a contravention of a provision enforceable  
18 under this Division if the contravention is constituted by  
19 conduct that is the same, or substantially the same, as  
20 the conduct alleged to constitute the contravention in the  
21 relevant infringement notice;

22 (ii) the circumstances of the alleged contravention;

23 (iii) whether the person has paid an amount, stated in an  
24 earlier infringement notice, for a contravention of a  
25 provision enforceable under this Division if the  
26 contravention is constituted by conduct that is the same,  
27 or substantially the same, as the conduct alleged to  
28 constitute the contravention in the relevant infringement  
29 notice;

30 (iv) any other matter the APVMA considers relevant.

31 *Notice of withdrawal*

- 32 (4) Notice of the withdrawal of the infringement notice must be given  
33 to the person. The withdrawal notice must state:

34 (a) the person's name and address; and

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- 1 (b) the day the infringement notice was given; and  
2 (c) the identifying number of the infringement notice; and  
3 (d) that the infringement notice is withdrawn; and  
4 (e) that:  
5 (i) if the provision is an offence provision and does not also  
6 constitute a civil penalty provision—the person may be  
7 prosecuted in a court for the alleged contravention; or  
8 (ii) if the provision is an offence provision and can also  
9 constitute a civil penalty provision—the person may be  
10 prosecuted in a court, or proceedings seeking a civil  
11 penalty order may be brought, in relation to the alleged  
12 contravention; or  
13 (iii) if the provision is a civil penalty provision—  
14 proceedings seeking a civil penalty order may be  
15 brought in relation to the alleged contravention.

### *Refund of amount if infringement notice withdrawn*

- 16  
17 (5) If:  
18 (a) the APVMA withdraws the infringement notice; and  
19 (b) the person has already paid the amount stated in the notice;  
20 the Commonwealth must refund to the person an amount equal to  
21 the amount paid.

### **145DE Effect of payment of amount**

- 22  
23 (1) If the person to whom an infringement notice for an alleged  
24 contravention of a provision is given pays the amount stated in the  
25 notice before the end of the period referred to in paragraph  
26 145DB(1)(h):  
27 (a) any liability of the person for the alleged contravention is  
28 discharged; and  
29 (b) either:  
30 (i) if the provision is an offence provision—the person may  
31 not be prosecuted in a court for the alleged  
32 contravention; or  
33 (ii) if the provision is a civil penalty provision—  
34 proceedings seeking a civil penalty order may not be  
35 brought against the person in relation to the alleged  
36 contravention; and

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- 1 (c) the person is not regarded as having admitted guilt or liability  
2 for the alleged contravention; and  
3 (d) if the provision is an offence provision—the person is not  
4 regarded as having been convicted of the alleged offence.
- 5 (2) Subsection (1) does not apply if the notice has been withdrawn.

## 6 **145DF Effect of this Division**

- 7 This Division does not:
- 8 (a) require an infringement notice to be given to a person for an  
9 alleged contravention of a provision enforceable under this  
10 Division; or  
11 (b) affect the liability of a person for an alleged contravention of  
12 a provision enforceable under this Division if:  
13 (i) the person does not comply with an infringement notice  
14 given to the person for the contravention; or  
15 (ii) an infringement notice is not given to the person for the  
16 contravention; or  
17 (iii) an infringement notice is given to the person for the  
18 contravention and is subsequently withdrawn; or  
19 (c) prevent the giving of 2 or more infringement notices to a  
20 person for an alleged contravention of a provision  
21 enforceable under this Division; or  
22 (d) limit a court's discretion to determine the amount of a  
23 penalty to be imposed on a person who is found to have  
24 contravened a provision enforceable under this Division.

## 25 **Division 4—Enforceable undertakings**

### 26 **145E Acceptance of undertakings**

- 27 (1) The Chief Executive Officer may accept any of the following  
28 undertakings:
- 29 (a) a written undertaking given by an approved person or an  
30 interested person that the person will, in order to comply with  
31 a provision of this Code, take specified action;
- 32 (b) a written undertaking given by an approved person or an  
33 interested person that the person will, in order to comply with  
34 a provision of this Code, refrain from taking specified action;

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- 1 (c) a written undertaking given by an approved person or an  
2 interested person that the person will take specified action  
3 directed towards ensuring that the person does not commit an  
4 offence against this Code or contravene a civil penalty  
5 provision, or is unlikely to do so, in the future.
- 6 (2) The undertaking must be expressed to be an undertaking under this  
7 section.
- 8 (3) The approved person or the interested person, as the case may be,  
9 may withdraw or vary the undertaking at any time, but only with  
10 the written consent of the Chief Executive Officer.
- 11 (4) The Chief Executive Officer's consent is not a legislative  
12 instrument.
- 13 (5) The Chief Executive Officer may, by written notice given to the  
14 person, cancel the undertaking.
- 15 (6) The APVMA must publish the undertaking on the APVMA's  
16 website.

