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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**AGRICULTURAL AND VETERINARY CHEMICALS (ADMINISTRATION)  
AMENDMENT BILL 2007**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Parliamentary Secretary to the Minister for Agriculture,  
Fisheries and Forestry, the Hon Sussan Ley MP)

## **AGRICULTURAL AND VETERINARY CHEMICALS (ADMINISTRATION) AMENDMENT BILL 2007**

### **OUTLINE**

The objective of the *Agricultural and Veterinary Chemicals (Administration) Amendment Bill 2007* is to amend the *Agricultural and Veterinary Chemicals (Administration) Act 1992* to give effect to the Government's decision, following on from the *Review of the Corporate Governance of Statutory Authorities and Office Holders* ("the Uhrig Review") of June 2003, to alter the governance arrangements for the Australian Pesticides and Veterinary Medicines Authority ("the APVMA") from a board structure to an executive management structure.

The APVMA will continue to be a statutory authority of the Commonwealth constituted under the *Agricultural and Veterinary Chemicals (Administration) Act 1992* ("the Administration Act"), with separate legal identity from the Commonwealth. The Authority retains the power to enter into contracts; acquire, hold and dispose of real and personal property; occupy land; appoint agents and attorneys; and do anything incidental to its powers as is currently the case. By these amendments, however, the assets and liabilities of the APVMA become assets and liabilities of the Commonwealth.

The APVMA will become subject to the provisions of the *Financial Management and Accountability Act 1997*, rather than the *Commonwealth Authorities and Companies Act 1997*. Staff of the APVMA will be persons engaged under the provisions of the *Public Service Act 1999* rather than persons employed under the Administration Act.

The APVMA will be constituted by an executive manager, the Chief Executive Officer ("the CEO"), who will manage the Authority. Under the previous arrangements, the APVMA was constituted by a governing board. However, an Advisory Board, consisting of up to nine part-time members appointed by the Minister, is established by these amendments to provide advice and make recommendations to the CEO.

The APVMA has responsibility for administering a joint Commonwealth and State and Territory regulatory regime assuring the safety and effectiveness of agricultural and veterinary chemical products throughout Australia. Under this joint regime, the Administration Act expressly provides that the APVMA has "any functions that are expressed to be conferred on it by a law of a State". Each of the States and the Northern Territory have passed complementary legislation conferring identical functions and powers on the APVMA. In this way a national and uniform legislative regime, administered by the APVMA, for the management and regulation of agricultural and veterinary chemical products has been established throughout Australia.

In developing these amendments to the structural constitution and governance of the APVMA, particular care has been taken not to affect the continued existence of the body corporate which is the APVMA and upon which State and Territory legislation has conferred functions and powers, or to disturb the Commonwealth and State and Territory cooperative arrangements underpinning the national regulatory scheme for agricultural and veterinary chemicals.

## **FINANCIAL IMPACT STATEMENT**

The amendments in this Bill are not expected to have any financial impact on the Commonwealth budget.

The APVMA operates on a full cost recovery basis, funded principally by levy on wholesale sales of chemical products and fee for services rendered.

While these amendments make some changes to the financial arrangements for the APVMA in that the APVMA is subjected to the provisions of the *Financial Management and Accountability Act 1997* rather than the *Commonwealth Authorities and Companies Act 1997*, the overall impact on the Commonwealth budget is expected to be nil.

## NOTES ON CLAUSES

### Clause 1: Short Title

1. The short title of this Act is the *Agricultural and Veterinary Chemicals (Administration) Amendment Act 2007*.

### Clause 2: Commencement

2. This clause provides for the commencement of the Act. Subclause 2(1) provides that each provision of the Act specified in column 1 of the table incorporated in that subclause commences or is taken to have commenced on the day specified in column 2 of the table.
3. Item 1 of the table provides that sections 1 to 3 and anything not covered elsewhere in the table commence on the day the Act receives the Royal Assent.
4. Item 2 of the table provides that Schedules 1 and 2 commence on 1 July 2007 if the Act receives Royal Assent on or before that day; otherwise the Schedules commence on a day to be fixed by Proclamation. However, if neither of the provisions commence within the period of six months beginning from the day on which the Act receives the Royal Assent, the Schedules commence the day after the end of that period.

### Clause 3: Schedule(s)

5. This clause provides that each Act specified in a Schedule is amended or repealed as set out in the Schedule, and any other item in a Schedule has effect according to its terms. There are two Schedules to this Act – one amending the *Agricultural and Veterinary Chemicals (Administration) Act 1992*; and the other containing application and transitional provisions.

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

### Item 1: Section 4

6. Item 1 inserts a new definition for *Advisory Board*. This definition is required as part of the change in governance arrangements for the APVMA which will have an Advisory Board rather than the previous governing board. The term is defined to mean the Advisory Board of the APVMA established by section 14.

### Item 2: Section 4

7. Item 2 inserts a new definition for *Board member*. This definition is required as part of the change in governance arrangements for the APVMA which will have an Advisory Board rather than the previous governing board. The term is defined to mean a member of the Advisory Board of the APVMA appointed in accordance with the new section 17 of the Administration Act and includes the Chair.

### **Item 3: Section 4**

8. Item 3 inserts a new definition for *Chair*. This definition is required as part of the change in governance arrangements for the APVMA which will have an Advisory Board rather than the previous governing board. The term is defined to mean the Chair of the Advisory Board.

### **Item 4: Section 4 (definition of *Chairperson*)**

9. Item 4 repeals the definition of *Chairperson*. The *Chairperson* was the chair of the outgoing governing board of the APVMA.

### **Item 5: Section 4**

10. Item 5 inserts a new definition for *Chief Executive Officer*. This definition is required as part of the change in governance arrangements for the APVMA whereby an executive manager will replace the previous governing board. The term is defined to mean the Chief Executive Officer appointed in accordance with section 33.

### **Item 6: Section 4 (definition of *Deputy Chairperson*)**

11. Item 6 repeals the definition of *Deputy Chairperson*. The *Deputy Chairperson* was the deputy chair of the previous governing board of the APVMA.

### **Item 7: Section 4 (definition of *director*)**

12. Item 7 repeals the definition of *director*. A *director* was a member of the previous governing board of the APVMA.

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

13. Item 8 repeals the existing paragraph (a) of the definition of *member of staff* and substitutes “a person referred to in subsection 45(1); or”. Subsection 45(1) [see item 46] now refers to staff of the APVMA being persons engaged under the *Public Service Act 1999*.

### **Item 9: At the end of subsection 7(3)**

14. Item 9 adds a note to the end of subsection 7(3) to the effect that, in relation to paragraph (a), the Chief Executive Officer may also enter into contracts on behalf of the Commonwealth pursuant to section 44 of the *Financial Management and Accountability Act 1997*. Subsection 7(3) retains the provision that the APVMA has power to do all things necessary or convenient to be done in connection with the performance of its functions and, in particular, may enter into contracts.
15. As noted in the outline to this Explanatory Memorandum, by subsection 7(3) of the Administration Act, the APVMA has retained its existing powers, including the power to contract in its own name (see paragraph (a)). To establish the national cooperative scheme for the management of agricultural and veterinary chemicals in Australia, each

of the States and Northern Territory have adopted complementary laws conferring identical powers on the APVMA. These national arrangements would be jeopardised should the existing powers of the APVMA be changed. In addition, the APVMA routinely enters into contracts in its own name in the conduct of its business, particularly with States and Territories and other agencies for the provision of scientific assessments and advice. In this context, the APVMA's continued ability to enter into contracts in its own name is vital. The functions and powers are conferred on the APVMA body corporate. To confer these functions and powers on the CEO would require a change to State and Territory laws.

