



Agricultural and Veterinary Chemicals (Administration) Amendment Act 2007

No. 90, 2007

**An Act to amend the *Agricultural and Veterinary
Chemicals (Administration) Act 1992*, and for
related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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**An Act to amend the *Agricultural and Veterinary
Chemicals (Administration) Act 1992*, and for
related purposes**

[Assented to 22 June 2007]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Agricultural and Veterinary
Chemicals (Administration) Amendment Act 2007*.

Agricultural and Veterinary Chemicals (Administration) Amendment Act 2007 No. 90, 2007

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2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	22 June 2007
2. Schedules 1 and 2	Either: (a) if this Act receives the Royal Assent on or before 1 July 2007—1 July 2007; or (b) otherwise—on a day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	1 July 2007 (paragraph (a) applies)

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Agricultural and Veterinary Chemicals (Administration) Act 1992

1 Section 4

Insert:

Advisory Board means the Advisory Board of the APVMA established by section 14.

2 Section 4

Insert:

Board member means a member of the Advisory Board appointed in accordance with section 17 (including the Chair).

3 Section 4

Insert:

Chair means the Chair of the Advisory Board.

4 Section 4 (definition of *Chairperson*)

Repeal the definition.

5 Section 4

Insert:

Chief Executive Officer means the Chief Executive Officer appointed in accordance with section 33.

6 Section 4 (definition of *Deputy Chairperson*)

Repeal the definition.

7 Section 4 (definition of *director*)

Repeal the definition.

8 Section 4 (paragraph (a) of the definition of *member of the staff*)

Repeal the paragraph, substitute:

- (a) a person referred to in subsection 45(1); or

9 At the end of subsection 7(3)

Add:

Note: Paragraph (a)—the Chief Executive Officer may also enter into contracts on behalf of the Commonwealth. See section 44 of the *Financial Management and Accountability Act 1997*.

10 After section 7

Insert:

7AA APVMA's assets are Commonwealth assets

- (1) Any real or personal property held by the APVMA is held for and on behalf of the Commonwealth.
- (2) Any money received by the APVMA is received for and on behalf of the Commonwealth.
- (3) The APVMA cannot hold real or personal property on trust.

Note: The Commonwealth may hold real or personal property or money on trust.

- (4) To avoid doubt, paragraph 7(3)(b) is subject to subsection (3) of this section.
- (5) To avoid doubt, a right to sue is taken not to be personal property for the purposes of subsection (1).

7AB APVMA's liabilities are Commonwealth liabilities

- (1) Any financial liabilities of the APVMA are taken to be liabilities of the Commonwealth.
- (2) In this section:

financial liability means a liability to pay a person an amount if the amount, or the method for working out the amount, has been determined.

11 At the end of section 8

Add:

- (3) To avoid doubt, the APVMA does not consult the Advisory Board for the purposes of this section when the Chief Executive Officer requests advice from the Board.

12 Paragraph 10(2)(c)

Omit “Chairperson”, substitute “Chief Executive Officer”.

13 Subsection 10(5)

Repeal the subsection, substitute:

- (5) A direction under subsection (1) is not a legislative instrument.

14 After section 10

Insert:

10A Chief Executive Officer not subject to direction on certain matters

To avoid doubt, section 10 does not empower the Minister to direct the Chief Executive Officer in relation to the Chief Executive Officer’s performance of functions, or exercise of powers, under the *Financial Management and Accountability Act 1997* or as an Agency Head under the *Public Service Act 1999*.

15 Paragraph 11(1)(a)

Repeal the paragraph.

16 Part 3 (heading)

Repeal the heading, substitute:

Part 3—Constitution of APVMA and Advisory Board

17 Before section 12

Insert:

Division 1—Constitution of APVMA

18 Subsection 12(1) (note)

Repeal the note.

19 Section 13

Repeal the section, substitute:

13 Constitution of APVMA

- (1) The APVMA consists of the Chief Executive Officer.
- (2) The performance of a function or the exercise of a power of the APVMA is not affected by a vacancy in the office of the Chief Executive Officer.

20 After section 13

Insert:

Division 2—The Advisory Board

21 Sections 14 to 19

Repeal the sections, substitute:

14 Establishment

The Advisory Board of the APVMA is established by this section.