### 17 **145EA Enforcement of undertakings**

- 18 (1) If:  
19 (a) a person has given an undertaking under section 145E; and  
20 (b) the undertaking has not been withdrawn or cancelled; and  
21 (c) the Chief Executive Officer considers that the person has  
22 breached the undertaking;  
23 the APVMA may, on behalf of the Commonwealth, apply to a  
24 court of competent jurisdiction for an order under subsection (2).
- 25 (2) If the court is satisfied that the person has breached the  
26 undertaking, the court may make any or all of the following orders:  
27 (a) an order directing the person to comply with the undertaking;  
28 (b) an order directing the person to pay to the Commonwealth an  
29 amount up to the amount of any financial benefit that the  
30 person has obtained directly or indirectly and that is  
31 reasonably attributable to the breach;  
32 (c) any order that the court considers appropriate directing the  
33 person to compensate any other person who has suffered loss  
34 or damage as a result of the breach;

1 (d) any other order that the court considers appropriate.

## 2 **Division 5—Injunctions**

### 3 **145F Grant of injunctions**

#### 4 *Restraining injunctions*

5 (1) If a person has engaged, is engaging or is proposing to engage, in  
6 conduct that constitutes an offence against this Code or a  
7 contravention of a civil penalty provision, a court of competent  
8 jurisdiction may, on application by any person, grant an injunction:

- 9 (a) restraining the first-mentioned person from engaging in the  
10 conduct; and  
11 (b) if, in the court's opinion, it is desirable to do so—requiring  
12 the first-mentioned person to do a thing.

#### 13 *Performance injunctions*

14 (2) If:

- 15 (a) a person has refused or failed, or is refusing or failing, or is  
16 proposing to refuse or fail, to do a thing; and  
17 (b) the refusal or failure was, is or would be, an offence against  
18 this Code or a contravention of a civil penalty provision;  
19 the court may, on application by any person, grant an injunction  
20 requiring the first-mentioned person to do that thing.

#### 21 *Grant of interim injunctions*

22 (3) Before deciding an application for an injunction under this section,  
23 the court may grant an interim injunction:

- 24 (a) restraining a person from engaging in conduct; or  
25 (b) requiring a person to do a thing.

### 26 **145FA Discharging or varying injunctions**

27 A court may discharge or vary an injunction granted by that court  
28 under this Division.

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1 **145FB Certain limits on granting injunctions not to apply**

2 *Restraining injunctions*

- 3 (1) The power of a court under this Division to grant an injunction  
4 restraining a person from engaging in conduct may be exercised:
- 5 (a) whether or not it appears to the court that the person intends  
6 to engage again, or to continue to engage, in conduct of that  
7 kind; and
  - 8 (b) whether or not the person has previously engaged in conduct  
9 of that kind; and
  - 10 (c) whether or not the conduct involves a serious and immediate  
11 risk of:
    - 12 (i) an effect that is harmful to human beings; or
    - 13 (ii) an unintended effect that is harmful to animals, plants or  
14 things, or to the environment.

15 *Performance injunctions*

- 16 (2) The power of a court under this Division to grant an injunction  
17 requiring a person to do a thing may be exercised:
- 18 (a) whether or not it appears to the court that the person intends  
19 to refuse or fail again, or to continue to refuse or fail, to do  
20 that thing; and
  - 21 (b) whether or not the person has previously refused or failed to  
22 do that thing; and
  - 23 (c) whether or not the conduct involves a serious and immediate  
24 risk of:
    - 25 (i) an effect that is harmful to human beings; or
    - 26 (ii) an unintended effect that is harmful to animals, plants or  
27 things, or to the environment.

28 **145FC Other powers of a court unaffected**

29 The powers conferred on a court under this Division are in addition  
30 to, and not instead of, any other powers of the court, whether  
31 conferred by this Code or otherwise.

1 **Division 6—Substantiation notices**

2 **145G APVMA may require claims to be substantiated etc.**

3 (1) This section applies if a person has made a claim or representation  
4 in relation to:

- 5 (a) a supply, or possible supply, of a chemical product by the  
6 person or another person; or  
7 (b) the manufacture of a chemical product by the person or  
8 another person; or  
9 (c) the safety or efficacy of a chemical product.

10 (2) The APVMA may give the person who made the claim or  
11 representation a written notice that requires the person to do one or  
12 more of the following:

- 13 (a) give information and/or produce documents to the APVMA  
14 that could be capable of substantiating or supporting the  
15 claim or representation;  
16 (b) if the claim or representation relates to a supply, or possible  
17 supply, of chemical products by the person or another  
18 person—give information and/or produce documents to the  
19 APVMA that could be capable of substantiating:  
20 (i) the quantities in which; and  
21 (ii) the place in which; and  
22 (iii) the period for which;

23 the person or other person is or will be able to make such a  
24 supply (whether or not the claim or representation relates to  
25 those quantities, that place or that period);

- 26 (c) give information and/or produce documents to the APVMA  
27 that are of a kind specified in the notice;

28 within 21 days after the notice is given to the person who made the  
29 claim or representation.

30 (3) Any kind of information or documents that the APVMA specifies  
31 under paragraph (2)(c) must be a kind that the APVMA is satisfied  
32 is relevant to:

- 33 (a) substantiating or supporting the claim or representation; or  
34 (b) if the claim or representation relates to a supply, or possible  
35 supply, of chemical products by the person or another  
36 person—substantiating the quantities in which, the place in
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- 1 which, or the period for which, the person or other person is  
2 or will be able to make such a supply.
- 3 (4) The notice must:  
4 (a) name the person to whom it is given; and  
5 (b) specify the claim or representation to which it relates; and  
6 (c) explain the effect of sections 145GA and 145GB.
- 7 (5) The notice may relate to more than one claim or representation that  
8 the person has made.
- 9 (6) This section does not apply to a person who made the claim or  
10 representation if the person:  
11 (a) made the claim or representation by publishing it on behalf of  
12 another person in the course of carrying on a business of  
13 providing information; and  
14 (b) does not have a commercial relationship with the other  
15 person other than for the purpose of:  
16 (i) publishing claims or representations promoting, or  
17 apparently intended to promote, the other person's  
18 business or other activities; or  
19 (ii) the other person supplying goods or services.