**Item 10: After section 7**

16. Item 10 inserts new sections 7AA and 7AB, which respectively provide that the APVMA's assets are Commonwealth assets and APVMA liabilities are Commonwealth liabilities. Previously, the assets and liabilities of the APVMA were held in its own right, however such assets and liabilities now become those of the Commonwealth by virtue of the APVMA's transition to the *Financial Management and Accountability Act 1997*.
17. New subsection 7AA(1) provides that any real or personal property held by the APVMA is held for and on behalf of the Commonwealth.
18. New subsection 7AA(2) provides that any money received by the APVMA is held by the APVMA is held for and on behalf of the Commonwealth.
19. New subsection 7AA(3) provides that the APVMA cannot hold real or personal property on trust. A note to the provision observes that the Commonwealth may hold real or personal property or money on trust.
20. New subsection 7AA(4) provides that, to avoid doubt, paragraph 7(3)(b) is subject to subsection (3) of this section. Paragraph 7(3)(b) retains the provision that the APVMA has power to do all things necessary or convenient to be done in connection with the performance of its functions and, in particular, may acquire, hold and dispose of real and personal property. The effect of the new subsection is that, although the APVMA may acquire, hold and dispose of real and personal property, the APVMA cannot hold such property on trust.
21. New subsection 7AA(5) provides that, to avoid doubt, a right to sue is taken not to be personal property for the purposes of subsection (1). Paragraphs 12(1)(a), (b) and (c) provide that the APVMA is a body corporate with perpetual succession, is to have a common seal and may sue and be sued in its corporate name. The effect of the new subsection is that the APVMA's right to sue is not considered to be personal property.
22. New subsection 7AB(1) provides that any financial liabilities of the APVMA are taken to be liabilities of the Commonwealth.
23. New subsection 7AB(2) defines, for the purposes of section 7AB, *financial liability* to mean a liability to pay a person an amount if the amount, or the method for working out the amount, has been determined.



### **Item 11: At the end of section 8**

24. Item 11 adds new subsection 8(3), which removes any doubt that the APVMA does not consult the new Advisory Board for the purposes of section 8 when the CEO requests advice from the Advisory Board.
25. This clarification seeks to maintain existing arrangements. Pursuant to section 34G of the Agvet Code, the APVMA is required to publish a summary of the advice it receives from a person, body or government it consulted under sections 8 or 8A of the Administration Act, if it relied on that advice to make a decision under the Agvet Code to grant an application for registration or approval. However, the APVMA is currently not required to publish a section 34G summary in respect of advice the CEO receives from the APVMA governing board. To statutorily require the CEO to publish a summary of advice received from the Advisory Board would add significantly to APVMA costs and would further extend registration and approval timeframes.

### **Item 12: Paragraph 10(2)(c)**

26. Item 12 omits the word “Chairperson” and substitutes “Chief Executive Officer” in paragraph 10(2)(c). The amendment is required as part of the change in governance arrangements for the APVMA whereby an executive manager (the CEO) will replace the previous governing board so that a reference to the previous Chairman of the governing board in paragraph 10(2)(c) should now be to the CEO. Paragraph 10(2)(c) requires the Minister to give the head of the organisation adequate opportunity to discuss the need for any proposed direction to the APVMA from the Minister.

### **Item 13: Subsection 10(5)**

27. Item 13 repeals the existing subsection 10(5) and substitutes a new subsection that provides that a direction under subsection 10(1) is not a legislative instrument.
28. Section 10 retains the power of the Minister to give directions to the APVMA in relation to certain things. The section also requires that if the Minister does give a direction, the Minister must gazette a notice setting out the particulars of the direction (that is, all the details) and table that notice before each House of Parliament. Section 10 has the same effect as the *Legislative Instruments Act 2003*, which requires a copy of the actual direction to be published and tabled. Were a copy of the direction to be gazetted and tabled, the requirements of subsection 10(3) would be satisfied.
29. However, section 10 also provides that the Minister may determine in writing that the gazettal and tabling of certain directions would prejudice the national interest of Australia. No such discretion would be available under the *Legislative Instruments Act 2003*. As such a discretion may be of particular importance with emerging issues such as the management of security chemicals, the Government has decided that a Ministerial Direction under subsection 10(1) should continue to not be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.



**Item 14: After section 10**

30. Item 14 inserts new section 10A that provides, so as to avoid any doubt, that the general power of the Minister to give directions to the APVMA in relation to certain things pursuant to section 10, does not empower the Minister to direct the CEO in relation to the CEO'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*.
31. As such, while the Minister has certain powers to direct the APVMA concerning the performance of its functions or the exercise of its powers, as the APVMA now consists of the CEO, the Minister cannot direct the CEO in relation to powers and functions granted generally to agency heads by the *Financial Management and Accountability Act 1997* and the *Public Service Act 1999*.

**Item 15: Paragraph 11(1)(a)**

32. Item 15 repeals paragraph 11(1)(a).
33. Paragraph 11(1)(a) allowed the APVMA to delegate, in writing, all or any of its powers and functions to a director of its governing board. As a result of the change in governance arrangements for the APVMA there will be an Advisory Board rather than the previous governing board. Consequently, the provision is no longer appropriate.

**Item 16: Part 3 (heading)**

34. Item 16 repeals the heading of Part 3 that referred to the constitution and meetings of the APVMA and substitutes it with "Part 3—Constitution of APVMA and Advisory Board".

**Item 17: Before section 12**

35. Item 17 inserts, before section 12, the new heading "Division 1—Constitution of the APVMA".

**Item 18: Subsection 12(1) (note)**

36. Item 18 deletes the note in subsection 12(1) that the *Commonwealth Authorities and Companies Act 1997* applies to the APVMA. As the APVMA is now to be subject to the *Financial Management and Accountability Act 1997* the note is no longer appropriate.

**Item 19: Section 13**

37. Item 19 repeals section 13, which related to the constitution of the APVMA and substitutes a new section.

38. New subsection 13(1) provides that the APVMA consists of the CEO. The APVMA previously consisted of a Chairperson and eight other directors (the governing board) and is now to consist of an executive manager, the CEO.
39. New subsection 13(2) provides that a performance of a function or the exercise of a power of the APVMA is not affected by a vacancy in the office of the CEO.

**Item 20: After section 13**

40. Item 20 inserts, after section 13, the new heading “Division 2—The Advisory Board”.

**Item 21: Sections 14 to 19**

41. Item 21 repeals section 14 to 19, relating to the directors of the previous governing board of the APVMA, and substitutes new sections relating to the Advisory Board.
42. New section 14 establishes the new Advisory Board of the APVMA.
43. New section 15 provides that the Advisory Board consists of up to nine Board members.
44. New section 16 provides for the function of the Advisory Board.
45. Subsection 16(1) provides that the function of the Advisory Board is, on its own initiative or at the request of the CEO, to provide advice and make recommendations to the CEO in relation to the performance of a function or the exercise of a power of the APVMA.
46. Subsection 16(2) provides that the Advisory Board has power to do all things necessary or convenient to be done in connection with the performance of its function.
47. Subsection 16(3) specifies that the Advisory Board cannot give any directions whatsoever to the CEO, including the CEO’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*.
48. Section 17 provides for the appointment of members of the Advisory Board.
49. Subsection 17(1) provides that a Board member is to be appointed, by written instrument, by the Minister on a part-time basis.
50. Subsection 17(2) provides that, when appointing Board members, the Minister must ensure that two members have experience in the regulation of chemical products, under State or Territory law; one member has experience in the agricultural chemical industry and another in the veterinary chemical industry; one member has experience in primary production; one member has experience in the environmental toxicology, including knowledge of the effect of chemicals in ecosystems; one member has experience in protecting consumer interests; one member has experience in public

health and occupational health and safety; and, if the Minister considers it necessary, one member that has experience in a field relevant to the APVMA's functions.