15 Membership

The Advisory Board consists of up to 9 Board members.

16 Function of Advisory Board

- (1) The Advisory Board's function is, either on its own initiative or at the request of the Chief Executive Officer, to provide advice and make recommendations to the Chief Executive Officer in relation to the performance of a function or the exercise of a power of the APVMA.
- (2) The Advisory Board has power to do all things necessary or convenient to be done for or in connection with the performance of its function.

- (3) To avoid doubt, the Advisory Board cannot give any directions to the Chief Executive Officer.

Division 3—Appointment etc. of members of Advisory Board

17 Appointment

- (1) A Board member is to be appointed by the Minister by written instrument, on a part-time basis.
- (2) When appointing Board members, the Minister must ensure that:
- (a) two Board members have experience in the regulation, under State or Territory law, of chemical products; and
 - (b) one Board member has experience in the agricultural chemical industry; and
 - (c) one Board member has experience in the veterinary chemical industry; and
 - (d) one Board member has experience in primary production; and
 - (e) one Board member has experience in environmental toxicology, including knowledge of the effect of chemicals in ecosystems; and
 - (f) one Board member has experience in protecting consumer interests; and
 - (g) one Board member has experience in public health and occupational health and safety; and
 - (h) if the Minister considers it necessary—one Board member has experience in a field relevant to the APVMA's functions.
- (3) The Minister must appoint one of the Board members to be the Chair.
- (4) The Minister must consult the Chief Executive Officer before appointing a person as a Board member or as the Chair.
- (5) A person's appointment as a Board member is not invalid because of a defect or irregularity in connection with the person's appointment.

18 Term of appointment

A Board member holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.

Note: A Board member is eligible for reappointment: see subsection 33(4A) of the *Acts Interpretation Act 1901*.

19 Remuneration and allowances

- (1) A Board member is to be paid such remuneration as is determined by the Remuneration Tribunal. If no determination of that remuneration is in operation, the Board member is to be paid such remuneration as is prescribed.
- (2) A Board member is to be paid the allowances that are prescribed.
- (3) If a person who is a Board member:
 - (a) is a member of the Parliament of a State; or
 - (b) is a candidate for election to the Parliament of a State and, under the law of the State, would not be eligible to be elected as a member of that Parliament if the person were entitled to remuneration or allowances under this Act; or
 - (c) is in service or employment of a State, or of an authority of a State, on a full-time basis; or
 - (d) holds or performs the duties of an office or position established by or under a law of a State on a full-time basis; the person must not be paid remuneration or allowances under this Act, but is to be reimbursed the expenses that the person reasonably incurs in performing duties under this Act.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.
- (5) In this section:

Parliament of a State:

- (a) in relation to the Australian Capital Territory—means the Legislative Assembly for the Australian Capital Territory; or
- (b) in relation to the Northern Territory—means the Legislative Assembly of the Northern Territory.

State includes the Australian Capital Territory and the Northern Territory.

22 Section 20

Repeal the section.

23 Section 21

Repeal the section, substitute:

21 Leave of absence

- (1) The Minister may grant leave of absence to the Chair on the terms and conditions that the Minister determines.
- (2) The Chair may grant leave of absence to another Board member on the terms and conditions that the Chair determines.

24 Section 22

Repeal the section, substitute:

22 Resignation

- (1) A Board member may resign by giving to the Minister a signed notice of resignation.
- (2) The Chair may resign his or her appointment as the Chair without resigning his or her appointment as a Board member.

25 Sections 23 and 24

Repeal the sections, substitute:

23 Standing obligation to disclose interests

- (1) A Board member must give written notice to the Minister of any direct or indirect financial interest that the member has if that interest could conflict with the proper performance of the Advisory Board's function. Notice is required whether or not there is any particular matter under consideration that gives rise to an actual conflict of interest.
- (2) For the purposes of subsection (1), it does not matter whether the interest is acquired before or after the Board member's appointment.

- (3) The notice must be given to the Minister as soon as practicable after the Board member becomes aware of the potential for conflict of interest.

24 Termination of appointment

The Minister may terminate the appointment of a Board member.

26 Section 25

Omit “director”, substitute “Board member”.