### 20 **145GA Compliance with substantiation notices**

- 21 (1) A person given a substantiation notice under section 145G must  
22 comply with the notice:  
23 (a) within the period specified in the notice; or  
24 (b) within such further time as the APVMA allows under  
25 subsection (3).
- 26 (2) A person given a substantiation notice under section 145G may  
27 apply to the APVMA for further time to comply with the notice.  
28 An application must be in writing and made within 21 days after  
29 the notice is given to the person.
- 30 (3) The APVMA may, by written notice given to the person, extend  
31 the period within which the person must comply with the notice.
- 32 (4) Despite subsection (1), an individual may refuse or fail to give  
33 particular information or produce a particular document in  
34 compliance with a substantiation notice on the ground that the

1 information, or production of the document, might tend to  
2 incriminate the individual or to expose the individual to a penalty.

### 3 **145GB Failure to comply with substantiation notice**

4 A person commits an offence if:

- 5 (a) the person is given a notice under section 145GA; and
- 6 (b) the person fails to comply with the notice:
  - 7 (i) within the period specified in the notice; or
  - 8 (ii) if the APVMA has allowed the person further time
  - 9 under subsection 145GA(3)—within such further time.

10 Penalty: 50 penalty units.

## 11 **Division 7—Enforceable directions**

### 12 **145H Chief Executive Officer may give directions**

- 13 (1) This section applies if the Chief Executive Officer believes, on  
14 reasonable grounds, that:
    - 15 (a) a person is not complying with this Code; and
    - 16 (b) it is necessary to exercise powers under this section:
      - 17 (i) to protect the health and safety of human beings; or
      - 18 (ii) to protect animals, plants or things, or the environment;
      - 19 or
      - 20 (iii) to prevent significant prejudice to trade or commerce
      - 21 between Australia and places outside Australia.
  - 22 (2) The Chief Executive Officer may, by written notice, give  
23 directions to the person requiring the person to take such steps,  
24 within the time specified in the notice, as are reasonable in the  
25 circumstances for the person to comply with this Code.
  - 26 (3) A time specified in a notice must be reasonable having regard to  
27 the circumstances.
  - 28 (4) A person commits an offence if:
    - 29 (a) the person is given a notice under this section; and
    - 30 (b) the person fails to comply with the notice within the time
    - 31 specified in the notice.
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- 1                   Penalty:
- 2                   (a) in the case of an aggravated offence—120 penalty units; and
- 3                   (b) in any other case—30 penalty units.
- 4                   (5) Section 4K of the *Crimes Act 1914* applies to an offence against
- 5                   subsection (4).
- 6                   (6) If the person does not take the steps specified in the notice within
- 7                   the time specified in the notice, the Chief Executive Officer may
- 8                   arrange for those steps to be taken.
- 9                   (7) If the APVMA incurs costs because of arrangements made by the
- 10                  Chief Executive Officer under subsection (6):
- 11                  (a) the person is liable to pay to the APVMA, on behalf of the
- 12                  Commonwealth, an amount equal to the cost; and
- 13                  (b) the amount may be recovered by the APVMA, on behalf of
- 14                  the Commonwealth, as a debt due to the Commonwealth in a
- 15                  court of competent jurisdiction.
- 16                  (8) To prove an aggravated offence, the prosecution must prove that
- 17                  the person who committed the offence:
- 18                  (a) intended his or her conduct:
- 19                      (i) to cause significant damage to the health and safety of
- 20                      human beings; or
- 21                      (ii) to cause significant damage to animals, plants or things,
- 22                      or the environment; or
- 23                      (iii) to significantly prejudice trade or commerce between
- 24                      Australia and places outside Australia; or
- 25                  (b) was reckless as to whether that conduct:
- 26                      (i) would cause significant damage to the health and safety
- 27                      of human beings; or
- 28                      (ii) would cause significant damage to animals, plants or
- 29                      things, or the environment; or
- 30                      (iii) would significantly prejudice trade or commerce
- 31                      between Australia and places outside Australia.
- 32                  (9) In this section:
- 33                  ***aggravated offence*** means an offence the commission of which:
- 34                      (a) causes significant damage, or is likely to cause significant
- 35                      damage:
-

- 1 (i) to the health and safety of human beings; or  
2 (ii) to animals, plants or things, or the environment; or  
3 (b) would significantly prejudice trade or commerce between  
4 Australia and places outside Australia.

## 5 **Division 8—Warning notices**

### 6 **145J APVMA may issue a warning notice**

7 The APVMA may issue a formal warning to a person in respect of  
8 an offence of a kind prescribed by the regulations if the APVMA  
9 has reasonable grounds to suspect that the person's conduct may  
10 constitute a commission of the offence.

