



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

**No. 47 of 1994**

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**An Act to make provision for the evaluation, registration  
and control of agricultural and veterinary chemical  
products, and for related matters, for the purposes of the  
*Agricultural and Veterinary Chemicals Act 1994***

**RECOGNISING:**

- (a) that the protection of the health and safety of human beings, animals and the environment is essential to the well-being of society and can be enhanced by putting in place a system to regulate agricultural chemical products and veterinary chemical products; and
- (b) that the principle of ecologically sustainable development requires a regulatory system that is designed to ensure that the use of such products at the present time will not impair the prospects of future generations; and

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

- (c) that the furthering of trade and commerce between Australia and places outside Australia, and the present and future economic viability and competitiveness of primary industry and of a domestic industry for manufacturing and formulating such products, are essential for the well being of the economy and require a system for regulating such products that is cost effective, efficient, predictable, adaptive and responsive; and
- (d) that it is desirable to establish a regulatory system that is open and accountable and gives opportunity for public input with respect to the regulation of such products; and
- (e) that the system should, so far as practicable, be uniform throughout Australia; and
- (f) that uniformity could best be achieved by the enactment of legislation by the Parliament of the Commonwealth as a law for the government of the Australian Capital Territory and the adoption of that legislation by the Parliaments and legislatures of the States and the Northern Territory:

The Parliament of Australia enacts:

[Assented to 24 March 1994]

**Short title**

1. This Act may be cited as the *Agricultural and Veterinary Chemicals Code Act 1994*.

**Commencement**

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

**Definitions**

3. In this Act, unless the contrary intention appears:  
“**NRA**” means the National Registration Authority for Agricultural and Veterinary Chemicals established by the *Agricultural and Veterinary Chemicals (Administration) Act 1992*;  
“**participating Territory**” has the same meaning as in the *Agricultural and Veterinary Chemicals Act 1994*;  
“**prescribed**” means prescribed by the regulations;  
“**the Code**” means the Agvet Code of the participating Territories;  
“**the regulations**” means the regulations in force for the time being under section 6.

**The Schedule**

4. The Schedule has effect for the purposes of the *Agricultural and Veterinary Chemicals Act 1994*.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**Citation and interpretation of Agvet Code and Agvet Regulations**

**5.(1)** The Agricultural and Veterinary Chemicals Code set out in the Schedule, as it applies as a law for the government of the participating Territories, may be referred to as the Agvet Code of the participating Territories.

**(2)** The regulations, as they apply for the purposes of the Agvet Code of the participating Territories, may be referred to as the Agvet Regulations of the participating Territories.

**(3)** In the Agvet Code, and the Agvet Regulations, of the participating Territories:

**“Act of this jurisdiction”** means an Act of the Parliament or an Act or Ordinance of a participating Territory;

**“the Minister for this jurisdiction”** means the Minister;

**“this jurisdiction”** means the participating Territories.

**(4)** In the Agvet Code, or the Agvet Regulations, of the participating Territories, a reference to an offence against that Code, or those Regulations, includes a reference to an offence against:

(a) section 6, 7 or 7A of the *Crimes Act 1914*; or

(b) subsection 86(1) of that Act because of paragraph (a) of that subsection;

that relates to an offence against that Code or those Regulations, as the case may be.

**Regulations**

**6.(1)** The Governor-General may make regulations prescribing matters:

(a) required or permitted by the Code to be prescribed by regulations within the meaning of the Code; or

(b) necessary or convenient to be prescribed by such regulations for carrying out or giving effect to the Code.

**(2)** In particular, the regulations may include provision for the purposes of the Code for or in relation to:

(a) the development and approval of standards for chemical products for which registration is sought and of standards for any of their constituents; or

(b) prescribing and regulating all matters and things with respect to inspection and investigation and with respect to samples, including the method of taking samples, the quantity or weight of samples, the labelling of samples, the delivery of samples to the NRA and the analysis of samples; or

(c) authorising any matter or thing to be from time to time determined, applied or regulated by a particular person; or

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

- (d) the records to be made and kept and the persons by whom they are to be made and kept; or
- (e) requiring records so kept to be produced at stated times to the NRA; or
- (f) the particulars to be included in labels for containers for chemical products, the way to write those particulars on those labels and the way to attach those labels to containers; or
- (g) the size and type of labels to be attached to containers for chemical products; or
- (h) the giving of notices by or to the NRA; or
- (i) prescribing penalties of not more than 10 penalty units for offences against the regulations.

**(3) The regulations may:**

- (a) adopt wholly or partly, and specifically or by reference, and with any modifications, any of the standards, rules, codes, specifications or methods of any association, body or institution whether as in force at the time of adoption or as changed from time to time; and
- (b) provide for the approval of the NRA to be the standard that applies in respect of a particular matter or thing; and
- (c) exempt particular substances or chemical products from the operation of any provision of the Code, either unconditionally or subject to conditions; and
- (d) exempt persons identified in the regulations from the operation of any provision of the Code, either unconditionally or subject to conditions.

**(4) Except as otherwise expressly provided in this Act or the Code, the regulations may be of general or specially limited application or may differ according to differences in time, locality, place or circumstance.**

**(5) Subject to subsection (6), in the regulations, unless the contrary intention appears, an expression has the same meaning as it has in the Agvet Code of the participating Territories.**

**(6) In a provision of the regulations that has effect for the purposes of a particular provision of the Agvet Code of the participating Territories, unless the contrary intention appears, an expression has the same meaning as it has in that provision of that Code.**

**(7) The regulations are to be interpreted subject to the Agvet Code of the participating Territories and it is intended that if, apart from this subsection, a provision of the regulations would have been interpreted as being inconsistent with that Code, the provision is nevertheless to be valid in so far as it is not so inconsistent.**

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**(8)** An expression has, in this section, the meaning it would have if this section were included in the Code.

**Orders**

**7.(1)** Subject to subsection (2), if:

(a) provision may be made by the regulations for or in relation to a matter; and

(b) the regulations declare that this section applies to that matter;  
the Minister may, by signed writing, make orders with respect to that matter that are consistent with the regulations.

**(2)** An order must not be made prescribing a penalty.

**(3)** An order is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**(4)** Section 49A of the *Acts Interpretation Act 1901* applies to an order in the same way as it applies to regulations.

**(5)** An order is taken to be a statutory rule for the purposes of the *Statutory Rules Publication Act 1903*.

**(6)** In considering whether to make an order under subsection (1), the Minister must have regard to:

(a) the effect that the order would have for the purposes of the Agvet Code of each jurisdiction other than the participating Territories because of a law of that jurisdiction that corresponds to the *Agricultural and Veterinary Chemicals Act 1994*; and

(b) the fact that section 48 of the *Acts Interpretation Act 1901* would apply in relation to the order because of subsection (3) of this section.

**(7)** Subject to subsection (8), in an order, unless the contrary intention appears, an expression has the same meaning as it has in the Agvet Code of the participating Territories.

**(8)** In a provision of an order that has effect for the purposes of a particular provision of the Agvet Code of the participating Territories, unless the contrary intention appears, an expression has the same meaning as it has in that provision of that Code.

**(9)** An order is to be interpreted subject to the Agvet Code of the participating Territories and it is intended that if, apart from this subsection, a provision of an order would have been interpreted as being inconsistent with that Code, the provision is nevertheless to be valid in so far as it is not so inconsistent.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**Compensation**

**8.(1)** In this section:

**“acquisition of property”** has the same meaning as in paragraph 51(xxxi) of the Constitution.

**(2)** If the operation of, or the doing of any act by the NRA under, the Agvet Code of the participating Territories results in the acquisition of property from a person, the Commonwealth is liable to pay to the person such compensation as is agreed upon between them or, in the absence of agreement, as is determined by the Supreme Court of a participating Territory in an action brought in that Court by the person against the Commonwealth.

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*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**

Section 4

# **Agricultural and Veterinary Chemicals Code**

## **TABLE OF CONTENTS**

### **PART 1—PRELIMINARY**

**Section**

1. Object of Code
2. Relationship of Code to other laws
3. Definitions
4. Definition of “agricultural chemical product”
5. Definition of “veterinary chemical product”
6. Determinations, approvals, exemptions etc. by NRA
7. Possession or custody of constituent or product
8. Labels attached to containers

### **PART 2—APPROVALS AND REGISTRATION**

*Division 1—Preliminary*

9. Explanation of Part

*Division 2—Applications for approval or registration*

10. Applications that may be made
11. How application is to be made
12. NRA to publish notice before determining application for approval of new active constituent
13. NRA to publish notice before determining application for registration of chemical product containing new active constituent
14. Grant or refusal of application
15. Restriction on power of NRA to grant applications
16. Multiple approvals or registrations
17. NRA must keep a Record of Approved Active Constituents for Chemical Products
18. NRA must keep a Register of Agricultural and Veterinary Chemical Products
19. How approval of active constituent is effected
20. How registration of chemical product is effected
21. How approval of label is effected
22. Date of approval or registration
23. Conditions of approval or registration

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

TABLE OF CONTENTS—*continued*

Section

24. Notice of approval or registration  
25. Notice of refusal of application  
26. Notice of incorrectly recorded or registered particulars
- Division 3—Application for variation of approval or registration or of conditions of approval or registration*
27. Who may apply  
28. How application is to be made  
29. Grant or refusal of application
- Division 4—Reconsideration of approval or registration*
30. NRA may invite the public to propose approved active constituents or registered chemical products for reconsideration  
31. NRA may reconsider approval or registration  
32. NRA may give notice of proposed reconsideration  
33. NRA may require trials or laboratory experiments to be conducted  
34. Reconsideration by NRA of continued approval or registration
- Division 5—Suspension or cancellation of approval or registration*
35. Notice of proposed suspension or cancellation to be given to co-ordinators  
36. Suspension or cancellation of approval or registration for breach of condition  
37. Suspension of approval or registration for failing to give information, or results of trials or experiments, to NRA  
38. Suspension of approval or registration for failing to give information, report or sample to NRA  
39. Suspension of registration if compensation for use of protected registration information cannot be arbitrated  
40. Suspension or cancellation of approval or registration following reconsideration of continued approval or registration  
41. Suspension or cancellation of approval or registration for non-compliance with criteria for registration or approval  
42. Cancellation of approval or registration at request of interested person  
43. Effect of suspension of approval or registration  
44. Inter-related suspensions and cancellations  
45. How approval or registration is suspended or cancelled  
46. How suspension or cancellation is revoked
- Division 6—Duration and renewal of approval or registration*
47. Period of approval or registration  
48. Application for renewal of registration of chemical product  
49. How application for renewal of registration is to be made  
50. Renewal of registration of chemical product  
51. Renewal of approval of label
- Division 7—Publication of notices by NRA*
52. Publication of notice of approval of active constituent or registration of chemical product  
53. Publication of notice of variations of approval of active constituent or registration of chemical product



*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

TABLE OF CONTENTS—*continued*

Section

- 54. Publication of notice of end of registration of chemical product
- 55. Publication of notice of suspension or cancellation of approval or registration
- 56. Notice of revocation of suspension or cancellation to be published

**PART 3—COMPENSATION FOR PROVIDER OF CERTAIN  
INFORMATION IN RESPECT OF CONTINUED REGISTRATION OF  
CERTAIN CHEMICAL PRODUCTS**

*Division 1—Preliminary*

- 57. Explanation of Part

*Division 2—Right to compensation*

- 58. Right of NRA to use information
- 59. Right of originator of protected registration information to compensation for its use in relation to other applications
- 60. NRA to notify applicants
- 61. Primary applicant to notify secondary applicant

*Division 3—Mediation or arbitration as to terms of compensation*

- 62. Application of Division
- 63. Mediation
- 64. Appointment of arbitrator
- 65. Determination of compensation on the basis of proposals made during negotiations
- 66. Arbitrator may require fresh proposals
- 67. Determination on basis of fresh proposals
- 68. What happens if fresh proposals are not made or are inadequate
- 69. What constitutes a reasonable proposal for compensation
- 70. Effect and enforcement of determination by arbitrator
- 71. Regulations to govern conduct of arbitration

**PART 4—CONTROL OF CHEMICAL PRODUCTS**

*Division 1—Preliminary*

- 72. Explanation of Part
- 73. Part not to apply to veterinary surgeons acting under other laws

*Division 2—Control generally*

- 74. Possession or custody of unapproved active constituents for the purpose of supply
- 75. Possession or custody of unregistered chemical products for the purpose of supply
- 76. Supply of unapproved active constituents
- 77. Supply of approved active constituents in contravention of conditions of approval
- 78. Supply of unregistered chemical products
- 79. Supply of registered chemical products in contravention of conditions of registration
- 80. Supply of chemical products without approved label
- 81. Supply of chemical products with unapproved label
- 82. Supply of chemical products in containers opened by inspector
- 83. Supply of substances whose constituents differ from constituents of registered chemical product
- 84. Claims inconsistent with labels

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

TABLE OF CONTENTS—*continued*

Section

- 85. Modification of warning prohibited
- 86. Labels not to be detached etc.
- 87. Chemical product to conform to standard
- 88. Certain notices not to be published
- 89. Certain statements prohibited

*Division 3—Date-controlled chemical products*

- 90. Manufacture or import of date-controlled chemical product
- 91. Supply of date-controlled chemical product
- 92. Abuse of warning on label prohibited

*Division 4—Restricted chemical products*

- 93. Restricted chemical product
- 94. Restricted chemical products may be supplied only to authorised persons
- 95. Labels for restricted chemical products

**PART 5—ANALYSIS**

- 96. Explanation of Part
- 97. Analysis by approved analysts
- 98. Evidence of results of analysis
- 99. Analysis of chemical products

**PART 6—RECALL NOTICES**

- 100. Explanation of Part
- 101. Recall of products that are unregistered or whose registration is being reconsidered
- 102. Recall of products in certain circumstances
- 103. Recall of products with unapproved labels
- 104. Notice of recall to be published
- 105. Non-compliance with recall notice
- 106. Recall under Trade Practices Act
- 107. Inconsistent requirements

**PART 7—PERMITS**

- 108. Explanation of Part
- 109. Definition of “permit”
- 110. How application is made
- 111. Functions of co-ordinators
- 112. NRA may grant or refuse application
- 113. Record of Permits
- 114. Issue of permit
- 115. Duration of permit
- 116. Effect of permit
- 117. Surrender of permit
- 118. Suspension of permit
- 119. Cancellation of permit

**PART 8—MANUFACTURE OF CHEMICAL PRODUCTS**

- 120. Explanation of Part

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

TABLE OF CONTENTS—*continued*

Section

121. Offences relating to manufacture and licences  
122. Application for licence  
123. Issue of licence  
124. Refusal of application  
125. Period of licence  
126. Conditions of licences  
127. Suspension and cancellation of licences  
128. Publication of list of manufacturers etc.
- PART 9—ENFORCEMENT**
- Division 1—Preliminary*
129. Explanation of Part
- Division 2—Injunctions*
130. Injunctions
- Division 3—Powers of entry, search and seizure*
131. Searches to monitor compliance with Code  
132. Offence-related searches and seizures  
133. Offence-related warrants  
134. Announcement before entry  
135. Details of warrant to be given to occupier  
136. Use of equipment to examine or process things  
137. Use of electronic equipment at premises  
138. Compensation for damage to electronic equipment  
139. Copies of seized things to be given  
140. Return of things that are seized  
141. Court of summary jurisdiction may permit a thing to be kept  
142. Certain expenses to be recoverable by NRA  
143. Warrants may be granted by telephone in urgent circumstances  
144. Power of inspector to require information or documents  
145. False or misleading information or document
- Division 4—Miscellaneous enforcement provisions*
146. Self-incrimination to be a reasonable excuse for non-compliance with requirement  
147. Time for bringing prosecutions  
148. Copying of documents  
149. Evidential certificates  
150. Forfeiture  
151. Conduct by directors, servants and agents  
152. Liability of persons acting on behalf of non-residents
- PART 10—MISCELLANEOUS**
153. Explanation of Part  
154. Recognition of things done under corresponding laws  
155. Discharge of obligations under this Code  
156. How to make a single application under Agvet Code of each jurisdiction  
157. Samples to be given for analysis  
158. Samples, or copies, of labels to be given  
159. NRA or other authority may require further information, report or samples in certain circumstances  
160. Overseas trials or experiments  
161. Notification of new information to NRA

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

TABLE OF CONTENTS—*continued*

Section	
162.	Disclosure of confidential commercial information
163.	Notice to interested person of proposed disclosure of information that is claimed to be confidential commercial information
164.	Fees
165.	Period within which NRA is to determine applications
166.	Reconsideration of decisions
167.	Review of decisions
168.	Statement to be included in certain notices of decisions
169.	Documents and samples become property of NRA
170.	Provisions relating to offences
<b>PART 11—TRANSITIONAL PROVISIONS</b>	
171.	Explanation of Part
172.	Existing clearance for registration of chemical product
173.	Pending application for clearance for registration of chemical product
174.	Existing registration of chemical product
175.	Pending application for registration of chemical product
176.	Existing registration or approval of label
177.	Pending application for registration or approval of label
178.	Provisions that apply in respect of existing registrations or approvals
179.	Pending application for variation of conditions
180.	Reconsideration of existing clearances for registration
181.	Existing permit
182.	Pending application for permit
183.	Pending proceedings before Administrative Appeals Tribunal
184.	Existing notices requiring further information or samples

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**LIST OF TERMS DEFINED BY SECTION 3 OF THE SCHEDULE  
(THE AGRICULTURAL AND VETERINARY  
CHEMICALS CODE)**

active constituent	ordinary office hours
adequate	participating Territory
agricultural chemical product	penalty unit
animal	permit
approval	pest
approved analyst	place of residence
approved form	plant
approved label	premises
approved person	prescribed
Australia	previous registering authority
chemical product	primary applicant
claim	primary chemical product
confidential commercial information	prohibited chemical product
constituent	protected chemical product
container	protected registration information
co-ordinator	protection period
corresponding previous law	published literature
criteria	recall notice
date-controlled chemical product	Record of Approved Active Constituents
date of manufacture	Record of Permits
deal with	re-entry period
director	Register of Chemical Products
distinguishing number	registered chemical product
document	registration
eligible law	regulations
environment	relevant particulars
excluded organism	repealed Act
expiry date	residues
fee	restricted chemical product
food producing species	sample
give information	secondary applicant
handling	secondary chemical product
holder	State
inspector	substance
instruction	supply
interested person	Territory
jurisdiction	thing
label	this Code
licence	variations
manufacturing principles	veterinary chemical product
material safety data sheet	veterinary surgeon
member of the staff	withholding period
NRA	working day
occupier	

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

**AGRICULTURAL AND VETERINARY CHEMICALS CODE**

**PART 1—PRELIMINARY**

**Object of Code**

1. The object of this Code is to make provision for and in relation to:
  - (a) the evaluation, approval, and control of the supply, of active constituents for proposed or existing agricultural chemical products or veterinary chemical products; and
  - (b) the evaluation, registration, and control of the manufacture and supply, of agricultural chemical products and veterinary chemical products.

**Relationship of Code to other laws**

2.(1) This Code excludes the operation of any other laws of this jurisdiction that are inconsistent with this Code.

(2) A law of this jurisdiction is not taken to be inconsistent with this Code if it can operate concurrently with this Code.

(3) A law of this jurisdiction enacted, or an instrument made under a law of this jurisdiction, after the commencement of this Code is not to be interpreted as amending or repealing, or otherwise altering the effect of, this Code unless that law, or the law under which that instrument was made, as the case may be, so provides expressly.

**Definitions**

3. In this Code, unless the contrary intention appears:

**“active constituent”**, in relation to a proposed or existing agricultural chemical product or veterinary chemical product, means the substance that is, or one of the substances that together are, primarily responsible for the biological or other effect identifying the product as an agricultural chemical product or a veterinary chemical product, as the case may be;

**“adequate”**, in relation to instructions on a label for containers for a chemical product, means adequate to ensure, as far as reasonably practicable, that the use of the product in accordance with the instructions:

  - (a) would not be an undue hazard to the safety of people exposed to it during its handling or people using anything containing its residues; and
  - (b) would not be likely to have an effect that is harmful to human beings; and

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

(c) would not be likely to have an unintended effect that is harmful to animals, plants or things or to the environment;

**“agricultural chemical product”** has the meaning given by section 4;

**“animal”** means any animal (other than a human being), whether vertebrate or not, and whether a food-producing species or not, and includes:

- (a) mammals, birds, bees, reptiles, amphibians, fish, crustaceans and molluscs; and
- (b) the semen, ova or embryo of an animal (other than a human being) or any other substance or thing directly relevant to the reproduction of an animal (other than a human being); and
- (c) any other prescribed form of animal life, whether prescribed by reference to a species or in any other way;

**“approval”** means:

- (a) in relation to an active constituent for a proposed or existing chemical product—an approval of the constituent under Part 2 of the Agvet Code of this jurisdiction that is in force; or
- (b) in relation to a label for containers for a chemical product—an approval of the label under Part 2 of the Agvet Code of this jurisdiction that is in force; or
- (c) when the expression is used without reference to such a constituent or label—an approval referred to in either paragraph (a) or (b);

**“approved analyst”** means a person appointed under subsection 69G(1) of the *Agricultural and Veterinary Chemicals (Administration) Act 1992* to be an approved analyst for the purposes of this Code;

**“approved form”** means a form approved by the NRA or prescribed by the regulations;

**“approved label”**, in relation to a container, means a label approved under Part 2 of the Agvet Code of this jurisdiction for the container;

**“approved person”**, in relation to the making of an application, or in relation to the giving of a notice, information or a report, by a person (the **“relevant person”**), means:

- (a) if the relevant person is an individual residing, or a body corporate incorporated, in Australia—the relevant person; or
- (b) in any case—an individual residing in Australia who, or a body corporate incorporated in Australia which, is authorised in writing by the relevant person to make the application or give the notice, information or report;

**“Australia”** includes any external Territories that are participating Territories;

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

**“chemical product”** means an agricultural chemical product or a veterinary chemical product, or both;

**“Chief Executive Officer”**, in relation to the NRA, includes a person acting as the Chief Executive Officer of the NRA;

**“claim”** includes any statement;

**“confidential commercial information”**, in relation to an active constituent for a proposed or existing chemical product, or in relation to a chemical product or a constituent of a chemical product, means:

- (a) a trade secret relating to the constituent or product; or
- (b) any other information relating to the constituent or product that has a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or
- (c) information (other than trade secrets to which paragraph (a) applies or information to which paragraph (b) applies) that:
  - (i) concerns the lawful commercial or financial affairs of a person, organisation or undertaking; and
  - (ii) relates to the manufacture, distribution or supply of the constituent or product; and
  - (iii) if it were disclosed, could unreasonably affect the person, organisation or undertaking in an adverse manner;

**“constituent”**, in relation to a chemical product, means any constituent of the product, whether an active constituent or not;

**“container”** includes anything by which or in which a chemical product is, or is to be, covered, enclosed, contained or packaged, but does not include a container (such as a shipping container) in which other containers of chemical products are, or are to be, placed for the purpose of being transported;

**“co-ordinator”**, in relation to a jurisdiction, means a person designated:

- (a) if the jurisdiction is a State—by a Minister of the State; or
- (b) if the jurisdiction is the participating Territories:
  - (i) if the Australian Capital Territory is the only participating Territory—by a Minister of the Australian Capital Territory; or
  - (ii) if there is more than one participating Territory—jointly by a Minister of the Commonwealth and a Minister of the Australian Capital Territory;

to perform the functions of a co-ordinator under this Code;

**“corresponding previous law”** means a previous law of this jurisdiction that corresponds wholly or partly to this Code, to the extent that it so corresponds;



*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

SCHEDULE—continued

“**criteria**” includes standards;

“**date-controlled chemical product**” means a chemical product declared by the regulations to be a date-controlled chemical product;

“**date of manufacture**”, in relation to a chemical product, means the date on which formulation of the product was completed;

“**deal with**”, in relation to an active constituent for a proposed or existing chemical product, or in relation to a chemical product, includes dispose of the constituent or product;

“**director**”, in relation to a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory, means:

(a) a constituent member of the body; or

(b) if the body does not have any members—a member of the board or other group of persons responsible for the administration or management of the affairs of the body;

“**distinguishing number**” includes a distinguishing number together with one or more letters or symbols, or both;

“**document**” includes a book or other record;

“**eligible law**”, in relation to a jurisdiction, means a law, or a provision of a law, of that jurisdiction that is declared by a law of that jurisdiction to be an eligible law for the purposes of the definition of “permit” in section 109;

“**environment**” includes all aspects of the surroundings of human beings, whether affecting them as individuals or in their social groupings;

“**excluded organism**” means an organism that is declared by the regulations to be an excluded organism;

“**expiry date**”, in relation to the contents of a container, means the month and year after which the contents should not be used;

“**fee**” includes a fee that is a tax;

“**food-producing species**” means an animal that produces food for human consumption or is used as food for human beings, and includes:

(a) any buffalo, cattle, deer, fish (other than ornamental fish), goat, kangaroo, pig, poultry, rabbit, sheep, bee, crustacean or mollusc; or

(b) any animal declared by the regulations to be a food-producing species;

“**give information**” includes make a statement;

“**handling**” includes transportation, storage, processing, use or disposal;

“**holder**”, in relation to a permit or licence, means the person to whom the permit or licence was issued;

“**inspector**” means:

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

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

**“instruction”** includes direction, caution, warning or recommendation;

**“interested person”**, in relation to an approved active constituent for a chemical product, a registered chemical product or an approved label for containers for a chemical product, means:

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

the other person; or

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

**“jurisdiction”** means:

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

**“label”** includes tag, leaflet, brand, stamp, mark, stencil or written statement;

**“licence”** means a licence under Part 8;

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

**“manufacturing principles”** means principles that the NRA has determined under section 23 of the *Agricultural and Veterinary Chemicals Act 1994* to be principles to be observed in the manufacture of chemical products;

**“material safety data sheet”**, in relation to a chemical product, means a written statement:

(a) which:

- (i) identifies the product; and
- (ii) states the health hazards that could be caused by the product; and
- (iii) states the manner of handling the product in a way that minimises hazards; and
- (iv) states the procedures to be adopted in the event of an emergency involving the product; and
- (v) contains information about the chemical and physical properties of the product other than confidential commercial information; and
- (vi) contains information in relation to the product of a kind prescribed for the purposes of paragraph (f) of the definition of “Material Safety Data Sheet” in section 5 of the *Industrial Chemicals (Notification and Assessment) Act 1989*; and

(b) which, if there is a note known as a Guidance Note for Completion of a Material Safety Data Sheet published by the National Occupational Health and Safety Commission, is prepared in accordance with that note;

**“member of the staff”**, in relation to the NRA, has the same meaning as in the *Agricultural and Veterinary Chemicals (Administration) Act 1992*;

**“NRA”** means the National Registration Authority for Agricultural and Veterinary Chemicals established by the *Agricultural and Veterinary Chemicals (Administration) Act 1992*;

**“occupier”**, in relation to any premises or a part of any premises, means the person in occupation, charge or control of the premises or of that part of the premises, as the case may be;

**“ordinary office hours”** means the hours when the office of the NRA is open to members of the public;

**“participating Territory”** has the same meaning as in the *Agricultural and Veterinary Chemicals Act 1994*;

**“penalty unit”** means \$100;

**“permit”** means a permit under Part 7;

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

**“pest”** means:

- (a) in relation to an animal, plant or thing—any animal, plant or other biological entity that injuriously affects the physical condition, worth or utility of the first-mentioned animal or plant or of that thing; or
- (b) in relation to a place—an animal, plant or other biological entity that injuriously affects the use or enjoyment of that place;

**“place of residence”**, in relation to a body corporate that is incorporated in Australia, means its registered office in Australia;

**“plant”** means any vegetation or fungus and includes a seed or cutting of a plant, or any other part or product of a plant;

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

- (a) a building, aircraft, vehicle or vessel; and
- (b) any structure, whether a fixed structure, or a moveable structure such as a tent, and whether on land or the bed of any waters or floating on any waters; and
- (c) a part of premises (including a part of premises of a kind referred to in paragraph (a) or (b));

**“prescribed”** means prescribed by the Agvet Code of this jurisdiction or by the regulations;

**“previous registering authority”** means a registering authority under a corresponding previous law;

**“primary applicant”**, in relation to a primary chemical product, means the person who gave protected registration information to the NRA in respect of that product;

**“primary chemical product”** has the meaning given in section 59;

**“prohibited chemical product”** means a chemical product that is declared by the regulations to be a prohibited chemical product;

**“protected chemical product”** means a registered chemical product to which both of the following paragraphs apply:

- (a) the product is or includes an invention in respect of which letters patent were granted under the *Patents Act 1952* or the *Patents Act 1990*;
- (b) the term of the letters patent (including any extension of that term) has ended, or will end during the protection period that applies to protected registration information about that product;

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

but does not include a chemical product in respect of which the instructions on the approved label, or each of the approved labels, state that the product should be used only in relation to a particular class of animals that are not a food-producing species;

**“protected registration information”**, in relation to a chemical product, means information that has been obtained because of trials or laboratory experiments and relates to the interaction between that product and:

- (a) the environment; or
- (b) living organisms or naturally occurring populations in ecosystems, including human beings;

but does not include information obtained only for the purpose of assessing the performance of the product in respect of its proposed use;

**“protection period”**, in relation to protected registration information of a particular kind, means:

- (a) if a period is stated in, or worked out in accordance with, the regulations in relation to information of that kind for the purposes of Part 3—the period so stated or worked out; or
- (b) otherwise—7 years;

**“published literature”**, in relation to a particular matter, means all documents that relate to that matter and are accessible to the public;

**“recall notice”** means a notice issued under section 101, 102 or 103;

**“Record of Approved Active Constituents”** means the Record of Approved Active Constituents for Chemical Products kept under section 17;

**“Record of Permits”** means the Record of Permits kept under section 113;

**“re-entry period”**, in relation to the use of a chemical product in a particular place (including a use of the product in relation to a crop or pasture in that place), means the period after that use during which it is unsafe for a person to enter the place without wearing appropriate protective clothing or equipment, or both;

**“Register of Chemical Products”** means the Register of Agricultural and Veterinary Chemical Products kept under section 18;

**“registered chemical product”** means a chemical product registered under Part 2 of the Agvet Code of this jurisdiction;

**“registration”** means registration of a chemical product that is in force under Part 2 of the Agvet Code of this jurisdiction;

**“regulations”** means the Agvet Regulations of this jurisdiction;

**“relevant particulars”**, in relation to:

- (a) an approved active constituent for a proposed or existing chemical product; or

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

(b) a registered chemical product; or

(c) an approved label for containers for a chemical product;

has the meaning given by subsection 19(2), 20(2) or 21(2), as the case may be, and includes particulars of a variation of relevant particulars that is made under paragraph 29(1)(h);

**“repealed Act”** means the *Agricultural and Veterinary Chemicals Act 1988*;

**“residues”**, in relation to an active constituent for a proposed or existing chemical product, or in relation to a chemical product, means the remains of the active constituent, or of the active constituents in the chemical product, as the case may be, persisting in or on:

(a) food; or

(b) other agricultural commodities; or

(c) plants, animals, soil, water or other environmental components;

together with all derivatives, metabolites and degradation products of the active constituent or active constituents arising from their use;

**“restricted chemical product”** means a chemical product declared by regulations made for the purposes of section 93 to be a restricted chemical product;

**“sample”** includes specimen;

**“secondary applicant”**, in relation to a secondary chemical product, means:

(a) if the NRA is considering an application for the registration of that product—the person who made the application; or

(b) if the NRA is reconsidering the registration of that product:

(i) subject to subparagraphs (ii), (iii) and (iv), the person (the **“original applicant”**) who applied for the registration or, in the case of a product whose registration has been renewed, applied for the renewal, or the last renewal, as the case may be, of the registration; or

(ii) subject to subparagraphs (iii) and (iv), if the original applicant has entered into a contract with another person in relation to the product under which, or as a result of which, the other person will or may apply to the NRA to have the other person’s name entered in the relevant particulars in relation to the product, or to have a label approved in relation to containers for the product, and the other person’s name is entered in those relevant particulars, or such a label is approved, on the application of the other person—the other person; or

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

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

**“secondary chemical product”** has the meaning given in section 59;

**“State”** includes the Northern Territory;

**“substance”** includes:

- (a) any gas, liquid, mixture or compound of gases, or mixture or compound of liquids; and
- (b) an organism or part of an organism, including a genetically manipulated organism or part of a genetically manipulated organism; and
- (c) material that is produced from an organism; and
- (d) matter whose production involves the use of an organism;

but does not include an excluded organism or part of an excluded organism, or material that is produced from, or matter whose production involves the use of, an excluded organism;

**“supply”** includes do, or cause or permit the doing of, any of the following:

- (a) sell;
- (b) expose for sale;
- (c) send or deliver for sale or on sale;
- (d) dispose of under a hire purchase agreement;
- (e) exchange;
- (f) give;
- (g) offer to do an act that would be a supply (including an act referred to in any of the above paragraphs);

and, for example, includes supply under a contract for work or labour that also involves the supply of any thing;

**“Territory”** does not include the Northern Territory;

**“thing”**, except where used as an object of the verb “to do”, includes:

- (a) an animal; and
- (b) information; and
- (c) a document; and

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (d) a substance;
  - “**this Code**” means the Agvet Code of this jurisdiction and includes the Agvet Regulations of this jurisdiction;
  - “**variations**” includes additions, omissions, substitutions and modifications;
  - “**veterinary chemical product**” has the meaning given by section 5;
  - “**veterinary surgeon**” means a person who is registered as a veterinary surgeon under the law of a State or Territory;
  - “**withholding period**”, in relation to the use of a chemical product, means the minimum period that needs to elapse between:
    - (a) the last use of the product in relation to a crop, pasture or animal; and
    - (b) the harvesting or cutting of, or the grazing of animals on, the crop or pasture, the shearing or slaughtering of the animal, or the collection of milk or eggs from the animal for human consumption, as the case may be;
- in order to ensure that the product’s residues fall to or below the maximum limit that the NRA permits;
- “**working day**” means a day other than a Saturday, a Sunday or a day that is a public holiday in the place where the office of the NRA is situated.

**Definition of “agricultural chemical product”**

**4.(1)** This section defines what is meant by an agricultural chemical product for the purposes of this Code.

**(2)** Subject to subsections (3) and (4), an agricultural chemical product is a substance or mixture of substances that is represented, imported, manufactured, supplied or used as a means of directly or indirectly:

- (a) destroying, stupefying, repelling, inhibiting the feeding of, or preventing infestation by or attacks of, any pest in relation to a plant, a place or a thing; or
- (b) destroying a plant; or
- (c) modifying the physiology of a plant or pest so as to alter its natural development, productivity, quality or reproductive capacity; or
- (d) modifying an effect of another agricultural chemical product; or
- (e) attracting a pest for the purpose of destroying it.

**(3)** An agricultural chemical product includes a substance or mixture of substances declared by the regulations to be an agricultural chemical product.

**(4)** An agricultural chemical product does not include:



*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (a) a veterinary chemical product; or
- (b) a substance or mixture of substances declared by the regulations not to be an agricultural chemical product.

**Definition of “veterinary chemical product”**

**5.(1)** This section defines what is meant by an veterinary chemical product for the purposes of this Code.

**(2)** Subject to subsections (3) and (4), a veterinary chemical product is a substance or mixture of substances that is represented as being suitable for, or is manufactured, supplied or used for, administration or application to an animal by any means, or consumption by an animal, as a way of directly or indirectly:

- (a) preventing, diagnosing, curing or alleviating a disease or condition in the animal or an infestation of the animal by a pest; or
- (b) curing or alleviating an injury suffered by the animal; or
- (c) modifying the physiology of the animal:
  - (i) so as to alter its natural development, productivity, quality or reproductive capacity; or
  - (ii) so as to make it more manageable; or
- (d) modifying the effect of another veterinary chemical product.

**(3)** A veterinary chemical product includes:

- (a) a vitamin, a mineral substance, or an additive, if, and only if, the vitamin, substance or additive is used for a purpose mentioned in paragraph (2)(a), (b), (c) or (d); and
- (b) a substance or mixture of substances declared by the regulations to be a veterinary chemical product.

**(4)** A veterinary chemical product does not include:

- (a) a substance or mixture of substances that is:
  - (i) prepared by a pharmacist in accordance with the instructions of a veterinary surgeon; or
  - (ii) prepared by a veterinary surgeon;  
in the course of the practice, by the person preparing the substance or mixture of substances, of his or her profession as permitted by or under a law of this jurisdiction; or
- (b) a substance or mixture of substances declared by the regulations not to be a veterinary chemical product.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

**Determinations, approvals, exemptions etc. by NRA**

6. If a provision of this Code refers to a determination made, approval or exemption given or other thing done by the NRA and there is no other provision of this Code expressly authorising the NRA to make such a determination, give such an approval or exemption or do such a thing, the NRA is authorised by this section to make such a determination, give such an approval or exemption or do such a thing either unconditionally or subject to conditions.

**Possession or custody of constituent or product**

7. A reference in this Code to doing anything in respect of an active constituent for a proposed or existing chemical product, or in respect of a chemical product, includes a reference to having possession or custody of the constituent or product.

**Labels attached to containers**

8.(1) For the purposes of this Code, a label is attached to a container if the label is securely attached or affixed to, appears on, or is included with, the container.

(2) For the purposes of this Code but without limiting the generality of subsection (1):

- (a) writing appearing on a container is taken to have been written on a label attached to the container; and
- (b) a reference to a label attached to a container includes a reference to writing appearing on the container; and
- (c) a reference to attaching a label to a container includes a reference to putting writing on the container.

**PART 2—APPROVALS AND REGISTRATION**

*Division 1—Preliminary*

**Explanation of Part**

9.(1) This Part contains provisions relating to:

- (a) the approval of active constituents for proposed or existing chemical products; and
- (b) the registration of chemical products; and
- (c) the approval of labels for containers for chemical products.

(2) Division 2 provides how applications are to be made and dealt with.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(3) Division 3 deals with applications to vary approvals or registrations or to vary the conditions of any approvals or registrations.

(4) Division 4 provides for the NRA to reconsider approvals and registrations for the purpose of deciding whether or not they should remain in force.

(5) Division 5 sets out the circumstances in which the NRA may suspend or cancel approvals or registrations.

(6) Division 6 states how long approvals and registrations are to continue in force and makes provision for their renewal.

(7) Division 7 provides for the NRA to publish notices telling the public of actions that it has taken under this Part.

***Division 2—Applications for approval or registration***

**Applications that may be made**

**10.** A person may apply to the NRA:

- (a) for approval of an active constituent for a proposed or existing chemical product; or
- (b) for registration of a chemical product; or
- (c) for approval of a label for containers for a chemical product.

**How application is to be made**

**11.(1)** The application must:

- (a) be in writing in or to the effect of the approved form; and
- (b) contain, or be accompanied by, any information that the NRA requires; and
- (c) be signed by an approved person; and
- (d) be accompanied by the prescribed fee (if any).

(2) The NRA may, with the written consent of the applicant, alter the application.

(3) At any time after an application has been made and before it has been determined, the applicant:

- (a) may give to the NRA information additional to or varying information previously given to the NRA; and
- (b) may withdraw the application by giving to the NRA written notice of the withdrawal signed by an approved person.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

**NRA to publish notice before determining application for approval of new active constituent**

**12.(1)** Before determining an application for approval of an active constituent not previously contained in a chemical product registered in this or another jurisdiction under the Agvet Code, or a corresponding previous law, of the jurisdiction concerned, the NRA must cause to be published in the *Gazette*, and in any other manner that it thinks appropriate, a notice:

- (a) stating that the application has been made and setting out the following:
  - (i) the name of the constituent;
  - (ii) particulars of the constituent other than confidential commercial information;
  - (iii) a summary of the NRA's evaluation of the constituent with regard to the matters mentioned in paragraph 14(3)(e);
  - (iv) any other matters that the NRA thinks appropriate; and
- (b) inviting any person who wishes to do so to make, within a period stated in the notice that ends not earlier than 28 days after the notice appears in the *Gazette*, a written submission to the NRA as to whether the application should be granted and stating the grounds on which the submission is based, which must be grounds that relate to matters that the NRA is required to take into account in deciding whether to grant the application.

(2) The NRA must take into account any submissions made in accordance with an invitation contained in the notice published under subsection (1).

**NRA to publish notice before determining application for registration of chemical product containing new active constituent**

**13.(1)** Before determining an application for registration of a chemical product containing an active constituent not previously contained in a chemical product registered in this or another jurisdiction under the Agvet Code, or a corresponding previous law, of the jurisdiction concerned, the NRA must cause to be published in the *Gazette*, and in any other manner that it thinks appropriate, a notice:

- (a) stating that the application has been made and setting out the following:
  - (i) the name that the applicant intends to use to describe the product;
  - (ii) particulars of the product and its active constituents other than confidential commercial information;

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

- (iii) a summary of the NRA's evaluation of the product with regard to the matters mentioned in paragraph 14(3)(e) and (f);
  - (iv) any other matters that the NRA thinks appropriate; and
- (b) inviting any person who wishes to do so to make, within a period stated in the notice that ends not earlier than 28 days after the notice appears in the *Gazette*, a written submission to the NRA as to whether the application should be granted and stating the grounds on which the submission is based, which must be grounds that relate to matters that the NRA is required to take into account in deciding whether to grant the application.

(2) The NRA must take into account any submissions made in accordance with an invitation contained in the notice published under subsection (1).

**Grant or refusal of application**

**14.(1)** The NRA must grant an application made under section 10 if it is satisfied of all the matters referred to in subsection (3).

(2) If the NRA is not satisfied as mentioned in subsection (1), it must refuse the application.

- (3) The matters referred to in subsection (1) are the following:
- (a) that the applicant has complied with subsection 11(1);
  - (b) that any requirement made under section 157 or 159 has been complied with;
  - (c) that, if necessary, section 158 has been complied with;
  - (d) that any requirements prescribed by the regulations in relation to the constituent, product or label, as the case may be, have been complied with;
  - (e) if the application is for approval of an active constituent or registration of a chemical product—that the use of the constituent or product in accordance with the recommendations for its use that the NRA proposes to approve:
    - (i) would not be an undue hazard to the safety of people exposed to it during its handling or people using anything containing its residues; and
    - (ii) would not be likely to have an effect that is harmful to human beings; and
    - (iii) would not be likely to have an unintended effect that is harmful to animals, plants or things or to the environment; and

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (iv) would not unduly prejudice trade or commerce between Australia and places outside Australia;
- (f) if the application is for registration of a chemical product—that the use of the product in accordance with the recommendations for its use that the NRA proposes to approve would be effective according to criteria determined by the NRA for the product;
- (g) if the application is for approval of a label for containers for a chemical product—that the label will contain adequate instructions relating to such of the following as are appropriate:
  - (i) the circumstances in which the product should be used;
  - (ii) how the product should be used;
  - (iii) the times when the product should be used;
  - (iv) the frequency of the use of the product;
  - (v) the withholding period after the use of the product;
  - (vi) the re-entry period after the use of the product;
  - (vii) the disposal of the product when it is no longer required;
  - (viii) the disposal of containers of the product;
  - (ix) the safe handling of the product and first aid in the event of an accident caused by the handling of the product;
  - (x) any other matters prescribed by the regulations;
- (h) that the fee (if any) prescribed in respect of the approval or registration, and any other amount (including an amount in respect of a tax or penalty) that is payable (whether by the applicant or by any other person) to the NRA in respect of the product under this Code or any other law in force in this or any other jurisdiction, have been paid.

**(4)** In satisfying itself for the purposes of subsection (1) whether the use of an active constituent in accordance with the recommendations for its use that the NRA proposes to approve would be an undue hazard as mentioned in subparagraph (3)(e)(i), or would be likely to have an effect that is harmful as mentioned in subparagraph (3)(e)(ii) or (iii), the NRA may have regard to such matters as it thinks relevant but must have regard to the following:

- (a) the toxicity of the constituent and its residues in relation to relevant organisms and ecosystems, including human beings ;
- (b) the method by which the constituent is, or is proposed to be, manufactured;
- (c) the extent to which the constituent will contain impurities;
- (d) whether an analysis of the chemical composition of the constituent has been carried out and, if so, the results of the analysis;

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(e) any other matters prescribed by the regulations.

(5) In satisfying itself for the purposes of subsection (1) whether the use of a chemical product in accordance with the recommendations for its use that the NRA proposes to approve would be an undue hazard as mentioned in subparagraph (3)(e)(i), or would be likely to have an effect that is harmful as mentioned in subparagraph (3)(e)(ii) or (iii), the NRA may have regard to such matters as it thinks relevant but must have regard to the following:

- (a) the toxicity of the product and its residues in relation to relevant organisms and ecosystems, including human beings;
- (b) the relevant poison classification of the product under the law in force in this jurisdiction;
- (c) how the product is formulated;
- (d) the composition and form of the constituents of the product;
- (e) the acceptable daily intake of each active constituent contained in the product;
- (f) whether any trials or laboratory experiments have been carried out to determine the residues of the product and, if so, the results of those trials or experiments and whether those results show that the residues of the product will not be greater than limits that the NRA has approved;
- (g) the stability of the product;
- (h) the specifications for containers for the product;
- (i) any other matters prescribed by the regulations.

(6) In satisfying itself for the purposes of subsection (1) whether the use of a chemical product in accordance with the recommendations for its use that the NRA proposes to approve would be effective as mentioned in paragraph (3)(f), the NRA must have regard to:

- (a) whether any trials or laboratory experiments have been carried out to determine the efficacy of the product and, if so, the results of those trials or experiments; and
- (b) any other matters prescribed by the regulations.

(7) This section has effect subject to section 15.

**Restriction on power of NRA to grant applications**

**15.(1)** Subject to subsection (2), the NRA must not:

- (a) grant an application for registration of a chemical product unless:
  - (i) the active constituent or each active constituent of the product is an approved active constituent; and

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (ii) the NRA also grants an application for approval of a label for containers for the product; or
  - (b) grant an application for approval of a label for containers for a chemical product unless it also grants or has granted an application for registration of the product.
- (2) Subparagraph (1)(a)(i) does not apply in relation to an active constituent that is exempted by the NRA from the operation of that subparagraph.

**Multiple approvals or registrations**

**16.(1)** The approval of an active constituent for a proposed or existing chemical product does not preclude the approval of the same constituent on the application of another person.

(2) The registration of a chemical product on the application of a person does not preclude the registration on the application of another person of another chemical product that has the same or similar constituents.

(3) The approval of a label for containers for a chemical product does not preclude the approval of another label or other labels for containers for that product.

**NRA must keep a Record of Approved Active Constituents for Chemical Products**

**17.(1)** For the purposes of this Code, the NRA must keep a record to be known as the Record of Approved Active Constituents for Chemical Products.

(2) The Record may be kept at a place and in a form that the NRA determines, and may be kept by electronic means.

(3) The Record is to be kept in 2 parts, one containing confidential commercial information and the other containing other information.

(4) The NRA must permit any person to inspect any part of the Record that does not contain confidential commercial information at any time during ordinary office hours on a working day.

(5) If a person applies to the NRA for a copy of, or extract from, a part of the Record that does not contain confidential commercial information and pays the prescribed fee (if any), the NRA must give the copy or extract to that person.



*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

**NRA must keep a Register of Agricultural and Veterinary Chemical Products**

**18.(1)** For the purposes of this Code, the NRA must keep a register to be known as the Register of Agricultural and Veterinary Chemical Products.

(2) The Register may be kept at a place and in a form that the NRA determines, and may be kept by electronic means.

(3) The Register is to be kept in 2 parts, one containing confidential commercial information and the other containing other information.

(4) The NRA must permit any person to inspect any part of the Register that does not contain confidential commercial information at any time during ordinary office hours on a working day.

(5) If a person applies to the NRA for a copy of, or extract from, a part of the Register that does not contain confidential commercial information and pays the prescribed fee (if any), the NRA must give the copy or extract to that person.

**How approval of active constituent is effected**

**19.(1)** If the NRA grants an application for approval of an active constituent for a proposed or existing chemical product, the NRA must approve the active constituent in accordance with this section, either unconditionally or subject to conditions as mentioned in section 23.

(2) Approval of an active constituent takes place by giving a distinguishing number to the active constituent and entering in the Record of Approved Active Constituents that number and any other particulars (the “**relevant particulars**”) that are prescribed by the regulations.

**How registration of chemical product is effected**

**20.(1)** If the NRA grants an application for registration of a chemical product, it must register the product in accordance with this section, either unconditionally or subject to conditions as mentioned in section 23.

(2) Registration of a chemical product takes place by giving a distinguishing number to the product and entering in the Register of Chemical Products that number and any other particulars (the “**relevant particulars**”) that are prescribed by the regulations.

**How approval of label is effected**

**21.(1)** If the NRA grants an application for approval of a label for containers for a chemical product in accordance with this section, the NRA must approve the label, either unconditionally or subject to conditions as mentioned in section 23.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(2) Approval of a label takes place by giving a distinguishing number to the label and recording in the relevant NRA file that number and any other particulars (the “**relevant particulars**”) that are prescribed by the regulations.

(3) The NRA must keep each approved label in, or in conjunction with, the relevant file.

(4) The NRA must permit any person during ordinary office hours on a working day to inspect the approved label referred to in subsection (3) or a copy of it.

(5) The NRA must supply a copy of the approved label on request by any person and on payment of the prescribed fee (if any).

**Date of approval or registration**

22. The date of approval of an active constituent for a proposed or existing chemical product, of registration of a chemical product or of approval of a label for containers for a chemical product is the date on which the relevant distinguishing number and the relevant particulars are entered in the Record of Approved Active Constituents or in the Register of Chemical Products or are recorded in the relevant NRA file, as the case may be.

**Conditions of approval or registration**

23.(1) The conditions of the approval of an active constituent for a proposed or existing chemical product, the registration of a chemical product or the approval of a label for containers for a chemical product are the conditions that the NRA thinks appropriate.

(2) Without limiting subsection (1), registration of a chemical product may be granted:

- (a) on the condition that the product is supplied only in a container of a kind referred to in the condition or prescribed by the regulations; or
- (b) on the condition that the product is not supplied in a container of a kind referred to in the condition or prescribed by the regulations.

(3) Approval of an active constituent for a proposed or existing chemical product, registration of a chemical product or approval of a label for containers for a chemical product may be granted on the condition that the approval or registration remains in force only for a stated period that is not more than one year.

(4) If the approval or registration is subject to a condition referred to in subsection (3) and the conditions of approval or registration have not been varied before the end of the period referred to in the condition, or the end of

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

that period as previously extended under this subsection, so as to remove the condition, the NRA may vary the condition so as to extend the period for a further period of not more than one year or for further periods each of which is not more than one year.

**Notice of approval or registration**

**24.(1)** If an application for approval of an active constituent for a proposed or existing chemical product, for registration of a chemical product or for approval of a label for containers for a chemical product is granted:

- (a) the NRA must give to the applicant written notice of the approval or registration; and
- (b) if the application related to registration of a chemical product—the NRA may cause to be made publicly available, in an appropriate manner, a material safety data sheet in respect of the product.

**(2)** The notice referred to in paragraph (1)(a) must contain the information that is prescribed by the regulations.

**(3)** Section 168 provides for additional matters to be included in a notice approving a constituent, registering a product, or approving a label, subject to conditions.

**Notice of refusal of application**

**25.(1)** If an application for approval of an active constituent for a proposed or existing chemical product, registration of a chemical product or approval of a label for containers for a chemical product is refused, the NRA must:

- (a) give to the applicant written notice of the refusal; and
- (b) include in the notice brief particulars of the reasons for the refusal.