27 After section 25

Insert:

Division 4—Advisory Board procedures

28 Sections 26 and 27

Repeal the sections, substitute:

26 Meetings between the Chief Executive Officer and the Advisory Board

Holding meetings

- (1) The Chief Executive Officer must hold such meetings with the Advisory Board as are necessary for the efficient performance of the APVMA’s functions.
- (2) Meetings are to be held at the times and places that the Chief Executive Officer determines.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone, etc.

Presiding at meetings

- (3) The Chief Executive Officer, or a person directed by the Chief Executive Officer, is to preside at meetings.

Procedure of meetings

- (4) The Chief Executive Officer may determine the procedure to be followed at or in relation to meetings, including matters with respect to:
 - (a) holding meetings; and
 - (b) the quorum for meetings (including requirements that particular Board members be present); and
 - (c) regulating the way in which meetings are conducted.
- (5) The Chief Executive Officer must ensure that minutes of meetings are kept.

Attendance by the Secretary

- (6) The Secretary, or a person authorised by the Secretary, may attend meetings.

Attendance by non-Board members

- (7) The Chief Executive Officer may invite a person, other than a Board member or the Secretary, to attend a meeting for the purpose of advising or informing it on any matter and may pay expenses incurred by the person in attending the meeting.

Disclosure of interest by a Board member

- (8) If a Board member has a direct or indirect financial interest in a matter being considered, or about to be considered, at the meeting, being an interest that could conflict with the proper performance of the Advisory Board's function, then the Board member must disclose that interest to the Chief Executive Officer as soon as practicable.

Disclosure to be recorded in the minutes of the meeting

- (9) Any disclosure under subsection (8), and any decision made by the Chief Executive Officer in relation to the disclosure, must be recorded in the minutes of the meeting.

Hearings held by the APVMA

- (10) Subsections (1) to (4) apply to a hearing held by the APVMA as if it were a meeting held by the Chief Executive Officer with the Advisory Board.

27 Meetings of the Advisory Board

Holding meetings

- (1) The Chair of the Advisory Board may hold such meetings of the Advisory Board as are necessary for the efficient performance of the Advisory Board's function.

Procedure of meetings

- (2) Subject to subsection (4), the Chief Executive Officer may, by writing, determine matters relating to the operation of the Advisory Board.
- (3) Subject to subsection (4), if no determination is in force for the purposes of subsection (2), the Advisory Board may operate in the way it determines.
- (4) The Chair must ensure that minutes of meetings are kept.

Disclosure of interest by a Board member

- (5) If a Board member has a direct or indirect financial interest in a matter being considered, or about to be considered, at a meeting, being an interest that could conflict with the proper performance of the Advisory Board's function, then the Board member must disclose that interest to the other Board members as soon as practicable.

Disclosure to be recorded in the minutes of the meeting

- (6) Any disclosure under subsection (5), and any decision made by the Board in relation to the disclosure, must be recorded in the minutes of the meeting.

Attendance by Chief Executive Officer

- (7) The Chair of the Advisory Board may invite the Chief Executive Officer to attend all or part of an Advisory Board meeting.

Determination not a legislative instrument

- (8) A determination made under subsection (2) is not a legislative instrument.

29 Before section 28

Insert:

Division 5—Committees

30 Subsection 28(2)

Omit “directors”, substitute “Board members”.

31 After section 29

Insert:

29A Remuneration and allowances of committee members

- (1) A member of a committee (other than a Board member) is to be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination is in operation, the member is to be paid such remuneration as is prescribed.
- (2) A member of a committee (other than a Board member) is to be paid such allowances as are prescribed.
- (3) If a person who is a member of a committee:
- (a) is a member of the Parliament of a State; or
 - (b) is a candidate for election to the Parliament of a State and, under the law of the State, would not be eligible to be elected as a member of that Parliament if the person were entitled to remuneration or allowances under this Act; or
 - (c) is in service or employment of a State, or of an authority of a State, on a full-time basis; or
 - (d) holds or performs the duties of an office or position established by or under a law of a State on a full-time basis;

the person must not be paid remuneration or allowances under this Act, but is to be reimbursed the expenses that the person reasonably incurs in performing duties under this Act.

- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.
- (5) In this section:

Parliament of a State:

- (a) in relation to the Australian Capital Territory—means the Legislative Assembly for the Australian Capital Territory; or
- (b) in relation to the Northern Territory—means the Legislative Assembly of the Northern Territory.

State includes the Australian Capital Territory and the Northern Territory.

32 Section 30

Omit “Chairperson of the APVMA”, substitute “Chief Executive Officer”.

33 Subsections 32(1) and (2)

Repeal the subsections, substitute:

- (1) The Chief Executive Officer is to manage the affairs of the APVMA and in doing so, may exercise any of the powers and perform any of the functions of the APVMA.

34 After section 32

Insert:

32A Working with the Advisory Board

- (1) In managing the affairs of the APVMA, the Chief Executive Officer must have regard to the advice and recommendations given to him or her by the Advisory Board (whether or not the advice and recommendations were given in response to a request).
- (2) The Chief Executive Officer must:
- (a) keep the Advisory Board informed of the performance of the APVMA’s functions; and

- (b) give the Advisory Board such reports, documents and information in relation to the APVMA's functions as the Chair of the Advisory Board requires for the performance of the Advisory Board's function.
- (3) The Chief Executive Officer may attend Advisory Board meetings if invited by the Chair of the Advisory Board to do so.

35 Section 33

Repeal the section, substitute:

33 Appointment

- (1) The Chief Executive Officer is to be appointed by the Minister by written instrument, on a full-time basis.
- (2) A Board member is not eligible for appointment as the Chief Executive Officer.
- (3) The appointment of a person as Chief Executive Officer is not invalid because of a defect or irregularity in connection with the person's appointment.

36 Section 34

Omit "APVMA", substitute "Minister".

37 Sections 35 and 36

Repeal the sections, substitute:

35 Remuneration and allowances

- (1) The Chief Executive Officer is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Chief Executive Officer is to be paid the remuneration that is determined by the Minister in writing.
- (2) The Chief Executive Officer is to be paid the allowances that are determined by the Minister in writing.
- (3) Subsections (1) and (2) have effect subject to the *Remuneration Tribunal Act 1973*.

38 Section 37

Omit “APVMA with the written approval of the Minister”, substitute “Minister in writing”.

39 Section 38

Omit “APVMA”, substitute “Minister”.

40 Section 40

Repeal the section, substitute:

40 Leave of absence for other purposes

The Minister may grant to the Chief Executive Officer leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines in writing.

41 Section 41

Omit “Chairperson”, substitute “Minister”.

42 After section 41

Insert:

41A Termination of appointment

The Minister may terminate the appointment of the Chief Executive Officer:

- (a) for misbehaviour or physical or mental incapacity; or
- (b) if the Chief Executive Officer:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
- (c) if the Chief Executive Officer is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

- (d) if the Chief Executive Officer engages, except with the Minister's approval, in paid employment outside the duties of his or her office; or
- (e) if the Chief Executive Officer fails, without reasonable excuse, to comply with section 42; or
- (f) if the Minister is satisfied that the Chief Executive Officer's performance has been unsatisfactory.

43 Section 42

Omit "Chairperson", substitute "Minister".

44 Subsections 43(1) to (3)

Repeal the subsections, substitute:

- (1) The Minister may appoint a person to act as Chief Executive Officer:
 - (a) during a vacancy in the office of Chief Executive Officer, whether or not an appointment has previously been made to that office; or
 - (b) during any period, or during all periods, when the Chief Executive Officer is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office of Chief Executive Officer.

45 Part 5 (heading)

Repeal the heading, substitute:

Part 5—Staff and consultants

46 Section 45

Repeal the section, substitute:

45 Staff

- (1) The staff of the APVMA are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Chief Executive Officer and the staff of the APVMA together constitute a Statutory Agency; and

- (b) the Chief Executive Officer is the Head of that Statutory Agency.

47 Sections 48 and 49

Repeal the sections.

48 Sections 50 to 54

Repeal the sections, substitute:

50 Development of corporate plan

- (1) The APVMA must develop, and prepare in written form, a corporate plan, for the period specified in the plan, that:
- (a) defines the principal objectives of the APVMA in performing its functions during that period; and
 - (b) gives a broad outline of the strategies to be pursued by the APVMA to achieve those objectives.
- (2) A corporate plan is to relate to a period beginning on the 1 July immediately following the end of the period to which the previous plan related.