## 11 **Division 9—Miscellaneous**

### 12 **188 Sections 146, 147 and 148 of the Schedule**

13 Repeal the sections, substitute:

#### 14 **146 False or misleading information or document**

- 15 (1) A person commits an offence if, for the purposes of, or in  
16 connection with, the consideration by the APVMA, in the course of  
17 the performance of any of its functions or the exercise of any of its  
18 powers under this Code, of any matters referred to in subsection  
19 14(4), (5) or (6), 56K(1) or paragraph 123(1)(a), the person:  
20 (a) gives information (whether orally or in writing) that the  
21 person knows to be false or misleading in a material  
22 particular; or  
23 (b) produces a document that the person knows to be false or  
24 misleading in a material particular without:  
25 (i) indicating to the person to whom the document is  
26 produced that it is false or misleading and the respect in  
27 which it is false or misleading; and  
28 (ii) providing correct information to that person if the  
29 person producing the document is in possession of, or  
30 can reasonably acquire, the correct information.

31 Penalty: 300 penalty units.

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- 1 (2) A person commits an offence if, for the purposes of, or in  
2 connection with, the consideration by the APVMA, in the course of  
3 the performance of any of its functions or the exercise of any of its  
4 powers under this Code, of any matters other than matters referred  
5 to in subsection (1), the person:
- 6 (a) gives information (whether orally or in writing) that the  
7 person knows to be false or misleading in a material  
8 particular; or
- 9 (b) produces a document that the person knows to be false or  
10 misleading in a material particular without:
- 11 (i) indicating to the person to whom the document is  
12 produced that it is false or misleading and the respect in  
13 which it is false or misleading; and
- 14 (ii) providing correct information to that person if the  
15 person producing the document is in possession of, or  
16 can reasonably acquire, the correct information.

17 Penalty: 60 penalty units.

### 18 **147 Time for bringing proceedings**

- 19 (1) Proceedings for an offence against this Code may be brought:
- 20 (a) within 3 years after the date the offence is alleged to have  
21 been committed; or
- 22 (b) within 2 years after the date evidence of the offence first  
23 came to the attention of the APVMA, a member of the staff  
24 of the APVMA or an inspector.
- 25 (2) If paragraph (1)(b) is relied on to begin proceedings for an offence,  
26 the court attendance notice, summons or application must contain  
27 particulars of the date that evidence of the offence first came to the  
28 attention of the APVMA, a member of the staff of the APVMA or  
29 an inspector, as the case may be. It need not contain particulars of  
30 the date on which the offence was committed.
- 31 (3) The date on which evidence of the offence first came to the  
32 attention of the APVMA, a member of the staff of the APVMA or  
33 an inspector, as the case may be, is the date specified in the court  
34 attendance notice, summons or application, unless the contrary is  
35 established.
- 36 (4) In this section:
-

1                    *evidence*, in relation to an offence, means evidence of any act or  
2                    omission constituting the offence.

## 3                    **189 After section 149 of the Schedule**

4                    Insert:

### 5                    **149A Recovery of costs of investigations**

6                    (1) This section applies if:

7                            (a) a person is convicted of an offence against an agvet law or is  
8                            found to have contravened an agvet penalty provision; and

9                            (b) the court convicting the person finds that the APVMA has  
10                            reasonably incurred costs and expenses in taking a sample, or  
11                            conducting an inspection, test or analysis during the  
12                            investigation of the offence and/or agvet penalty provision;  
13                            and

14                            (c) the APVMA applies for an order against the person for the  
15                            payment of the costs and expenses.

16                    (2) The court may order the person to pay to the APVMA, on behalf of  
17                    the Commonwealth, the reasonable costs and expenses that it  
18                    considers just and equitable in the circumstances.

19                    Note:            The APVMA may recover certain other expenses, see section 142.

## 20                    **190 Subsection 160A(2) of the Schedule (penalty)**

21                    Repeal the penalty.

## 22                    **191 After subsection 160A(2) of the Schedule**

23                    Insert:

24                    (2A) A person commits an offence if the person contravenes  
25                    subsection (2).

26                    Penalty: 300 penalty units.

27                    Note:            For the physical elements of this offence, see subsection 8A(2).

28                    (2B) Subsection (2) is a *civil penalty provision*.

29                    Note:            Part 9A provides for pecuniary penalties for contraventions of civil  
30                    penalty provisions.

## 31                    **192 Subsection 161(1) of the Schedule (penalty)**

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1 Repeal the penalty.

2 **193 After subsection 161(1) of the Schedule**

3 Insert:

4 (1A) A person commits an offence if the person contravenes  
5 subsection (1).

6 Penalty: 300 penalty units.

7 Note: For the physical elements of this offence, see subsection 8A(2).

8 (1B) Subsection (1) is a *civil penalty provision*.

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

11 **194 Paragraph 167(1)(o) of the Schedule**

12 After “section 118”, insert “, 118A or 118B”.

13 **195 Paragraph 167(1)(p) of the Schedule**

14 After “section 119”, insert “, 119A or 119B”.

15 **196 Subsection 170A(1) of the Schedule (penalty)**

16 Repeal the penalty, substitute:

17 Penalty: 50 penalty units.

18 **197 Paragraph 181(1)(b) of the Schedule**

19 Omit “or 91”, substitute “, 91 or 91A”.

20 **198 Application—general**

21 (1) Subject to items 201 to 204 of this Schedule, the amendments made by  
22 this Schedule apply in relation to acts and omissions that occur on or  
23 after the day this item commences.