51. The expectation is that a member with experience in environmental toxicology would be a person with high level scientific qualifications that would be able to provide advice to the CEO in relation to the toxicity of constituents and their residues in relation to relevant organisms and ecosystems; the toxicity of products and their residues in relation to relevant organisms and ecosystems; and whether a chemical product used as proposed would or would not be likely to have an unintended effect that is harmful to animals, plants or things or to the environment.
52. The expectation is that a member with experience in public health and occupational health and safety would be a person with suitable scientific qualifications that would be able to provide advice to the CEO in relation to the toxicity of constituents and their residues in relation to human beings; the toxicity of products and their residues in relation to human beings; whether a chemical product used as proposed would or would not be likely to have an effect that is harmful to human beings; and whether a chemical product used as proposed would or would not be likely to be an undue hazard to the safety of people exposed to it during its handling or people using anything containing its residues.
53. The experiential make-up of the Advisory Board is similar to that of the previous governing board, with the addition of experience in environmental toxicology, experience in public health and the option of Ministerial discretion to add another member with experience in a field relevant to the APVMA's functions. This experiential make-up complements the role and responsibilities of the APVMA and includes representation from each key stakeholder sector. The skills and experience offered by the Advisory Board will assist to inform the CEO, which in turn is expected to aid his or her discharge of the functions of the position.
54. Subsection 17(3) provides that the Minister must appoint one of the Board members to be the Chair. The responsibilities of the Chair are detailed in section 21 (item 23) and section 27 (item 28) and include the power to grant leave of absence for other Board members, holding meetings of the Advisory Board (where necessary) and ensuring that minutes of such meetings are kept. Noting the limited responsibilities of the Chair, the establishment of a Deputy Chair has not been considered warranted.
55. Subsection 17(4) requires the Minister to consult the CEO before appointing a person as a Board member or as the Chair. As it is the CEO who is intended to be assisted by the advice of the Advisory Board, it is considered appropriate that the CEO be consulted in relation to the appointment of a Board member or of the Chair.
56. Subsection 17(5) provides that a person's appointment as a Board member is not invalid because of a defect or irregularity in connection with the person's appointment.
57. Section 18 provides that a Board member holds office for the period specified in the instrument of appointment. That period must not exceed three years. A note to the section observes that, pursuant to subsection 33(4A) of the *Acts Interpretation Act 1901*, a Board member is eligible for re-appointment.

58. Section 19 sets out the remuneration and allowances to be paid to Advisory Board members.
59. Subsection 19(1) provides that 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.
60. Subsection 19(2) provides that a Board member is to be paid the allowances as are prescribed.
61. Subsection 19(3) provides that, if a person who is a Board member, is a member of Parliament of a State or is a candidate for election to a Parliament of a State and would not be eligible to be elected if the person were entitled to remuneration or allowances under this Act; or is in full-time employment or service of a State or a State authority or holds or performs the full-time duties of an office or position established by State law, then 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.
62. Subsection 19(4) provides that this section has effect subject to the *Remuneration Tribunal Act 1973*.
63. Subsection 19(5) defines the words *Parliament of a State* and *State* for the purposes of section 19. *Parliament of a State*, in relation to the Australian Capital Territory and the Northern Territory respectively, means the Legislative Assembly for the Australian Capital Territory and the Legislative Assembly of the Northern Territory. *State* includes the Australian Capital Territory and the Northern Territory.

**Item 22: Section 20**

64. Item 22 repeals section 20 that provided that directors of the APVMA's previous governing board may receive such other benefits as the Minister determines.

**Item 23: Section 21**

65. Item 23 repeals section 21 that allowed the Chairperson and directors of the previous governing board to be granted leave of absence and substitutes a new section providing for leave for the Chair and other Board members of the Advisory Board.
66. Subsection 21(1) provides that the Minister may grant leave of absence to the Chair on the terms and conditions that the Minister determines.
67. Subsection 21(2) provides that the Chair may grant leave of absence to another Board member on the terms and conditions that the Chair determines.

**Item 24: Section 22**

68. Item 24 repeals section 22 that provided for the resignation of directors of the previous governing board and substitutes a new section allowing members of the Advisory Board to resign.
69. Subsection 22(1) provides that a Board member may resign by giving the Minister a signed notice of resignation.
70. Subsection 22(1) provides that the Chair may resign his or her appointment as the Chair without resigning his or her appointment as a Board member.

**Item 25: Sections 23 and 24**

71. Item 25 repeals sections 23 and 24 that respectively required directors to disclose financial interests in certain circumstances and provided for the termination of directors' appointments. Item 25 substitutes new sections 23 and 24, headed 'Standing obligation to disclose interests' and 'Termination of appointment'.
72. Subsection 23(1) requires a Board member to give written notice to the Minister of any of his or her direct or indirect financial interests 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.
73. Subsection 23(2) provides that, for the purposes of subsection (1), it does not matter whether the interest is acquired before or after the Board member's appointment.
74. Subsection 23(3) provides that 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.
75. Subsection 24 provides that the Minister may terminate the appointment of a Board member. This power is entirely discretionary.

**Item 26: Section 25**

76. Item 26 omits "director" and substitutes "Board member" in section 25 in relation to terms and conditions of appointment of Board members not provided for by the Administration Act. This amendment is required as part of the change in governance arrangements for the APVMA which will have an Advisory Board rather than the previous governing board.

**Item 27: After section 25**

77. Item 27 inserts, after section 25, the new heading "Division 4—Advisory Board procedures".

**Item 28: Sections 26 and 27**

78. Item 28 repeals sections 26 and 27 that dealt with meetings of the APVMA and substitutes new sections titled “Meetings between the Chief Executive Officer and the Advisory Board” and “Meetings of the Advisory Board” that respectively provide procedures for meetings between the CEO and the Advisory Board and meetings of the Advisory Board.
79. New subsection 26(1) provides that the CEO must hold sufficient meetings with the Advisory Board as are necessary for the efficient performance of the APVMA’s functions. The intent of this provision is to ensure that the Advisory Board is engaged in an appropriate manner without mandating or prescribing a requirement for meetings where there are no relevant matters before the APVMA on which the advice and recommendations of the Advisory Board would be beneficial. To mandate meetings in such circumstances would be an inefficient use of public money.
80. New subsection 26(2) provides that meetings between the CEO and the Advisory Board are to be held at times and places that the CEO determines. A note to the provision observes that Section 33B of the *Acts Interpretation Act 1901* provides that a body may permit persons to participate in meetings, such as those referred to in the new subsection 26(2), by telephone and other means of communication.
81. New subsection 26(3) provides that the CEO, or a person that the CEO directs, is to preside at meetings between the CEO and the Advisory Board. The effect of this provision is that it authorises the CEO or a person that the CEO directs to chair such meetings.
82. New subsection 26(4) provides that the CEO may determine the procedure to be adhered to at or in relation to meetings. The procedures include matters with respect to: holding meetings; the quorum for meetings (including requirements that particular Board members be present); and regulating the way in which meetings are conducted. The intent of this provision is to ensure that the CEO has sufficient control of the meetings that he or she holds with the Advisory Board in order to obtain the advice that he or she requires in order to manage the affairs of the APVMA.
83. New subsection 26(5) requires the CEO to ensure that minutes of the meetings held by the CEO with the Advisory Board are kept. The intent of this provision is to ensure that there is a record of such meetings.
84. New subsection 26(6) provides that the Secretary, or a person authorised by the Secretary, may attend meetings held by the CEO with the Advisory Board. The Uhrig Review recommended that to assist an Advisory Board’s considerations, particularly in relation to the background of government policy and options for implementation, the relevant portfolio Secretary should attend such meetings of the Advisory Board. The intent of this provision is to give effect to this recommendation. It is anticipated that the Secretary, or a person authorised by the Secretary, would be invited to attend these meetings in a similar manner to that with which the members of the Advisory Board are invited to attend.
85. New subsection 26(7) provides that the CEO 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. The provision also provides that the CEO may pay the expenses incurred by the person in attending the meeting. The intent of this provision is to allow the CEO to have persons with relevant knowledge attend Advisory Board meetings and ensure that appropriate information is available to the Advisory Board for it to perform its function. The persons the CEO may invite are not limited to APVMA staff and may include anyone.