**(2)** Section 168 provides for additional matters to be included in a notice under this section.

**Notice of incorrectly recorded or registered particulars**

**26.(1)** If a person:

- (a) is the interested person in relation to an approved active constituent for a proposed or existing chemical product, a registered chemical product or an approved label for containers for a chemical product; and
- (b) has reasonable cause to believe that, because of a change in circumstances, inaccurate recording or any other reason, a particular entered in the Record of Approved Active Constituents, in the Register of Chemical Products or in the relevant NRA file in relation to the constituent, product or label is not correct in a material respect;

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

the person must, as soon as practicable, give to the NRA a written notice, signed by an approved person, identifying the incorrect particular and informing the NRA of the correct particular.

Penalty: 60 penalty units.

(2) If the NRA is satisfied that the particular entered in the Record, Register or file in relation to the constituent, product or label is not correct, the NRA must change the entry accordingly.

***Division 3—Application for variation of approval or registration or of conditions of approval or registration***

**Who may apply**

27. The interested person in relation to:

- (a) an approved active constituent for a proposed or existing chemical product; or
- (b) a registered chemical product; or
- (c) an approved label for containers;

may apply to the NRA for variation of the relevant particulars of the approval or registration, or variation of the conditions of the approval or registration.

**How application is to be made**

28.(1) The application must:

- (a) be in writing in or to the effect of the approved form; and
- (b) contain, or be accompanied by, the information that the NRA requires; and
- (c) be signed by an approved person; and
- (d) be accompanied by the prescribed fee (if any).

(2) The NRA may alter the application with the written consent of the applicant.

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

**Grant or refusal of application**

29.(1) If the NRA is satisfied of the following:

- (a) that the applicant has complied with subsection 28(1);
- (b) that any requirement made under section 157 or 159 has been complied with;

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (c) that, if necessary, section 158 has been complied with;
- (d) that any requirements prescribed by the regulations in relation to the variation of the relevant particulars of an approval or registration or of the conditions of an approval or registration have been complied with;
- (e) if the application relates to a constituent or a product—that, if those particulars or conditions were varied in accordance with the application, the use of, or any other dealing with, the constituent or product in accordance with the recommendations for its use or for such a dealing that the NRA proposes to approve:
  - (i) would not be an undue hazard to the safety of people exposed to it during its handling or people using anything containing its residues; and
  - (ii) would not be likely to have an effect that is harmful to human beings; and
  - (iii) would not be likely to have an unintended effect that is harmful to animals, plants or things or to the environment; and
  - (iv) would not unduly prejudice trade or commerce between Australia and places outside Australia;
- (f) if the application relates to a product—that, if those particulars or conditions were varied in accordance with the application, the use of the product in accordance with the recommendations for its use that the NRA proposes to approve would be effective according to criteria determined by the NRA for the product;
- (g) if the application relates to a label—that the label would contain adequate instructions relating to the matters referred to in paragraph 14(3)(g);

it must:

- (h) grant the application and vary those particulars or conditions accordingly by entering in the relevant Record or Register or recording in the relevant file particulars of the variation and the date on which the entry or record is made; and
  - (i) give written notice to the interested person stating that the variation has been made and setting out particulars of the variation.
- (2) In satisfying itself for the purposes of paragraph (1)(e) or (f), the NRA must have regard to the matters referred to in subsection 14(4), (5) or (6), as the case requires.
- (3) If the NRA is not satisfied as mentioned in subsection (1), it must refuse the application.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

- (4) If the application is refused, the NRA must:
  - (a) give to the applicant written notice of the refusal; and
  - (b) include in the notice brief particulars of the reasons for the refusal.
- (5) Section 168 provides for additional matters to be included in a notice under subsection (4).

*Division 4—Reconsideration of approval or registration*

**NRA may invite the public to propose approved active constituents or registered chemical products for reconsideration**

30.(1) The NRA may cause to be published in the *Gazette*, and in any other manner it thinks appropriate, notices inviting persons to propose active constituents for proposed or existing chemical products, or to propose chemical products, whose approval or registration the NRA might reconsider.

(2) A notice under subsection (1) must state the criteria that are to be taken into account by the NRA in reconsidering the approval or registration.

(3) A proposal made by a person because of an invitation contained in a notice under subsection (1) must submit reasons, based on the criteria stated in the notice, in support of the proposal.

**NRA may reconsider approval or registration**

31.(1) The NRA may at any time, in accordance with this Division, reconsider:

- (a) the approval of an active constituent for a proposed or existing chemical product; or
- (b) the registration of a chemical product; or
- (c) the approval of a label for containers for a chemical product.

(2) The basis of the NRA's reconsideration is to be whether it is satisfied that the requirements prescribed by the regulations for continued approval of the active constituent, for continued registration of the product, or for continued approval of the label, as the case may be, are complied with.

**NRA may give notice of proposed reconsideration**

32.(1) Before reconsidering the approval of an active constituent for a proposed or existing chemical product or the registration of a chemical product, the NRA may, if it thinks it desirable to do so, cause to be published, in a manner that it thinks appropriate, a notice:

- (a) stating that the NRA proposes to reconsider the approval or registration and setting out the relevant particulars of the constituent or product; and

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

(b) inviting any person who wishes to do so to make, within a period stated in the notice that ends not earlier than 28 days after the publication of the notice, a written submission to the NRA as to whether the approval or registration should be continued.

(2) The NRA must give written notice to the interested person in relation to the constituent or product:

(a) telling the person the matter or matters that it proposes to reconsider and its reasons for so proposing; and

(b) requiring the person, within a period stated in the notice that ends not earlier than 28 days after the day on which the notice is given, to give to the NRA any information of which the person is aware that is relevant to the reconsideration; and

(c) inviting the person, within that period, to make a written submission to the NRA about the matter or matters referred to in paragraph (a).

(3) A person must comply with a requirement made of the person under paragraph (2)(b).

Penalty: 120 penalty units.

(4) Subsection (3) does not apply if, before the end of the period stated in the notice, the person requests the NRA under section 42 to cancel the approval of the constituent or the registration of the product, as the case may be, and the NRA complies with the request.

(5) The NRA must take into account any submissions made in accordance with an invitation contained in a notice published under subsection (1) or in a notice given under subsection (2).

**NRA may require trials or laboratory experiments to be conducted**

**33.(1)** The NRA may, by written notice given to the interested person in relation to an active constituent for a proposed or existing chemical product, or in relation to a chemical product, require the person, within a reasonable period stated in the notice:

(a) to conduct, or cause to be conducted, trials or laboratory experiments in relation to the constituent or product, as the case may be, that the NRA thinks necessary for the purposes of its reconsideration of the approval of the constituent or the registration of the product; and

(b) to give the results of the trials or experiments to the NRA.

(2) A person must comply with a requirement made of the person under subsection (1).

Penalty: 120 penalty units.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(3) Subsection (2) does not apply if, before the end of the period stated in the notice, the person requests the NRA under section 42 to cancel the approval of the constituent or the registration of the product, as the case may be, and the NRA complies with the request.

(4) This section does not affect the NRA's powers under section 159.

**Reconsideration by NRA of continued approval or registration**

**34.(1)** If the NRA is satisfied that, provided that the conditions to which an approval or registration is currently subject are complied with:

- (a) if the reconsideration relates to an approval of a constituent or registration of a product—the continued use of, or any other dealing with, the constituent or product in accordance with the recommendations for its use or for such a dealing that the NRA has approved:
  - (i) would not be an undue hazard to the safety of people exposed to it during its handling or people using anything containing its residues; and
  - (ii) would not be likely to have an effect that is harmful to human beings; and
  - (iii) would not be likely to have an unintended effect that is harmful to animals, plants or things or to the environment; and
  - (iv) would not unduly prejudice trade or commerce between Australia and places outside Australia; and
- (b) if the reconsideration relates to registration of a product—the continued use of the product in accordance with the recommendations for its use that the NRA has approved would be effective according to criteria determined by the NRA for the product; and
- (c) if the reconsideration relates to an approval of a label—the label would contain adequate instructions relating to the matters referred to in paragraph 14(3)(g); and
- (d) any other prescribed requirements for continued approval or registration would be complied with;

the NRA must as soon as practicable:

- (e) give written notice to the interested person stating that it affirms the approval or registration on the conditions to which the approval or registration is currently subject and giving brief particulars of the reasons for its decision; and



*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (f) if it caused a notice to be published under subsection 32(1) in relation to its proposed reconsideration of the approval or registration—cause to be published, in the same way as the first-mentioned notice, a notice stating that it has affirmed the approval or registration on the conditions to which the approval or registration is currently subject.
- (2) In satisfying itself as mentioned in paragraph (1)(a) or (b), the NRA must have regard to the matters referred to in subsection 14(4), (5) or (6), as the case requires.
- (3) If the NRA is not satisfied as mentioned in subsection (1), subsections (4) to (6) apply.
- (4) The NRA must give written notice to the interested person stating that the NRA is not so satisfied.
- (5) If the NRA is satisfied that the conditions to which the approval or registration is currently subject can be varied in such a way that the requirements for continued approval or registration will be complied with:
- (a) the NRA must vary the conditions of approval or registration by entering in the relevant Record or Register or recording in the relevant file the particulars of the variation; and
- (b) the NRA must:
- (i) state in the notice referred to in subsection (4) that, although the NRA is not satisfied as mentioned in subsection (1), it is satisfied that the conditions can be so varied and has varied the conditions accordingly; and
- (ii) set out in the notice particulars of the variation.
- (6) A notice given under subsection (4) must give brief particulars of the reasons for the NRA's decision and, if subsection (5) applies, also give brief particulars of the reasons for the variation of the conditions of the approval or registration.
- (7) Section 168 provides for additional matters to be included in a notice to which subsection (5) applies.
- (8) Section 40 provides for the suspension or cancellation of the approval or registration if the NRA is not satisfied that the conditions of the approval or registration can be varied as mentioned in subsection (5).

***Division 5—Suspension or cancellation of approval or registration***

**Notice of proposed suspension or cancellation to be given to co-ordinators**

**35.** The NRA must not suspend or cancel an approval or registration unless:

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (a) it has given notice of the proposed suspension or cancellation to each co-ordinator designated for a jurisdiction; and
- (b) a period of 10 working days, or any other period that the NRA thinks adequate in a particular case, has elapsed since the notice was given.

**Suspension or cancellation of approval or registration for breach of condition**

**36.** If there is a contravention of a condition of the approval of an active constituent for a proposed or existing chemical product, the registration of a chemical product or the approval of a label for containers for a chemical product, the NRA may suspend or cancel the approval or registration.

**Suspension of approval or registration for failing to give information, or results of trials or experiments, to NRA**

**37.(1)** If:

- (a) at the end of the period stated in a notice given to a person under subsection 32(2), the NRA is satisfied that the person is aware of information relevant to the reconsideration but has failed to give that information to the NRA; or
- (b) at the end of the period stated in a notice given to a person under subsection 33(1), the NRA is satisfied that the person has not conducted, or caused to be conducted, the trials or experiments or has not given the results of the trials or experiments to the NRA;

the NRA may suspend the approval or registration.

(2) Subject to subsection (4), the NRA must revoke a suspension imposed under paragraph (1)(a) when it is satisfied that all the information relevant to the reconsideration has been given to it.

(3) Subject to subsection (4), the NRA must revoke a suspension imposed under paragraph (1)(b) when it has received the results of the trials or experiments.

(4) If the information or the results of the trials or experiments are not given to the NRA within a period after the suspension takes place that the NRA thinks reasonable, the NRA may cancel the approval or registration.

**Suspension of approval or registration for failing to give information, report or sample to NRA**

**38.(1)** If the interested person in relation to an approved active constituent for a proposed or existing chemical product, or in relation to a chemical product, fails, without reasonable excuse, to comply with a requirement contained in a notice under section 159 or with section 161, the NRA may suspend the approval or registration.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(2) Subject to subsection (3), the NRA must revoke a suspension imposed under subsection (1) if it is satisfied that the relevant information, report or sample has been given to it.

(3) If the information, report or sample is not given to the NRA within a reasonable period after the suspension takes place, the NRA may cancel the approval or registration.

**Suspension of registration if compensation for use of protected registration information cannot be arbitrated**

**39. If:**

- (a) the primary applicant in relation to a primary chemical product and the secondary applicant in relation to a secondary chemical product were parties to an arbitration under Division 3 of Part 3 as to the terms of compensation; and
- (b) the arbitrator gives notice to the NRA under section 68 in respect of the failure of each party to the arbitration to make a fresh proposal as to the terms of the compensation or to make a fresh proposal as to those terms that the arbitrator considers to be reasonable;

the NRA may suspend the registration of either or both of those products.

**Suspension or cancellation of approval or registration following reconsideration of continued approval or registration**

**40.** If, in the course of reconsidering the approval of an active constituent for a proposed or existing chemical product, the registration of a chemical product or the approval of a label for containers for a chemical product, the NRA is not satisfied that the conditions of the approval or registration can be varied in such a way that the prescribed requirements for continued approval or registration will be complied with, the NRA may suspend or cancel the approval or registration.

**Suspension or cancellation of approval or registration for non-compliance with criteria for registration or approval**

**41.(1)** The NRA may suspend or cancel the approval of an active constituent for a proposed or existing chemical product, or the registration of a chemical product, if it appears to the NRA that, having regard to the matters referred to in subsection 14(4) or (5), as the case requires, the continued use of, or any other dealing with, the constituent or product in accordance with the recommendations for its use or for such a dealing that the NRA has approved:

- (a) may be an undue hazard to the safety of people exposed to it during its handling or people using anything containing its residues; or

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (b) may be likely to have an effect that is harmful to human beings; or
- (c) may be likely to have an unintended effect that is harmful to animals, plants or things or to the environment; or
- (d) may unduly prejudice trade or commerce between Australia and places outside Australia.

(2) The NRA may suspend or cancel the registration of a chemical product if it appears to the NRA that, having regard to the matters referred to in subsection 14(6), the continued use of the product in accordance with the recommendations for its use that the NRA has approved may not be effective according to criteria determined by the NRA for the product.

(3) If it appears to the NRA that a direction on an approved label for containers for a chemical product that relates to a matter referred to in paragraph 14(3)(g) may no longer be adequate, the NRA may suspend or cancel the approval.

**Cancellation of approval or registration at request of interested person**

**42.(1)** If:

- (a) the interested person in relation to an approval or registration gives to the NRA a written notice:
  - (i) requesting the NRA to cancel the approval or registration; and
  - (ii) stating the reasons for the request; and
- (b) the NRA is satisfied that there are no valid reasons why it should not agree to the request;

the NRA must cancel the approval or registration.

(2) The NRA must give written notice of its decision on a request under subsection (1) to the person or persons who made the request.

**Effect of suspension of approval or registration**

**43.(1)** A suspension of an approval or registration must be for a stated period.

(2) An approval or registration is taken for the purposes of this Code other than sections 74 and 75 not to be in force during any period in which it is suspended.

(3) An approval or registration may be cancelled even though it is suspended.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

**Inter-related suspensions and cancellations**

**44.(1)** If the NRA suspends or cancels the only approval, or all the approvals, of an active constituent for a proposed or existing chemical product, it must also suspend or cancel any registration of that product.

**(2)** If the NRA suspends or cancels the registration of a chemical product, it may also suspend or cancel, as the case may be, any approval relating to a label for containers for the product.

**(3)** If the NRA suspends or cancels the approval of the only approved label, or all the approved labels, for containers for a chemical product, it may also suspend or cancel, as the case may be, the registration of the product.

**How approval or registration is suspended or cancelled**

**45.(1)** Suspension or cancellation of an approval or registration is made by entering in the relevant Record or Register or recording in the relevant file:

- (a) the fact that the approval or registration has been suspended or cancelled; and
- (b) in respect of a suspension—the period of the suspension; and
- (c) the date on which the entry or record is made.

**(2)** Subject to subsection (4), if the NRA suspends or cancels an approval or registration, it must, as soon as practicable, give written notice of the suspension or cancellation to the interested person and to any other person to whom, in its opinion, such a notice should be given.

**(3)** A notice given to a person under subsection (2):

- (a) must tell the person of the suspension or cancellation; and
- (b) in respect of suspension or cancellation of the approval of an active constituent for a proposed or existing chemical product or the registration of a chemical product—must contain the following matters:
  - (i) brief reasons for the suspension or cancellation; and
  - (ii) instructions for using or otherwise dealing with the constituent or product; and
  - (iii) a warning of the consequences if the person fails to comply with the instructions, including a statement of any period after which it will be an offence against this Code to have possession or custody of the constituent or product; and
  - (iv) any other warnings or explanations in relation to the constituent or product that the NRA thinks desirable;

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

excluding any matters that the NRA thinks it unnecessary for the notice to contain.

(4) Subsection (2) does not require notice of the cancellation under section 42 of an approval or registration to be given to the person who requested the cancellation.

(5) Section 168 provides for additional matters to be included in a notice given under subsection (2).

**How suspension or cancellation is revoked**

**46.(1)** Suspension or cancellation of an approval or registration is revoked by entering in the relevant Record or Register or recording in the relevant file:

- (a) the fact that the suspension or cancellation has been revoked; and
- (b) the date on which the entry is made.

(2) If the NRA revokes the suspension or cancellation of an approval or registration, it must, as soon as practicable, give written notice of the revocation to the interested person and to any other person to whom, in its opinion, such a notice should be given.

(3) If the cancellation of an approval or registration is revoked, the cancellation is taken never to have occurred.

***Division 6—Duration and renewal of approval or registration***

**Period of approval or registration**

**47.(1)** The approval of an active constituent for a proposed or existing chemical product continues in force unless it is cancelled.

(2) Subject to subsection (3), the registration of a chemical product ends at the end of 30 June next following the day on which the registration was granted or renewed, or last renewed, as the case may be.

(3) The registration of a chemical product that is taken to have been effected by subsection 172(2) or paragraph 174(1)(a) or 176(1)(c) ends at the end of 3 months after the commencement of this Code unless the registration is renewed.

(4) The approval of a label for containers for a chemical product ends when the registration of the product ends.

(5) This section has effect subject to:

- (a) any condition of a kind referred to in subsection 23(3) to which an approval or registration is subject; and

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (b) subsection 43(2), which relates to suspension of an approval or registration; and
- (c) the following provisions of this Division.

**Application for renewal of registration of chemical product**

**48.(1)** The interested person may apply for the renewal, or further renewal, as the case may be, of the registration of a chemical product.

**(2)** Subject to subsection (3), the application must be made not later than one month, or a shorter period that the NRA permits, before the registration ends.

**(3)** In circumstances that are prescribed by the regulations and upon payment of the prescribed fee (if any), the NRA may accept a late application if the application is made on or before a date that the NRA determines.

**How application for renewal of registration is to be made**

**49.(1)** The application must:

- (a) be in writing in or to the effect of the approved form; and
- (b) contain, or be accompanied by, the information that the NRA requires; and
- (c) be signed by an approved person; and
- (d) be accompanied by the prescribed fee (if any).

**(2)** The NRA may, with the written consent of the applicant, alter the application.

**(3)** At any time after an application has been made and before it has been determined, the applicant may withdraw the application by giving to the NRA written notice of the withdrawal signed by an approved person.

**(4)** Subject to subsection (5), the NRA must grant the application:

- (a) if the application was made in accordance with subsection 48(2)—before the registration ends; or
- (b) if the application was made in accordance with subsection 48(3)—within one month after the application was made;

and must give written notice to the applicant of the renewal and the period of the renewal.

**(5)** If an amount (including an amount in respect of a tax or penalty) that is payable (whether by the applicant or by any other person) to the NRA in respect of the product under any law in force in any jurisdiction has not been paid, the NRA may refuse to grant the application for renewal.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(6) If the application was made in accordance with subsection 48(2) and the NRA fails to grant the application before the registration ends, the registration continues in force until:

- (a) the NRA grants the application; or
- (b) if the NRA decides to refuse to grant the application because of non-payment of an amount as mentioned in subsection (5)—the NRA gives written notice of its decision to the applicant.

(7) If the NRA accepts a late application under subsection 48(3) and grants the application, the registration continues in force, or is taken to have continued in force, as the case may be, until the application is or was granted.

**Renewal of registration of chemical product**

**50.** The renewal of registration of a chemical product:

- (a) is granted by entering in the Register of Chemical Products a statement that the registration has been renewed and the date on which the renewed registration ends; and
- (b) takes effect, or is to be regarded as having taken effect, as the case may be, at the beginning of the day immediately following the day on which the previous registration ends or ended.

**Renewal of approval of label**

**51.** If the registration of a chemical product is renewed:

- (a) any approval of a label for containers for the product is, by this section, also renewed; and
- (b) the renewal of that approval takes effect, or is to be regarded as having taken effect, as the case may be, at the beginning of the day immediately following the day on which the previous registration of the product ends or ended; and
- (c) the NRA must record in the relevant file a statement that the approval of the label has been renewed and the date on which the renewed approval ends.

*Division 7—Publication of notices by NRA*

**Publication of notice of approval of active constituent or registration of chemical product**

**52.(1)** If the NRA approves an active constituent for a proposed or existing chemical product, it must, as soon as practicable after the approval, cause notice of the approval to be published in accordance with subsection (3).



*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

(2) If the NRA registers a chemical product, it must, as soon as practicable after the registration, cause notice of the registration to be published in accordance with subsection (3), unless the NRA thinks it unnecessary, in the circumstances, to publish such a notice.

(3) The notice:

- (a) is to be published in the *Gazette* and in any other manner that the NRA thinks appropriate; and
- (b) must state that the constituent has been approved or the product has been registered, as the case may be, and state the date of the approval or registration; and
- (c) must contain a brief statement of the conditions of the approval or registration that directly regulate the use of the constituent or product, as the case may be.

**Publication of notice of variations of approval of active constituent or registration of chemical product**

53.(1) If the NRA varies any particulars of an approval of an active constituent for a proposed or existing chemical product or of the registration of a chemical product or any conditions of such an approval or registration, the NRA must, unless it thinks that, in the circumstances, it is unnecessary to do so, cause notice of the variation to be published in the *Gazette* and in any other manner that it thinks appropriate.

(2) The notice must:

- (a) state that the particulars or conditions have been varied and state the date of the variation; and
- (b) contain a brief statement of the nature of, and reasons for, the variation.

**Publication of notice of end of registration of chemical product**

54. If the registration of a chemical product ends and is not renewed, the NRA must, as soon as practicable, cause to be published in the *Gazette*, and in any other manner that it thinks appropriate, a notice:

- (a) stating that the registration has ended; and
- (b) setting out the date on which the registration ended; and
- (c) containing any other information that the NRA thinks appropriate;

unless the NRA thinks that, in the circumstances it is unnecessary to publish such a notice.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

**Publication of notice of suspension or cancellation of approval or registration**

**55.(1)** If the NRA suspends or cancels the approval of an active constituent for a proposed or existing chemical product, the registration of a chemical product or the approval of a label for containers for a chemical product, it must, as soon as practicable, cause to be published in the *Gazette*, and in any other manner that it thinks appropriate, notice of the suspension or cancellation containing any information that it thinks relevant.

**(2)** If the reason, or one of the reasons, for the suspension or cancellation was:

- (a) that the continued use of, or other dealing with, the constituent or product:
  - (i) might be an undue hazard to the safety of people exposed to it during its handling or people using anything containing its residues; or
  - (ii) might be likely to have an effect that is harmful to human beings; or
  - (iii) might be likely to have an unintended effect that is harmful to animals, plants or things or to the environment; or
- (b) that the continued use of the product might not be effective according to criteria determined by the NRA for the product; or
- (c) that a direction on a label for containers for the product might no longer be adequate;

the notice must contain the following:

- (d) a statement to that effect;
- (e) instructions for using or otherwise dealing with the constituent or product;
- (f) a warning of the consequences if a person fails to comply with the instructions, including a statement of any period after which it will be an offence against this Code to have possession or custody of the constituent or product;
- (g) any other warnings or explanations in relation to the constituent or product that the NRA thinks desirable.

**(3)** If, after the publication under this section of a notice of the suspension or cancellation of an approval or registration, a person uses or otherwise deals with the constituent or product, or a product containing the label, as the case may be, in accordance with the instructions contained in the

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

notice, the person is taken to have been issued with a permit to use or otherwise deal with the constituent or product, or the product containing the label, in accordance with those instructions.

- (4) Subject to subsection (5), if:
- (a) a notice of the suspension or cancellation of the approval of an active constituent for a proposed or existing chemical product, the registration of a chemical product or the approval of a label for containers for a chemical product has been published under this section; and
  - (b) a person has possession or custody of that constituent or product for the purpose of supply;

the person must not deal with the constituent or product except in accordance with the instructions contained in the notice.

Penalty: 300 penalty units.

(5) Subsection (4) does not apply to a dealing with a constituent or product if the constituent was an approved active constituent, the product was a registered chemical product, or the label on the product was an approved label, when the dealing took place because of its having been approved or registered again after its previous approval or registration had been cancelled.

(6) It is a defence to a prosecution of a person for an offence against subsection (4) if the person proves that, when the person dealt with the constituent or product, the person did not know, and could not reasonably be expected to have known, of the existence of the notice or that the dealing was not in accordance with the instructions contained in the notice.

(7) If the NRA causes a notice of the suspension or cancellation of the registration of a chemical product to be published under this section, the NRA must:

- (a) as soon as practicable cause a copy of the notice to be given to each person who is an interested person in relation to an approved label for a container for the product to which the notice relates; and
- (b) cause a copy of the notice to be given to any other person who, in the opinion of the NRA, should be given notice of the suspension or cancellation and of the instructions, warnings and explanations contained in the notice.

(8) If the NRA causes a notice of the suspension or cancellation of the approval of a label for containers for a chemical product to be published under this section, the NRA must:

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (a) as soon as practicable cause a copy of the notice to be given to the interested person in relation to the chemical product; and
- (b) cause a copy of the notice to be given to any other person who, in the opinion of the NRA, should be given notice of the suspension or cancellation and of the instructions, warnings and explanations contained in the notice.