24 (2) For the purposes of this item, if an act or omission is alleged to have  
25 occurred between 2 dates, one before and one on or after this item  
26 commences, the act or omission is taken to have occurred before the  
27 day this item commences.

28 **199 Application—investigative powers**

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1 (1) Part 7AA of the *Agricultural and Veterinary Chemicals*  
2 (*Administration*) Act 1992, as inserted by this Schedule, applies in  
3 relation to the entering of premises on or after the day this item  
4 commences.

5 (2) Part 9A of the Schedule to the *Agricultural and Veterinary Chemicals*  
6 *Code Act 1994*, as amended by this Schedule, applies in relation to the  
7 entering of premises on or after the day this item commences.

## 8 **200 Application—item 159**

9 The amendment made by item 159 of this Schedule applies in relation  
10 to an application made on or after the day this item commences.

## 11 **201 Application—item 188**

12 Section 147 of the Schedule to the *Agricultural and Veterinary*  
13 *Chemicals Code Act 1994*, as inserted by item 188 of this Schedule,  
14 applies in relation to criminal proceedings that begin on or after the day  
15 this item commences.

## 16 **202 Application—item 189**

17 Section 149A of the Schedule to the *Agricultural and Veterinary*  
18 *Chemicals Code Act 1994*, as inserted by item 189 of this Schedule,  
19 applies in relation to criminal proceedings and/or proceedings for a civil  
20 penalty order that begin on or after the day this item commences.

## 21 **203 Saving of authorisations and regulations**

22 (1) An authorisation that was in effect for the purposes of subsection 132(3)  
23 of the old law continues in effect on and after the day this item  
24 commences as though it had been made for the purposes of  
25 section 132D of the new law.

26 (2) Regulations in force for the purposes of paragraph 121(4)(a) of the old  
27 law continue in force on and after the day this item commences as if  
28 they were regulations in force for the purposes of paragraph 121A(1)(a)  
29 of the new law.

30 (3) In this item:

31 *new law* means the Code set out in the Schedule to the *Agricultural and*  
32 *Veterinary Chemicals Code Act 1994*, as amended by this Schedule.

# EXPOSURE DRAFT

## Schedule 4 Enforcement

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1            *old law* means the Code set out in the Schedule to the *Agricultural and*  
2            *Veterinary Chemicals Code Act 1994*, as in force immediately before  
3            the day this item commences.  
4

1 **Schedule 5—Data protection**  
2

3 *Agricultural and Veterinary Chemicals Code Act 1994*

4 **1 Subsection 3(1) of the Schedule (paragraph (b) of the**  
5 **definition of *protected chemical product*)**

6 Omit “product;”, substitute “product.”.

7 **2 Subsection 3(1) of the Schedule (definition of *protected***  
8 ***chemical product*)**

9 Omit all the words after paragraph (b).

10 **3 Subsection 3(1) of the Schedule (definition of *protected***  
11 ***information*)**

12 Repeal the definition, substitute:

13 *protected information*, in relation to an active constituent for a  
14 proposed or existing chemical product or in relation to a chemical  
15 product, means any information that:

16 (a) relates to the constituent or product; and

17 (b) has been obtained because of a trial or laboratory experiment  
18 but only if:

19 (i) the information is of a kind mentioned in paragraph  
20 32(2)(b) and was given to the APVMA in response to a  
21 notice under that section; or

22 (ii) the trial or laboratory experiment was conducted in  
23 response to a notice under section 33; or

24 (iii) the information was given to the APVMA in response to  
25 a notice under subsection 159(1) for the purposes of  
26 paragraph 159(1)(c) or (d).

27 **4 Subsection 3(1) of the Schedule (definition of *protection***  
28 ***period*)**

29 Repeal the definition, substitute:

30 *protection period*, in relation to protected information of a  
31 particular kind, means the period that:

# EXPOSURE DRAFT

## Schedule 5 Data protection

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- 1 (a) begins on the day that the information is given to the  
2 APVMA; and  
3 (b) ends 8 years after the day that the APVMA first uses the  
4 information to make a decision under any of the following  
5 provisions:  
6 (i) subsection 34(1) or (5);  
7 (ii) subsection 40(1) or (2).

### 8 **5 After subsection 34D(5) of the Schedule**

9 Insert:

10 (5A) For the purpose of subsection (5), the use of identical information,  
11 or information to the same effect, is taken not to be prevented by  
12 section 14B or 34C or Part 3 if:

- 13 (a) either:  
14 (i) the information was given to the APVMA in connection  
15 with an application under section 10 or 27 that was  
16 withdrawn or refused; or  
17 (ii) the information was given to the APVMA in connection  
18 with an application under section 110; and  
19 (b) the information is given to the APVMA again in connection  
20 with an application under section 10 or 27; and  
21 (c) the information is not publicly available.

