



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

Act No. 71 of 1994 as amended

This compilation was prepared on 30 July 2004
taking into account amendments up to Act No. 79 of 2004

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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Contents

Part 1—Preliminary	1
1 Short title [see Note 1]	1
2 Commencement [see Note 1]	1
3 Interpretation	1
4 Definition of <i>agricultural chemical product</i>	7
5 Definition of <i>veterinary chemical product</i>	7
6 Act to bind Crown	8
6A Application of the <i>Criminal Code</i>	9
7 Power of APVMA to make certain determinations	9
Part 2—Liability for levy	10
8 Liability for levy in respect of disposals of chemical products	10
9 Amount of levy	10
10 Payment of levy	11
11 Late payment penalty	11
Part 3—Calculation or assessment of levy	12
12 Calculation of levy by person liable	12
13 Assessment of levy by APVMA	13
14 Fresh assessments	14
15 Reconsideration and review of assessments	15
Part 4—Enforcement	17
16 Levy and late payment penalty recoverable as debts	17
17 APVMA may require information about disposals of chemical products	17
18 Appointment of inspectors	18
19 Searches to monitor compliance with Act	18
20 Offence-related searches and seizures	19
21 Power of inspector to require information or documents	20
22 Offence-related warrants	20
23 Announcement before entry	21
24 Details of warrant to be given to occupier	22
25 Use of equipment to examine or process things	22
26 Use of electronic equipment at premises	23
27 Compensation for damage to electronic equipment	24
28 Copies of seized things to be provided	25
29 Retention of things that are seized	25
30 Court of summary jurisdiction may permit a thing to be kept	26

Part 5—Miscellaneous	27
31 Administrative Appeals Tribunal may review certain decisions by APVMA	27
32 Self-incrimination to be a reasonable excuse for non-compliance with requirement.....	27
33 Copying of documents	27
34 Applicant for registration of chemical product to keep records	28
36 Exemptions from liability for damages	28
37 Evidential certificates.....	28
38 Regulations	29
Notes	31

An Act to provide for the collection of an interim levy on agricultural and veterinary chemical products, and for related purposes

Part 1—Preliminary

1 Short title [see Note 1]

This Act may be cited as the *Agricultural and Veterinary Chemical Products (Collection of Interim Levy) Act 1994*.

2 Commencement [see Note 1]

- (1) Subject to subsection (2), this Act commences on a day to be fixed by Proclamation.
- (2) If the commencement of this Act is not fixed by a Proclamation published in the *Gazette* within the period of 6 months beginning on the day on which this Act receives the Royal Assent, this Act is repealed on the first day after the end of that period.

3 Interpretation

- (1) In this Act, unless the contrary intention appears:

agricultural chemical product has the meaning given by section 4.

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

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

Section 3

APVMA means the Australian Pesticides and Veterinary Medicines Authority continued in existence by section 6 of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

assessment means an assessment under section 13.

Australian Capital Territory includes the Jervis Bay Territory.

Australian product means a chemical product that has been manufactured in Australia, but does not include an imported product.

chemical product means an agricultural chemical product or a veterinary chemical product but does not include such a product that, under the regulations, is exempt from levy.

document includes a book or other record.

excluded organism means an organism that is declared by the regulations to be an excluded organism.

give information includes make a statement.

imported product means a chemical product that has been imported into Australia (whether or not the product was manufactured in Australia).

inspector means a person appointed as an inspector for the purposes of this Act under section 18.

interested person, in relation to a registered chemical product, means:

- (a) subject to paragraphs (b), (c) and (d), the person (the **original applicant**) who applied for the registration or, in the case of a chemical product whose registration has been renewed, applied for the renewal, or the last renewal, as the case may be, of the registration; or
- (b) subject to paragraphs (c) and (d), if the original applicant has entered into a contract with another person in relation to the product under which, or as a result of which, the other person will or may apply to the relevant registering authority to have the other person's name entered in the register in relation to the product, or to have a label approved in relation to

containers for the product, and the other person's name is entered in that register, or such a label is approved, on the application of the other person—the other person; or