**Notice of revocation of suspension or cancellation to be published**

**56.** If the NRA revokes the suspension or cancellation of the approval of an active constituent for a proposed or existing chemical product, the registration of a chemical product or the approval of a label for containers for a chemical product, it must, as soon as practicable, cause to be published in the *Gazette*, and in any other manner that it thinks appropriate, notice of the revocation containing any information that it thinks relevant.

**PART 3—COMPENSATION FOR PROVIDER OF CERTAIN  
INFORMATION IN RESPECT OF CONTINUED REGISTRATION  
OF CERTAIN CHEMICAL PRODUCTS**

*Division 1—Preliminary*

**Explanation of Part**

**57.(1)** This Part contains provisions that entitle a person who has provided information (“**protected registration information**”) to the NRA in relation to a chemical product (a “**protected chemical product**”), under a requirement made of the person by the NRA, to receive compensation from anyone else who wishes to use the information in connection with an application to register another chemical product.

- (2) Compensation is not payable in respect of information unless:
- (a) the protected chemical product is or includes a patentable invention and the term of the patent has ended or is about to end; and
  - (b) the information was obtained from trials or laboratory experiments and relates to the interaction between the product and:
    - (i) the environment; or
    - (ii) living organisms or naturally occurring populations in ecosystems, including human beings;and is not information that was obtained merely for the purpose of assessing the performance of the product.

(3) Compensation is not payable in respect of information if the product is for use only in relation to a species of animals that is not a food-producing species.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(4) The parties concerned are invited to negotiate the terms of the compensation and provision is made for the appointment of a mediator if the parties are unable to agree and for the terms to be arbitrated if the mediation is unsuccessful. If an arbitration takes place, the arbitrator is to base his or her decision on whichever of the proposals put forward by the parties is considered by the arbitrator to be the most reasonable assessment of the proportion of the cost of producing the information that it is fair for the party wishing to use it to pay to the party who provided it.

*Division 2—Right to compensation*

**Right of NRA to use information**

**58.(1)** Except as provided in this Part, the NRA may use information obtained by it from any source for the purpose of performing any of its functions or exercising any of its powers under this Code.

(2) This Part does not affect the operation of section 169.

**Right of originator of protected registration information to compensation for its use in relation to other applications**

**59.(1)** Subject to subsection (2), if, because of a requirement that the NRA has made under section 33 or for the purposes of paragraph 159(1)(c) or (d), protected registration information has been given to the NRA in relation to a protected chemical product (the “**primary chemical product**”), the NRA must not use the information in determining whether to register, or to continue the registration of, another chemical product (the “**secondary chemical product**”) some or all of whose constituents are the same as, or similar to, the constituents of the primary chemical product.

(2) Subsection (1) does not apply if:

(a) the primary applicant and the secondary applicant:

(i) have agreed as to the terms of the compensation to be paid by the secondary applicant to the primary applicant for the information to be used in relation to the secondary chemical product; and

(ii) have notified the NRA in writing that they have so agreed and of the terms of the compensation; or

(b) an arbitrator that the NRA has appointed has determined the compensation to be so paid and the secondary applicant has given notice to the primary applicant and to the NRA stating that the secondary applicant agrees to comply with the determination; or

(c) the protection period has elapsed since that information was given to the NRA; or

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

- (d) the NRA is satisfied, having regard to such criteria (if any) as are prescribed, that it is in the public interest for the information to be so used.
- (3) If the NRA decides to use the information under paragraph (2)(d), the NRA:
  - (a) must give written notice of its decision to the primary applicant and the secondary applicant; and
  - (b) must not make a determination using the information before the end of 28 days after the day on which the notice is given.
- (4) Section 168 provides for additional matters to be included in a notice given under paragraph (3)(a).
- (5) Without affecting the duty of the NRA to comply with subsection (1):
  - (a) the validity of any registration, or continued registration, of the secondary chemical product is not affected by a contravention by the NRA of that subsection or by the failure of the secondary applicant to comply with the agreement or determination; and
  - (b) no action or other proceeding lies against the Commonwealth, the NRA, or a person who is or has been a delegate of the NRA, a director of the NRA, the Chief Executive Officer of the NRA, or a member of the staff of the NRA, for any loss directly or indirectly sustained because of such a contravention or failure.

**NRA to notify applicants**

**60.(1)** This section applies if:

- (a) the NRA is unable to complete its consideration of the registration or continued registration of a secondary chemical product under this Code unless it uses protected registration information; and
  - (b) paragraph 59(2)(c) does not permit the NRA to use the information.
- (2) The NRA must give to the secondary applicant written notice:
- (a) stating that the NRA's consideration of the registration or continued registration of the secondary chemical product cannot be completed unless the NRA uses the information; and
  - (b) stating that the NRA is precluded from using the information except in circumstances prescribed by paragraph 59(2)(a), (b) or (d) and setting out those circumstances; and
  - (c) requesting the secondary applicant to tell the NRA, within a reasonable period stated in the notice, whether the secondary applicant wants the NRA to take further action in respect of the information under this section.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

**(3)** If the secondary applicant tells the NRA that it wants the NRA to take further action in respect of the information under this section, the NRA must give to the primary applicant or each primary applicant and to the secondary applicant written notice:

(a) containing:

(i) in respect of the notice to a primary applicant—the prescribed information about the secondary applicant and the secondary chemical product; or

(ii) in respect of the notice to the secondary applicant—the prescribed information about the primary applicant and primary chemical product, or each primary applicant and each primary chemical product; and

(b) stating that the NRA's consideration of the registration or continued registration of the secondary chemical product cannot be completed unless the NRA uses protected registration information given by a primary applicant but the NRA is precluded from using that information except in circumstances prescribed by paragraph 59(2)(a), (b) or (d) and setting out those circumstances; and

(c) inviting the primary applicant or each primary applicant, and the secondary applicant, within a period stated in the notice, to negotiate as to the terms of the compensation to be paid by the secondary applicant to that primary applicant for the use of that information and to give written notice to the NRA of the results of the negotiation; and

(d) telling them that, if they are unable to agree as to the terms of the compensation:

(i) a mediator will be appointed to try to help them to reach agreement; and

(ii) if the mediation is not successful, an arbitrator will be appointed to determine those terms in accordance with any reasonable proposals made in the course of the negotiations (including negotiations during the period of the mediation); and

(iii) if the arbitrator finds that no reasonable proposals were made, the NRA may suspend the registration of the primary chemical product or the secondary chemical product, or both; and

(e) telling them of the obligations imposed on the primary applicant or each primary applicant under section 61.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

**Primary applicant to notify secondary applicant**

**61.** As soon as practicable after a primary applicant receives a notice under section 60, the primary applicant must give written notice to the secondary applicant setting out the following:

- (a) the amount of the cost incurred by the primary applicant in obtaining the protected registration information excluding any part of that cost that relates to information that was obtained from a Government or public authority, whether in Australia or elsewhere, or was otherwise publicly available;
- (b) particulars of the amounts included in that cost as mentioned in subsection 69(3);
- (c) when the protected registration information was obtained by the primary applicant;
- (d) when the NRA required the primary applicant to give the protected registration information to the NRA;
- (e) any other information required by the regulations.

Penalty: 300 penalty units.

***Division 3—Mediation or arbitration as to  
terms of compensation***

**Application of Division**

**62.(1)** This Division applies if:

- (a) there is only one primary applicant and the primary applicant is unable to agree with the secondary applicant as to the terms of the compensation to be paid by the secondary applicant to the primary applicant; or
- (b) there are 2 or more primary applicants and none of them is able to agree with the secondary applicant as to the terms of the compensation to be paid by the secondary applicant to the primary applicant concerned;

and the secondary applicant has notified the NRA in writing of the failure to reach agreement.

**(2)** If the secondary applicant tells the NRA at any time during the course of any negotiations, mediation or arbitration under this Division that the secondary applicant no longer wants any further action to be taken under this Division for the purposes of the secondary application, this Division ceases to apply in relation to that application.



*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

**Mediation**

**63.(1)** The NRA must appoint a person as a mediator to try to help the parties to the negotiations to reach agreement as to the terms of the compensation.

**(2)** The mediation ceases:

- (a) if the parties reach agreement as to those terms; or
- (b) the mediator or either party to the mediation tells the NRA that the mediation has not been successful; or
- (c) 14 days have elapsed since the appointment of the mediator.

**(3)** If, before the mediation ceases, the person appointed as the mediator:

- (a) dies; or
- (b) becomes incapable of performing, or continuing to perform, his or her functions; or
- (c) resigns his or her appointment; or
- (d) for any other reason refuses or fails to perform, or to complete the performance of, his or her functions as required by this section;

the NRA may appoint another person as mediator in place of the first-mentioned person.

**(4)** If another mediator is appointed under subsection (3), the period of 14 days referred to in paragraph (2)(c) is taken to have begun from the appointment of the first mediator but that period does not include any period after the occurrence of an event referred to in subsection (3) and before the appointment of the other mediator.

**Appointment of arbitrator**

**64.(1)** If the mediation has ceased without the parties having reached agreement as to the terms of the compensation, the NRA must appoint a person as an arbitrator to determine those terms in accordance with any reasonable proposals that were made in the course of the negotiations (including negotiations during the period of the mediation).

**(2)** If, before the functions of an arbitrator appointed under this section (including this subsection) are fully performed, the person appointed as the arbitrator:

- (a) dies; or
- (b) becomes incapable of performing, or continuing to perform, his or her functions; or
- (c) resigns his or her appointment; or

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(d) for any other reason refuses or fails to perform, or to complete the performance of, his or her functions as required by this section; the NRA may appoint another person as arbitrator in place of the first-mentioned person.

**Determination of compensation on the basis of proposals made during negotiations**

**65.(1)** The arbitrator must consider the proposals as to the terms of the compensation that were made by the parties to the negotiations or each of the negotiations.

(2) If a party to any negotiations made a proposal as to the terms of the compensation that the arbitrator considers to be reasonable and the other party failed to make any proposal as to those terms or failed to make a proposal that the arbitrator considers to be reasonable, the arbitrator must determine those terms in accordance with the first-mentioned proposal.

(3) If each party to any negotiations made proposals as to the terms of the compensation that the arbitrator considers to be reasonable, the arbitrator must determine those terms in accordance with whichever of those proposals the arbitrator considers to be the most reasonable.

**Arbitrator may require fresh proposals**

**66.** If each party to any negotiations failed to make any proposal as to the terms of the compensation or failed to make a proposal as to those terms that the arbitrator considers to be reasonable, the arbitrator must give written notice to each of them requiring them to make fresh proposals to the arbitrator as to the terms of the compensation.

**Determination on basis of fresh proposals**

**67.(1)** If a party to an arbitration makes a fresh proposal as to the terms of the compensation that the arbitrator considers to be reasonable and the other party fails to make any fresh proposal as to those terms or fails to make a fresh proposal that the arbitrator considers to be reasonable, the arbitrator must determine those terms in accordance with the first-mentioned proposal.

(2) If each party to an arbitration makes fresh proposals as to the terms of the compensation that the arbitrator considers to be reasonable, the arbitrator must determine those terms in accordance with whichever of those proposals the arbitrator considers to be the most reasonable.

**What happens if fresh proposals are not made or are inadequate**

**68.** If each party to an arbitration fails, within a reasonable period, to make a fresh proposal as to the terms of the compensation or to make a fresh proposal as to those terms that the arbitrator considers to be reasonable, the

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

arbitrator must give written notice of the failure to the NRA and, upon the giving of the notice, section 39 permits the NRA to suspend the registration of the primary product or any of the primary products or of the secondary product, or both or all of them.

**What constitutes a reasonable proposal for compensation**

**69.(1)** A proposal as to the terms of the compensation is taken to be reasonable if, and only if, the arbitrator is satisfied that:

- (a) it provides for an amount or amounts to be paid by the secondary applicant to a primary applicant; and
- (b) the amount or amounts represent a fair proportion of:
  - (i) the amount of the cost incurred by that primary applicant in obtaining the protected registration information excluding any part of that cost that relates to information that was obtained from a Government or public authority, whether in Australia or elsewhere, or was otherwise publicly available; or
  - (ii) if the protected registration information was obtained by that primary applicant before the NRA required that applicant to give that information to the NRA—a lesser amount than the amount worked out under subparagraph (i) that is appropriate having regard to the period between the time when that information was so obtained and the time when it was given to the NRA.

**(2)** The question as to what is a fair proportion of an amount referred to in subparagraph (1)(b)(i) or (ii) is to be determined by the arbitrator having regard to any matters that are prescribed by the regulations and any other matters that he or she considers appropriate.

**(3)** For the purposes of subsection (1), the amount of the cost incurred by a primary applicant in obtaining protected registration information comprises:

- (a) all relevant costs incurred by that primary applicant in obtaining that information (taking into account the practices generally engaged in by persons conducting tests or laboratory experiments of the kinds used to obtain information of the kind concerned) and including, without limiting the above:
  - (i) the direct and indirect costs of planning, conducting, and analysing the results of, tests and laboratory experiments and giving the information to the NRA; and

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (ii) the cost of repeating, or redoing with modifications, tests or laboratory experiments if it was appropriate to repeat or redo them; and
  - (iii) if the tests or laboratory experiments were conducted by the use of equipment of that primary applicant—depreciation on that equipment; and
  - (iv) any other prescribed costs; and
- (b) a reasonable rate of interest on the amount worked out under paragraph (a).

(4) The reference in paragraph (3)(a) to all relevant costs incurred by a primary applicant includes, if the primary applicant is a body corporate, an appropriate portion of any relevant costs incurred by another body corporate that is related to the primary applicant.

(5) The question whether 2 bodies corporate are related to each other is to be determined in the same way as for the purposes of the Corporations Law.

**Effect and enforcement of determination by arbitrator**

70.(1) If the arbitrator makes a determination or determinations as to the terms of the compensation to be paid by the secondary applicant to a primary applicant or primary applicants, the following provisions apply.

- (2) The arbitrator must:
- (a) send the determination, or each determination, to the NRA; and
  - (b) give to the primary applicant and secondary applicant to whom a determination relates a copy of the determination certified by the arbitrator to be a true copy.

(3) If there is only one such determination and the secondary applicant gives written notice to the primary applicant stating that the secondary applicant agrees to comply with the determination, the secondary applicant is liable to pay compensation to the primary applicant in accordance with the determination.

(4) If there are 2 or more such determinations and the secondary applicant gives written notice to the primary applicant to whom one of those determinations relates stating that the secondary applicant agrees to comply with that determination, the secondary applicant is liable to pay compensation to that primary applicant in accordance with that determination.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(5) If the secondary applicant to whom a determination relates gives notice under subsection (3) or (4) to the primary applicant to whom that determination relates, that secondary applicant must give a copy of the notice to the NRA unless that secondary applicant has a reasonable excuse for failing to do so.

Penalty: 10 penalty units.

(6) If a primary applicant to whom a determination by the arbitrator relates receives a notice under subsection (3) or (4) by the secondary applicant to whom that determination relates, that primary applicant may lodge a copy of the determination certified by the arbitrator, together with the notice, with a court having jurisdiction to the extent of the total amount of compensation payable under the determination and, when the determination and application have been so lodged, the determination may be enforced as a final judgment of that court.

**Regulations to govern conduct of arbitration**

**71.(1)** The regulations may make rules governing the conduct of an arbitration under this section.

(2) The regulations may provide that rules so made apply to the exclusion of any law of this jurisdiction relating to the conduct of commercial arbitrations.

**PART 4—CONTROL OF CHEMICAL PRODUCTS**

*Division 1—Preliminary*

**Explanation of Part**

**72.(1)** This Part regulates the supply of active constituents for chemical products and the supply of chemical products.

(2) The Part restricts:

- (a) the possession of unapproved constituents and unregistered products for the purpose of supplying them; and
- (b) the supply of unapproved constituents or unregistered products; and
- (c) the supply of approved constituents or registered products in contravention of the conditions of their approval or registration.

(3) The Part does not apply to veterinary surgeons who prescribe veterinary chemical products in the course of the practice of their profession.

(4) Division 2 contains provisions relating to active constituents or chemical products generally.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(5) Division 3 contains special provisions relating to the manufacture and supply of date-controlled chemical products.

(6) Division 4 relates to the supply of certain restricted chemical products.

**Part not to apply to veterinary surgeons acting under other laws**

**73(1).** This Part does not apply to a veterinary surgeon, or a person acting under the instructions of a veterinary surgeon, in respect of any thing done or omitted to be done by him or her if the doing of, or the omitting to do, that thing is permitted by or under a law of this jurisdiction other than the Agvet Code of this jurisdiction.

(2) Nothing in this Part affects the application to a veterinary surgeon of any other law of this jurisdiction.

*Division 2—Control generally*

**Possession or custody of unapproved active constituents for the purpose of supply**

**74.(1)** A person must not at any time (the “**relevant time**”) have in the person’s possession or custody for the purpose of supply a substance that is likely to be used as an active constituent for a chemical product unless:

- (a) the substance is an approved active constituent for a proposed or existing chemical product; or
- (b) the substance is exempted by the NRA from the operation of this section; or
- (c) the possession or custody is authorised by a permit; or
- (d) all the following subparagraphs apply:
  - (i) the constituent had, at a time or times before the relevant time, been approved under this Code or a corresponding previous law;
  - (ii) the period beginning on the day when the constituent ceased, or last ceased, to be so approved and ending at the relevant time is not longer than a period that the NRA has determined in relation to the constituent for the purposes of this subparagraph;
  - (iii) if the approval of the constituent was subject to conditions—the possession or custody is in accordance with those conditions.

Penalty: 200 penalty units.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

(2) The NRA may, on its own initiative or on the application of a person, extend a period determined by it under subparagraph (1)(d)(ii) for a further period or periods determined by it.

(3) It is a defence to a prosecution of a person for an offence against subsection (1) if the person proves that at the relevant time the person did not know, and could not reasonably be expected to have known, that the substance was not an approved active constituent.

(4) If an application is made to the NRA under subsection (2), the NRA must give to the applicant written notice of its decision on the application.

(5) Section 168 provides for additional matters to be included in a notice given under subsection (4).

**Possession or custody of unregistered chemical products for the purpose of supply**

**75.(1)** A person must not at any time (the “**relevant time**”) have in the person’s possession or custody for the purpose of supply a chemical product that is not a registered chemical product unless:

- (a) the possession or custody is authorised by a permit; or
- (b) the product is exempted by the NRA from the operation of this section; or
- (c) all the following subparagraphs apply:
  - (i) the product had, at a time or times before the relevant time, been registered under this Code or a corresponding previous law;
  - (ii) the period beginning on the day when the product ceased, or last ceased, to be so registered and ending at the relevant time is not longer than a period that the NRA has determined in relation to the product for the purposes of this subparagraph;
  - (iii) a recall notice has not been issued in respect of the product;
  - (iv) if the registration of the product was subject to conditions—the possession or custody is in accordance with those conditions.

Penalty: 200 penalty units.

(2) The NRA may, on its own initiative or on the application of a person, extend a period determined by it under subparagraph (1)(c)(ii) for a further period or periods determined by it.

(3) It is a defence to a prosecution of a person for an offence against subsection (1) if the person proves that at the relevant time the person did not know, and could not reasonably be expected to have known, that the chemical product was not a registered chemical product.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(4) If an application is made to the NRA under subsection (2), the NRA must give to the applicant written notice of its decision on the application.

(5) Section 168 provides for additional matters to be included in a notice given under subsection (4).

**Supply of unapproved active constituents**

**76.(1)** A person must not supply, or cause or permit to be supplied, an active constituent for a proposed or existing chemical product that is not an approved active constituent unless:

- (a) the constituent is exempted by the NRA from the operation of this section; or
- (b) the supply is authorised by a permit; or
- (c) all the following subparagraphs apply:
  - (i) the constituent had, at a time or times before the supply takes place, been approved under this Code or a corresponding previous law;
  - (ii) the period beginning on the day when the constituent ceased, or last ceased, to be so approved and ending on the day when the supply takes place is not longer than a period that the NRA has determined in relation to the constituent for the purposes of this subparagraph;
  - (iii) the supply is a supply of part of a stock of the constituent that was in the person's possession or custody immediately before the product so ceased, or last ceased, to be approved;
  - (iv) if the approval of the constituent was subject to conditions—the supply is in accordance with those conditions.

Penalty: 300 penalty units.

(2) The NRA may, on its own initiative or on the application of a person, extend a period determined by it under subparagraph (1)(c)(ii) for a further period or periods determined by it.

(3) It is a defence to a prosecution of a person for an offence against subsection (1) if the person proves that, when the person supplied the constituent, or caused or permitted the constituent to be supplied, as the case may be, the person did not know, and could not reasonably be expected to have known, that the active constituent was not an approved active constituent.

(4) If an application is made to the NRA under subsection (2), the NRA must give to the applicant written notice of its decision on the application.

(5) Section 168 provides for additional matters to be included in a notice given under subsection (4).



*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

**Supply of approved active constituents in contravention of conditions of approval**

**77.(1)** A person must not supply, or cause or permit to be supplied, an approved active constituent for a proposed or existing chemical product whose approval is subject to conditions unless the supply is in accordance with those conditions or is authorised by a permit.

Penalty: 300 penalty units.

**(2)** It is a defence to a prosecution of a person for an offence against subsection (1) if the person proves that, when the person supplied the constituent, or caused or permitted the constituent to be supplied, as the case may be, the person did not know, and could not reasonably be expected to have known, that the approval of the constituent was subject to the conditions referred to in that subsection.

**Supply of unregistered chemical products**

**78.(1)** A person must not supply, or cause or permit to be supplied, a chemical product that is not a registered chemical product unless:

- (a) the supply is authorised by a permit; or
- (b) the product is exempted by the NRA from the operation of this section; or
- (c) all the following subparagraphs apply:
  - (i) the product had, at a time or times before the supply takes place, been registered under this Code or a corresponding previous law;
  - (ii) the period beginning on the day when the product ceased, or last ceased, to be so registered and ending on the day when the supply takes place is not longer than a period that the NRA has determined in relation to the product for the purposes of this subparagraph;
  - (iii) the supply is a supply of part of a stock of the product that was in the person's possession or custody immediately before the product so ceased, or last ceased, to be registered;
  - (iv) a recall notice has not been given in respect of the product;
  - (v) the person is not the person who imported the product into, or manufactured the product in, Australia;
  - (vi) if the registration of the product was subject to conditions—the supply is in accordance with those conditions.

Penalty: 300 penalty units.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(2) The NRA may, on its own initiative or on the application of a person, extend a period determined by it under subparagraph (1)(c)(ii) for a further period or periods determined by it.

(3) It is a defence to a prosecution of a person for an offence against subsection (1) if the person proves that, when the chemical product was supplied, or caused or permitted to be supplied, as the case may be, the person did not know, and could not reasonably be expected to have known, that the product was not a registered chemical product.

(4) If an application is made to the NRA under subsection (2), the NRA must give to the applicant written notice of its decision on the application.

(5) Section 168 provides for additional matters to be included in a notice given under subsection (4).

**Supply of registered chemical products in contravention of conditions of registration**

**79.(1)** A person must not supply, or cause or permit to be supplied, a registered chemical product whose registration is subject to conditions unless the supply is in accordance with those conditions or is authorised by a permit.

Penalty: 300 penalty units.

(2) It is a defence to a prosecution of a person for an offence against subsection (1) if the person proves that, when the chemical product was supplied, or caused or permitted to be supplied, as the case may be, the person did not know, and could not reasonably be expected to have known, that the registration of the product was subject to the conditions referred to in that subsection.

**Supply of chemical products without approved label**

**80.(1)** A person must not supply, or cause or permit to be supplied, a chemical product in a container that does not have an approved label attached to it unless the supply is authorised by a permit.

Penalty: 300 penalty units.

(2) It is a defence to a prosecution of a person for an offence against subsection (1) if the person proves that, when the chemical product was supplied, or caused or permitted to be supplied, as the case may be, in the container, the person did not know, and could not reasonably be expected to have known, that the container did not have an approved label attached to it.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

**Supply of chemical products with unapproved label**

**81.(1)** A person must not supply, or cause or permit to be supplied, a chemical product in a container if the label attached to the container is not identical (except for particulars relating to the batch number, date of manufacture or expiry date of the product) to an approved label for the container for the product unless the supply is authorised by a permit.

Penalty: 300 penalty units.

**(2)** It is a defence to a prosecution of a person for an offence against subsection (1) if the person proves that, when the chemical product was supplied, or caused or permitted to be supplied, as the case may be, in the container, the person did not know, and could not reasonably be expected to have known, that the label attached to the container was not identical to an approved label for the container for the product.

**Supply of chemical products in containers opened by inspector**

**82.(1)** Except with the written consent of an inspector, a person must not supply, or cause or permit to be supplied, a chemical product in a container that has been opened by an inspector under paragraph 131(1)(f).

Penalty: 300 penalty units.

**(2)** It is a defence to a prosecution of a person for an offence against subsection (1) if the person proves that, when the chemical product was supplied, or caused or permitted to be supplied, as the case may be, in the container, the person did not know, and could not reasonably be expected to have known, that the container had been opened by an inspector.

**Supply of substances whose constituents differ from constituents of registered chemical product**

**83.** A person must not, without reasonable excuse, supply, or cause or permit to be supplied, a substance or mixture of substances in a container to which is attached a label containing a name of a registered chemical product if:

- (a) the constituents of the substance or mixture differ by more than the prescribed extent from the constituents of the registered chemical product that were shown in the particulars of the registered chemical product contained in the Register of Chemical Products; or
- (b) the concentration of the constituents of the substance or mixture differs by more than the prescribed extent from the concentration of the constituents of the registered chemical product that was shown in those particulars; or

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (c) the composition or purity of any constituent of the substance or mixture differs by more than the prescribed extent from the composition or purity of the corresponding constituent of the registered chemical product that was shown in those particulars.

Penalty: 300 penalty units.