### 22 **6 Subsection 34D(6) of the Schedule**

23 Omit “one of the following”.

### 24 **7 At the end of paragraph 34D(6)(a) of the Schedule**

25 Add “or”.

### 26 **8 Paragraph 34D(6)(b) of the Schedule**

27 Omit “product;”, substitute “product.”.

### 28 **9 Paragraphs 34D(6)(c) to (f) of the Schedule**

29 Repeal the paragraphs.

### 30 **10 Paragraph 57(2)(b) of the Schedule**

31 Repeal the paragraph, substitute:

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# EXPOSURE DRAFT

Data protection **Schedule 5**

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- 1 (b) the information was obtained because of a trial or laboratory  
2 experiment and any of the following apply:  
3 (i) the information is of a kind mentioned in paragraph  
4 32(2)(b) and was given to the APVMA in response to a  
5 notice under that section;  
6 (ii) the trial or laboratory experiment was conducted in  
7 response to a notice under section 33;  
8 (iii) the information was given to the APVMA in response to  
9 a notice under subsection 159(1) for the purposes of  
10 paragraph 159(1)(c) or (d).

11 **11 Subsection 57(2) of the Schedule**

12 Omit all the words after paragraph (b).

13 **12 Subsection 57(3) of the Schedule**

14 Repeal the subsection.

15 **13 Subsection 60(2) of the Schedule**

16 Omit “give to the secondary applicant”, substitute “give to the primary  
17 applicant or each primary applicant and to the secondary applicant”.

18 **14 Paragraph 60(2)(c) of the Schedule**

19 Omit “secondary applicant” (wherever occurring), substitute “notice  
20 recipient”.

21 **15 Subsection 60(3) of the Schedule**

22 Omit “the secondary applicant tells”, substitute “a notice recipient  
23 tells”.

24 **16 Subsection 61(1) of the Schedule**

25 Omit “section 60”, substitute “subsection 60(3)”.

26 **17 Subsection 62(1) of the Schedule**

27 Omit “the secondary applicant has”, substitute “any applicant has”.

28 **18 Application—item 5**

# EXPOSURE DRAFT

## Schedule 5 Data protection

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1           The amendment made by item 5 of this Schedule applies in relation to  
2           an application under Part 2 or 2A of the Schedule to the *Agricultural*  
3           *and Veterinary Chemicals Code Act 1994*, whether made before, on or  
4           after the day this item commences.

### 5           **19 Application—items 13, 14, 15 and 17**

6           The amendments made by items 13, 14, 15 and 17 of this Schedule  
7           apply in relation to a notice given under section 60 of the Schedule to  
8           the *Agricultural and Veterinary Chemicals Code Act 1994* on or after  
9           the day this item commences.

### 10          **20 Saving of protection period for existing protected** 11          **information**

- 12          (1)     Despite item 4 of this Schedule:
- 13                  (a) the definition of *protection period* of the old law continues to  
14                  apply on and after the day this item commences to protected  
15                  information (within the meaning of the old law); and  
16                  (b) regulations in force for the purposes of paragraph (a) of the  
17                  definition of *protection period* of the old law continue in  
18                  force on and after the day this item commences in relation to  
19                  such information.
- 20          (2)     In this item:
- 21                  *old law* means the Code set out in the Schedule to the *Agricultural and*  
22                  *Veterinary Chemicals Code Act 1994*, as in force immediately before  
23                  this item commences.  
24

# EXPOSURE DRAFT

Arrangements for collecting levy **Schedule 6**

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1 **Schedule 6—Arrangements for collecting levy**  
2

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

5 **1 Subsection 3(1)**

6 Insert:

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

9 **2 Subsection 3(1)**

10 Insert:

11 *collecting agency* means:

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

15 **3 Subsection 3(1) (definition of *notional wholesale value*)**

16 Omit “APVMA”, substitute “collecting agency”.

17 **4 After section 3**

18 Insert:

19 **3A Minister may determine collecting agency**

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

25 **5 Section 6 (heading)**

26 Repeal the heading, substitute:

# EXPOSURE DRAFT

## Schedule 6 Arrangements for collecting levy

---

1 **6 Power of collecting agency to make certain determinations**

2 **6 Subsection 6(1)**

3 Omit “APVMA”, substitute “collecting agency”.

4 **7 Subsection 14(2)**

5 Omit “APVMA”, substitute “collecting agency”.

6 **8 Paragraph 14A(1)(a)**

7 Omit “APVMA”, substitute “collecting agency”.

8 **9 Subsection 14A(3)**

9 Omit “APVMA”, substitute “collecting agency”.

10 **10 Subsection 15(1)**

11 Omit “APVMA” (wherever occurring), substitute “collecting agency”.

12 **11 Subsection 15(3)**

13 Omit “APVMA” (wherever occurring), substitute “collecting agency”.

14 **12 Subsections 15(4), (5) and (6)**

15 Omit “APVMA”, substitute “collecting agency”.

16 **13 Section 16 (heading)**

17 Repeal the heading, substitute:

18 **16 Assessment of levy by collecting agency**

19 **14 Subsection 16(1)**

20 Omit “APVMA”, substitute “collecting agency”.

21 **15 Subsection 16(4)**

22 After “APVMA”, insert “or, if an Agency is specified by legislative  
23 instrument under section 3A, the Agency,”.

24 **16 Subsections 16(5) and (6)**

25 Omit “APVMA”, substitute “collecting agency”.

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# EXPOSURE DRAFT

Arrangements for collecting levy **Schedule 6**

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1 **17 Subsection 16(12)**

2 Omit “APVMA by the Chief Executive Officer of the APVMA”,  
3 substitute “collecting agency by the Chief Executive Officer of the  
4 Agency”.

