**Explanatory Statement**

Issued by Authority of the Minister for Agriculture, Drought and Emergency Management

*Agricultural and Veterinary Chemicals Code Act 1994*

*Agricultural and Veterinary Chemicals Code Amendment (Cost Recovery) Regulations 2020*

**Legislative Authority**

The *Agricultural and Veterinary Chemicals Code Act 1994* (the Act) contains, as a Schedule, the Agricultural and Veterinary Chemicals Code (Agvet Code). The Agvet Code provides for the evaluation, registration, control and manufacture of agricultural and veterinary chemicals.

Subsection 6(1) of the Act) provides that the Governor‑General may make regulations prescribing matters:

* required or permitted by the Agvet Code to be prescribed by regulations within the meaning of the Agvet Code or
* necessary or convenient to be prescribed by such regulations for carrying out or giving effect to the Agvet Code.

Section 164 of the Agvet Code provides that 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 Australian Pesticides and Veterinary Medicines Authority (APVMA)
* the lodging of a notice under Division 2AA of Part 2 of the Agvet Code (notified variations of the relevant particulars of a registration or approval) or
* the doing of any thing by the APVMA or by an inspector, under the Agvet Code or the *Agricultural and Veterinary Chemicals Code Regulations 1995* (the Code Regulations)—the latter is enabled by the definition of ‘this Code’ in section 3 of the Agvet Code.

The Act does not specify any conditions that need to be satisfied before the power to make the Regulations may be exercised.

**Purpose**

The purpose of the *Agricultural and Veterinary Chemicals Code Amendment (Cost Recovery) Regulations 2020* (the Regulations) is to restore the APVMA’s cost recovery arrangements to sustainable levels. The agency had operated at a deficit for several years.

The Regulations amend the Code Regulations to adjust certain fees to levels consistent with a revised Cost Recovery Implementation Statement (CRIS). The Minister for Agriculture, Drought and Emergency Management approved the CRIS on 8 April 2020. It is available from the APVMA’s website at apvma.gov.au. The charges prescribed by this instrument are those identified in the minister-approved CRIS.

**Background**

Agricultural and veterinary (agvet) chemicals are regulated through a cooperative National Registration Scheme (the NRS). The NRS is a partnership between the Commonwealth and the states and territories, with an agreed division of responsibilities. It is implemented through an applied law scheme, supported by an intergovernmental agreement.

The APVMA is established by the Commonwealth under the *Agricultural and Veterinary Chemicals (Administration) Act 1992*. It assesses, registers and approves agvet chemicals for use in Australia. The APVMA is responsible for regulating these chemicals up to and including the point of supply—for example, retail sale. The control of use of agvet chemicals after supply is the responsibility of individual states and territories.

The NRS is implemented, in part, through the Act, including the Agvet Code. The Agvet Code provides for the APVMA to evaluate, approve, register and reconsider active constituents and agvet chemical products and their associated labels. It also allows the APVMA to issue permits for supply and use and to licence the manufacture of agvet chemical products. Other provisions allow the APVMA to regulate the supply of agvet chemical products and ensure compliance with, and enforce, the Agvet Code including suspending and cancelling registrations and approvals. The Code Regulations also provide for controls on the supply of hormonal growth promotants.

The APVMA’s revised CRIS covers the period from 1 July 2020 to 30 June 2022. The CRIS was developed in accordance with the Australian Government Charging Framework. It sets out how the APVMA proposes to recover the full activity-based costs of all regulatory services the APVMA provides to industry while fulfilling its statutory functions.

The CRIS applied detailed activity-based cost and regulatory services price modelling. The APVMA used standard activity-based costing methodology to allocate expenses to activities and activity costs to outputs (services). This allowed the APVMA to analyse the efficiency of outputs and business processes of each activity. The cost data were estimated as follows:

* all regulatory activities delivered on a cost recovery basis were identified
* all corporate support activities were identified
* staff salary and on costs were allocated to activities based on staff effort (time) spent on activities at salary rates (at staff classification levels)
* actual supplier costs
* corporate and other overhead costs were attributed to activities and outputs
* using the actual volume of applications received in 2018–19.

This is the first time that the APVMA has revised its charges since 2012. As the APVMA’s operating costs have risen considerably during this time, some fee increases are substantial. In addition, the complexity of some assessments has increased and the costing model is more accurate than that used previously—so some charges have changed more than others.

The APVMA recovers its costs through a combination of cost recovery fees and levies. The charges prescribed in this regulation relate only to cost recovery fees. No change is proposed to the levy arrangements (which are prescribed in the *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994* and the *Agricultural and Veterinary Chemical Products (Collection of Levy) Regulations 1995*.