51 Approval of corporate plan

- (1) The APVMA must give a copy of the corporate plan to the Minister for approval on or before:
- (a) 1 June in each calendar year; or
 - (b) a later day in a particular calendar year, as allowed by the Minister.
- (2) However, the APVMA is not required to give a copy of the corporate plan to the Minister for approval in a calendar year if:
- (a) the first year to which the plan would relate is a year to which a previous corporate plan is in force; and
 - (b) the Minister determines, at the request of the APVMA, that this subsection applies for the calendar year.
- (3) The plan comes into force on:
- (a) the day on which it is approved by the Minister; or
 - (b) the first day of the period to which it relates;
- whichever is the later.
-

52 Variation of corporate plans

- (1) The APVMA may, at any time, review a corporate plan, whether or not it has come into force, and consider whether a variation to the plan is necessary.
- (2) The APVMA may, with the approval of the Minister, vary a corporate plan.
- (3) The Minister may, at any time, request the APVMA to vary a corporate plan, whether or not it has come into force.
- (4) If the Minister requests a variation of a corporate plan, the APVMA must, with the approval of the Minister, vary the plan accordingly.
- (5) If a variation of a corporate plan is approved by the Minister after the plan has come into force, the plan as so varied continues in force on and after the day on which the variation is so approved.
- (6) Despite subsection (2), the APVMA may vary a corporate plan without the approval of the Minister if the variation is of a minor nature. The variation takes effect on the day on which it is made.
- (7) If the APVMA makes a variation of a minor nature, the APVMA must inform the Minister of the variation as soon as practicable after making it.

49 Paragraph 55(2)(b)

Omit “and”.

50 Paragraph 55(2)(c)

Repeal the paragraph.

51 Subsection 57(1)

Omit “Sections 52, 53 and 54 apply”, substitute “Section 52 applies”.

52 Part 7

Repeal the Part, substitute:

Part 7—Finance and reporting requirements

Division 1—Australian Pesticides and Veterinary Medicines Special Account

58 Australian Pesticides and Veterinary Medicines Special Account

- (1) The Australian Pesticides and Veterinary Medicines Special Account is established by this section.
- (2) The Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

59 Credits to the Account

There must be credited to the Account amounts equal to the following:

- (a) all money appropriated by the Parliament for the purposes of the Account;
- (b) fees received by the Commonwealth under this Act, under the *Agricultural and Veterinary Chemicals Act 1988* or under the Agvet Codes or Agvet Regulations;
- (c) any amounts of levy, late payment penalty or understatement penalty paid to the Commonwealth under any Act providing for the collection of a levy imposed in respect of the disposal of chemical products;
- (d) any amounts paid by a State to the Commonwealth for the purposes of the APVMA;
- (e) money received by the APVMA in relation to property paid for with money from the Account;
- (f) amounts of any gifts given or bequests made for the purposes of the Account.

Note: An Appropriation Act provides for amounts to be credited to a Special Account if any of the purposes of the Account is a purpose that is covered by an item in the Appropriation Act.

60 Purposes of the Account

- (1) This section sets out the purposes of the Account.
-

- (2) Amounts standing to the credit of the Account may be debited for the following purposes:
- (a) to pay or discharge the costs, expenses or other obligations incurred by the APVMA in the performance of its functions;
 - (b) in payment of any remuneration and allowances payable to any person under this Act;
 - (c) in making any other payments that the APVMA is authorised or required to make by or under this Act or any other law of the Commonwealth or any law of a State or Territory that is expressed to confer functions or powers on the APVMA.

Note: See section 21 of the *Financial Management and Accountability Act 1997*.

Division 2—Reporting requirements

61 Annual report

Annual report to be given to Minister

- (1) The APVMA must, as soon as practicable after 30 June in each financial year, prepare and give to the Minister a report (an **annual report**) on the APVMA's operations during that year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains provisions about annual reports.