**Claims inconsistent with labels**

**84.(1)** Except to the extent that the person is authorised by a permit, a person must not, without reasonable excuse, make any claim, or cause or permit any claim to be made, in respect of:

- (a) a registered chemical product; or
- (b) a chemical product that contains a registered chemical product; that is inconsistent with any of the instructions on any approved label for containers for the registered chemical product.

Penalty: 300 penalty units.

**(2)** Subsection (1) does not apply to:

- (a) a claim that is exempted by the NRA from the operation of this section; or
- (b) a claim made in a notice published under section 55; or
- (c) a claim that is permitted to be made under any other law of this jurisdiction.

**Modification of warning prohibited**

**85.(1)** Except to the extent that the person is authorised by a permit, a person must not, in connection with the supply of a chemical product, without reasonable excuse, make a claim, or cause or permit a claim to be made, in respect of the product that is inconsistent with the expiry date required by the regulations to be contained on a label attached to a container of the product.

Penalty: 300 penalty units.

**(2)** Subsection (1) does not apply to a claim made in a notice published under section 55.

**Labels not to be detached etc.**

**86.(1)** If a label attached to a container of a chemical product contains any matter (the “**approved matter**”) identical to any matter contained on an approved label for containers for the product, a person must not, without reasonable excuse, do, or cause or permit to be done, any of the following:

- (a) detach or otherwise remove the label;

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

- (b) alter, deface, obliterate or destroy the approved matter;
- (c) attach another label to, or endorse anything upon, the container that in either case has the effect of expressly or impliedly negating, varying, or in any way detracting from, qualifying or minimising the purport or effect of, the approved matter.

Penalty: 300 penalty units.

(2) Paragraph (1)(b) does not apply to an alteration, defacing, obliteration or destruction of matter that is done by the destruction or disposal of the chemical product without otherwise contravening this Code.

**Chemical product to conform to standard**

**87.(1)** This section applies to a chemical product if:

- (a) a standard is prescribed in respect of the product or in respect of a constituent contained in the product; and
- (b) the product is prescribed for the purposes of this section.

(2) Except to the extent that the person concerned is authorised by a permit, a person must not, without reasonable excuse, supply the product, or cause or permit the product to be supplied, unless:

- (a) if a standard is prescribed in respect of the product—the product conforms to the standard; or
- (b) if a standard is prescribed in respect of a constituent contained in the product—the constituent contained in the product conforms to the standard.

Penalty: 300 penalty units.

**Certain notices not to be published**

**88.(1)** In this section:

“**notice**” includes a circular and an advertisement;

“**publish**”, means publish by any means, including in a newspaper or periodical, by broadcasting or televising, in a cinematograph film or in a video recording.

(2) A person must not publish, or cause or permit to be published, a notice that offers to sell, or invites the making of offers to buy:

- (a) an active constituent for a proposed or existing chemical product if the constituent is not an approved active constituent; or
- (b) a chemical product that is not a registered chemical product;

unless:

- (c) an application has been made for approval of the constituent or registration of the product, as the case may be; and

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

- (d) the notice states:
- (i) that the constituent is not an approved active constituent or the product is not a registered chemical product, as the case may be; and
  - (ii) that such an application has been made.

Penalty: 30 penalty units.

(3) It is a defence to a prosecution of a person for an offence against subsection (2) if the defendant proves that, when the notice was published, or caused or permitted to be published, as the case may be, the defendant did not know, and could not reasonably be expected to have known, that:

- (a) if paragraph (2)(a) applies—the constituent was not an approved active constituent; or
- (b) if paragraph (2)(b) applies—the product was not a registered chemical product.

**Certain statements prohibited**

**89.(1)** A person must not, without reasonable excuse, do, or cause or permit to be done, any of the following:

- (a) publish or communicate any false or misleading information about a chemical product;
- (b) expressly or impliedly claim that the NRA recommends the use of a chemical product;
- (c) expressly or impliedly claim that the NRA guarantees, warrants or assures the safety or efficacy of a chemical product;
- (d) expressly or impliedly claim that the use of a chemical product is recommended:
  - (i) by the Commonwealth, a State or a Territory; or
  - (ii) by an authority of the Commonwealth, a State or a Territory;  
or
  - (iii) by an officer or employee of, or of an authority of, the Commonwealth, a State or a Territory;
- (e) expressly or impliedly make a claim (however the claim is stated), without any qualification, or with a qualification that, in the NRA's opinion, is unjustified, to the effect that a chemical product is natural, organic, safe, harmless, non-toxic, non-poisonous, non-injurious or environment-friendly;

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (f) expressly or impliedly claim that a chemical product has particular qualities if those qualities are prescribed by the regulations for the purposes of this paragraph.

Penalty: 30 penalty units.

- (2) Paragraph (1)(d) does not apply:

- (a) to an officer or employee of, or of an authority of, the Commonwealth, a State or a Territory when, in the course of his or her employment as such an officer or employee, he or she expressly or impliedly claims that a chemical product is recommended; or
- (b) to a prescribed person when, in prescribed circumstances, the person expressly or impliedly claims that a chemical product is recommended.

(3) Subsection (1) does not prevent a person from making statements about a chemical product in circumstances prescribed by the regulations or from reporting statements so made.

(4) Paragraph (1)(b) or (c) does not apply in relation to a claim as to a recommendation, guarantee, warrant or assurance by the NRA if a document issued to the public by the NRA contains such a recommendation, guarantee, warrant or assurance and the NRA did not, before the claim was made, publicly withdraw or revoke the recommendation, guarantee, warrant or assurance.

(5) Paragraph (1)(d) does not apply in relation to a claim as to a recommendation by, or by an authority of, the Commonwealth, a State or a Territory, or by an officer or employee of the Commonwealth, a State, a Territory or such an authority, if a document issued to the public by the Commonwealth, the State, the Territory or the authority, as the case may be, contains such a recommendation and the Commonwealth, State, Territory or authority did not, before the claim was made, publicly withdraw or revoke the recommendation.

***Division 3—Date-controlled chemical products***

**Manufacture or import of date-controlled chemical product**

**90.** A person who manufactures or imports a date-controlled chemical product must:

- (a) as soon as practicable make a record in or to the effect of the approved form and in the prescribed manner containing the date of manufacture, or the date of manufacture and import, as the case may be, of the product and any other particulars that are required by the regulations to be inserted in the record; and

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (b) keep that record for at least the period prescribed by the regulations for keeping it;

unless the person has a reasonable excuse for not doing so.

Penalty: 120 penalty units.

**Supply of date-controlled chemical product**

**91.(1)** Except to the extent that the person is otherwise authorised by a permit, a person must not, without reasonable excuse, supply, or cause or permit to be supplied, a date-controlled chemical product in a container that does not have attached to it an approved label containing:

- (a) matter that the NRA has approved as sufficient to enable the NRA to identify the date of manufacture of the product; and
- (b) the expiry date required to be contained on the label as a condition of the registration of the product.

**(2)** If the container of a date-controlled chemical product has attached to it a label containing an expiry date, a person must not, without reasonable excuse, after that date, supply, or cause or permit to be supplied, the product that is in the container unless:

- (a) the person is authorised to do so by a permit; or
- (b) the person does so on a date that, despite the date on the label, is earlier than the date that is required to be contained on the label as a condition of the registration of the product.

Penalty: 120 penalty units.

**Abuse of warning on label prohibited**

**92.(1)** If a label attached to a container of a chemical product contains any matter (the “**approved matter**”) that is, or has been, required to be contained on the label by or under subsection 91(1), a person must not, without reasonable excuse, do, or cause or permit to be done, any of the following:

- (a) detach or otherwise remove the label;
- (b) alter, deface, obliterate or destroy the approved matter;
- (c) attach another label to, or endorse anything upon, the container that in either case has the effect of negating, varying, or in any way detracting from, qualifying or minimising the purport or effect of, the approved matter.

**(2)** Paragraph (1)(b) does not apply to an alteration, defacing, obliteration or destruction of matter that is done by the destruction or disposal of the chemical product without otherwise contravening this Code.

Penalty: 120 penalty units.



*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

***Division 4—Restricted chemical products***

**Restricted chemical product**

**93.(1)** Subject to subsection (2), the regulations may declare a chemical product to be a restricted chemical product.

(2) A chemical product may not be declared by the regulations to be a restricted chemical product unless the NRA has certified in writing that it is in the public interest for the product to be so declared.

(3) In deciding whether to give a certificate in relation to a chemical product under subsection (2), the NRA must have regard to the following:

- (a) whether the product may have an effect that is harmful to human beings;
- (b) whether the product may have any unintended effect that is harmful to any animal, plant or thing or to the environment;
- (c) whether any special knowledge, skill or qualification is required in the preparation or handling of the product;
- (d) whether any special equipment is required to use the product with safety.

**Restricted chemical products may be supplied only to authorised persons**

**94.** A person must not, without reasonable excuse, supply a restricted chemical product, or cause or permit a restricted chemical product to be supplied, to a person who is not authorised to use the product under another law of this jurisdiction.

Penalty: 120 penalty units.

**Labels for restricted chemical products**

**95.** A person must not, without reasonable excuse, supply a restricted chemical product, or cause or permit a restricted chemical product to be supplied, unless the label attached to the container for the product contains the words “RESTRICTED CHEMICAL PRODUCT—ONLY TO BE SUPPLIED TO OR USED BY AN AUTHORISED PERSON”.

Penalty: 120 penalty units.

**PART 5—ANALYSIS**

**Explanation of Part**

**96.** This Part sets out the procedure by which samples or substances are to be analysed and states how evidence of the results of the analysis may be given in proceedings under this Code.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

**Analysis by approved analysts**

**97.(1)** An inspector may give a portion of a sample taken under paragraph 131(1)(c) or 132(1)(d) to an approved analyst for analysis.

(2) If an analysis has been made by, or under the personal supervision of, an approved analyst in respect of a sample given for analysis under this Code, the analyst must give to the NRA a certificate in or to the effect of the approved form in respect of the analysis.

Penalty: 10 penalty units.

(3) The NRA must, if asked to do so by an inspector, give to the inspector a copy of a certificate given under subsection (2).

(4) The NRA must, upon receipt of the prescribed fee (if any), give a copy of a certificate given to it under subsection (2) to a person who appears to it to be:

- (a) the owner of the substance from which the sample analysed was taken or the person in whose possession or custody, or under whose control, the substance was when the sample was taken; or
- (b) an applicant for approval of that substance as an active constituent or for registration of that substance as a chemical product.

(5) If a person referred to in paragraph (4)(a) or (b) so requests, the NRA must give to the person a portion of the sample that is sufficient to enable the person to have a further analysis made.

(6) A person must not, for trade purposes or for advertisement, without reasonable excuse, use a certificate given under subsection (2) or any matter contained in it.

Penalty: 60 penalty units.

(7) This section applies in respect of a substance seized under section 131 or 132 in the same way as it applies in respect of a sample of a substance taken under paragraph 131(1)(c) or 132(1)(d) and references in this section to a sample or to a substance from which a sample was taken include references to a substance so seized.

**Evidence of results of analysis**

**98.(1)** Subject to subsection (3), in any proceedings under this Code, a certificate of an approved analyst in or to the effect of the approved form stating, in respect of a sample of a substance in relation to which the offence is alleged to have been committed, any of the following:

- (a) that the analyst signing the certificate is an approved analyst;
- (b) when and from whom the sample of the substance was received;

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (c) what, if any, labels or other means of identifying the sample of the substance accompanied it when it was received;
- (d) what container or containers the sample of the substance was contained in when it was received;
- (e) a description of the sample of the substance received;
- (f) when the sample of the substance, or a portion of it, was analysed;
- (g) a description of the method of analysis;
- (h) the results of the analysis;
- (i) how the sample of the substance was dealt with after handling by the analyst, including details of:
  - (i) the quantity kept; and
  - (ii) the name of the person, if any, to whom any quantity so kept was given; and
  - (iii) measures taken to secure any quantity so kept;

is admissible as *prima facie* evidence of the matters stated in the certificate and, if the certificate states the results of the analysis, of the correctness of those results.

(2) Unless the contrary is proved, a document purporting to be a certificate under subsection (1) is taken to be such a certificate and to have been duly given.

(3) A certificate must not be admitted in evidence under subsection (1) in proceedings for an offence unless:

- (a) the person charged with the offence or a barrister or solicitor who has appeared for the person in those proceedings has, at least 14 days before the certificate is sought to be so admitted, been given a copy of the certificate together with reasonable notice of the intention to produce the certificate as evidence in the proceedings; or
- (b) reasonable efforts were made to give the copy and notice as required by paragraph (a) but those efforts were unsuccessful.

(4) Subject to subsection (5), if, under subsection (1), a certificate of an analyst is admitted in evidence in a proceeding for an offence, the person charged with the offence may require the analyst to be called as a witness for the prosecution and the analyst may be cross-examined as if he or she had given evidence of the matters stated in the certificate.

(5) Subsection (4) does not entitle a person to require an analyst to be called as a witness for the prosecution unless:

- (a) the prosecutor has been given at least 4 days' notice of the person's intention to require the analyst to be so called; or

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(b) the court, by order, allows the person to require the analyst to be so called.

(6) This section applies in respect of a substance seized under section 131 or 132 in the same way as it applies in respect of a sample of a substance taken under paragraph 131(1)(c) or 132(1)(d) and references in this section to a sample or to a substance from which a sample was taken include references to a substance so seized.

**Analysis of chemical products**

**99.(1)** If a person has possession or custody of a substance or mixture of substances that is intended for supply as a chemical product under a particular name, the following provisions apply.

(2) If a chemical product having that name is registered under Division 2 of Part 2 and the NRA, on the advice of an inspector, reasonably suspects that:

- (a) the constituents of the substance or mixture differ by more than the prescribed extent from the constituents stated in relation to the chemical product in the Register of Chemical Products; or
- (b) the concentration of the constituents of the substance or mixture differs by more than the prescribed extent from the concentration of the constituents stated in relation to the chemical product in the Register of Chemical Products; or
- (c) the composition or purity of a constituent of the substance or mixture differs by more than the prescribed extent from the composition or purity of that constituent stated in relation to the chemical product in the Register of Chemical Products;

the NRA may, by written notice given to the person, require the person to have the substance or mixture analysed to find out its constituents, their concentration and the composition and purity of each of them.

(3) If the NRA, on the advice of an inspector, reasonably suspects that the substance or mixture does not comply with any prescribed standard or other prescribed requirement, the NRA may, by written notice given to the person, require the person to have the substance or mixture analysed to find out whether it complies with any prescribed standard or other prescribed requirement.

(4) Without limiting subsections (2) and (3), a notice given to a person under either of those subsections may require any one or more of the following:

- (a) that samples of the substance or mixture are taken:

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (i) under the supervision of an inspector; or
- (ii) in the manner stated in the notice;
- (b) that the analysis is carried out:
  - (i) under the supervision of an approved analyst; or
  - (ii) in the manner stated in the notice;
- (c) that the analysis is carried out at a prescribed laboratory;
- (d) that the analysis is carried out within a period stated in the notice;
- (e) that the analysis is carried out at the expense of the person.
- (5) A person to whom a notice is given under subsection (2) or (3) must not fail, without reasonable excuse:
  - (a) to comply with the notice; and
  - (b) to give the analyst's certificate to the NRA not later than 5 working days after the person received that certificate.

Penalty: 120 penalty units.

- (6) The NRA may cause to be published in a manner that it thinks appropriate:
  - (a) the name, and the address of the place of business, of:
    - (i) the person who had possession or custody of the substance or mixture; and
    - (ii) if the substance or mixture is intended for supply as a chemical product and the person referred to in subparagraph (i) is not the interested person in relation to the product—the interested person; and
  - (b) the result of the analysis of the substance or mixture.
- (7) If a requirement made under this section is inconsistent with an earlier requirement made under this section, the earlier requirement is, to the extent of the inconsistency, of no effect.
- (8) Section 168 provides for additional matters to be included in a notice given under subsection (2) or (3).

**PART 6—RECALL NOTICES**

**Explanation of Part**

**100.** This Part sets out various circumstances in which the NRA may issue recall notices requiring persons who have, or have had, stocks of chemical products in their possession to stop supplying the products and to take action in relation to the products as directed by the NRA. The power of the NRA to issue recall notices is in addition to powers conferred on the Trade Practices Commission under the *Trade Practices Act 1974*.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

**Recall of products that are unregistered or whose registration is being reconsidered**

**101.(1)** If a chemical product is not registered under the Agvet Code of this jurisdiction, or the NRA is reconsidering the registration of a chemical product under Division 4 of Part 2 of that Code, the NRA may give written notice to any person (the “**notified person**”) who has, or has had, possession or custody of stocks of the product, or of a particular batch of the product, in this jurisdiction, requiring the notified person to do any one or more of the things mentioned in subsection (2).

(2) The things that the notified person may be required to do under subsection (1) are as follows:

- (a) not to supply, or to stop supplying, the product, or that batch, in this jurisdiction either immediately or within a stated period;
- (b) to take any action stated in the notice that the notified person is reasonably capable of taking to recover stocks of the product or of that batch from any other person in this jurisdiction:
  - (i) to whom the product or that batch has been supplied by the notified person; or
  - (ii) who has possession or custody of any such stocks directly or indirectly because of a supply by the notified person;
- (c) if the product is not registered—to destroy, as stated in the notice, stocks of the product or of that batch in the possession or custody of, or recovered by, the notified person in this jurisdiction or to deal with them as stated in the notice;
- (d) to report to the NRA within a stated period on the action taken by the notified person under the notice.

(3) Section 168 provides for additional matters to be included in a notice under subsection (1).

**Recall of products in certain circumstances**

**102.(1)** If it appears to the NRA that:

- (a) having regard to the matters referred to in subsection 14(5) or (6), as the case requires, the continued use of a registered chemical product in accordance with the instructions on an approved label for containers for the product:
  - (i) may be an undue hazard to the safety of people exposed to it during its handling or people using anything containing its residues; or
  - (ii) may be likely to have an effect that is harmful to human beings; or

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

- (iii) may be likely to have an unintended effect that is harmful to animals, plants or things or to the environment; or
- (iv) may unduly prejudice trade or commerce between Australia and places outside Australia; or
- (v) may not be effective according to criteria that the NRA has determined for the product; or
- (b) the constituents of stocks of a registered chemical product or of a particular batch of a registered chemical product differ by more than the prescribed extent from the constituents stated in relation to the product in the Register of Chemical Products; or
- (c) the concentration of the constituents of stocks of a registered chemical product or of a particular batch of a registered chemical product differs by more than the prescribed extent from the concentration of the constituents stated in relation to the product in the Register of Chemical Products; or
- (d) the composition or purity of any constituent of stocks of a registered chemical product or of a particular batch of a registered chemical product differs by more than the prescribed extent from the composition or purity of that constituent stated in relation to the product in the Register of Chemical Products;

the NRA may give written notice to any person (the “**notified person**”) who has, or has had, possession or custody in this jurisdiction of any of the stocks or of the batch, or of stocks or a batch of the product in containers to which the label is attached, as the case may be, requiring the notified person to do any one or more of the things mentioned in subsection (2).

(2) The things that the notified person may be required to do under subsection (1) are as follows:

- (a) not to supply, or to stop supplying, any of those stocks or of that batch, either immediately or within a stated period;
- (b) to take any action stated in the notice that the notified person is reasonably capable of taking to recover stocks of the product or of that batch from any other person in this jurisdiction:
  - (i) to whom the product or that batch has been supplied by the notified person; or
  - (ii) who has possession or custody of any such stocks directly or indirectly because of a supply by the notified person;
- (c) to take any action that is stated in the notice, or that the notified person thinks necessary, to prevent or reduce any harmful effects that may have resulted from the use of the product;

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (d) to destroy, as stated in the notice, any of those stocks or any of that batch in the possession or custody of, or recovered by, the notified person in this jurisdiction or to deal with them as stated in the notice;
- (e) to report to the NRA within a stated period on the action taken by the notified person under the notice.

(3) Section 168 provides for additional matters to be included in a notice under subsection (1).

**Recall of products with unapproved labels**

**103.(1)** If it appears to the NRA that labels attached to the containers of stocks of a registered chemical product, or of a particular batch of a registered chemical product, differ from the approved label kept in, or in conjunction with, the relevant NRA file in relation to the product, the NRA may give written notice to any person (the “**notified person**”) who has, or has had, possession or custody of any of those stocks or of that batch requiring the person to do any one or more of the things mentioned in subsection (2).

(2) The things that the notified person may be required to do under subsection (1) are as follows:

- (a) not to supply, or to stop supplying, any of those stocks or of that batch, either immediately or within a stated period;
- (b) to take any action stated in the notice that the notified person is reasonably capable of taking to recover stocks of the product or of that batch from any other person in this jurisdiction:
  - (i) to whom the product or that batch has been supplied by the notified person; or
  - (ii) who has possession or custody of any such stocks directly or indirectly because of a supply by the notified person;
- (c) to attach labels to the containers that are the same as the approved label kept in, or in conjunction with, the relevant NRA file or to destroy any of those stocks or of that batch in the possession or custody of, or recovered by, the notified person or to deal with them as stated in the notice;
- (d) to report to the NRA within a stated period on the action taken by the notified person under the notice.

(3) Section 168 provides for additional matters to be included in a notice under subsection (1).



*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

**Notice of recall to be published**

**104.(1)** If the NRA issues a recall notice, it must, as soon as practicable, cause notices of the issue of the recall notice to be published in the *Gazette* and in any other manner that it thinks appropriate.

**(2)** Each notice must contain a brief statement of the matters to which the recall notice relates.

**Non-compliance with recall notice**

**105.** A person to whom a recall notice is given must not fail, without reasonable excuse, to comply with the notice.

Penalty: 120 penalty units.

**Recall under Trade Practices Act**

**106.** Section 65R of the *Trade Practices Act 1974* imposes obligations on certain persons who voluntarily recall chemical products.

**Inconsistent requirements**

**107.** If a requirement made under section 101, 102 or 103 is inconsistent with an earlier requirement made under any of those sections, the earlier requirement is, to the extent of the inconsistency, of no effect.

**PART 7—PERMITS**

**Explanation of Part**

**108.(1)** This Part sets up a system under which a person who wants to do something in respect of an active constituent for a proposed or existing chemical product, or in respect of a chemical product, that would otherwise be prohibited by this Code or another law of this jurisdiction may obtain a permit in respect of the doing of the thing. The permit does not have any practical operation unless a law of this jurisdiction permits the thing to be done by the holder of such a permit.

**(2)** An example of a situation where a permit may be needed is if someone wants to conduct a trial or experiment in relation to an unapproved constituent or an unregistered product in order to decide whether to make an application for approval or registration.

**(3)** Other circumstances in which a permit could be sought are:

- (a)** if someone wants to import samples for submission to the NRA in connection with an application for approval or registration; or
- (b)** if someone wants to use a registered product in a way that is not authorised by the approved label for containers of the product.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

**Definition of “permit”**

**109.** In this Part:

“**permit**” means a permit, in respect of an active constituent for a proposed or existing chemical product, or in respect of a chemical product, to do or omit to do any thing stated in the permit the doing of which, or the omission to do which, would, apart from the permit, be:

- (a) an offence against section 74, 75, 76, 77, 78, 79, 80, 81, 84, 85, 87 or 91; or
- (b) an offence against an eligible law of this jurisdiction.

**How application is made**

**110.(1)** Any person may apply to the NRA, on behalf of that person, a class of persons or persons generally, for a permit in respect of an active constituent for a proposed or existing chemical product or in respect of a chemical product.

**(2)** The application must:

- (a) be in writing in or to the effect of the approved form; and
- (b) contain, or be accompanied by, the information that the NRA requires; and
- (c) be signed by an approved person; and
- (d) be accompanied by the prescribed fee (if any).

**(3)** The NRA may, with the written consent of the applicant, alter the application.

**(4)** At any time after an application has been made and before it has been determined, the applicant may withdraw the application by giving to the NRA written notice of the withdrawal signed by an approved person.

**Functions of co-ordinators**

**111.(1)** If there is a co-ordinator designated for this or another jurisdiction:

- (a) the NRA must, unless it thinks it inappropriate to do so, give the co-ordinator a copy of the application and of any accompanying documents; and
- (b) if the NRA has given a copy of the application and documents referred to in paragraph (a) to a co-ordinator, the applicant must give to the co-ordinator any additional information that the co-ordinator, by written notice given to the applicant, reasonably requires for the purpose of making a recommendation to the NRA about the application; and

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(c) when the co-ordinator is satisfied that he or she has sufficient information to enable a recommendation to be made about the application, the co-ordinator may give to the NRA a recommendation as to whether the application should be granted.

(2) Any information given by a person to a co-ordinator because of a requirement made under subsection (1) must be in writing and be signed by an approved person.

**NRA may grant or refuse application**

**112.(1)** The NRA must consider the application and take into account any recommendations made by a co-ordinator.

- (2) The NRA must grant the application if it is satisfied of the following:
- (a) that, having regard to criteria determined by it, the applicant is a suitable person to hold the permit applied for;
  - (b) that the applicant has complied with subsection 110(2) and any requirement made by a co-ordinator under paragraph 111(1)(b);
  - (c) that any requirement made under section 157 or 159 has been complied with;
  - (d) that, if necessary, section 158 has been complied with;
  - (e) that any requirements prescribed by the regulations in relation to such an application have been complied with;
  - (f) that, having regard to the matters referred to in subsection 14(4) or (5), as the case requires, the use of, or any other dealing with, the constituent or product as proposed in the application for the permit:
    - (i) would not be an undue hazard to the safety of people exposed to it during its handling or people using anything containing its residues; and
    - (ii) would not be likely to have an effect that is harmful to human beings; and
    - (iii) would not be likely to have an unintended effect that is harmful to animals, plants or things or to the environment; and
    - (iv) would not unduly prejudice trade or commerce between Australia and places outside Australia;
  - (g) that, having regard to the matters referred to in subsection 14(6), the use of the product as proposed in the application for the permit would be effective according to criteria that the NRA has determined for the product;
  - (h) that any requirements prescribed by the regulations in relation to the issue of such a permit have been complied with;

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(i) if an application has not been made for approval of the constituent or registration of the product or such an application has not been determined—that there are reasonable grounds for the application not having been made or for issuing the permit pending determination of the application, as the case may be.