86. New subsection 26(8) provides that if a member of the Advisory Board has a direct or indirect financial interest that could conflict with the proper performance of the Advisory Board's function in relation to a matter being considered, or about to be considered at a meeting, then the Advisory Board member must disclose that interest to the CEO as soon as practicable. The intent of this provision is to ensure that the CEO is aware of any conflict of interest that may impinge on the advice provided by the Advisory Board.
87. New subsection 26(9) requires that any disclosure made under subsection 26(8) and any decision made by the CEO in relation to the disclosure must be recorded in the minutes of the meeting. The intent of this provision is to ensure that there is a record of any disclosures and the action taken in relation to them.
88. New subsection 26(10) provides that subsections 26(1) to 26(4) apply to hearings held by the APVMA in the same way that those provisions apply to meetings held by the CEO with the Advisory Board. Hearings of the APVMA are dealt with by section 69EP of the Administration Act. The intent of this provision is to define the role of the Advisory Board in hearings held by the APVMA. Section 69EP is amended correspondingly by item 53.
89. New subsection 27(1) provides that 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. The effect of this provision is that it authorises the Advisory Board to meet in the absence of the CEO. It is anticipated that such meetings would be held for the purposes of the Advisory Board preparing its advice for the CEO and that for efficiency, such meetings would generally be held just prior to meetings held by the CEO under subsection 26(1). Meetings of the Advisory Board that do not yield relevant advice and recommendations in relation to the performance of a function or the exercise of a power of the APVMA would be considered to be in excess to that which are necessary for the efficient performance of the Advisory Board's function.
90. New subsection 27(2) provides that, subject to subsection 27(4) [which requires the Chair to keep minutes of the Advisory Board meetings], the CEO may determine matters relating to the operation of the Advisory Board. It is envisaged that such matters would include the quorum for meetings, the way in which meetings are conducted, the location of meetings, the affairs to be discussed and any other matter relating to the operation of the Advisory Board. The effect of the reference to subsection 4 is that irrespective of how the CEO determines that the Advisory Board is to operate, the Chair must ensure that minutes of the meetings of the Advisory Board are kept.



91. New subsection 27(3) provides that, subject to subsection 27(4) [which requires the Chair to keep minutes of the Advisory Board meetings], if no determination of the CEO is in force as to how the Advisory Board is to operate, the Advisory Board may operate in the way it determines. The intent of the provision is, where no determination of the CEO is in effect, to allow the Advisory Board the freedom to operate in whatever way it determines for its meetings for the efficient performance of the Advisory Board's function. The effect of the reference to subsection 4 is that irrespective of how the Advisory Board chooses to operate, the Chair must ensure that minutes of the meetings of the Advisory Board are kept.
92. New subsection 27(4) requires the Chair of the Advisory Board to ensure that minutes of meetings of the Advisory Board are kept. The intent of this provision is to ensure that a record of the meetings of the Advisory Board is kept.
93. New subsection 27(5) provides that if a member of the Advisory Board has a direct or indirect financial interest that could conflict with the proper performance of the Advisory Board's function in relation to a matter being considered, or about to be considered at a meeting, then the Advisory Board member must disclose that interest to the other Board members as soon as practicable. The intent of this provision is to ensure that the other Board members are aware of any conflict of interest that may impinge on the advice provided by the member with the conflict of interest, which may in turn impinge on the proper function of the Advisory Board.
94. New subsection 27(6) requires that any disclosure made under subsection 27(5), and any decision made by the Board in relation to the disclosure must be recorded in the minutes of the meeting. The intent of this provision is to ensure that there is a record of any disclosures and the action taken in relation to them.
95. New subsection 27(7) provides that the Chair of the Advisory Board may invite the CEO to attend all or part of an Advisory Board meeting. It is envisaged that the Chair may exercise this power in circumstances such as where the Advisory Board seeks a briefing by the CEO on a particular matter or wishes the CEO to participate in a discussion that the Advisory Board is to have. It is not intended that the CEO be bound to attend meetings of the Advisory Board if invited to do so.
96. New subsection 27(8) provides that a determination made under subsection 27(2) [which provides that the CEO may determine matters relating to the operation of the Advisory Board] is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. The effect of this provision is to exempt such directions of the CEO from the requirements of the *Legislative Instruments Act 2003*, which would require such directions to be registered and subject to Parliamentary scrutiny. Such procedures would not be necessary or appropriate for directions of the CEO to the Advisory Board in relation to the procedures for operating. Furthermore, such directions would generally be considered to be of administrative character.

**Item 29: Before section 28**

97. Item 29 inserts, before section 28, a new heading "Division 5 – Committees".

**Item 30: Subsection 28(2)**

98. Item 30 omits “directors” and substitutes “Board members” in subsection 28(2), which relates to the composition of committees of the APVMA. This amendment is required as part of the change in governance arrangements for the APVMA which will have an Advisory Board rather than the previous governing board.

### **Item 31: After section 29**

99. Item 39 inserts, after section 29, a new section “Remuneration and allowances of committee members”.
100. New subsection 29A(1) provides that a committee member (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.
101. New subsection 29A(2) provides that a committee member (other than a Board member) is to be paid the allowances as are prescribed.
102. New subsection 29A(3) provides that, if a person who is member of a committee, is a member of Parliament of a State or is a candidate for election to a Parliament of a State and would not be eligible to be elected if the person were entitled to remuneration or allowances under this Act; or is in full-time employment or service of a State or a State authority or holds or performs the full-time duties of an office or position established by State law, then 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.
103. New subsection 29A(4) provides that this section has effect subject to the *Remuneration Tribunal Act 1973*.
104. New subsection 29A(5) defines the words *Parliament of a State* and *State* for the purposes of this section. *Parliament of a State*, in relation to the Australian Capital Territory and the Northern Territory respectively, means the Legislative Assembly for the Australian Capital Territory and the Legislative Assembly of the Northern Territory. *State* includes the Australian Capital Territory and the Northern Territory.

### **Item 32: Section 30**

105. Item 30 omits “Chairperson of the APVMA” and substitutes “Chief Executive Officer” in section 30, which relates to arrangements relating to the provision of staff and facilities for committees of the APVMA. This amendment is required as part of the change in governance arrangements for the APVMA which will have an Advisory Board rather than the previous governing board (headed by the Chairperson of the APVMA). The CEO is now to be responsible for the provision of any staff or facilities for committees of the APVMA and any such request from the Chairperson of such a committee therefore must be made to the CEO.

**Item 33: Subsections 32(1) and (2)**

106. Item 33 repeals subsections 32(1) and 32(2), which related to the CEO's management of the APVMA and exercise of powers of the APVMA, and substitutes a new subsection. This amendment removes references to directions given by the APVMA (meaning the previous governing board which constituted the APVMA). This amendment is required as part of the change in governance arrangements for the APVMA, where the governing board is disbanded and the CEO has sole responsibility for the governance of the APVMA.
107. New subsection 32(1) provides that the CEO is to manage the affairs of the APVMA and in doing so may exercise any of the powers and functions of the APVMA. This provision reflects the adoption of the Executive Management model, with the CEO having sole responsibility for the governance and operation of the APVMA.

**Item 34: After section 32**

108. Item 34 inserts, after section 32, the new section "Working with the Advisory Board" which deals with the interaction between the CEO and the Advisory Board.
109. New subsection 32A(1) provides that the CEO, in performing the duties of the office, must take into account the advice and recommendations provided by the Advisory Board. The provision provides that this applies whether or not the advice and recommendations were provided to the CEO in response to a request made by the CEO for advice or not. The CEO is not bound by the advice and recommendations provided by the Advisory Board. The new subsection 16(3) at item 21 provides that the Advisory Board cannot give any directions to the CEO.
110. New subsection 32A(2) provides that the CEO must keep the Advisory Board informed of the performance of the APVMA's functions and that the CEO must give to the Advisory Board such documents and information in relation to the APVMA's functions as the Chair of the Advisory Board requires to allow the Advisory Board to execute its function. The functions of the APVMA are described by subsection 7(1A). The intent of this provision is not that the Chair may obtain any and all documents or information held by the APVMA, but rather only that which relates to the functions of the APVMA and which would be required by the Advisory Board to perform its function. The Chair is not entitled to request a document if it does not relate to the APVMA's functions and is not necessary for the carrying out of the Advisory Board's functions.
111. New subsection 32A(3) provides that the CEO may attend meetings of the Advisory Board if invited by the Chair. The new subsection 27(1) at item 28 provides that meetings of the Advisory Board may be held by the Chair as are necessary for the efficient performance of the Advisory Board's function and the new subsection 27(7) provides that the Chair may invite the CEO to such meetings. Such meetings are distinct from those held by the CEO under the new subsection 26(1) at item 28.