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

jurisdiction means:

- (a) a State; or
- (b) the Australian Capital Territory.

late payment penalty means late payment penalty payable under section 11.

leviable disposal in relation to a chemical product, means:

- (a) if the product is an Australian product:
 - (i) if the product is disposed of in Australia by the manufacturer—that disposal of the product; or
 - (ii) if the product is applied by the manufacturer to the manufacturer's own use—that application of the product; or
- (b) if the product is an imported product:
 - (i) if the product is disposed of in Australia by the importer—that disposal of the product; or
 - (ii) if the product is applied by the importer to the importer's own use—that application of the product.

leviable value, in relation to a leviable disposal of a chemical product, means:

- (a) if the leviable disposal was a sale by wholesale of the product by the manufacturer or importer and the parties to the sale were dealing at arm's length—the amount received by the manufacturer or importer in respect of the sale; or

Section 3

- (b) otherwise—the notional wholesale value of the product at the time of the disposal.

levy means levy, imposed by any Act, that is payable under this Act.

manufacture includes formulate.

member of the staff, in relation to the APVMA, has the same meaning as in the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

notional wholesale value, in relation to a chemical product at a particular time, means the amount that the APVMA determines would have been received:

- (a) if the product is an Australian product—by the manufacturer; or
- (b) if the product is an imported product—by the importer;
- in respect of the product if, at that time, the product had been sold by the manufacturer or importer, as the case may be, by wholesale to a person with whom the manufacturer or importer was dealing at arm's length.

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

offence against this Act includes an offence against:

- (a) section 6 of the *Crimes Act 1914*; or
- (b) section 11.1, 11.4 or 11.5 of the *Criminal Code*;
- that relates to an offence against this Act.

pest means:

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

plant means any vegetation or fungus and includes a seed or cutting of a plant, or any other part or product of a plant.

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

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

prescribed date for payment, in relation to any levy that is payable in respect of leviable disposals of a chemical product in a relevant year, means:

- (a) except if the levy is payable because of an assessment, whichever is the later of:
 - (i) 1 June next following the end of that year; or
 - (ii) the day immediately following the end of 6 weeks after the date of commencement of this Act;or, if the APVMA determines a later day for the purposes of this paragraph in relation to that year, that later day; or
- (b) if the levy is payable because of an assessment—the date stated in the notice of assessment to be the date by which the levy is to be paid.

rate of levy has the meaning given by paragraph 9(c).

registered means registered under a prescribed law of any jurisdiction.

relevant calendar year means the calendar year that began on 1 January 1993.

State includes the Northern Territory.

substance includes:

- (a) any gas, liquid, mixture or compound of gases, or mixture or compound of liquids; and

Section 3

- (b) an organism or part of an organism, including a genetically manipulated organism or part of a genetically manipulated organism; and
- (c) material that is produced from an organism; and
- (d) matter whose production involves the use of an organism; but does not include an excluded organism or part of an excluded organism, or material that is produced from, or matter whose production involves the use of, an excluded organism.

thing includes a document.

total leviable value, in relation to a chemical product for a relevant calendar year, means the sum of the leviable values in respect of the leviable disposals of the product that took place anywhere in Australia during that year.

veterinary chemical product has the meaning given by section 5.

veterinary surgeon means a person who is registered as a veterinary surgeon under the law of a jurisdiction.