(3) If the NRA is not satisfied as mentioned in subsection (2), it must refuse the application.

(4) If the NRA refuses the application, it must:

(a) give written notice of the refusal to the applicant and to each co-ordinator to whom a copy of the application was given; and

(b) include in the notice brief particulars of the reasons for the refusal.

(5) Section 168 provides for additional matters to be included in a notice of refusal of an application for a permit.

**Record of Permits**

113.(1) For the purposes of this Code, the NRA must keep a record, in a form determined by it, to be known as the Record of Permits.

(2) The Record of Permits is to be kept in 2 parts as provided by subsections (3) and (4).

(3) One part is to contain:

(a) information about permits the making of applications for which is confidential commercial information; and

(b) confidential commercial information about other permits.

(4) The other part is to contain information about the other permits referred to in paragraph (3)(b) that is not confidential commercial information.

(5) The NRA must permit any person to inspect the part of the Record of Permits referred to in subsection (4) at any time during ordinary office hours on a working day.

(6) Subject to subsection (7), if a person asks for a copy of a permit other than a permit to which paragraph (3)(a) applies and pays the prescribed fee (if any), the NRA must give the person a copy of the permit.

(7) If a permit referred to in subsection (6) contains confidential commercial information, the NRA must delete that information from the copy given under that subsection.

**Issue of permit**

114.(1) The NRA may, on its own initiative or on an application made under section 110, issue a permit to a person.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(2) When issuing a permit, the NRA must give a distinguishing number to the permit.

(3) The permit may be unconditional or subject to any conditions that the NRA thinks appropriate.

(4) The permit must:

- (a) contain the distinguishing number given to the permit; and
- (b) state whether it applies to persons generally and, if not, state the persons or class of persons to whom it applies, other than persons to whom it applies because of subsection 116(3); and
- (c) state the active constituent or chemical product in respect of which it is issued; and
- (d) state the things authorised by the permit to be done or omitted to be done; and
- (e) state any conditions of the permit.

(5) As soon as practicable after a permit is issued, the NRA must:

- (a) place a copy of the permit in the Record of Permits; and
- (b) if there is a co-ordinator designated for this or another jurisdiction, tell the co-ordinator that the permit has been issued and tell him or her of any conditions to which the permit is subject; and
- (c) in prescribed circumstances, tell a prescribed authority that the permit has been issued.

**Duration of permit**

**115.(1)** Subject to this section, a permit is in force until it is surrendered under section 117 or the NRA cancels it under section 119.

(2) Subject to subsection (3), a permit may be expressed to be in force only for a period stated in the permit.

(3) The holder of a permit to which subsection (2) applies may apply in writing to the NRA for an extension or extensions of the permit and, if such an application is made and the prescribed fee (if any) is paid, the NRA may extend the permit for a further period that it thinks appropriate.

(4) This section has effect subject to subsection 118(6).

(5) If an application is made to the NRA under subsection (3), the NRA must give to the applicant written notice of its decision on the application.

(6) Section 168 provides for additional matters to be included in a notice refusing to extend a permit.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

**Effect of permit**

**116.(1)** If, while a permit in respect of an active constituent for a proposed or existing chemical product, or in respect of a chemical product, is in force:

- (a) a person to whom the permit applies who, in accordance with the conditions (if any) stated in the permit, does or omits to do any thing in respect of the constituent or product that the permit states may be done or omitted to be done; and
- (b) a provision of this Code or of an eligible law of this jurisdiction prohibits the doing of, or the omitting to do, that thing unless authorised by a permit;

the person does not commit an offence against that provision.

**(2)** The persons to whom a permit applies are:

- (a) if the permit states that it applies to persons generally—any person; or
- (b) otherwise—the person or each person named, or included in a class of persons stated, in the permit.

**(3)** If a permit names a person or states a class of persons as mentioned in paragraph (2)(b), the permit also applies to:

- (a) any qualified employee of the person, or of a person in the class, acting in the course of his or her employment; and
- (b) if a person, or a person in the class, is a body corporate—any qualified person acting in his or her capacity as a director of the body corporate.

**(4)** In this section:

“**qualified**” means qualified under another law of this jurisdiction in relation to the things authorised by the permit to be done or omitted to be done.

**Surrender of permit**

**117.(1)** The holder of a permit may surrender it by giving to the NRA a written notice, signed by an approved person, stating that the holder surrenders the permit.

**(2)** The surrender of a permit takes effect when the NRA receives the notice of surrender.

**(3)** If there is a co-ordinator designated for this or another jurisdiction, the NRA must, as soon as practicable, tell the co-ordinator that the permit has been surrendered.

**Suspension of permit**

**118.(1)** The NRA, by written notice given to the holder of a permit, may suspend the permit if it appears to the NRA that:

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

- (a) having regard to the matters referred to in subsection 14(4) or (5), as the case requires, the continued use of, or any other dealing with, an active constituent for a proposed or existing chemical product, or a chemical product, in accordance with the permit:
  - (i) may be an undue hazard to the safety of people exposed to the constituent or product during its handling or people using anything containing its residues; or
  - (ii) may have an effect that is harmful to human beings; or
  - (iii) may have an unintended effect that is harmful to animals, plants or things or to the environment; or
  - (iv) may unduly prejudice trade or commerce between Australia and places outside Australia; or
  - (v) is inappropriate for any other reason; or
- (b) having regard to the matters referred to in subsection 14(6), the continued use of a chemical product in accordance with the permit may not be effective according to criteria that the NRA has determined for the product.

(2) If the holder of a permit fails, without reasonable excuse, to comply with a requirement contained in a notice under section 159 or with section 161, the NRA may, by written notice given to the holder of the permit, suspend the permit.

(3) The NRA may, for any reason that it thinks sufficient, suspend a permit that is taken by section 181 to have been issued under section 114.

(4) A suspension of a permit under subsection (1), (2) or (3) must be for a stated period.

(5) If the holder of a permit is proceeded against for an offence against, or has failed to comply with a lawful direction or requirement of an inspector given under, the Agvet Code of this or another jurisdiction, the NRA may, by written notice given to the holder of the permit, suspend the permit until the proceeding has been disposed of or the direction or requirement has been complied with, as the case may be.

(6) A permit is not in force during any period in which it is suspended.

(7) A notice of suspension of a permit must include brief particulars of the reasons for the suspension.

(8) Section 168 provides for additional matters to be included in a notice of suspension of a permit.

(9) If a permit is suspended, the NRA may, by written notice given to the holder of the permit, revoke the suspension.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

**(10)** If:

- (a) the NRA suspends, or revokes the suspension of, a permit; and
- (b) there is a co-ordinator designated for this or another jurisdiction;

the NRA must, as soon as practicable, tell the co-ordinator of the suspension or revocation.

**Cancellation of permit**

**119.(1)** The NRA, by written notice given to the holder of a permit, may cancel the permit if it appears to the NRA that:

- (a) having regard to the matters referred to in subsection 14(4) or (5), as the case requires, the continued use of, or any other dealing with, an active constituent for a proposed or existing chemical product, or a chemical product, in accordance with the permit:
  - (i) may be an undue hazard to the safety of people exposed to the constituent or product during its handling or people using anything containing its residues; or
  - (ii) may have an effect that is harmful to human beings; or
  - (iii) may have an unintended effect that is harmful to animals, plants or things or to the environment; or
  - (iv) may unduly prejudice trade or commerce between Australia and places outside Australia; or
  - (v) is inappropriate for any other reason; or
- (b) having regard to the matters referred to in subsection 14(6), the continued use of a chemical product in accordance with the permit may not be effective according to criteria that the NRA has determined for the product.

**(2)** If a permit is suspended under subsection 118(2) and the information, report or sample referred to in section 159 or 161 is not given within a reasonable period after the suspension takes place, the NRA may cancel the permit.

**(3)** The NRA may, for any reason that it thinks sufficient, cancel a permit that is taken by section 181 to have been issued under section 114.

**(4)** The NRA may, by written notice given to the holder of a permit, cancel the permit if the holder:

- (a) has been convicted of an offence against the Agvet Code of this or another jurisdiction, or an offence against another law of this or another jurisdiction relating to chemical products or to active constituents for proposed or existing chemical products; or



*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (b) contravenes a condition of the permit.
- (5) A permit may be cancelled even though it is suspended.
- (6) If information about the holder of a permit comes to the NRA's knowledge and it is of the opinion that, if it had been in possession of the information before it issued the permit, it would have refused to issue the permit, it may, by written notice given to the holder, cancel the permit.
- (7) A notice of cancellation of a permit must include brief particulars of the reasons for the cancellation.
- (8) Section 168 provides for additional matters to be included in a notice of cancellation of a permit.
- (9) If a permit is cancelled, the NRA may, by written notice to the person who held the permit, revoke the cancellation.
- (10) If the cancellation of a permit is revoked, the cancellation is taken never to have occurred.
- (11) if:
  - (a) a permit is cancelled or the cancellation of a permit is revoked; and
  - (b) there is a co-ordinator designated for this or another jurisdiction;the NRA must, as soon as practicable, tell the co-ordinator of the cancellation or revocation.

**PART 8—MANUFACTURE OF CHEMICAL PRODUCTS**

**Explanation of Part**

**120.(1)** This Part:

- (a) prohibits the manufacture of certain chemical products; and
  - (b) provides for the licensing of manufacturers of other chemical products.
- (2) A licensee is required by this Part to comply with manufacturing principles determined by the NRA, which may include codes of good manufacturing practice.
- (3) Section 121 does not come into force until a date to be prescribed by regulations that is not later than 12 months after the date of commencement of this Code.

**Offences relating to manufacture and licences**

**121.(1)** Subject to subsection (2), this section applies on and after a date to be prescribed by the regulations for the purposes of this Part.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

(2) If this section does not apply under subsection (1) before the end of the period of 12 months after the date of commencement of this Code, it applies on and after the first day after the end of that period.

(3) A person must not, without reasonable excuse, carry out a step in the manufacture of a prohibited chemical product at premises in this jurisdiction.  
Penalty: 240 penalty units.

(4) A person must not, without reasonable excuse, carry out a step in the manufacture of chemical products at premises in this jurisdiction unless:

- (a) under the regulations, the products are exempt products or the person is an exempt person in relation to the manufacture of the products; or
- (b) the person is the holder of a licence that is in force that authorises the carrying out of that step in relation to the products at those premises;  
or
- (c) both the following subparagraphs apply:
  - (i) the person was engaged in the manufacture of the products at those premises at the commencement of this Code;
  - (ii) before this section began to apply the person applied for a licence authorising the carrying out of that step in relation to the products at those premises but the NRA has not dealt with the application.

Penalty: 240 penalty units.

(5) A person who is the holder of a licence must not, without reasonable excuse, contravene a condition of the licence.

Penalty for a contravention of this subsection: 120 penalty units.

**Application for licence**

**122.(1)** An application for a licence must:

- (a) be in writing in or to the effect of the approved form; and
- (b) contain, or be accompanied by, the information that the NRA requires; and
- (c) be signed by an approved person; and
- (d) be accompanied by the prescribed fee (if any).

(2) The NRA may, by written notice given to an applicant for a licence, require the applicant:

- (a) to give to the NRA, within a reasonable time stated in the notice, the further information concerning the application that is mentioned in the notice; or

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (b) to allow an inspector, or another person authorised in writing by the NRA, at any reasonable time set out in the notice, to inspect the premises, equipment, processes and facilities that are proposed to be used in the manufacture of the chemical products, or to inspect other goods on those premises.

**Issue of licence**

**123.(1)** If a person has made an application to carry out steps in the manufacture of chemical products (other than prohibited chemical products) at particular premises and complied with section 122, the NRA must issue to the person a licence to carry out those steps at those premises unless:

- (a) the NRA is satisfied that:
  - (i) the person will be unable to comply with the manufacturing principles; or
  - (ii) the premises are not satisfactory for the manufacture of the products; or
- (b) a licence previously issued to the person was cancelled except at the request of the person; or
- (c) the person:
  - (i) has been convicted of an offence against the Agvet Code of this or another jurisdiction, or an offence against another law of this or another jurisdiction relating to chemical products; or
  - (ii) has failed on more than 2 occasions in any 12 months to observe any one or more of the manufacturing principles in connection with the manufacture of chemical products, whether the failures related to the same manufacturing principle or to different manufacturing principles.

(2) Despite paragraph (1)(b) or (c), the NRA may issue a licence to a person to whom, apart from this subsection, it could not issue a licence because of that paragraph if, in the opinion of the NRA, special circumstances make it appropriate to do so.

- (3) A licence is subject to conditions as mentioned in section 126.
- (4) The licence must state:
  - (a) the person to whom it is issued; and
  - (b) the products to which it relates; and
  - (c) any conditions (other than conditions referred to in subsection 126(4)) to which the licence is subject when it is issued.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

(5) If the NRA issues a licence, the NRA must cause particulars of the licence to be published in the *Gazette*, and in any other manner that it thinks appropriate, as soon as is practicable after the licence is issued.

**Refusal of application**

124.(1) If the NRA refuses an application for a licence, it must:

- (a) give written notice of the refusal to the applicant; and
- (b) include in the notice brief particulars of the reasons for the refusal.

(2) Section 168 provides for additional matters to be included in a notice of refusal of an application for a licence.

**Period of licence**

125.(1) A licence comes into force on the day stated in the licence and, subject to subsection (2), remains in force until it is cancelled.

(2) A licence is not in force during any period in which it is suspended.

**Conditions of licences**

126.(1) The conditions to which a licence may be subject are:

- (a) the conditions that the NRA imposes for the purpose of ensuring that the holder of the licence manufactures the chemical products in accordance with the manufacturing principles and any standards that apply to the products; and
- (b) any other conditions relating to the manufacture of the products that the NRA thinks appropriate to impose.

(2) The NRA may, by written notice given to the holder of a licence, impose new conditions on the licence or vary or remove existing conditions.

(3) The imposition or variation of a condition under subsection (2) takes effect:

- (a) if the notice states that the action is necessary to prevent imminent risk to public health or occupational health or safety, or imminent risk of impact on trade or commerce between Australia and places outside Australia—on the day on which the notice is given to the person; or
- (b) otherwise—on a day stated for the purpose in the notice that is not earlier than 28 days after the notice is given to the person.

(4) In addition to any conditions imposed in accordance with subsection (1) or (2), each licence is, except as otherwise stated in the licence, subject to the conditions that the holder of the licence will:

- (a) ensure that the chemical products conform to any standard that applies to them; and

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(b) comply with any other conditions prescribed by the regulations for the purposes of this section.

(5) Section 168 provides for additional matters to be included in a notice imposing a new condition on a licence or varying an existing condition.

**Suspension and cancellation of licences**

**127.(1)** Subject to subsection (2), the NRA may, by written notice given to the holder of a licence, suspend the licence for a period stated in the notice, or cancel the licence, if:

- (a) the holder has been convicted of an offence against the Agvet Code of this or another jurisdiction, or an offence against another law of this or another jurisdiction in relation to chemical products or active constituents for proposed or existing chemical products; or
- (b) the holder has contravened a condition of the licence; or
- (c) the holder has failed on more than 2 occasions in any 12 months to comply with any one or more of the manufacturing principles in connection with the manufacture of chemical products, whether the failures related to the same manufacturing principle or to different manufacturing principles; or
- (d) the holder has asked in writing that the licence be suspended or cancelled, as the case may be; or
- (e) the holder ceases to carry on the business of manufacturing the chemical products to which the licence relates; or
- (f) a prescribed fee in connection with the licence has not been paid.

(2) If the NRA proposes to suspend or cancel a licence except when asked to do so by the holder of the licence, the NRA must, unless it thinks that failure to suspend or cancel the licence immediately would create an imminent risk to public health or occupational health or safety, or an imminent risk of impact on trade or commerce between Australia and places outside Australia:

- (a) by written notice given to the holder, tell the holder of the action that the NRA proposes to take and of the reasons for that proposed action; and
- (b) except if the proposed action is to be taken because of a failure to pay a prescribed fee—give the holder an opportunity to make, within a reasonable time stated in the notice, written submissions to the NRA in relation to the proposed action.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(3) If the holder makes written submissions in accordance with paragraph (2)(b), the NRA is not to make a decision relating to the suspension or cancellation of the licence before taking the submissions into account.

(4) A licence may be cancelled even though it is suspended.

(5) A notice suspending or cancelling a licence must include brief particulars of the reasons for the suspension or cancellation.

(6) Section 168 provides for additional matters to be included in a notice suspending or cancelling a licence.

(7) If a licence is suspended or cancelled, the NRA may, by written notice given to the holder of the licence, revoke the suspension or cancellation.

(8) If the NRA suspends or cancels, or revokes the suspension or cancellation of, a licence, the NRA must cause particulars of the suspension, cancellation or revocation to be published in the *Gazette*, and in any other manner that it thinks appropriate, as soon as is practicable after the suspension, cancellation or revocation takes place.

(9) If the cancellation of a licence is revoked, the cancellation is taken never to have occurred.

**Publication of list of manufacturers etc.**

128. The NRA may, from time to time and in a manner determined by it, publish a list of the holders of licences, the chemical products to which the licences relate, the steps of manufacture that the licences authorise and the addresses of the premises to which the licences relate.

**PART 9—ENFORCEMENT**

*Division 1—Preliminary*

**Explanation of Part**

129.(1) This Part contains provisions for the enforcement of this Code.

(2) Division 2 empowers any person to seek an injunction to enforce compliance with this Code.

(3) Division 3 contains provisions authorising inspectors to monitor compliance with this Code and, if contraventions are suspected to have occurred, to obtain search warrants. Inspectors are, or may be, given powers to enter and search premises and seize things. They may also require the giving of information or the production of documents.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

(4) Division 4 contains various ancillary provisions.

*Division 2—Injunctions*

**Injunctions**

**130.(1)** If a person has engaged, or is proposing to engage, in any conduct that was or would be an offence against this Code, a court of competent jurisdiction may, on the application of any person, grant an injunction restraining the first-mentioned person from engaging in the conduct and, if in the court's opinion it is desirable to do so, requiring that person to do a particular thing.

(2) If in the opinion of the court it is desirable to do so, the court may grant an interim injunction pending determination of an application under subsection (1).

(3) The court may discharge or vary an injunction granted under subsection (1) or (2).

(4) The power of the court to grant an injunction restraining a person from engaging in conduct may be exercised:

- (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
- (b) whether or not the person has previously engaged in conduct of that kind; and
- (c) whether or not the conduct involves a serious and immediate risk of:
  - (i) an effect that is harmful to human beings; or
  - (ii) an unintended effect that is harmful to animals, plants or things or to the environment.

(5) The power of the court to grant an injunction requiring a person to do a particular thing may be exercised:

- (a) whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that thing; and
- (b) whether or not the person has previously refused or failed to do that thing; and
- (c) whether or not there is a serious and immediate risk of:
  - (i) an effect that is harmful to human beings; or
  - (ii) an unintended effect that is harmful to animals, plants or things or to the environment;

if the person refuses or fails to do that thing.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

***Division 3—Powers of entry, search and seizure***

**Searches to monitor compliance with Code**

**131.(1)** Subject to this section, to the extent that it is reasonably necessary to do so for the purpose of finding out whether this Code has been complied with, an inspector, with any necessary help, may enter, at any time during ordinary working hours on any day, any premises that the inspector has reasonable cause to believe are premises at which active constituents for proposed or existing chemical products, or chemical products, or records relating to any such constituents or products, are kept and may do any one or more of the following:

- (a) search the premises and any thing found at the premises;
- (b) inspect and take photographs (including video recordings), or make sketches, of the premises or any thing at the premises;
- (c) take and keep samples of any thing at the premises;
- (d) inspect any document kept at the premises;
- (e) seize any thing at the premises if the inspector believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction or to protect the health of the public or of any person;
- (f) open any container at the premises for the purpose of inspecting, or taking a sample of, its contents provided that the container is resealed after the inspection is made or the sample is taken;
- (g) if a thing is seized under paragraph (e), direct the occupier of the premises or the owner of that thing to keep it at the premises, or at other premises under the control of the occupier or owner that will, in the opinion of the inspector, cause least danger to the health of the public or of any person;
- (h) give any other directions for, or with respect to, the detention of a thing that has been seized under paragraph (e);
- (i) destroy or make harmless, or give directions for the destruction or making harmless of, a chemical product at the premises.

**(2)** An inspector may not:

- (a) under paragraph (1)(c)—take samples of a thing; or
- (b) under paragraph (1)(e)—seize a thing;

that appears to the inspector to be in the possession or custody of a person unless the inspector makes out and tenders to the person a receipt in or to the effect of the approved form for the sample taken or thing seized.

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



*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(4) An inspector may not exercise any powers under subsection (1) in relation to premises if:

- (a) the occupier of the premises has required the inspector to produce his or her identity card for inspection by the occupier; and
- (b) the inspector fails to comply with the requirement.

(5) The powers conferred on an inspector under paragraph (1)(i) may not be exercised unless:

- (a) the NRA believes on reasonable grounds that it is necessary in the interest of the health of the public or of any person for those powers to be exercised and authorises the inspector concerned to do so; or
- (b) the owner of the chemical product concerned authorises the inspector to exercise those powers in respect of the product.

(6) If a direction given by an inspector under this section is inconsistent with an earlier direction given by an inspector under this section, the earlier direction is, to the extent of the inconsistency, of no effect.

(7) If a direction given by an inspector under this section is inconsistent with a requirement that the NRA has made under section 99, 101, 102 or 103, the direction is, to the extent of the inconsistency, of no effect.

(8) A person must not, without reasonable excuse, refuse or fail to comply with the direction given by an inspector under this section.

Penalty: 30 penalty units.

**Offence-related searches and seizures**

**132.(1)** If an inspector has reasonable grounds for suspecting that there may be at any premises a particular thing that may be evidence of the commission of an offence against this Code, the inspector, with any necessary help, may:

- (a) with the consent of the occupier of the premises; or
- (b) under a warrant issued under section 133;

enter the premises and:

- (c) search the premises for the thing; and
- (d) if the thing is found, take photographs (including video recordings) of the premises or thing, take samples of the thing, seize the thing or undertake more than one of those activities; and
- (e) give any directions for, or with respect to, the detention of a thing that has been seized under paragraph (d).

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(2) If, in the course of searching, under a warrant issued under section 133, for a particular thing in relation to a particular offence, an inspector finds a thing that the inspector believes, on reasonable grounds, to be:

- (a) a thing that may be evidence of the commission of the offence, although not the thing stated in the warrant; or
- (b) a thing that may be evidence of the commission of another offence against this Code or an offence against the Agvet Code of another jurisdiction;

and the inspector believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or the other offence, the warrant is taken to authorise the inspector to seize that thing.

(3) If an inspector seizes a thing under paragraph (1)(d) and the inspector is authorised by the NRA to exercise powers under this subsection, the inspector may do any one or more of the following:

- (a) if the seizure related to a substance and the inspector suspects that there has been a contravention of this Code in respect of any of its constituents, or in respect of the concentration, composition or purity of any of its active constituents—supervise the reformulation of the substance so that there is no such contravention;
- (b) if the seizure related to a substance and its container and the inspector suspects that there has been a contravention of this Code in respect of the container—supervise the placing of the substance in a container in respect of which there is no such contravention;
- (c) if the seizure related to a substance and its container and the inspector suspects that there has been a contravention of this Code in respect of the label attached to the container—supervise the attaching to the container of a label in respect of which there is no such contravention.

**Offence-related warrants**

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

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

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

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

- (4) The warrant must:
- (a) state the nature of the offence; and
  - (b) state the purpose for which the warrant is issued; and
  - (c) authorise an inspector named in the warrant, with any help, and using any force, that is necessary and reasonable, to enter the premises and exercise the powers referred to in paragraphs 132(1)(c), (d) and (e) in respect of the thing; and
  - (d) state whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
  - (e) state a day, not later than 7 days after the day of issue of the warrant, upon which the warrant ceases to have effect.

**Announcement before entry**

**134.(1)** An inspector who is authorised to enter premises under a warrant issued under section 133 or a person helping such an inspector must, before any person enters the premises under the warrant:

- (a) announce that he or she is authorised by the warrant to enter the premises; and
- (b) give any person at the premises an opportunity to allow entry to the premises.

(2) The inspector or a person helping the inspector does not have to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure:

- (a) the safety of a person (including the inspector and any person helping the inspector); or
- (b) that the effective execution of the warrant is not frustrated.

**Details of warrant to be given to occupier**

**135.(1)** If a warrant under section 133 in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the inspector or a person helping the inspector must make a copy of the warrant available to that person.

(2) The inspector must identify himself or herself to the person at the premises.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(3) The copy of the warrant referred to in subsection (1) need not include the signature of the magistrate who issued the warrant.

**Use of equipment to examine or process things**

**136.(1)** An inspector who enters premises under section 131 or 132 or a person helping the inspector may bring to the premises any equipment reasonably necessary for the examination or processing of things found at the premises in order to determine whether they are things that may be seized under that section.

(2) If:

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

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

the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized under section 131 or 132, as the case may be.

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

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

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

(4) The inspector or a person helping the inspector may operate equipment already at the premises to carry out the examination or processing of a thing found at the premises in order to determine whether it is a thing that may be seized under section 131 or 132, as the case may be, if the inspector or person helping believes on reasonable grounds that:

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

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

**Use of electronic equipment at premises**

**137.(1)** Subject to subsection (4), if a thing found at premises that an inspector has entered under section 131 or 132 is or includes records of information in a written or electronic form, the inspector or a person helping the inspector may operate, or the inspector may require the occupier or an employee of the occupier who is present to operate, equipment at the premises to see whether:

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (a) the equipment; or
  - (b) a disk, tape or other storage device that:
    - (i) is at the premises; and
    - (ii) can be used with, or is associated with, the equipment;
- contains records that are relevant to determining whether this Code has been complied with.