### **Item 35: Section 33**

112. Item 35 repeals section 33 that related to appointment of the CEO and substitutes a new section, “Appointment”.
113. New subsection 33(1) provides that the CEO is to be appointed by the Minister by written instrument, on a full-time basis.
114. New subsection 33(2) specifies that a person who is appointed as a member of the Advisory Board is not eligible to be appointed as the CEO.
115. New subsection 33(3) provides that the CEO’s appointment is not invalid because of a defect or irregularity in connection with the person’s appointment.

### **Item 36: Section 34**

116. Item 36 omits the name “APVMA” and substitutes “Minister” in section 34, relating to the term of the CEO’s appointment. This amendment is required as part of the change in governance arrangements for the APVMA whereby the governing board that constitutes the APVMA is abolished. The term of the CEO’s appointment was previously agreed between the APVMA and the CEO in writing and is now to be agreed in writing between the CEO and the Minister.

### **Item 37: Sections 35 and 36**

117. Item 37 repeals section 35 and section 36. Section 35 dealt with remuneration and allowances for the CEO. Section 36 addressed other benefits that the CEO may receive. Item 37 substitutes a new section, “Remuneration and allowances”.
118. New subsection 35(1) provides that the CEO is to be paid such remuneration as is determined by the Remuneration Tribunal, but if no determination is in operation, the CEO is to be paid such remuneration as is determined by the Minister.
119. New subsection 35(2) provides that the CEO is to be paid such allowances as are determined by the Minister.
120. New subsection 35(3) provides that this section has effect subject to the *Remuneration Tribunal Act 1973*.

### **Item 38: Section 37**

121. Item 38 omits “APVMA with the written approval of the Minister” and substitutes “Minister” in section 37, which relates to the terms and conditions of the CEO’s appointment. This amendment is required as part of the change in governance arrangements for the APVMA whereby the governing board that constitutes the APVMA is abolished. The terms of the CEO’s appointment was previously determined by the APVMA with the written approval of the Minister and will now be determined by the Minister in writing.

**Item 39: Section 38**

122. Item 39 omits the name “APVMA” and substitutes “Minister” in section 38, which specifies arrangements for the CEO to engage in other paid employment. This amendment is required as part of the change in governance arrangements for the APVMA whereby the governing board that constituted the APVMA is abolished. The power to give approval for the CEO to engage in other paid employment rested with the APVMA (meaning the Chairperson and directors) and is now to rest with the Minister.

**Item 40: Section 40**

123. Item 40 repeals section 40, which provided for leave of absence for the CEO for purposes other than recreation and substitutes a new section, “Leave of absence for other purposes”.
124. New section 40 provides that the Minister may grant the CEO leave of absence, other than recreation leave, on terms and conditions that the Minister determines in writing.

**Item 41: Section 41**

125. Item 41 omits the name “APVMA” and substitutes “Minister” in section 41, which specifies arrangements for the CEO to resign. This amendment is required as part of the change in governance arrangements for the APVMA whereby the governing board that constitutes the APVMA is abolished. The new section 33 at item 35 provides that the CEO is to be appointed by the Minister and hence logically any notice of resignation of the CEO must now be given to the Minister.

**Item 42: After section 41**

126. Item 42 inserts a new section 41A, which deals with the termination of the appointment of the CEO.
127. New section 41A provides that the Minister may terminate the appointment of the CEO in the following circumstances: for misbehaviour or physical or mental incapacity; if the CEO becomes bankrupt, or applies to take the benefit of any law for the relief of bankrupt, or insolvent debtors, or compounds with his or her creditors, or makes an assignment of his or her remuneration for the benefit of his or her creditors; if the CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; if the CEO engages, except with the Minister’s approval, in paid employment outside the duties of his or her office; if the CEO fails, without reasonable excuse, to comply with section 42 [regarding the disclosure of interests]; or if the Minister is satisfied that the CEO’s performance has been unsatisfactory.

#### **Item 43: Section 42**

128. Item 43 omits “Chairperson” and substitutes “Minister” in section 42, which relates to the disclosure of interests by the CEO. This amendment is required as part of the change in governance arrangements for the APVMA whereby the governing board (headed by the Chairperson) that constitutes the APVMA is abolished. The CEO was previously required to disclose to the Chairperson all direct and indirect financial interests that the CEO has or acquires in any business or in any body corporate carrying on any business. Such disclosures are now to be made to the Minister.

#### **Item 44: Subsections 43(1) to (3)**

129. Item 44 repeals subsections 43(1) to (3), and substitutes a new subsection. Subsections 43(1) to (3) provided that the APVMA could appoint a person to act as the CEO, the APVMA could terminate such an appointment, and that the appointee could resign by giving the Chairperson a notice of resignation. This amendment is required as part of the change in governance arrangements for the APVMA whereby the governing board that constitutes the APVMA is abolished. The new section 33 at item 35 provides that the CEO is to be appointed by the Minister and hence logically the power to appoint a person to act as the CEO will now rest with the Minister.
130. New subsection 43(1) provides that the Minister may appoint a person to act as the CEO during a vacancy in the office of CEO, whether or not an appointment has previously been made to that office; or during any period that the CEO is absent from duty or from Australia, or is otherwise unable to perform the duties of the office of CEO.

#### **Item 45: Part 5 (heading)**

131. Item 45 repeals the heading of Part 5 that referred to “employees and consultants” and substitutes it with “Part 5 – Staff and consultants”.

#### **Item 46: Section 45**

132. Item 46 repeals section 45 that referred to “Employees” and substitutes a new section, “Staff”.
133. New subsection 45(1) provides that the staff of the APVMA are to be persons engaged under the *Public Service Act 1999*. The staff of the APVMA had previously been employed under the Administration Act. The employment of staff under the *Public Service Act 1999* reflects the Government policy that for bodies prescribed under the *Financial Management and Accountability Act 1997* staff should be employed under the *Public Service Act 1999*.
134. New subsection 45(2) provides that, for the purposes of the *Public Service Act 1999*, the CEO and staff of the APVMA together constitute a Statutory Agency, with the CEO being the Head of that Statutory Agency. In effect the staff of the APVMA will

be employed by the APVMA on behalf of the Commonwealth and will not be the staff of a Department.

**Item 47: Sections 48 and 49**

135. Item 47 repeals sections 48 and 49, which provided for a human resources development program and required the merit principle to apply to employment matters. These matters are now dealt with (in effect) by virtue of APVMA staff being persons engaged under the *Public Service Act 1999*. As such sections 48 and 49 are redundant.

**Item 48: Sections 50 to 54**

136. Item 48 repeals sections 50 to 54, relating to the development, approval and variation of the corporate plan, and substitutes three new sections, “Development of corporate plan”, “Approval of corporate plan” and “Variation of corporate plan”.
137. New subsection 50(1) provides that the APVMA must develop a corporate plan in written form for a period that is specified in the plan and that the plan must define the key objectives of the APVMA in performing its functions during the period to which the plan relates, outlining in a broad sense the strategies to be engaged by the APVMA to achieve the defined objectives.
138. New subsection 50(2) requires that the corporate plan must be for a period beginning on 1 July for the year immediately following the expiry of the period to which the previous corporate plan related. It is intended that the previous corporate plan would expire on 30 June.
139. New subsection 51(1) requires the APVMA to provide the Minister with a copy of the corporate plan for his or her approval on or before 1 June in each calendar year, except where exempted from this requirement by the new subsection 51(2), or on a later date that the Minister allows. The intent of the latter is to provide the Minister with discretion in relation to the provision of the corporate plan.
140. New subsection 51(2) exempts the APVMA from the requirement to provide the Minister with a corporate plan in a calendar year, if a plan is already in force for the first year that the new plan would relate to, or the Minister determines at the request of the APVMA that the APVMA is not required to provide him or her with a corporate plan for approval for the particular year. The intent of this provision is to avoid the need for the APVMA to submit the same corporate plan to the Minister for approval each year where the corporate plan is a multi-year plan that has previously been approved and is in effect for the relevant calendar year, if the Minister so determines.
141. New subsection 51(3) provides that a corporate plan comes into effect on the day that it is approved by the Minister or the first day of the period to which it relates, whichever is the later. The intent of this provision is to clarify that a corporate plan cannot come into effect until approved by the Minister, but if the Minister approves the plan before the period to which it relates to clarify that it cannot come into effect until the first day (1 July as provided by subsection 50(2)) of the period to which the plan relates.