- (2) For the purposes of this Act, if a label for containers for a chemical product is registered under a prescribed law of a jurisdiction:
 - (a) the product is taken to be registered under that law; and
 - (b) a reference to registration of the product is taken, in relation to that jurisdiction, to be a reference to registration of the label.
- (3) If, at any time or during any period, a permit in relation to a chemical product is in force under a prescribed law of any jurisdiction, this Act has effect as if:
 - (a) the product were registered under a prescribed law of that jurisdiction at that time or during that period; and
 - (b) a reference to the person who applied for the registration of the product were a reference to the person who applied for the permit.
- (4) If a change occurs in the legal or equitable ownership of a chemical product, the product is taken to be disposed of at the time of the change by the person who was the legal owner of the product immediately before the change.

- (5) If a chemical product is applied by a person to the person's own use, the product is taken to be disposed of by the person when it is so applied.

4 Definition of *agricultural chemical product*

- (1) This section defines what is meant by an agricultural chemical product for the purposes of this Act.
- (2) Subject to subsections (3) and (4), an agricultural chemical product is a substance or mixture of substances that is represented, imported, manufactured, supplied or used as a means of directly or indirectly:
- (a) destroying, stupefying, repelling, inhibiting the feeding of, or preventing infestation by or attacks of, any pest in relation to a plant, a place or a thing; or
 - (b) destroying a plant; or
 - (c) modifying the physiology of a plant or pest so as to alter its natural development, productivity, quality or reproductive capacity; or
 - (d) modifying an effect of another agricultural chemical product; or
 - (e) attracting a pest for the purpose of destroying it.
- (3) An agricultural chemical product includes a substance or mixture of substances declared by the regulations to be an agricultural chemical product.
- (4) An agricultural chemical product does not include:
- (a) a veterinary chemical product; or
 - (b) a substance or mixture of substances declared by the regulations not to be an agricultural chemical product.

5 Definition of *veterinary chemical product*

- (1) This section defines what is meant by a veterinary chemical product for the purposes of this Act.
- (2) Subject to subsections (3) and (4), a veterinary chemical product is a substance or mixture of substances that is represented as being
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Section 6

- suitable for, or is manufactured, supplied or used for, administration or application to an animal by any means, or consumption by an animal, as a way of directly or indirectly:
- (a) preventing, diagnosing, curing or alleviating a disease or condition in the animal or an infestation of the animal by a pest; or
 - (b) curing or alleviating an injury suffered by the animal; or
 - (c) modifying the physiology of the animal:
 - (i) so as to alter its natural development, productivity, quality or reproductive capacity; or
 - (ii) so as to make it more manageable; or
 - (d) modifying the effect of another veterinary chemical product.
- (3) A veterinary chemical product includes:
- (a) a vitamin, a mineral substance, or an additive, if, and only if, the vitamin, substance or additive is used for a purpose mentioned in paragraph (2)(a), (b), (c) or (d); and
 - (b) a substance or mixture of substances declared by the regulations to be a veterinary chemical product.
- (4) A veterinary chemical product does not include:
- (a) a substance or mixture of substances that is:
 - (i) prepared by a pharmacist in accordance with the instructions of a veterinary surgeon; or
 - (ii) prepared by a veterinary surgeon;
in the course of the practice, by the person preparing the substance or mixture of substances, of his or her profession, as permitted by or under a law of any jurisdiction; or
 - (b) a substance or mixture of substances declared by the regulations not to be a veterinary chemical product.

6 Act to bind Crown

- (1) This Act binds the Crown in all its capacities.
- (2) Nothing in this Act renders the Crown in any capacity liable to be prosecuted for an offence.

6A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

7 Power of APVMA to make certain determinations

The APVMA may:

- (a) by notice in writing to the manufacturer or importer of a chemical product, determine the amount that would have been received by the manufacturer or importer in respect of the product at a particular time as mentioned in the definition of *notional wholesale value* in subsection 3(1); or
- (b) by notice published in the *Gazette*, determine a later day for the purposes of paragraph (a) of the definition of *prescribed date for payment* in subsection 3(1).