(2) If the inspector or a person helping the inspector, after equipment at the premises is operated, finds that the equipment contains records of that kind or that a disk, tape or other storage device at the premises contains records of that kind, he or she may:

- (a) seize the equipment or the disk, tape or other storage device; or
  - (b) if the records can, by using facilities at the premises, be put in documentary form—operate the facilities to put the records in that form and seize the documents so produced; or
  - (c) if the records can be transferred to a disk, tape or other storage device that:
    - (i) is brought to the premises; or
    - (ii) is at the premises and whose use for the purpose has been agreed to in writing by the occupier of the premises;
- operate the equipment or other facilities to copy the records to the storage device and remove the storage device from the premises.

(3) An inspector or person helping an inspector may seize equipment under paragraph (2)(a) only if:

- (a) it is not practicable to put the relevant records in documentary form as mentioned in paragraph (2)(b) or to copy the records as mentioned in paragraph (2)(c); or
- (b) possession by the occupier of the equipment could be an offence.

(4) An inspector or a person helping an inspector must not operate equipment for the purpose mentioned in subsection (1) unless the inspector or person helping believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

**Compensation for damage to electronic equipment**

**138.(1) If:**

- (a) equipment is damaged because of being operated as mentioned in section 136 or 137; and
- (b) the damage was caused by:
  - (i) insufficient care being exercised in selecting the person who was to operate the equipment; or

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (ii) insufficient care being exercised by the person operating the equipment;

the NRA must pay compensation for the damage to the owner of the equipment.

(2) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and the employees and agents of the occupier, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

**Copies of seized things to be given**

**139.(1)** Subject to subsection (2), if an inspector who has entered premises under section 131 or 132 seizes:

(a) a document, film, computer file or other thing that can be readily copied; or

(b) a storage device the information in which can be readily copied;

the inspector must, if asked to do so by the occupier of the premises or another person who apparently represents the occupier and is present when the seizure takes place, give a copy of the thing or the information to that person as soon as practicable after the seizure.

(2) Subsection (1) does not apply if:

(a) the thing that has been seized was seized under paragraph 137(2)(b) or (c); or

(b) possession by the occupier of the document, film, computer file, thing or information could be an offence.

**Return of things that are seized**

**140.(1)** If an inspector seizes a thing under section 131 or 132, the inspector must take reasonable steps to return it if the reason for its seizure no longer exists.

(2) If the thing has not been returned before the end of 60 days after its seizure, the inspector must take reasonable steps to return it unless:

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

(b) the inspector may keep the thing because of an order under section 141; or

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

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(3) If the thing has to be returned, it must be returned to the person from whom it was seized or, if that person is not entitled to possess it, to the owner.

(4) If there is a dispute as to the ownership of the thing, the inspector may keep the thing until the dispute is resolved.

(5) This section has effect subject to sections 141 and 150.

**Court of summary jurisdiction may permit a thing to be kept**

**141.(1)** If:

(a) before the end of 60 days after an inspector seizes a thing under section 131 or 132; or

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

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

(2) If the court is satisfied that it is necessary for the inspector to continue to keep the thing:

(a) for the purposes of an investigation as to whether an offence has been committed; or

(b) to enable evidence of an offence to be secured for the purposes of a prosecution;

the court may order that the inspector may keep the thing for a period stated in the order.

(3) If the court thinks that notice of the application should be given to any person, it may require such a notice to be given before it hears the application.

**Certain expenses to be recoverable by NRA**

**142.(1)** Any expense incurred by the NRA under paragraph 131(1)(i) in respect of the destruction or making harmless of a chemical product is a debt due to the NRA by the owner of the product.

(2) Any expense incurred by the NRA under subsection 132(3) in supervising:

(a) the reformulation of a substance; or

(b) the placing of a substance in a container; or

(c) the attaching of a label to a container;

is a debt due to the NRA:

(d) if paragraph (a) or (b) applies—by the owner of the substance; or

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(e) if paragraph (c) applies—by the owner of the substance in the container.

(3) Any expense incurred by the NRA under paragraph 140(2)(c) in destroying or disposing of a thing is a debt due to the NRA by the owner of the thing.

(4) Any expense incurred by the NRA under section 140 in returning a thing to a person is a debt due to the NRA by the person.

(5) Any expense incurred by the NRA under section 150 in disposing of a thing that has been forfeited to the NRA is a debt due to the NRA by the person whose property the thing was before it was forfeited.

(6) The NRA may recover a debt due by a person under this section by action against the person.

**Warrants may be granted by telephone in urgent circumstances**

**143.(1)** If, because of circumstances of urgency, an inspector considers it necessary to do so, the inspector may apply for a warrant under subsection 133(1), by telephone, in accordance with this section.

(2) Before so applying, an inspector must prepare an information of a kind referred to in subsection 133(2) that sets out the grounds on which the issue of the warrant is being sought, but the inspector may, if it is necessary to do so, apply before the information has been sworn.

(3) If a magistrate to whom an application under subsection (1) is made is satisfied:

- (a) after having considered the terms of the information prepared in accordance with subsection (2); and
- (b) after having received any further information that the magistrate requires about the grounds on which the issue of the warrant is being sought;

that there are reasonable grounds for issuing the warrant, the magistrate must complete and sign such a search warrant as the magistrate would have issued under section 133 if the application had been made in accordance with that section.

(4) If a magistrate signs a warrant under subsection (3):

- (a) the magistrate must notify the inspector of the terms of the warrant and the date on which and the time at which it was signed, and write on it the reasons for the granting of the warrant; and



*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(b) the inspector must complete a form of warrant in the terms notified to the inspector by the magistrate and write on it the name of the magistrate and the date on which and the time at which the warrant was signed.

(5) If an inspector completes a form of warrant in accordance with subsection (4), the inspector must, not later than the day after the day on which the warrant ended or was executed, whichever is the earlier, send to the magistrate who signed the warrant the form of warrant completed by the inspector and the information duly sworn in connection with the warrant.

(6) Upon receiving the documents referred to in subsection (5), the magistrate must attach to them the warrant signed by the magistrate and deal with the documents in the manner in which the magistrate would have dealt with the information if the application for the warrant had been made in accordance with section 133.

(7) A form of warrant duly completed by an inspector in accordance with subsection (4) is, if it is in accordance with the terms of the warrant signed by the magistrate, authority for any entry, search, seizure or direction that the warrant so signed authorises.

(8) If it is material, in any proceedings, for a court to be satisfied that an entry, search, seizure or direction was authorised in accordance with this section, and the warrant signed by a magistrate in accordance with this section authorising the entry, search, seizure or direction is not produced in evidence, the court must assume, unless the contrary is proved, that the entry, search, seizure or direction was not authorised by such a warrant.

**Power of inspector to require information or documents**

**144.(1)** Subject to subsection (2), an inspector who has entered premises under this Division may, to the extent that it is reasonably necessary for the purpose of finding out whether this Code has been complied with, require a person to give information to the inspector and to produce any documents referred to by the inspector.

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

(3) A person must not refuse or fail, without reasonable excuse, to comply with a requirement made under subsection (1).

Penalty: 30 penalty units.

**False or misleading information or document**

**145.** A person must not:

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (a) in connection with an application made to the NRA under this Code;  
or
  - (b) in compliance or purported compliance with:
    - (i) a requirement made under this Code; or
    - (ii) a provision of this Code;
- do either of the following:
- (c) give information (whether orally or in writing) that the person knows to be false or misleading in a material particular;
  - (d) produce a document that the person knows to be false or misleading in a material particular without:
    - (i) indicating to the person to whom the document is produced that it is false or misleading and the respect in which it is false or misleading; and
    - (ii) providing correct information to that person if the person producing the document is in possession of, or can reasonably acquire, the correct information.

Penalty: 30 penalty units.

***Division 4—Miscellaneous enforcement provisions***

**Self-incrimination to be a reasonable excuse for non-compliance with requirement**

**146.** It is a reasonable excuse for a person to refuse or fail to give information, produce a document or do any other thing that the person is required to do by or under this Code that the information, the production of the document or the doing of that other thing would tend to incriminate the person.

**Time for bringing prosecutions**

**147.** A prosecution for an offence against this Code may be begun at any time within 2 years after the commission of the offence.

**Copying of documents**

**148.** If an inspector inspects a document under section 131 or seizes a document under section 131 or 132 or a person produces a document to an inspector in accordance with a requirement under subsection 144(1), the inspector may make copies of, or take extracts from, the document.

**Evidential certificates**

**149.(1)** This section has effect for the purposes of any legal or administrative proceeding under or for the purposes of this Code.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(2) A certificate that states a matter referred to in subsection (3) is evidence of that matter if it is signed by the Chief Executive Officer of the NRA, or by a member of the staff of the NRA whom the NRA has authorised to give certificates under this section.

(3) The matters that may be stated in a certificate referred to in subsection (2) are as follows:

- (a) that a substance referred to in the certificate was, or was not, at a particular time, or during a particular period, an active constituent, or an approved active constituent, for a proposed or existing chemical product;
- (b) that a chemical product referred to in the certificate was, or was not, at a particular time, or during a particular period, a chemical product or a registered chemical product;
- (c) that a label referred to in the certificate was, or was not, at a particular time, or during a particular period, an approved label for containers for a chemical product;
- (d) that a permit or exemption referred to in the certificate was in force at a particular time or during a particular period;
- (e) that an approval, registration, permit or exemption referred to in the certificate was suspended at a particular time or during a particular period;
- (f) that an approval, registration, permit or exemption referred to in the certificate is, or was at a particular time or during a particular period, subject to a stated condition;
- (g) that the matter appearing on an approved label, or in a permit, referred to in the certificate is identical to matter set out in, or in a writing annexed to, the certificate;
- (h) that a person named in the certificate was an inspector at a particular time or during a particular period;
- (i) that a document referred to in the certificate that purports to be a copy of, or an extract from, a record, register or file kept under this Code is a true copy or extract, as the case may be;
- (j) that a notice, direction or requirement referred to in the certificate was given at a particular time to a particular person under this Code;
- (k) that the NRA had not received by a particular time an application, statement, report or other document, or any sample or other thing, referred to in the certificate that was required or permitted to be made or given to the NRA by a person under this Code;

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (l) that a document referred to in the certificate is, or was at a particular time or during a particular period, a standard, rule, code, specification or method of a particular association, body or institution;
- (m) that a licence referred to in the certificate was in force at a particular time or during a particular period;
- (n) that a licence referred to in the certificate was suspended at a particular time or during a particular period;
- (o) that a licence referred to in the certificate is, or was at a particular time or during a particular period, subject to a stated condition;
- (p) that a particular statement contained in a document referred to in the certificate is, or was at a particular time or during a particular period, a manufacturing principle that the NRA has determined.

(4) Unless the contrary is proved, a document purporting to be a certificate referred to in subsection (2) is taken to be such a certificate and to have been duly given.

(5) Unless the contrary is proved, evidence that a label attached to a sealed container contained any matter at any time in a manner prescribed or required by this Code in relation to a chemical product is also evidence that the product was in the container at that time.

**Forfeiture**

**150.(1)** If a person is convicted of an offence against this Code in respect of a thing that the court finds to be the property of that person, the court may order all or any part of the thing to be forfeited to the NRA.

(2) If the court makes an order under subsection (1) in respect of, or in respect of part of, a thing, the thing, or that part of the thing, as the case may be, becomes the property of the NRA and, subject to section 162, may be dealt with or disposed of in any manner that the NRA thinks appropriate.

**Conduct by directors, servants and agents**

**151.(1)** Subject to subsection (2), in proceedings against a body corporate for an offence against this Code:

- (a) any conduct engaged in by a director, servant or agent of the body corporate within the actual or apparent scope of his or her employment or within his or her actual or apparent authority is taken to have been engaged in also by the body corporate; and
- (b) it is taken to be established that conduct (the “**relevant conduct**”) was engaged in by the body corporate intentionally, knowingly or recklessly if it is proved:

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

- (i) that the directors of the body corporate intentionally, knowingly or recklessly engaged in the relevant conduct or expressly, tacitly or impliedly authorised or permitted the relevant conduct to be engaged in; or
- (ii) that a servant or agent of the body corporate with duties of such responsibility that his or her conduct may fairly be assumed to represent the policy of the body corporate intentionally, knowingly or recklessly engaged in the relevant conduct or expressly, tacitly or impliedly authorised or permitted the relevant conduct to be engaged in.

(2) Subparagraph (1)(b)(ii) does not apply if the body corporate proves that it exercised due diligence to prevent the relevant conduct.

(3) Subject to subsection (4), in proceedings against an individual for an offence against this Code:

- (a) any conduct engaged in by a servant or agent of the individual within the actual or apparent scope of his or her employment or within his or her actual or apparent authority is taken to have been engaged in also by the individual; and
- (b) it is taken to be established that conduct (the “**relevant conduct**”) was engaged in by the individual intentionally, knowingly or recklessly if it is proved that a servant or agent of the individual with duties of such responsibility that his or her conduct may fairly be assumed to represent the policy of the individual intentionally, knowingly or recklessly engaged in the relevant conduct or expressly, tacitly or impliedly authorised or permitted the relevant conduct to be engaged in.

(4) Paragraph (3)(b) does not apply if the individual proves that he or she exercised due diligence to prevent the relevant conduct.

(5) If:

- (a) an individual is convicted of an offence against this Code; and
- (b) the individual would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the individual is not liable to be punished by imprisonment for the offence.

(6) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

**Liability of persons acting on behalf of non-residents**

**152.(1)** If:

(a) a person does any thing in this jurisdiction on behalf of another person who is not a resident of, and does not carry on business in, Australia; and

(b) the doing of that thing is an offence against this Code;

this Code has effect, in addition to the effect that it has apart from this subsection, as if the first-mentioned person did that thing on that person's own account and not on behalf of the other person.

**(2)** If:

(a) a person who is not a resident of, and does not carry on business in, Australia fails to do a thing in this jurisdiction in relation to:

(i) an active constituent for a proposed or existing chemical product in respect of which that person is the interested person; or

(ii) a chemical product in respect of which that person is the interested person; and

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

the approved person who signed the application for the approval of the constituent or the registration, or the renewal of the registration, of the product is taken to have been under the same liability under this Code as the first-mentioned person to do that thing and, if the thing is not done by the approved person, is punishable accordingly.

**PART 10—MISCELLANEOUS**

**Explanation of Part**

**153.** This Part contains miscellaneous provisions (other than enforcement provisions) that relate generally to other provisions of this Code. Most provisions that affect only a particular part of this Code are contained in that Part.

**Recognition of things done under corresponding laws**

**154.(1)** In this Code, unless the contrary intention appears, a reference to any thing done by or in relation to the NRA is a reference to such a thing done under or for the purposes of the Agvet Code of this jurisdiction or of another jurisdiction.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(2) In this Code, unless the contrary intention appears, a reference to any thing done by or in relation to a court is a reference to such a thing done under or for the purposes of the Agvet Code of this jurisdiction or of another jurisdiction.

**Discharge of obligations under this Code**

**155.(1)** Except as expressly provided in this Code, any thing done, whether within Australia or elsewhere, which, if it had been done under or for the purposes of this Code, would have discharged an obligation under this Code, discharges that obligation.

(2) Subject to subsection (3), any thing that has to be done under this Code may, for the purposes of this Code, be done anywhere in Australia, whether within or outside this jurisdiction.

(3) Subsection (2) does not affect the operation of any provision of this Code that:

- (a) expressly requires a particular thing to be done within this jurisdiction; or
- (b) expressly or by implication permits a particular thing to be done outside Australia.

**How to make a single application under Agvet Code of each jurisdiction**

**156.(1)** This section facilitates the administration, on a national basis, of the Agvet Code of each jurisdiction by permitting a single application to be made under the Agvet Code of each jurisdiction.

(2) This can be done by expressing an application to be made under the Agvet Codes (rather than under the Agvet Code of a particular jurisdiction), so that it has effect as an application under the relevant provision of the Agvet Code of each jurisdiction.

**Samples to be given for analysis**

**157.(1)** If the NRA so requires, a person who makes an application under this Code must:

- (a) if the application relates to an active constituent or active constituents for a proposed or existing chemical product—give a sample of that constituent or of each of those constituents; or
- (b) if the application relates to a chemical product—give a sample of any constituent of the product or a sample of the product, or both;

to the NRA or to a body named by the NRA, for the purpose of analysis by an approved analyst.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

- (2) The sample must:
- (a) be of a quantity; and
  - (b) be taken on a day; and
  - (c) be taken in a manner; and
  - (d) be taken from a batch;

that the NRA has directed.

(3) The applicant must pay to the NRA the amount that the NRA notifies the applicant in writing to be the cost of the analysis referred to in subsection (1), including the cost of packaging and transporting the sample or samples for analysis.

**Samples, or copies, of labels to be given**

**158.(1)** A person who makes an application that relates to a label for containers for a chemical product must give to the NRA:

- (a) the number of samples or copies of the label that the NRA requires; and
- (b) if the NRA so requires, a sample of any adhesive or other substance or any device intended to be used in connection with the method or methods by which the label is to be attached to the containers.

(2) A sample or copy of a label to be given to the NRA under subsection (1) must be in a form that the NRA reasonably requires.

(3) A sample or copy of a label may contain matters that relate to the supply or use of the product in another jurisdiction.

**NRA or other authority may require further information, report or samples in certain circumstances**

**159.(1)** For the purposes of:

- (a) an application under this Code in relation to an active constituent for a proposed or existing chemical product; or
- (b) an application under this Code in relation to a chemical product (including an application in relation to a label for containers for a chemical product); or
- (c) reconsidering the approval of an active constituent for a proposed or existing chemical product, the registration of a chemical product or the approval of a label for containers for a chemical product; or
- (d) deciding whether to suspend or cancel a permit in respect of an active constituent for a proposed or existing chemical product or in respect of a chemical product;



*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

the NRA or another prescribed authority may, by written notice given to the interested person, or to the applicant for or holder of the relevant permit, in relation to the constituent or product, require that person, within a reasonable period stated in the notice, or within a further period that the NRA allows, to do any one or more of the following:

- (e) give to the NRA or that prescribed authority, as the case may be, information, of a kind stated in the notice, that may be relevant to the application;
- (f) carry out a search of published literature for information about the active constituent, or about the chemical product or any of its constituents, as the case may be, and give a report to the NRA or that prescribed authority on the results of that search;
- (g) give to the NRA or that prescribed authority, or to another body that the NRA or that authority has determined, a sample or further sample of the active constituent, or of the chemical product or any of its constituents, as the case may be, for the purpose of analysis by an approved analyst.

(2) Any information or report that a person has to give to the NRA or a prescribed authority under subsection (1) must be given in writing and be signed by an approved person.

(3) If a person fails, without reasonable excuse, to comply with a requirement under subsection (1) the NRA may:

- (a) treat the application as having been withdrawn; or
- (b) suspend further consideration of the application until the applicant complies with the requirement.

(4) If the NRA decides in accordance with subsection (3) to treat an application as having been withdrawn or to suspend further consideration of an application, it must give written notice of its decision to the applicant.

(5) Section 168 provides for additional matters to be included in a notice under subsection (4).

**Overseas trials or experiments**

**160.** For the purposes of:

- (a) an application under this Code in relation to an active constituent for a proposed or existing chemical product; or
- (b) an application under this Code in relation to a chemical product (including an application in relation to a label for containers for a chemical product); or

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (c) reconsidering the approval of an active constituent for a proposed or existing chemical product, the registration of a chemical product or the approval of a label for containers for a chemical product; or
- (d) deciding whether to suspend or cancel a permit in respect of an active constituent for a proposed or existing chemical product or in respect of a chemical product;

the NRA may take account of the results of any trials or experiments already carried out in a foreign country in relation to the constituent, or in relation to the product or any of its constituents, to the extent that those results are relevant having regard to any matters it thinks appropriate, including:

- (e) any significant differences in the proposed use of the constituent, or of the product, in Australia and in that foreign country; or
- (f) any different environmental factors affecting the use of the constituent, or of the product, in Australia and in that foreign country; or
- (g) any significant additional information relating to the properties of the constituent, or of the product or of any of its constituents, that has become available since the conduct of those trials or experiments.

**Notification of new information to NRA**

**161.(1) If:**

- (a) the interested person in relation to an approved active constituent for a proposed or existing chemical product or in relation to a registered chemical product; or
- (b) the holder of a permit in relation to an active constituent for a proposed or existing chemical product or in relation to a chemical product;

becomes aware of any relevant information in relation to the constituent or in relation to the product or of any of its constituents, the person must, as soon as practicable after the person becomes aware of the information, give that information to the NRA.

Penalty: 300 penalty units.

**(2) Information is relevant information if it:**

- (a) contradicts any information given to the NRA under this Code; or
- (b) shows that the use of, or any other dealing with, the constituent or the chemical product in accordance with the recommendations for its use or for such a dealing that the NRA has approved:
  - (i) may be an undue hazard to the safety of people exposed to it during its handling or people using anything containing its residues; or

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (ii) may be likely to have an effect that is harmful to human beings;  
or
  - (iii) may be likely to have an unintended effect that is harmful to animals, plants or things or to the environment; or
  - (c) shows that the use of the product in accordance with the recommendations for its use that the NRA has approved may be ineffective according to criteria determined by the NRA for the product; or
  - (d) would have had to be given to the NRA in connection with the application for the approval, registration or permit if the applicant had been aware of the information when the application was made.
- (3) Any information that a person has to give to the NRA under this section must be given in writing signed by an approved person.

**Disclosure of confidential commercial information**

**162.(1)** Except in the performance of functions or duties, or the exercise of powers, under this Code, a person who is or has been a director, the Chief Executive Officer, or a member of the staff, of the NRA, or is or has been a consultant to the NRA, a mediator or arbitrator appointed under this Code, or a co-ordinator designated for a jurisdiction, must not intentionally or recklessly disclose, directly or indirectly, to another person any information about an active constituent for a proposed or existing chemical product, about a chemical product or any of its constituents, or about a label for containers for a chemical product, that:

- (a) the person knows to be confidential commercial information; and
- (b) was acquired by the person in the performance of such functions or duties or the exercise of such powers.

Penalty: Imprisonment for 2 years.

(2) Subsection (1) does not prohibit the disclosure of information about a constituent or a chemical product to a court in any proceeding but the court must do all things necessary to prevent disclosure of that information to any other person except for the purpose of the proceeding.

(3) Despite subsection (1), a person (the “**authorised person**”) that the NRA has authorised to act under this section may:

- (a) disclose confidential commercial information about an active constituent for a proposed or existing chemical product:
  - (i) by disclosing a summary of an assessment of the constituent made by the NRA or by a prescribed authority or person; or

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (ii) for the purposes of the NRA's reconsideration of the approval of the constituent under Division 4 of Part 2—by disclosing particulars of the constituent; or
  - (iii) by disclosing, subject to the conditions prescribed by the regulations, information about the toxicity of the constituent and its residues in relation to relevant organisms and ecosystems, including human beings; or
- (b) disclose confidential commercial information about a chemical product or any of its constituents:
  - (i) if the product contains an active constituent that, before the registration of the product, was not contained in a chemical product registered in this or another jurisdiction under the Agvet Code, or a corresponding previous law, of the jurisdiction concerned—by disclosing a summary of an assessment that the NRA has made of the product; or
  - (ii) for the purposes of the NRA's reconsideration of the registration of the product under Division 4 of Part 2—by disclosing particulars of the product; or
  - (iii) by disclosing, subject to any conditions prescribed by the regulations, information about the toxicity of the product and its residues in relation to relevant organisms and ecosystems, including human beings; or
- (c) disclose confidential commercial information about an active constituent for a proposed or existing chemical product, or about a chemical product or any of its constituents, to:
  - (i) the Commonwealth, a State or a Territory, or an authority of the Commonwealth, of a State or of a Territory; or
  - (ii) a person who is expressly authorised to obtain the information by the interested person in relation to the constituent or product; or
  - (iii) a prescribed authority or prescribed person; or
- (d) subject to subsection (4), disclose confidential commercial information about an active constituent for a proposed or existing chemical product, or about a chemical product or any of its constituents, to:
  - (i) an overseas authority having similar functions to the NRA; or
  - (ii) a prescribed international organisation;

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

if the authorised person thinks it is reasonable to make the disclosure and the interested person in relation to the constituent or product has consented to the disclosure or the authorised person has made reasonable efforts to obtain that consent.

(4) An authorised person must not disclose information to an authority or organisation under paragraph (3)(d) without the consent of the interested person unless:

- (a) the authorised person has given to the interested person written notice of the decision to disclose the information; and
- (b) a period of 28 days has elapsed since the notice was given.

(5) Section 168 provides for additional matters to be included in a notice given under paragraph (4)(a).

(6) A person who acquires information because of a disclosure under subsection (3), and any person under the control of that person, is, in respect of that information, subject to the same obligations and liabilities under subsection (1) as if that person were a person performing duties under this Code and had acquired the information in the performance of those duties.

(7) Despite subsection (1), the authorised person may permit confidential commercial information about a constituent or chemical product to be disclosed to a Government, body or person:

- (a) for the purpose of enabling the Government, body or person to give advice to the NRA or to another Government, body or person in accordance with section 8 of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*; or
- (b) if the person is a co-ordinator for a jurisdiction—for the purpose of enabling the co-ordinator to make a recommendation to the NRA in accordance with paragraph 111(1)(c).

(8) Except for the purpose of providing advice to the NRA in accordance with section 8 of the *Agricultural and Veterinary Chemicals (Administration) Act 1992* or making a recommendation to the NRA in accordance with paragraph 111(1)(c), a person who acquires information because of a disclosure under subsection (7), and any person who is or has been under the control of that person, must not intentionally or recklessly disclose that information, directly or indirectly, to any person if the person disclosing the information knows that the information is confidential commercial information.