142. New subsection 52(1) provides that the APVMA may at any time, review a corporate plan and consider whether a variation to the plan is necessary. The provision provides that the APVMA may do so whether the plan has come into force or not.
143. New subsection 52(2) provides that having considered whether a variation to the corporate plan is necessary under subsection 52(1), the APVMA may vary the corporate plan, provided the Minister approves of the variation. The provision provides that this may occur at any time.
144. New subsection 52(3) provides that the Minister may request the APVMA to vary the corporate plan, irrespective of whether it has come into force or not. The effect of this provision is that the Minister may request the APVMA to vary a corporate plan that has been given to him or her for approval, or a corporate plan that he or she has previously approved.
145. New subsection 52(4) provides that where the Minister requests the APVMA to vary the corporate plan, the APVMA must vary the corporate plan accordingly. The effect of this provision is to compel the APVMA to comply with a request of the Minister to vary the corporate plan. It is not envisaged that a request made by the Minister to vary the corporate plan would constitute a direction to the APVMA concerning the performance of its functions or the exercise of its powers. Section 10 of the Administration Act deals with such directions.
146. New subsection 52(5) provides that if a variation of the corporate plan is approved by the Minister after the plan has come into force, the plan is considered to be varied and is in effect (including the variation) on and after the day the variation is approved. This provision has the effect of continuing the previously approved plan, taking account of, or including, the approved variation.
147. New subsection 52(6) provides that the APVMA may vary the corporate plan without the approval of the Minister if the variation is of a minor nature. The provision provides that the APVMA may make such a minor variation despite subsection 52(2), which requires the approval of the Minister to vary the corporate plan. The provision also provides that the variation takes effect on the day that it is made to the corporate plan. It is envisaged that a minor variation would generally relate to administrative matters such as a change in the name of a certain program or scheme within the APVMA; or formatting improvements that do not alter the intent of the plan. The intent of this provision is to provide the APVMA with an element of flexibility to vary the corporate plan for minor matters.
148. New subsection 52(7) provides that if the APVMA makes a minor variation as authorised by subsection 52(6), the APVMA must inform the Minister that the variation has been made as soon as practicable after making it. The effect of this provision is to keep the Minister advised and allow him or her to determine their satisfaction in respect to the variation. It should be noted that subsection 52(3) provides that the Minister may request the plan to be varied should the Minister not be satisfied with the minor variation made by the APVMA.

**Item 49: Paragraph 55(2)(b)**

149. Item 49 omits the word “and” from subsection 55(2)(b). This is a consequential amendment as a result of item 50 which repeals subsection 55(2)(c).

**Item 50: Paragraph 55(2)(c)**

150. Item 50 repeals subsection 55(2)(c) which required that the annual operational plan propose action to implement the human resources development program developed under the previous section 48. The previous section 48 is repealed by item 47 as it has been made redundant by virtue of APVMA staff now being persons engaged under the *Public Service Act 1999*.

**Item 51: Subsection 57(1)**

151. Item 51 omits the words “Sections 52, 53 and 54 apply” from subsection 57(1) and substitutes the words “Section 52 applies”. The previous subsections 52, 53 and 54, which related to the variation of the corporate plan, are repealed by item 48 and substituted by a single new section, section 52, “Variation of corporate plan”.
152. Subsection 57(1), as amended, has the effect that variations to the annual operational plan, whether at the initiative of the APVMA or at the request of the Minister, are to be dealt with in the same manner as variations to the corporate plan. The intent of this provision is to maintain consistency between the corporate and annual operational plans. This is of particular relevance as variations to the corporate plan may also require consequential variations to the operational plan.

**Item 52: Part 7**

153. Item 52 repeals the previous “Part 7- Finance” and substitutes a new Part, “Part 7- Finance and reporting requirements”. This amendment is required as part of the change in governance arrangements for the APVMA whereby financial regulation of the body is being changed from regulation under the *Commonwealth Authorities and Companies Act 1997* to regulation under the *Financial Management and Accountability Act 1997*.
154. New Part 7 contains three divisions. “Division 1 – Australian Pesticides and Veterinary Medicines Special Account” provides for a Special Account and includes the sections “Australian Pesticides and Veterinary Medicines Special Account”, “Credits to the Account” and “Purposes of the Account”. “Division 2 – Reporting requirements” specifies reporting requirements for the APVMA “Annual report”. “Division 3 – Exemption from taxation” provides for “Exemption from taxation”.
155. New subsection 58(1) establishes the Australian Pesticides and Veterinary Medicines Special Account.
156. New subsection 58(2) provides that the Australian Pesticides and Veterinary Medicines Special Account is a Special Account for the purposes of the *Financial Management and Accountability Act 1997*.

157. The establishment of a Special Account is warranted as the operating costs of the APVMA are recovered directly from the industry it regulates through the collection of levies and fees, and the Special Account will optimise transparency in terms of identifying the funds collected by the APVMA and the reporting on those funds, facilitating stakeholder confidence. The Special Account will be required on an ongoing basis.
158. New section 59 provides that the Special Account established by section 58 must be credited with amounts equal to all money appropriated by the Parliament for the purposes of the Special Account; fees received by the Commonwealth under the Administration Act, under the *Agricultural and Veterinary Chemicals Act 1988* or under the Agvet Code or *Agricultural and Veterinary Chemicals Code Regulations 1995*; 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; any amounts paid by a State to the Commonwealth for the purposes of the APVMA; money received by the APVMA in relation to property paid for with money from the Special Account; and amounts of any gifts given or bequests made for the purposes of the Special Account. These are the primary avenues of revenue for the APVMA and as such the effect of the provision is that the revenue received by the APVMA is to be credited to the Australian Pesticides and Veterinary Medicines Special Account. Section 57 of the *Financial Management and Accountability Act 1997* requires the financial statements of an agency (including those pertaining to a Special Account) to be prepared in accordance with the Finance Ministers Orders.
159. A note to section 59 observes that an Appropriation Act provides for amounts to be credited to a Special Account if any purposes of the Account is a purpose that is covered by an item in the Appropriation Act. This note relates to subsection 21(1) of the *Financial Management and Accountability Act 1997*, which provides that if another Act establishes a Special Account and identifies the purposes of the Special Account, that the Consolidated Revenue Fund is appropriated for expenditure for those purposes, up to the balance of the Special Account.
160. New subsection 60(1) provides that the section sets out the purposes of the Special Account.
161. New subsection 60(2) provides that amounts standing to the credit of the Special Account may be debited for purposes including: to pay or discharge the costs, expenses or other obligations incurred by the APVMA in the performance of its functions; in payment of any remuneration and allowances payable to any person under the Administration Act; and in making any other payments that the APVMA is authorised or required to make by or under the Administration 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. These are the only means by which the APVMA is authorised to expend public money.

162. A note to section 60 observes that section 21 of the *Financial Management and Accountability Act 1997* is relevant to the provision. Subsection 21(1A) of that Act provides that if an Act allows an amount standing to the credit of a Special Account to be applied, debited, paid or otherwise used for a particular purpose, then, unless the contrary intention appears, the amount may also be applied, paid or otherwise used in making a notional payment for that purpose.
163. New subsection 61(1) requires that as soon as practicable after 30 June in each financial year, the APVMA must prepare and give to the Minister an annual report on the APVMA's operations during that year. A note to the provision observes that section 34C of the *Acts Interpretation Act 1901* contains provisions that are relevant to annual reports.
164. New subsection 61(2) specifies the things that must be included in the annual report. They include: an assessment of the extent to which its operations during the year to which the report relates have contributed to the objectives set out in the corporate plan applicable to the period and to the objectives set out in the annual operational plan that relates to a period corresponding to that year; the particulars of variations (if any) of the corporate plan and the annual operational plan taking effect during that year and significant purchases and disposals of real property by the APVMA during that year and 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; 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; the financial statements required by section 49 of the *Financial Management and Accountability Act 1997* and an audit report on those statements required by section 57 of the *Financial Management and Accountability Act 1997*.
165. New section 62 provides that the APVMA is not subject to taxation under the laws of the Commonwealth or of a State or Territory. This is consistent with other government entities with a public purpose. A note to the provision observes that the APVMA may however be subject to taxation under certain laws such as the *A New Tax System (Goods and Services Tax) Act 1999*. That Act contains a provision (section 177-5), which cancels the effect of another provision of another Act that would provide exemption from liability to pay GST. However the cancellation does not apply if certain conditions apply.