**Consultation**

Throughout 2019, the APVMA consulted the affected plant protection chemicals and veterinary medicines industries, farmers and other users (through peak bodies and stakeholder meetings) on options to restore its financial sustainability. Relevant state and territory agencies were kept informed and provided with the opportunity to comment on the draft CRIS. Consultation involved teleconferences, meetings and forums. The APVMA circulated discussion papers and published the costing and pricing models that underpinned the proposed charges. On 4 November 2019, the APVMA released a draft CRIS for public comment, with 11 submissions received. The APVMA conducted further consultation with affected industries up to, and including, February 2020. The APVMA adjusted the proposed charges, and the timing of implementation, as a result of these consultations.

The Office of Best Practice Regulation (OBPR) was consulted in the preparation of the Regulations (ID 25573). The OBPR advised a Regulation Impact Statement was not required as the proposed measures are likely to have no more than minor regulatory impacts on business, community organisations or individuals.

**Details/ Operation**

Details of the Regulations are set out in Attachment A.

**Other**

The Regulations are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.* A full statement of compatibility is set out in Attachment B.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

**Attachment A**

**Details of the *Agricultural and Veterinary Chemicals Code Amendment (Cost Recovery) Regulations 2020***

Section 1 – Name

This section provides that the name of the Regulations is the *Agricultural and Veterinary Chemicals Code Amendment (Cost Recovery) Regulations 2020*.

Section 2 – Commencement

This section provides for the Regulations to commence on 1 July 2020.

Section 3 – Authority

This section provides that the Regulations are made under the *Agricultural and Veterinary Chemicals Code Act 1994.*

Section 4 – Schedules

This section relevantly provides that the Regulations are amended or repealed as set out in the applicable items in the Schedule.

Schedule 1 – Amendments

***Agricultural and Veterinary Chemicals Code Regulations 1995***

**Item 1** **– Subregulation 47(2)**

This item amends subregulation 47(2) of the Code Regulations to update the fee that a person must pay when seeking a unique notification number from the APVMA for each of the premises from which a person intends to supply a hormonal growth promotant. This number is necessary to authorise supply of hormonal growth promotants from the premises to which the unique notification number relates.

The fee is consistent with the approved 2020 CRIS. The fee was calculated on the basis of cost recovery.

**Item 2** **– Subregulation 71A(1)**

This item repeals and substitutes subregulation 71A(1) of the Code Regulations. Consistent with the approved 2020 CRIS, item 2 updates the fees payable for an application for the renewal of the registration of a chemical product that is made in the financial years beginning on 1 July 2020, 1 July 2021 and later financial years. The fees are all calculated on the basis of cost recovery.

**Item 3 – In the appropriate position in Part 10**

This item inserts new Division 10.5 in the Code Regulations.

The effect of new regulation 91 is that the fee in item 1 (for applying for a unique notification number to supply hormonal growth promotants) applies in relation to notices given on or after 1 July 2020.

The effect of new regulation 92 is that the fees prescribed in item 4 (for different kinds of applications) and item 5 (for different assessment modules) apply in relation to applications made on or after 1 July 2020.

**Item 4** **– Amendments of listed provisions – clause 2.1 of Schedule 6**

This item amends items 1, 3, 4, 5, 6, 7, 8, 9, 11, 12, 15, 16, 17 and 18 of the table in clause 2.1 of Schedule 6 of the Code regulations. Consistent with the approved 2020 CRIS, item 4 updates the fee payable for different kinds of applications under the Agvet Code. For example, this item amends table item 11 to increase the application fee to vary relevant particulars or conditions of registration or label approval where a full assessment of the chemical product is required from $28,610 to $36,205. The fees are all calculated on the basis of cost recovery.

**Item 5** **– Amendments of listed provisions – Schedule 7**

This item amends items 1, 2.1, 2.3, 5.1, 5.2, 5.3, 5.5, 6.1, 6.3, 7.2, 7.3, 8.1, 8.2, 8.3, 11.1, 11.2 and 11.3 of the table in Schedule 7 of the Code Regulations, which sets out the fees and periods for completion of modules, levels and types of assessments for the purposes of sections 70A and 77 of the Code Regulations. Consistent with the approved 2020 CRIS, item 5 updates the fee payable for different assessment modules under the Agvet Code. For example, the fee for conducting a preliminary assessment in table item 1 is updated from $710 to $902. The fees are all calculated on the basis of cost recovery.

**Attachment B**

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

***Agricultural and Veterinary Chemicals Code Amendment (Cost Recovery) Regulations 2020***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The Legislative Instrument makes amendments to the *Agricultural and Veterinary Chemicals Code Regulations 1995* to update fees consistent with an approved, consulted on, and published Cost Recovery Implementation Statement.

The Legislative Instrument will improve the sustainability of the cost recovery arrangements for the Australian Pesticides and Veterinary Medicines Authority.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**The Hon. David Littleproud MP**

**Minister for Agriculture, Drought and Emergency Management**