Penalty: Imprisonment for 2 years.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(9) If a person who is or has been a director, the Chief Executive Officer, or a member of the staff, of the NRA, or is or has been a consultant to the NRA, a mediator or arbitrator appointed under this Code, or a co-ordinator designated for a jurisdiction, has disclosed to another person, except under subsection (3) or (7), any confidential commercial information about an active constituent for a proposed or existing chemical product, or about a chemical product or any of its constituents, that was acquired by the first-mentioned person in the performance of functions or duties, or the exercise of powers, under this Code, the other person, and any person who is or has been under the control of the other person, must not intentionally or recklessly disclose that information, directly or indirectly, to any person if the person disclosing the information knows that the information is confidential commercial information.

Penalty: Imprisonment for 2 years.

(10) The powers conferred by subsection (7) are in addition to, and do not prejudice, the powers conferred by subsection (3).

(11) A notice published under section 52, 53, 54 or 55 must not contain any confidential commercial information about an active constituent for a proposed or existing chemical product or about a chemical product or any of its constituents.

(12) This section does not preclude the institution of an action or other civil proceeding against a person in respect of the disclosure, or the proposed, threatened or likely disclosure, by that person of confidential commercial information about an active constituent for a proposed or existing chemical product, or about a chemical product or any of its constituents.

(13) A reference in this section to information about an active constituent for a proposed or existing chemical product, or about a chemical product, includes a reference to the fact that an application has been made for approval of the constituent or registration of the product or the fact that an application has been made for a permit in respect of the constituent or product, as the case may be.

(14) In this section:

“**court**” includes a tribunal, authority or person having power to require the production of documents or the answering of questions;

“**disclose**”, in relation to information, means give or communicate in any way.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

**Notice to interested person of proposed disclosure of information that is claimed to be confidential commercial information**

**163.(1)** If:

- (a) a person (the “**disclosing person**”) decides to disclose to another person information about an active constituent for a proposed or existing chemical product, about a chemical product or any of its constituents, or about a label for containers for a chemical product; and
- (b) the interested person in relation to the constituent, product or label has claimed to the NRA that the information is confidential commercial information but the disclosing person does not agree with the claim; and
- (c) the disclosure would, if the information were confidential commercial information, contravene section 162;

the disclosing person:

- (d) must give written notice to the interested person of the decision to disclose the information stating the reasons why the disclosing person considers that the information is not confidential commercial information; and
- (e) must not disclose the information until the end of 28 days after the notice is given.

Penalty: Imprisonment for 2 years.

(2) Section 168 provides for additional matters to be included in a notice given under subsection (1).

**Fees**

**164.(1)** The regulations may prescribe, or prescribe a method of working out, the fees to be paid in respect of the making of an application to the NRA, or the doing of any thing by the NRA or by an inspector, under this Code.

(2) Fees referred to in subsection (1) are due and payable in the manner and at the time or times that are prescribed.

(3) A fee prescribed as a stated amount must not be more than \$20,000.

(4) Two or more fees may be prescribed for the same matter.

(5) A fee is not payable in respect of the making of an application to the NRA, or the doing of any thing by the NRA or by an inspector, under a provision of the Agvet Code of this jurisdiction in relation to an active constituent for a proposed or existing chemical product, a chemical product, or a label for containers for a chemical product, if a corresponding fee has

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

been paid in respect of the making of a corresponding application, or the doing of a corresponding thing, as the case may be, in relation to the same constituent, product or label, under the corresponding provision of the Agvet Code of another jurisdiction.

(6) Any fee that the NRA receives under this Code is to be paid to the Commonwealth.

(7) If a fee has to be paid in respect of an application to the NRA or in respect of the doing of any thing by the NRA, the NRA may refuse to consider the application or do that thing until the fee is paid.

(8) The NRA may, on behalf of the Commonwealth, either on its own initiative or on application by a person, waive the whole or a part of a fee that would otherwise be payable under this Code, or remit the whole or a part of a fee that has been paid under this Code:

- (a) if the fee is payable or was paid in respect of an application to the NRA that is to be or has been withdrawn; or
- (b) in any other circumstances that are prescribed by the regulations.

(9) If an application is made to the NRA under subsection (8), it must give to the applicant written notice of its decision on the application.

(10) Section 168 provides for additional matters to be included in a notice given under subsection (9).

**Period within which NRA is to determine applications**

**165.(1)** When an application is made under this Code to the NRA, the NRA must determine the application within a period stated in, or determined in accordance with, the regulations.

(2) In working out the period within which an application has to be determined, no regard is to be had to:

- (a) any period beginning on the day when the NRA makes a requirement of the applicant in connection with the application and ending on the day when the requirement is complied with; and
- (b) if the NRA has, before the application was made, caused to be published a notice in the *Gazette* under subsection 69EP(2) of the *Agricultural and Veterinary Chemicals (Administration) Act 1992* in relation to a hearing that is relevant to the determination of the application and the hearing did not finish before the application was made—the period beginning when the application was made and ending when the hearing finished; and



*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (c) if the NRA has, after the application was made, caused such a notice to be published in the *Gazette*—the period beginning when the notice was published and ending when the hearing finished.

**Reconsideration of decisions**

**166.(1)** This section applies if:

- (a) a decision (the “**original decision**”) on a particular matter (the “**relevant matter**”) has been made under this Code other than this section on behalf of the NRA by a member of the staff of the NRA; and
- (b) a person is entitled to apply under section 167 to the Administrative Appeals Tribunal for review of the original decision.

(2) The person may, by writing, request the NRA to reconsider the original decision.

(3) If a request is so made, the NRA must reconsider the original decision and:

- (a) confirm the original decision; or
- (b) vary the original decision; or
- (c) set aside the original decision; or
- (d) set aside the original decision and make a new decision in substitution for the original decision.

(4) The NRA must, as soon as practicable, give written notice to the person who made the request setting out the NRA’s decision on the reconsideration.

(5) The decision on the reconsideration is taken, for the purposes of this Code other than paragraph (1)(a), to be a fresh decision on the relevant matter made under the provision of this Code under which the original decision was made.

(6) Section 168 provides for additional matters to be included in certain notices given under subsection (4).

**Review of decisions**

**167.(1)** An application may be made to the Administrative Appeals Tribunal for review of the following decisions of the NRA:

- (a) a decision under Division 2 of Part 2 to refuse an application for approval of an active constituent for a proposed or existing chemical product, for registration of a chemical product or for approval of a label for containers for a chemical product;
- (b) a decision under Division 2 of Part 2 to approve an active constituent for a proposed or existing chemical product, to register a chemical product, or to approve a label for containers for a chemical product, subject to particular conditions;

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (c) a decision under Division 3 of Part 2 to refuse an application to vary the relevant particulars of the approval of an active constituent for a proposed or existing chemical product, the relevant particulars of the registration of a chemical product or the relevant particulars of the approval of a label for containers for a chemical product;
- (d) a decision under Division 3 of Part 2 to refuse an application to vary the conditions of the approval of an active constituent for a proposed or existing chemical product, the registration of a chemical product, or the approval of a label for containers for a chemical product;
- (e) a decision under Division 4 of Part 2 to vary the conditions of the approval of an active constituent for a proposed or existing chemical product, the registration of a chemical product, or the approval of a label for containers for a chemical product;
- (f) a decision under Division 5 of Part 2 to suspend or cancel the approval of an active constituent for a proposed or existing chemical product, the registration of a chemical product or the approval of a label for containers for a chemical product;
- (g) a decision under subsection 48(3) refusing to accept a late application;
- (h) a decision to use protected registration information under paragraph 59(2)(d);
- (i) a decision under subsection 74(2), 75(2), 76(2) or 78(2) extending, or refusing to extend, a period;
- (j) a decision under section 99 to require the analysis of a substance or mixture of substances;
- (k) a decision to issue a recall notice;
- (l) a decision under Part 7 to refuse an application for a permit;
- (m) a decision under Part 7 to issue a permit subject to particular conditions or for a particular period only;
- (n) a decision under Part 7 to refuse to extend a permit;
- (o) a decision under section 118 to suspend a permit;
- (p) a decision under section 119 to cancel a permit;
- (q) a decision under Part 8 to refuse an application for a licence;
- (r) a decision under Part 8 to issue a licence subject to particular conditions referred to in subsection 126(1);
- (s) a decision under subsection 126(2) to impose a new condition on a licence or varying an existing condition;
- (t) a decision under section 127 to suspend or cancel a licence;

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (u) a decision under subsection 159(3) to treat an application as having been withdrawn or to suspend further consideration of an application;
- (v) a decision to disclose information to an authority or organisation under paragraph 162(3)(d) without the consent of the interested person concerned;
- (w) a decision to disclose information under section 163;
- (x) a decision under subsection 164(8) to refuse to waive or remit the whole or a part of a fee.

(2) For the purposes of this section, if an application made to the NRA is not determined within the period within which the NRA has to determine the application, the NRA is taken to have made a decision at the end of that period to refuse the application.

(3) This section has effect subject to the *Administrative Appeals Tribunal Act 1975*.

(4) In this section:  
“**decision**” has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

**Statement to be included in certain notices of decisions**

**168.(1)** If written notice of the making of a decision to which section 167 applies, or of the making of a decision under section 166 which, because of subsection 166(5), is taken to be a decision to which section 167 applies, is given to a person (other than a co-ordinator designated for this or another jurisdiction), that notice must include a statement to the effect that:

- (a) subject to the *Administrative Appeals Tribunal Act 1975*, application may be made by or on behalf of a person whose interests are affected by the decision to the Administrative Appeals Tribunal for review of the decision to which the notice relates; and
- (b) unless subsection 28(4) of that Act applies, application may be made in accordance with section 28 of that Act by or on behalf of a person whose interests are affected by the decision for a statement in writing setting out the findings on material questions of fact, referring to the evidence or other material on which those findings were based and giving the reasons for the decision.

(2) Any failure to comply with a requirement of subsection (1) in relation to a decision does not affect the validity of the decision.

**Documents and samples become property of NRA**

**169.** When a document or sample is given to the NRA for any purpose of this Code, it becomes the property of the NRA.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

**Provisions relating to offences**

**170.(1)** Offences against subsections 162(1), (8) and (9) and subsection 163(1) are indictable offences.

(2) All other offences against this Code are summary offences.

(3) A provision of this Code relating to indictable offences or summary offences is taken to refer to bodies corporate as well as to individuals.

(4) If an individual is convicted of an indictable offence against this Code, the court may, if the court thinks it appropriate in all the circumstances of the case, impose, instead of, or in addition to, a penalty of imprisonment, a monetary penalty not greater than the number of penalty units worked out using the formula:

$$\text{Term of Imprisonment} \times 5$$

where:

“**Term of Imprisonment**” means the number of months in the maximum term of imprisonment by which the offence is punishable.

(5) If a body corporate is convicted of an offence against this Code, the court may, if the court thinks fit, impose a monetary penalty not greater than 5 times the amount of the maximum monetary penalty that could be imposed by the court on an individual convicted of the same offence.

**PART 11—TRANSITIONAL PROVISIONS**

**Explanation of Part**

**171.** This Part contains provisions that continue in force, under the Agvet Code of this jurisdiction, certain existing clearances, registrations, approvals and permits and certain pending applications, reconsiderations and proceedings.

**Existing clearance for registration of chemical product**

**172.(1)** If:

- (a) immediately before the commencement of the Agvet Code of this jurisdiction:
  - (i) a clearance for registration that the NRA granted under section 15 of the repealed Act in respect of a chemical product was in force; and
  - (ii) the product was not registered by a previous registering authority of this jurisdiction; and
- (b) a label for containers for the product becomes approved under that Code;

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

the following subsections apply.

(2) The product is taken to be registered by the NRA under section 20 of that Code when the label becomes approved and to be so registered subject to the conditions (if any) to which the clearance was subject.

(3) The person who applied for the clearance is taken to be the person who applied for the registration.

**Pending application for clearance for registration of chemical product**

**173. If:**

- (a) before the commencement of the Agvet Code of this jurisdiction an application for the clearance for registration of a chemical product was duly made to the NRA under section 12 of the repealed Act but had not been disposed of by the NRA; and
- (b) the product was not registered before that commencement by a previous registering authority of this jurisdiction;

the following paragraphs apply:

- (c) the application is taken to be an application for the registration of the product duly made upon that commencement to the NRA under section 10 of that Code;
- (d) any sample, particulars of trials or laboratory experiments or other information given to the NRA under a provision of the repealed Act in connection with the application is taken to have been given to the NRA under the provision of that Code that corresponds to that provision of the repealed Act.

**Existing registration of chemical product**

**174.(1)** If, immediately before the commencement of the Agvet Code of this jurisdiction, a chemical product was registered by the previous registering authority of this jurisdiction and a label in relation to, or in relation to containers for, that product was also registered or approved by that authority, the following paragraphs apply:

- (a) the product is taken to have been registered by the NRA under section 20 of that Code upon that commencement subject to the conditions (if any) to which its registration by that previous registering authority was subject;

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (b) the person who applied for the registration of the product by the previous registering authority or, if that registration was renewed, the person who applied for the renewal or the last renewal, as the case may be, is taken to be the person who applied for the registration of the product under that Code;
- (c) the label is taken to have been approved in relation to the product by the NRA under section 21 of that Code upon that commencement:
  - (i) for the containers for which it was registered or approved by that previous registering authority or, if it was not registered or approved for containers, for all containers for the product; and
  - (ii) subject to the conditions (if any) to which its registration or approval by that previous registering authority was subject.

**(2) If:**

- (a) immediately before the commencement of the Agvet Code of this jurisdiction, the supply of a chemical product that was not registered by the previous registering authority of this jurisdiction was permitted in this jurisdiction, either unconditionally or subject to conditions, because the product was registered by the previous registering authority of another jurisdiction; and
- (b) a label for containers for the product becomes approved under that Code;

the following paragraphs apply:

- (c) if the supply of the product was permitted unconditionally—the product is taken to be registered by the NRA under section 20 of that Code when the label becomes approved;
- (d) if its supply was permitted subject to conditions—the product is taken to be so registered subject to those conditions;
- (e) the person who applied for the registration of the product by the previous registering authority of the other jurisdiction or, if that registration was renewed, the person who applied for the renewal or the last renewal, as the case may be, is taken to be the person who applied for the registration of the product under that Code.

**(3) If, immediately before the commencement of the Agvet Code of this jurisdiction:**

- (a) a chemical product was registered by the previous registering authority of this jurisdiction; but
- (b) it was unlawful under the law of this jurisdiction to supply the product;

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

the product is taken for the purposes of this section not to have been so registered immediately before that commencement.

**Pending application for registration of chemical product**

**175.(1)** If:

- (a) before the commencement of the Agvet Code of this jurisdiction an application for the registration of a chemical product was duly made to the previous registering authority of this jurisdiction but had not been disposed of by that authority; and
- (b) subject to subsection (2), immediately before that commencement the product was registered by a previous registering authority of another jurisdiction;

the application is taken to be an application for the registration of the product duly made upon that commencement to the NRA under section 10 of that Code.

(2) If the NRA directs that paragraph (1)(b) is not to apply in respect of a particular chemical product, subsection (1) applies in relation to that product as if that paragraph were omitted.

**Existing registration or approval of label**

**176.(1)** If, immediately before the commencement of the Agvet Code of this jurisdiction:

- (a) no provision was made by the corresponding previous law of this jurisdiction for the registration of chemical products; but
- (b) a label in relation to, or in relation to containers for, a chemical product was registered or approved by the previous registering authority of this jurisdiction;

then, upon that commencement, the following paragraphs apply:

- (c) the product is taken to have been registered unconditionally by the NRA under section 20 of that Code;
- (d) the label is taken to have been approved in relation to the product by the NRA under section 21 of that Code:
  - (i) for the containers for which it was registered or approved by that previous registering authority or, if it was not registered or approved for containers, for all containers for the product; and
  - (ii) subject to the conditions (if any) to which its registration or approval by that authority was subject.

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(2) If, immediately before the commencement of the Agvet Code of this jurisdiction, a label in relation to, or in relation to containers for, a chemical product was registered or approved by the previous registering authority of this jurisdiction, the label is taken to have been approved in relation to the product by the NRA under section 21 of that Code upon that commencement:

- (a) for the containers for which it was registered or approved by that previous registering authority or, if it was not registered or approved for containers, for all containers for the product; and
- (b) subject to the conditions (if any) to which its registration or approval by that authority was subject.

**Pending application for registration or approval of label**

**177.(1) If:**

- (a) before the commencement of the Agvet Code of this jurisdiction, an application for the registration or approval of a label in relation to, or in relation to containers for, a chemical product was duly made to the previous registering authority of this jurisdiction but had not been disposed of by that previous registering authority; and
- (b) immediately before that commencement:
  - (i) no provision was made by the corresponding previous law of this jurisdiction for the registration or approval of chemical products; and
  - (ii) the product was registered by a previous registering authority of another jurisdiction;

the following paragraphs apply:

- (c) the application is taken to be an application for the registration of the product duly made upon that commencement to the NRA under section 10 of that Code;
- (d) subject to subsection (3), the application is also taken to be an application for the approval of the label duly made upon that commencement to the NRA under that section.

(2) If:

- (a) before the commencement of the Agvet Code of this jurisdiction, an application for the registration or approval of a label in relation to, or in relation to containers for, a chemical product was duly made to the previous registering authority of this jurisdiction but had not been disposed of by that authority; and
- (b) subject to subsection (3), immediately before that commencement the label was registered or approved by a previous registering authority of another jurisdiction;



*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

the application is taken to be an application for the approval of the label duly made upon that commencement to the NRA under section 10 of that Code.

(3) If the NRA directs that paragraph (1)(d) or (2)(b) is not to apply in respect of a particular label, this section applies in relation to that label as if that paragraph were omitted.

**Provisions that apply in respect of existing registrations or approvals**

**178.(1)** If a chemical product is taken by section 172 or 174 or subsection 176(1) of the Agvet Code of this jurisdiction to have been registered under that Code:

- (a) the NRA may, but does not have to, do either or both of the following:
  - (i) give a distinguishing number to the product;
  - (ii) enter the relevant particulars in the Register of Chemical Products; and
- (b) paragraph 167(1)(b) of that Code has effect as if the registration of the product that is taken to be effected by section 172 or 174 or subsection 176(1) of that Code resulted from a decision by the NRA under Division 2 of Part 2 of that Code to register the product subject to the conditions to which its registration is taken to be subject by that section.

(2) If a label for containers for a chemical product is taken by section 176 of the Agvet Code of this jurisdiction to have been approved under that Code, the NRA may, but does not have to, do either or both of the following:

- (a) give a distinguishing number to the label;
- (b) record the relevant particulars in the relevant NRA file.

**Pending application for variation of conditions**

**179.** If:

- (a) before the commencement of the Agvet Code of this jurisdiction an application for the variation of the conditions to which a clearance for registration in respect of a chemical product was subject under the repealed Act was duly made to the NRA under section 13 of that Act but had not been disposed of by the NRA; and
- (b) the product is taken by section 172 or 174 of that Code to have been registered by the NRA subject to those conditions;

the following paragraphs apply:

- (c) the application is taken to be an application duly made to the NRA under section 27 of that Code for the variation of the conditions to which the registration of the product is taken to be subject because of section 172 or 174 of that Code;

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (d) any particulars of trials or laboratory experiments or other information given to the NRA under a provision of the repealed Act in connection with the application are taken to have been given to the NRA under the provision of that Code that corresponds to that provision of the repealed Act.

**Reconsideration of existing clearances for registration**

**180. If:**

- (a) before the commencement of the Agvet Code of this jurisdiction, the NRA had, under section 17 of the repealed Act, informed the person holding a certificate of clearance for registration issued in respect of a chemical product that it proposed to reconsider the grant of the clearance, but the NRA had not completed its reconsideration; and
- (b) the product is taken by section 172 or 174 of that Code to have been registered by the NRA subject to conditions;

the following paragraphs apply:

- (c) any notice that the NRA has given to the person under subsection 17(1) of the repealed Act in respect of its proposed reconsideration of the clearance is taken to have been a notice of a proposed reconsideration of the registration that the NRA has duly given, with any necessary changes, under subsection 32(2) of that Code as if that Code had been in force when the notice was given;
- (d) any particulars of trials or laboratory experiments or other information given to the NRA by the person to whom the notice was given is taken to have been given by the person to the NRA under section 33 of that Code.

**Existing permit**

**181.(1) If:**

- (a) immediately before the commencement of the Agvet Code of this jurisdiction, there was in force a permit or other instrument issued by the previous registering authority of this jurisdiction in respect of an active constituent for a proposed or existing chemical product or in respect of a chemical product; and
- (b) the permit or other instrument authorised persons generally, or a person or class of persons, to do or omit to do any thing the doing of which, or the omission to do which, after that commencement would, apart from this section, be an offence against section 74, 75, 76, 77, 78, 79, 80, 81, 84, 85, 87 or 91 of that Code or against an eligible law of this jurisdiction;

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE**—continued

the following subsections apply.

(2) The permit or other instrument, to the extent that it authorises a person to do or omit to do that thing, is taken to be a permit that the NRA has issued under section 114 of that Code upon that commencement subject to the conditions (if any) to which it was subject immediately before that commencement.

(3) The person who applied for the permit or other instrument is taken to be the person who applied for the permit under that Code.

**Pending application for permit**

**182.** If:

- (a) before the commencement of the Agvet Code of this jurisdiction, an application for a permit under a corresponding previous law in respect of an active constituent for a proposed or existing chemical product, or in respect of a chemical product, was duly made to the previous registering authority of this jurisdiction but had not been disposed of by that authority; and
- (b) the application was for a permit to do or omit to do something which, if such a permit were not granted under that Code, would be:
  - (i) an offence against section 74, 75, 76, 77, 78, 79, 80, 81, 84, 85, 87 or 91 of that Code; or
  - (ii) an offence against an eligible law of this jurisdiction;

the application is taken to be an application for such a permit duly made upon that commencement to the NRA under section 110 of that Code.

**Pending proceedings before Administrative Appeals Tribunal**

**183.(1)** If, before the commencement of the Agvet Code of this jurisdiction, an application had been duly made under the repealed Act to the Administrative Appeals Tribunal for review of a decision by the NRA under that Act in respect of a chemical product but the application had not been disposed of by the Tribunal, the following provisions apply.

(2) If the application to the Tribunal was made under paragraph 41(1)(b) of the repealed Act for the review of a decision by the NRA under section 15 of that Act to refuse an application for clearance of the product:

- (a) the application for clearance of the product is taken to have been an application made under section 10 of the Agvet Code of this jurisdiction for registration of the product; and

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

- (b) the NRA's decision to refuse the application for clearance of the product is taken to have been a decision by the NRA under Division 2 of Part 2 of that Code to refuse the application for registration of the product; and
- (c) the application to the Tribunal is taken to have been an application duly made under paragraph 167(1)(a) of that Code for review of that decision by the NRA to refuse the application for registration of the product; and
- (d) the Tribunal is to continue to deal with the application for review accordingly.

**(3) If:**

- (a) the application to the Tribunal was made under paragraph 41(1)(a) of the repealed Act for the review of a decision by the NRA under section 15 of that Act to grant clearance of the product subject to particular conditions; and
- (b) the product is taken by section 172 or 174 of the Agvet Code of this jurisdiction to have been registered by the NRA subject to those conditions;

the application is taken to have been an application duly made under paragraph 167(1)(b) of that Code for review of a decision of the NRA under Division 2 of Part 2 of that Code to register the product subject to those conditions and the Tribunal is to continue to deal with the application accordingly.

**(4) If:**

- (a) the application to the Tribunal was made under paragraph 41(1)(c) of the repealed Act for the review of a decision that the NRA has made under section 16 of that Act to refuse an application to vary the conditions to which clearance of the product was subject; and
- (b) the product is taken by section 172 or 174 of the Agvet Code of this jurisdiction to have been registered by the NRA subject to those conditions;

the following paragraphs apply:

- (c) the application to vary the conditions of the clearance of the product is taken to have been an application made under section 27 of that Code for the variation of conditions of the registration of the product;

*Agricultural and Veterinary Chemicals Code*  
*No. 47, 1994*

**SCHEDULE—continued**

(d) the application to the Tribunal is taken to have been an application duly made under paragraph 167(1)(d) of that Code for review of a decision by the NRA under Division 3 of Part 2 of that Code to refuse the application for the variation of conditions of the registration of the product;

(e) the Tribunal is to deal with the application for review accordingly.

**(5) If:**

(a) the application to the Tribunal was made under paragraph 41(1)(e) of the repealed Act for the review of a decision that the NRA made under section 17 of that Act to vary the conditions to which the clearance of the product was subject; and

(b) the product is taken by section 172 or 174 of the Agvet Code of this jurisdiction to have been registered by the NRA subject to those conditions;

the following paragraphs apply:

(c) the product is taken to have had those conditions varied by the NRA under subsection 29(1) of that Code;

(d) the application to the Tribunal is taken to have been an application duly made under paragraph 167(1)(e) of that Code for review of the decision by the NRA to vary those conditions;

(e) the Tribunal is to deal with the application for review accordingly.

**Existing notices requiring further information or samples**

**184.** If, before the commencement of the Agvet Code of this jurisdiction:

(a) the NRA duly gave a notice to a person, under section 14 of the repealed Act, in respect of a chemical product to which section 173 or 179 of that Code applies; or

(b) a previous registering authority of this jurisdiction duly gave a notice to a person, under a provision of the law of this jurisdiction to which section 159 of that Code corresponds, in respect of a chemical product to which section 174 of that Code applies or in respect of a label to which section 176 of that Code applies;

and the person had not complied with the notice before that commencement, the notice is taken to have been a notice duly given to that person by the NRA under section 159 of that Code in respect of that product or label, as the case may be, as if that Code had been in force when the notice was given.

*Agricultural and Veterinary Chemicals Code  
No. 47, 1994*

*[Minister's second reading speech made in—  
House of Representatives on 16 December 1993  
Senate on 8 February 1994]*