**Item 53: Paragraph 69EP(7)(a)**

166. Item 53 omits the term “director” and substitutes the term “Board member” in subsection 69EP(7)(a) that provides that certain persons may be present at hearings directed by the APVMA to be in private. The amendment is required as part of the change in governance arrangements for the APVMA whereby the governing board constituted by directors is disbanded and an Advisory Board established. The effect of the amendment is authorise Advisory Board members to attend hearings that are to be held in private. Such attendance may be necessary in order for the Advisory Board to fulfil its function.

**Item 54: Subparagraph 70(1)(a)(i)**

167. Item 54 repeals subparagraph 70(1)(a)(i) that provided that a certificate purported to be signed by a director would upon mere production be receivable as prima facie evidence of the matter stated in the certificate to be an act done by the APVMA. The amendment is required as part of the change in governance arrangements for the APVMA whereby the governing board constituted by directors is disbanded. The members of the Advisory Board established by section 14 (item 21) do not have the power to sign certificates under section 70.

**Item 55: Paragraph 70(2)(a)**

168. Item 55 deletes the term “a director or” from subsection 70(2)(a) that provided that a certificate purported to be signed by a director would upon mere production be receivable as prima facie evidence that a named person is authorised to sign certificates for the purposes of subsection 70(1). The amendment is required as part of the change in governance arrangements for the APVMA whereby the governing board constituted by directors is disbanded.

**Schedule 2—Amendment of the Agricultural and Veterinary Chemicals (Administration) Act 1992**

**PART 1 – DEFINITIONS**

**Item 1: Definitions**

169. Item 1 sets out the definitions that apply in Schedule 2.

**PART 2 – ASSETS, LIABILITIES AND LEGAL PROCEEDINGS**

**Item 2: Existing property, money and financial liabilities**

170. Item 2 clarifies financial management arrangements regarding existing property, money and financial liabilities at the commencement of this Schedule. Subitem 2(1) provides that any real or personal property or money held by the APVMA immediately prior to the commencement of Schedule 2 is taken, on the commencement of Schedule 2, to be held by the APVMA for and on behalf of the Commonwealth. This provision is consistent with financial management arrangements for agencies prescribed under the *Financial Management and Accountability Act 1997*.
171. Subitem 2(2) provides that any financial liabilities of the APVMA immediately prior to the commencement of Schedule 2 are taken, on the commencement of Schedule 2, to be liabilities of the Commonwealth. This provision is also consistent with financial management arrangements for agencies prescribed under the *Financial Management and Accountability Act 1997*.

172. Subitem 2(3) clarifies that the financial management arrangements specified in subitems 2(1) and 2(2) are subject to items 3 and 4 of Schedule 2, which stipulate arrangements with respect to assets held on trust and liabilities on assets held on trust by the APVMA.
173. Subitem 2(4) confirms that an amount of money equal to the amount of money held by the APVMA immediately prior to the commencement of Schedule 2, which on the commencement of Schedule will be held by the APVMA for and on behalf of the Commonwealth, may be paid out of the Consolidated Revenue Fund and appropriated accordingly for the purpose of the performance of APVMA functions.

### **Item 3: Vesting of assets held on trust by the APVMA**

174. Item 3 deals with the vesting of assets held on trust by the APVMA. Subitem 3(1) confirms that this item applies in relation to any assets held on trust by the APVMA immediately prior to the commencement of Schedule 2.
175. Subitem 3(2) provides that, on the commencement of Schedule 2, assets held on trust by the APVMA cease to be held by the APVMA and become assets held on trust by the Commonwealth. The subitem clarifies that the settlement of these assets in the possession of the Commonwealth is effected without any conveyance, transfer or assignment and that, to avoid any doubt, the Commonwealth becomes the APVMA's successor in law in relation to those assets. This provision is consistent with financial management arrangements for agencies prescribed under the *Financial Management and Accountability Act 1997*.

### **Item 4: Vesting of liabilities relating to assets held on trust**

176. Item 4 deals with the vesting of liabilities relating to assets held on trust. Subitem 4(1) confirms that this item applies in relation to any liabilities of the APVMA relating to assets to which item 3 applies.
177. Subitem 4(2) has a similar operation to subitem 3(2). It provides that, on the commencement of Schedule 2, liabilities to which this subitem applies cease to be liabilities of the APVMA and become liabilities of the Commonwealth. The subitem clarifies that the settlement of these liabilities in the possession of the Commonwealth is effected without any conveyance, transfer or assignment and that, to avoid any doubt, the Commonwealth becomes the APVMA's successor in law in relation to those liabilities. This provision is consistent with financial management arrangements for agencies prescribed under the *Financial Management and Accountability Act 1997*.

### **Item 5: Certificates relating to vesting of land**

178. Item 5 deals with certificates relating to the vesting of land. Subitem 5(1) provides that this item applies if land vests in the Commonwealth on the commencement of Schedule 2 (pursuant to item 2) and a certificate in the form set out in subitem 5(1) is lodged with a land registration official. Subitem 5(2) confirms that the land registration official may register the land and deal with, and give effect to, the certificate.

## **Item 6: Certificates relating to vesting of assets other than land**

179. Item 6 deals with certificates relating to the vesting of assets other than land. Subitem 6(1) provides that this item applies if any asset other than land vests in the Commonwealth on the commencement of Schedule 2 (pursuant to item 2) and a certificate in the form set out in subitem 5(1) is lodged with an assets registration official. Subitem 6(2) confirms that the assets registration official may deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions of assets of that kind.

## **Item 7: Substitution of parties to proceedings**

180. Item 7 confirms that, on the commencement of Schedule 2, the Commonwealth is substituted as a party to any proceedings of a court or tribunal, relating to an asset held on trust, to which the APVMA was a party immediately prior to the commencement of this Schedule.

## **PART 3 – STAFFING MATTERS**

### **Item 8: Directors of the APVMA**

181. Item 8 is a transitional provision with respect to the office of APVMA directors. The provision provides that any person, who is a director of the APVMA immediately prior to the commencement of Schedule 2, ceases to hold such an office on the commencement of Schedule 2. The effect of this provision is to remove the present directors of the APVMA from their office as directors.

### **Item 9: Chief Executive Officer**

182. Item 9 is a transitional provision with respect to the office of the CEO. Subitem 9(1) deals with the appointment of the CEO on the commencement of Schedule 2. The effect of this provision is to appoint the person holding the office of the CEO immediately prior to the commencement of Schedule 2 as the CEO at the commencement of Schedule 2 for the purposes of section 33 of the Administration Act.
183. Paragraph 9(1)(a) confirms that the term of appointment of the CEO is the balance of the term of appointment of the CEO that remained immediately prior to the commencement of Schedule 2. Paragraph 9(1)(b) confirms that the appointment of the CEO is on such terms and conditions that applied to the CEO immediately prior to commencement of Schedule 2 subject to items 9(2) and 9(3).
184. Subitem 9(2) provides that, notwithstanding the repeal of section 36 of the Administration Act, section 36 continues to have effect in relation to the CEO after the commencement of Schedule 2. The purpose of this provision is to ensure that any determination made by the APVMA under section 36 of the Administration Act with respect to other benefits payable to the CEO will continue to have effect after the commencement of Schedule 2.

185. Subitem 9(3) confirms that the new section 41A has effect in relation to the CEO after the commencement of Schedule 2. The new section 41A enables the Minister to terminate the appointment of the CEO for various reasons.

**Item 10: Transfer of staff**

186. Item 10 is a transitional provision relating to the transfer of staff and staffing procedures following the commencement of Schedule 2. Subitem 10(1) provides that any staffing procedures of the APVMA that were in effect immediately prior to the commencement of Schedule 2 continue to have effect after the commencement of Schedule 2. Subitem 10(1) applies only in relation to processes that were commenced but not completed at the commencement of Schedule 2, and things done by, for or in relation to, the APVMA or an employee of the APVMA before the commencement of Schedule 2.