Contents of annual report

- (2) The APVMA must include in the report the following:
- (a) an assessment of the extent to which its operations during the year to which the report relates have contributed:
 - (i) to the objectives set out in the corporate plan applicable to the period; and
 - (ii) to the objectives set out in the annual operational plan that relates to a period corresponding to that year;
 - (b) particulars of:
 - (i) variations (if any) of the corporate plan and the annual operational plan taking effect during that year; and
 - (ii) significant purchases and disposals of real property by the APVMA during that year; and

- (iii) any directions given to the APVMA by the Minister during that year to which subsection 10(3) applies and the impact of the directions on the operations of the APVMA;
- (c) an evaluation of its overall performance during that year against the performance indicators set out in the corporate plan applicable to the period and the annual operational plan that came into force at the beginning of that year;
- (d) the financial statements required by section 49 of the *Financial Management and Accountability Act 1997*;
- (e) an audit report on those statements under section 57 of the *Financial Management and Accountability Act 1997*.

Division 3—Exemption from taxation

62 Exemption from taxation

The APVMA is not subject to taxation under the laws of the Commonwealth or of a State or Territory.

Note: Despite this section, the APVMA may be subject to taxation under certain laws. See, for example, section 177-5 of the *A New Tax System (Goods and Services Tax) Act 1999*.

53 Paragraph 69EP(7)(a)

Omit “director”, substitute “Board member”.

54 Subparagraph 70(1)(a)(i)

Repeal the subparagraph.

55 Paragraph 70(2)(a)

Omit “a director or”.

Schedule 2—Application and transitional provisions

Part 1—Definitions

1 Definitions

In this Schedule:

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

APVMA has the same meaning as in the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

asset means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; or
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective.

assets official, in relation to an asset other than land, means the person or authority who, under a law of the Commonwealth, a State or a Territory, under a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned.

commencement time means the time when this Schedule commences.

director has the same meaning as in the *Agricultural and Veterinary Chemicals (Administration) Act 1992* as in force immediately before this Schedule commences.

financial liability means a liability to pay a person if the amount, or the method for working out the amount, has been determined.

instrument:

- (a) includes:
 - (i) a contract, deed, undertaking or agreement; and
 - (ii) a notice, authority, order or instruction; and
 - (iii) an instrument made under an Act or regulations; but
- (b) does not include an Act.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

land means any legal or equitable estate or interest in real property, whether actual, contingent or prospective.

Schedule 2 Application and transitional provisions

Part 1 Definitions

land registration official, in relation to land, means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

liability means any liability, duty or obligation, whether actual, contingent or prospective.

new law means the *Agricultural and Veterinary Chemicals (Administration) Act 1992* as in force immediately after the commencement time.

old law means the *Agricultural and Veterinary Chemicals (Administration) Act 1992* as in force immediately before the commencement time.

staffing procedures includes procedures and policies, and any actions or decisions taken under or in accordance with those procedures and policies, that relate to recruitment, promotion, performance management, inefficiency, misconduct, forfeiture of position, fitness for duty, loss of essential qualifications, disciplinary action, reviews of or appeals against staffing decisions, transfers, redundancy, resignations, termination of employment, grievance processes and leave.

Part 2—Assets, liabilities and legal proceedings

2 Existing property, money and financial liabilities

- (1) Any real or personal property or any money that is held by the APVMA immediately before the commencement time is taken, at the commencement time, to be held by the APVMA for and on behalf of the Commonwealth.
- (2) Any financial liabilities of the APVMA that exist immediately before the commencement time are taken, at the commencement time, to be liabilities of the Commonwealth.
- (3) Subitems (1) and (2) have effect subject to items 3 and 4 of this Schedule.
- (4) If an amount of money (the *original amount*) is covered by subitem (1), an amount equal to the original amount may be paid out of the Consolidated Revenue Fund, which is appropriated accordingly, for the purpose of the performance of the functions of the APVMA.

3 Vesting of assets held on trust by the APVMA

- (1) This item applies to any assets held on trust by the APVMA immediately before the commencement time.
- (2) At the commencement time, the assets cease to be assets held on trust by the APVMA and become assets held on trust by the Commonwealth, without any conveyance, transfer or assignment. The Commonwealth becomes the APVMA's successor in law in relation to those assets.