5 **18 Subsection 17(1)**

6 Omit “APVMA” (wherever occurring), substitute “collecting agency”.

7 **19 Paragraph 17(2)(a)**

8 Omit “or to an inspector”, substitute “, an Agency specified by  
9 legislative instrument under section 3A or an inspector”.

10 **20 Subsection 18(1)**

11 Omit “APVMA” (wherever occurring), substitute “collecting agency”.

12 **21 Subsections 18(3), (4), (5), (7) and (8)**

13 Omit “APVMA”, substitute “collecting agency”.

14 **22 At the end of Part 3**

15 Add:

16 **18A Reporting obligations of collecting agency**

17 (1) This section applies if an Agency is specified by legislative  
18 instrument under section 3A to be the collecting agency.

19 (2) In relation to a particular period, the Agency must notify the  
20 APVMA, in writing, of the following:

21 (a) the leviable disposals of a chemical product that took place  
22 during the period;

23 (b) the total leviable value (if any) in respect of the product for  
24 that period and the amount of the levy (if any) that was  
25 payable;

26 (c) any assessment made by the Agency as to whether any levy  
27 was payable in respect of leviable disposals of the chemical  
28 product during the period;

29 (d) the amounts of levy, late payment penalty or understatement  
30 penalty collected by the Agency during the period;

# EXPOSURE DRAFT

## Schedule 6 Arrangements for collecting levy

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- 1 (e) if the prescribed date for payment of levy falls within the  
2 period—the amounts of levy that have not been paid on or  
3 before the prescribed date;
- 4 (f) if late payment penalty or understatement penalty is payable  
5 during the period—any amounts of late payment penalty or  
6 understatement penalty that have not been paid;
- 7 (g) if the amounts of any levy, late payment penalty or  
8 understatement penalty overpaid by a person have been  
9 credited during the period against a liability of the person to  
10 pay another such amount under the Act—the amount credited  
11 and the person in relation to whom the amount was credited;
- 12 (h) if the whole or part of the liability to pay an amount of levy,  
13 late payment penalty or understatement penalty has been  
14 waived during the period—the amount that has been waived  
15 and the person in relation to whom the amount was waived;
- 16 (i) if the total amount of levy, late payment penalty or  
17 understatement penalty was rounded during the period—the  
18 amount of levy, late payment penalty or understatement  
19 penalty payable, the amount as rounded and the person in  
20 relation to whom the amount was rounded.
- 21 (3) The Agency must notify the APVMA in such form, and by such  
22 time after the end of the period, as the APVMA requires.

### 23 **18B APVMA may request information from collecting agency**

- 24 (1) This section applies if an Agency is specified by legislative  
25 instrument under section 3A to be the collecting agency.
- 26 (2) The APVMA may request the collecting agency to provide any  
27 information it has acquired under this Act if the APVMA considers  
28 that the information is or may be required to enable:
- 29 (a) the APVMA to perform functions, or exercise powers, under  
30 the *Agricultural and Veterinary Chemicals (Administration)*  
31 *Act 1992* or the Code set out in the Schedule to the  
32 *Agricultural and Veterinary Chemicals Code Act 1994*; or
- 33 (b) the Chief Executive Officer of the APVMA to perform his or  
34 her functions, or exercise his or her powers, under the  
35 *Agricultural and Veterinary Chemicals (Administration) Act*  
36 *1992* or the Code set out in the Schedule to the *Agricultural*  
37 *and Veterinary Chemicals Code Act 1994*.

# EXPOSURE DRAFT

Arrangements for collecting levy **Schedule 6**

---

1 (3) The Agency must respond to the APVMA in such form, and by  
2 such time, as the APVMA requires.

3 **23 Section 20 (heading)**

4 Repeal the heading, substitute:

5 **20 APVMA or collecting agency may require information about**  
6 **disposals of chemical products**

7 **24 Subsection 20(1)**

8 After “the APVMA may”, insert “or, if a collecting agency is specified  
9 by legislative instrument under section 3A to be the collecting agency,  
10 the collecting agency may”.

11 **25 Subsection 20(1)**

12 After “give to the APVMA”, insert “or the collecting agency, as the  
13 case may be”.

14 **26 Subsection 20(2)**

15 Repeal the subsection, substitute:

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

19 **27 Section 33 (heading)**

20 Repeal the heading, substitute:

21 **33 Administrative Appeals Tribunal may review certain decisions by**  
22 **collecting agency**

23 **28 Paragraphs 33(b), (c) and (d)**

24 Omit “APVMA”, substitute “collecting agency”.

25 **29 Section 38**

26 Omit “delegate of the APVMA”, substitute “delegate of the APVMA or  
27 of any other Agency”.

28 **30 Subsection 38A(1)**

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# EXPOSURE DRAFT

## Schedule 6 Arrangements for collecting levy

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1 Omit “APVMA”, substitute “collecting agency”.

### 2 **31 Section 38B**

3 Omit “APVMA”, substitute “collecting agency”.

### 4 **32 Section 38B (note)**

5 Omit “APVMA”, substitute “collecting agency”.

### 6 **33 Section 38C**

7 Omit “APVMA”, substitute “collecting agency”.

### 8 **34 After section 38C**

9 Insert:

### 10 **38D Costs and expenses of collecting agency**

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

13 (a) must pay the Agency for the costs and expenses incurred by  
14 the Agency in relation to collecting levy, late payment  
15 penalty or understatement penalty under this Act; and

16 (b) may debit the Australian Pesticides and Veterinary Medicines  
17 Special Account for this purpose.