187. Subitem 10(2) is a regulation making power for dealing with more complicated staffing procedures that cannot be dealt with in this Act. This provision enables regulations to be made for the purpose of prescribing details relating to how the APVMA's staffing procedures will continue to apply after the commencement of Schedule 2. It also enables regulations to be made in relation to other matters of a transitional nature concerning the transfer of staff from employment under the Administration Act to employment under the *Public Service Act 1999*.

188. Subitem 10(3) provides that subitem 10(1) and any regulations made under subitem 10(2) have effect notwithstanding any requirements of the *Public Service Act 1999*.

**PART 4 – REFERENCES TO, AND THINGS DONE BY OR IN RELATION TO, THE DIRECTORS OF THE APVMA**

**Item 11: Operation of laws – things done by, or in relation to, directors of the APVMA**

189. Item 11 clarifies the operation of laws with respect to things done by, or in relation to, directors of the APVMA after the commencement of Schedule 2. Subitem 11(1) provides that any thing done by, or in relation to, directors of the APVMA prior to the commencement of Schedule 2 is taken to have been done by, or in relation to, the CEO after the commencement of Schedule 2. The purpose of this provision is to import things done by, or in relation to, directors of the APVMA to the CEO on the commencement of Schedule 2. The provision reinforces the CEO's responsibility for the governance of the APVMA on the commencement date of Schedule 2.

190. Subitem 11(2) provides that a thing done before the commencement of Schedule 2 pursuant to a provision amended by Schedule 1 has effect from the time it is done as if it were done under that provision as amended. This is a transitional provision, which clarifies that things done by, or in relation to, directors of the APVMA under a provision which is amended by Schedule 1 has effect from the time at which the thing was actually done, as if the provision were already amended.



191. Subitem 11(3) gives the Minister power to determine that subitem 11(1) does not apply in relation to a specified thing done by, or in relation to, the directors of the APVMA; or applies as if the reference in subitem 11(1) to the CEO was a reference to the Commonwealth. This is a discretionary power that may be exercised, depending on the individual circumstances of the matter.
192. Subitem 11(4) is a regulation making power with respect to determinations made by the Minister under paragraph 11(3)(a). The effect of the provision is to allow regulations to be made, which attribute things specified in a determination under 11(3)(a) to a person or body other than the CEO or the Commonwealth. It provides an alternative to the options specified in subitem 11(3).
193. Subitem 11(5) clarifies that, for the purposes of item 11, a thing done by, or in relation to, directors of the APVMA includes the making of an instrument. Item 1 defines the term “instrument” to include a contract, deed, undertaking, agreement, notice, authority, order, instruction or an instrument made under an Act or regulations (such as a legislative instrument, an instrument of delegation, appointment or authorisation).
194. Subitem 11(6) confirms that a determination made by the Minister under subitem 11(3) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

#### **Item 12: References in instruments**

195. Item 12 is a transitional provision regarding references in instruments to directors of the APVMA. The term “instrument” is defined in item 1. Subitem 12(1) provides that a reference to the directors of the APVMA in an instrument in force immediately before the commencement of Schedule 2 has effect following the commencement of Schedule as if the reference were a reference to the CEO.
196. Subitem 12(2) gives the Minister power to determine that subitem 12(1) does not apply in relation to a specified reference (to the directors of the APVMA); or applies as if the reference in subitem 11(1) to the CEO were a reference to the Commonwealth. This is a discretionary power that may be exercised, depending on the individual circumstances of the reference.
197. Subitem 12(3) is a regulation making power with respect to determinations made by the Minister under paragraph 12(2)(a). The provision allows regulations to be made stating that an instrument containing a reference to APVMA directors specified in a determination made under paragraph 12(2)(a) has effect from the commencement of Schedule 2 as if the reference to APVMA directors were a reference to a person or body other than the CEO or the Commonwealth. The effect of this provision is to replace any reference to APVMA directors with a reference to persons or bodies other than the CEO or the Commonwealth. It provides an alternative to the options specified in subitem 12(2).

198. Subitem 12(4) confirms that a determination made by the Minister under subitem 12(2) is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

## **PART 5 – REPORTING REQUIREMENTS AND RECORDS**

### **Item 13: Reporting requirements**

199. Item 13 is a transitional provision regarding reporting requirements. Subitem 13(1) imposes a mandatory requirement on the CEO with respect to ongoing reporting requirements. It provides that the CEO must submit reports that, prior to the commencement of Schedule 2, were required to be submitted by the APVMA or its directors after the commencement of Schedule 2.
200. Subitem 13(2) enables the CEO to meet similar reporting requirements in a single report where the CEO is required to submit a report for a part of a period and the APVMA is required to submit a report in relation to the remainder of the period. The purpose of this provision is to streamline reporting requirements following the commencement of Schedule 2.
201. Subitem 13(3) deals with reporting requirements ending before the commencement of Schedule 2. The provision imposes a mandatory requirement on the CEO to submit reports that the APVMA or its directors were required to submit prior to the commencement of Schedule 2 and those reports are now overdue.
202. Subitem 13(4) confirms that where reporting requirements have been imposed on the CEO by virtue of this item, the laws imposing those requirements have effect on the CEO as if those requirements applied to the APVMA or its directors. To avoid any doubt, this provision applies in relation to offence provisions for failing to provide reports under the Administration Act.

### **Item 14: New annual report requirements to apply from 2007-2008 and later financial years**

203. Item 14 confirms that the new section 61 applies to the 2007-08 financial year and each subsequent financial year. The new section 61 imposes a requirement on the APVMA to prepare and submit to the Minister an annual report regarding the operations of the APVMA for the relevant financial year.

### **Item 15: Access to records**

204. Item 15 reinforces the existing obligation in subsection 27L(4) of the *Commonwealth Authorities and Companies Act 1997* regarding the right of access provided to directors of a Commonwealth authority and persons who have ceased to be directors of a Commonwealth authority in relation to the books of that authority. The provision makes it clear that the CEO must continue to discharge the obligation on behalf of the APVMA.

### **Item 16: Continuing obligation to keep records**

205. Item 16 reinforces the existing obligation in section 20 of the *Commonwealth Authorities and Companies Act 1997* regarding the APVMA's obligation to keep accounting records. Section 20 of the *Commonwealth Authorities and Companies Act 1997* imposes a requirement on the APVMA to keep accounting records in a certain manner for a period of 7 years after the completion of the transactions to which they relate, and to make those records available at all reasonable times for inspection by any director of the authority.

## **PART 6 – MISCELLANEOUS**

### **Item 17: Exemption from stamp duty and other State or Territory taxes**

206. Item 17 provides an exemption from stamp duty or other State or Territory taxes payable in connection with the transfer of an asset or liability under Schedule 2 or the operation of Schedule 2 in any other respect.

### **Item 18: Constitutional safety net – acquisition of property**

207. Item 18 provides a constitutional safety net with respect to an acquisition of property that occurs by operation of Schedule 2. Subitem 18(1) provides that the Commonwealth must pay a reasonable amount of compensation to the person from whom the property is acquired. In the event of a dispute regarding the amount of compensation, subitem 18(2) permits the person concerned to institute proceedings in a court of competent jurisdiction.

### **Item 19: Certificates taken to be authentic**

208. Item 19 confirms that certificates made or issued under Schedule 2 are taken to be authentic unless otherwise established.

### **Item 20: Delegation by Minister**

209. Item 20 is a delegation provision concerning the powers of the Minister under Schedule 2. Subitem 20(1) permits the Minister to delegate all or any of his or her powers and functions under Schedule 2 to the CEO. Subitem 20(2) confirms that the CEO must comply with any directions of the Minister when exercising or performing his or her delegated powers or functions.

### **Item 21: Regulations**

210. Item 21 is a regulation making power enabling the Governor-General to prescribe any matters required or permitted by Schedule 2 to be prescribed, or are necessary or convenient for carrying out or giving effect to Schedule 2. The matters that are required or permitted by Schedule 2 to be prescribed are transitional staffing matters as specified in item 10 and matters concerning determinations made under Part 4.