4 Vesting of liabilities relating to assets held on trust

- (1) This item applies to the liabilities of the APVMA relating to assets to which item 3 of this Schedule applies.
- (2) At the commencement time, the liabilities cease to be liabilities of the APVMA relating to the assets and become liabilities of the Commonwealth relating to the assets, without any conveyance, transfer or assignment. The Commonwealth becomes the APVMA's successor in law in relation to these liabilities.

5 Certificates relating to vesting of land

- (1) This item applies if:
- (a) any land vests in the Commonwealth under this Schedule; and
 - (b) there is lodged with a land registration official a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the land, whether by reference to a map or otherwise; and
 - (iii) states that the land has become vested in the Commonwealth under this Schedule.

Note: Certificates under paragraph (1)(b) are presumed to be authentic: see item 19 of this Schedule.

- (2) The land registration official may:
- (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
 - (b) deal with, and give effect to, the certificate.

6 Certificates relating to vesting of assets other than land

- (1) This item applies if:
- (a) any asset other than land vests in the Commonwealth under this Schedule; and
 - (b) there is lodged with an assets official a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the asset; and
 - (iii) states that the asset has become vested in the Commonwealth under this Schedule.

Note: Certificates under paragraph (1)(b) are presumed to be authentic: see item 19 of this Schedule.

- (2) The assets official may:
- (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and
 - (b) make such entries in the register as are necessary having regard to the effect of this Schedule.

7 Substitution of parties to proceedings

If any proceedings relating to an asset held on trust, to which the APVMA was a party, were pending in any court or tribunal immediately before the commencement time, the Commonwealth is substituted for the APVMA, from the commencement time, as a party to the proceedings.

Part 3—Staffing matters

8 Directors of the APVMA

A person who is a director of the APVMA immediately before the commencement time ceases, immediately after the commencement time, to hold office as such a director by force of this item.

9 Chief Executive Officer

- (1) The person holding office as the Chief Executive Officer under section 33 of the old law immediately before the commencement time is taken to have been duly appointed as the Chief Executive Officer by the Minister under section 33 of the new law:
 - (a) for the balance of the person's term of appointment that remained immediately before the commencement time; and
 - (b) subject to subitems (2) and (3), on the same terms and conditions as applied to the person immediately before the commencement time.
- (2) Section 36 of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*, as repealed by Schedule 1 to this Act, has effect after the commencement time in relation to the Chief Executive Officer.
- (3) Section 41A of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*, as inserted by Schedule 1 to this Act, has effect after the commencement time in relation to the Chief Executive Officer.

10 Transfer of staff

- (1) The APVMA's staffing procedures that were in effect immediately before the commencement time continue to apply after the commencement time in relation to:
 - (a) processes begun before, but not completed by, the commencement time; and
 - (b) things done by, for or in relation to the APVMA or an employee of the APVMA before the commencement time.
- (2) The regulations may prescribe:

- (a) details relating to how the APVMA's staffing procedures will continue to apply under subitem (1); and
 - (b) other matters of a transitional nature in relation to the transfer of persons:
 - (i) who were employed by the APVMA before the commencement time; and
 - (ii) who will be employed under the *Public Service Act 1999* after the commencement time.
- (3) Subitem (1) and any regulations made under subitem (2) have effect despite the *Public Service Act 1999*.

Part 4—References to, and things done by or in relation to, the directors of the APVMA

11 Operation of laws—things done by, or in relation to, directors of the APVMA

- (1) If, before the commencement time, a thing was done by, or in relation to, the directors of the APVMA, then, for the purposes of the operation of any law after the commencement time, the thing is taken to have been done by, or in relation to, the Chief Executive Officer.
- (2) For the purposes of subitem (1), a thing done before the commencement time under a provision amended by Schedule 1 to this Act has effect from that time as if it were done under that provision as amended. However, this is not taken to change the time at which the thing was actually done.
- (3) The Minister may, by writing, determine that subitem (1):
 - (a) does not apply in relation to a specified thing done by, or in relation to, the directors of the APVMA; or
 - (b) applies as if the reference in that subitem to the Chief Executive Officer were a reference to the Commonwealth.A determination under this subitem has effect accordingly.
- (4) The regulations may provide for a thing specified in a determination under paragraph (3)(a) to be taken to have been done by, or in relation to, a person or body other than the Chief Executive Officer or the Commonwealth.
- (5) To avoid doubt, for the purposes of this item, doing a thing includes making an instrument.
- (6) A determination made under subitem (3) is not a legislative instrument.