### 18 **38E Delegation**

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

21 (a) if the Agency is the APVMA—an SES employee or acting  
22 SES employee in the APVMA; or

23 (b) if the Agency is specified by legislative instrument under  
24 section 3A to be the collecting agency—an SES employee or  
25 acting SES employee in the Agency.

### 26 **35 Subsection 39(1)**

27 After “APVMA”, insert “or, if a collecting agency is specified by  
28 legislative instrument under section 3A to be the collecting agency, the  
29 collecting agency, or both,”.

### 30 **36 Validation of delegations**

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# EXPOSURE DRAFT

Arrangements for collecting levy **Schedule 6**

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- 1 (1) This item applies if:  
2 (a) before the day this item commences, a person signed a notice  
3 of assessment on behalf of the APVMA as a delegate of the  
4 Chief Executive Officer under subsection 16(12) of the  
5 *Agricultural and Veterinary Chemical Products (Collection*  
6 *of Levy) Act 1994*; and  
7 (b) the signing of the notice of assessment would, apart from this  
8 item, be invalid or ineffective because the person was not  
9 delegated the power to do so for the purpose of that  
10 subsection.
- 11 (2) The person's signing of the notice of assessment on behalf of the  
12 APVMA as a delegate of the Chief Executive Officer:  
13 (a) is as valid and effective, and is taken always to have been as  
14 valid and effective, as it would have been if:  
15 (i) section 38E of the *Agricultural and Veterinary*  
16 *Chemical Products (Collection of Levy) Act 1994* had  
17 been in force at the time of the signing of the notice of  
18 assessment; and  
19 (ii) if the person was not an SES employee or acting SES  
20 employee at the time of the signing of the notice of  
21 assessment—the person were an SES employee or  
22 acting SES employee at the time of the signing of the  
23 notice of assessment; and  
24 (iii) the person had been validly delegated the power to sign  
25 the notice of assessment under that section; and  
26 (b) is taken for all purposes not to affect, and never to have  
27 affected, the validity of the notice of assessment.
- 28 (3) This item does not affect rights or liabilities arising between parties to  
29 proceedings heard and finally determined by a court on or before the  
30 day this item commences, to the extent that those rights or liabilities  
31 arose from, or were affected by, a person's signing of a notice of  
32 assessment as described in paragraph (1)(a).  
33

# EXPOSURE DRAFT

## Schedule 7 Miscellaneous

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### Schedule 7—Miscellaneous

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

##### **1 Subsection 3(1) (definition of *prescribed date for payment*)**

Repeal the definition, substitute:

*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.

##### **2 Subsection 3(1) (definition of *rate of levy*)**

Repeal the definition, substitute:

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

##### **3 Subsection 3(1) (definition of *relevant calendar year*)**

Repeal the definition.

##### **4 Division 1 of Part 2**

Repeal the Division.

##### **5 Subsection 20(1)**

Omit “(other than section 9)”.

##### **6 Subsection 39(2)**

Omit “11, 12 or”.

#### *Agricultural and Veterinary Chemicals Code Act 1994*

##### **7 Subsection 7(1)**

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# EXPOSURE DRAFT

Miscellaneous Schedule 7

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1 Omit “signed writing”, substitute “legislative instrument signed by the  
2 Minister”.

## 3 **8 Subsections 7(3) to (5)**

4 Repeal the subsections.

## 5 **9 Paragraph 7(6)(b)**

6 Repeal the paragraph, substitute:

7 (b) the fact that the *Legislative Instruments Act 2003* applies in  
8 relation to the order.

## 9 **10 Subsection 3(1) of the Schedule (paragraph (b) of the 10 definition of *material safety data sheet*)**

11 Repeal the paragraph, substitute:

12 (b) which, if there is a national code of practice for the  
13 preparation of material safety data sheets, is prepared in  
14 accordance with that code of practice.

## 15 **11 Paragraph 14(3)(c) of the Schedule**

16 Repeal the paragraph.

## 17 **12 Paragraph 29(1)(c) of the Schedule**

18 Repeal the paragraph.

## 19 **13 Subsection 56D(2) of the Schedule**

20 Omit “prepare in writing”, substitute “, by legislative instrument,  
21 prepare”.

## 22 **14 Subsection 56F(1) of the Schedule**

23 Omit “prepare, in writing”, substitute “, by legislative instrument,  
24 prepare”.

## 25 **15 Subsection 56F(3) of the Schedule**

26 Omit “by writing”, substitute “by legislative instrument”.

## 27 **16 Section 56H of the Schedule**

28 Repeal the section.

## 29 **17 Paragraph 112(2)(d) of the Schedule**

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# EXPOSURE DRAFT

## Schedule 7 Miscellaneous

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1 Repeal the paragraph.

2 **18 Subsection 166(3) of the Schedule**

3 After “reconsider the original decision”, insert “based on the  
4 information used to make it”.

5 **19 Sections 173, 175, 177, 179 and 182 of the Schedule**

6 Repeal the sections.

7 **20 Paragraph 184(a) of the Schedule**

8 Repeal the paragraph.

9 **21 Application**

10 The amendment made by item 18 of this Schedule applies in relation to  
11 a request made to the APVMA on or after the day this item commences.