12 References in instruments

- (1) If:
 - (a) an instrument is in force immediately before the commencement time; and
 - (b) the instrument contains a reference to the directors of the APVMA;
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the instrument has effect from the commencement time as if the reference to the directors of the APVMA were a reference to the Chief Executive Officer.

- (2) The Minister may, by writing, determine that subitem (1):
- (a) does not apply in relation to a specified reference; or
 - (b) applies as if the reference in that subitem to the Chief Executive Officer were a reference to the Commonwealth.
- A determination under this subitem has effect accordingly.
- (3) The regulations may provide that an instrument containing a reference specified in a determination under paragraph (2)(a) has effect from the commencement time as if the reference were a reference to a person or body other than the Chief Executive Officer or the Commonwealth.
- (4) A determination made under subitem (2) is not a legislative instrument.

Part 5—Reporting requirements and records

13 Reporting requirements

Reports for periods ending after the commencement time

- (1) If:
- (a) immediately before the commencement time, a law required the APVMA or the directors of the APVMA to provide a report (whether financial statements or otherwise) for a period; and
 - (b) the period ends after the commencement time;
- the Chief Executive Officer must provide the report, as required, for so much of the period as occurs before the commencement time.

- (2) If:
- (a) under subitem (1), the Chief Executive Officer is required to provide a report for a part of a period; and
 - (b) the APVMA is also required to provide a similar report for the remainder of the period;
- the Chief Executive Officer may meet the requirements in a single report for the period.

Reports for periods ending before the commencement time

- (3) If:
- (a) a law required the APVMA or the directors of the APVMA to provide a report (whether financial statements or otherwise) for a period that ended before the commencement time; and
 - (b) the report has not been provided by the commencement time;
- the Chief Executive Officer must provide the report as required.

Application of law to Chief Executive Officer

- (4) To avoid doubt, if under this item the Chief Executive Officer is required to provide a report under a law, the law applies to the Chief Executive Officer in respect of the report in the same way as the law would have applied to the APVMA or the directors of the APVMA in respect of the report.
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14 New annual report requirements to apply from 2007-2008 and later financial years

Section 61 of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*, as inserted by Schedule 1 to this Act, applies to the 2007-2008 financial year and later financial years.

15 Access to records

For the purposes of the operation of subsection 27L(4) of the *Commonwealth Authorities and Companies Act 1997* in relation to the books of the APVMA, the reference in that subsection to a Commonwealth authority is to be read, after the commencement time, as a reference to the Chief Executive Officer.

16 Continuing obligation to keep records

Section 20 of the *Commonwealth Authorities and Companies Act 1997* (as in force from time to time) continues to apply after the commencement time in relation to accounting records kept by the APVMA under that section before that time as if the APVMA continued to be subject to that Act.

Part 6—Miscellaneous

17 Exemption from stamp duty and other State or Territory taxes

No stamp duty or other tax is payable under a law of a State or Territory in respect of, or in respect of anything connected with:

- (a) the transfer of an asset or liability under this Schedule; or
- (b) the operation of this Schedule in any other respect.

18 Constitutional safety net—acquisition of property

- (1) If the operation of this Schedule would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

19 Certificates taken to be authentic

A document that appears to be a certificate made or issued under this Schedule:

- (a) is taken to be such a certificate; and
- (b) is taken to have been properly given;

unless the contrary is established.

20 Delegation by Minister

- (1) The Minister may, by writing, delegate all or any of his or her powers and functions under this Schedule to the Chief Executive Officer.
- (2) In exercising or performing powers or functions under a delegation, the Chief Executive Officer must comply with any directions of the Minister.

21 Regulations

- (1) The Governor-General may make regulations prescribing matters:
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- (a) required or permitted by this Schedule to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.
- (2) The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by Schedule 1 to this Act.
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*[Minister's second reading speech made in—
House of Representatives on 10 May 2007
Senate on 12 June 2007]*

(77/07)