Part 2—Liability for levy

8 Liability for levy in respect of disposals of chemical products

- (1) If a chemical product was or is registered in any jurisdiction on 1 January next following the end of a relevant calendar year, levy is payable in respect of leviable disposals of the product that took place anywhere in Australia at any time during that year.
- (2) Subject to subsection (3) the interested person in relation to the chemical product is liable to pay the levy.
- (3) If the chemical product was registered as mentioned in subsection (1) in more than one jurisdiction and different persons were the interested persons in relation to the product in different jurisdictions, those persons are jointly and severally liable to pay the levy.

9 Amount of levy

The amount of the levy that is payable in respect of leviable disposals of a particular chemical product during a relevant calendar year is:

- (a) if the total leviable value in respect of the product for that year is not more than \$25,000—\$500; or
- (b) if the total leviable value in respect of the product for that year is more than \$25,000 but not more than \$100,000—\$830; or
- (c) if the total leviable value in respect of the product for that year is more than \$100,000:
 - (i) the amount worked out using the formula:

$$\$830 + \left\{ \begin{array}{l} \text{total leviable value in respect} \\ \text{of the product for that year} \end{array} \times \text{rate of levy} \right\}; \text{ or}$$

- (ii) \$20,000;

whichever is the less, where:

rate of levy means the percentage prescribed by the regulations for the purposes of this paragraph in respect of that year.

10 Payment of levy

A person who is liable to pay levy in respect of a chemical product must pay the levy on or before the prescribed date for payment of that levy.

11 Late payment penalty

- (1) If any levy payable by a person is not wholly paid on or before the prescribed date for payment of the levy, the person immediately becomes liable to pay a late payment penalty of:
 - (a) subject to paragraph (b)—\$200; or
 - (b) if another amount is prescribed by the regulations for the purposes of this section and is applicable in respect of that prescribed date for payment—that other amount.
- (2) The APVMA may waive the whole or a part of the liability to pay an amount of late payment penalty.

Part 3—Calculation or assessment of levy

12 Calculation of levy by person liable

- (1) If it appears to the APVMA that a person may be liable to pay levy in respect of leviable disposals of a chemical product that took place during a relevant calendar year, the APVMA may, not earlier than the end of that year, by written notice given to the person:
 - (a) tell the person the rate of levy payable in respect of chemical products for that year; and
 - (b) require the person:
 - (i) to calculate the total leviable value (if any) in respect of the product for that year and the amount of the levy (if any) that is payable; and
 - (ii) within a period of not less than one month that is stated in the notice, to notify the APVMA in writing of the results of the calculations and the basis on which the calculations were made.

- (2) A person must not refuse or fail to comply with a requirement made under subsection (1).

Penalty: 30 penalty units.

- (2A) Subsection (2) does not apply if the person has a reasonable excuse.

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

- (2B) An offence under subsection (2) is an offence of strict liability.

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

- (3) Subject to subsection (6), a person who has given to the APVMA, under subparagraph (1)(b)(ii) or this subsection, a notification in writing in respect of the total leviable value (if any) in respect of a chemical product for a calendar year and the amount of the levy (if any) that is payable may make a further calculation of that value and amount in substitution for the value and amount last so calculated and notify the APVMA of the results of the further

calculations and the basis on which the further calculations were made.

- (4) Subject to subsection (6), an amount notified by a person to the APVMA in accordance with this section as being the amount calculated by the person to be the levy payable in respect of a chemical product for a calendar year or, if more than one amount has been so notified for that year, the amount last notified, is taken to be the amount of levy so payable.
- (5) Subject to subsection (6), if a notification by a person to the APVMA in accordance with this section or, if more than one notification has been made, the last such notification, states that the calculations made by the person show that no levy is payable in respect of a particular chemical product for a calendar year, no levy is payable by the person in respect of that product for that year.
- (6) Subsections (3), (4) and (5) do not apply in relation to a chemical product in respect of a calendar year if the APVMA has made or makes an assessment as to whether any levy is payable in respect of that product for that year.

13 Assessment of levy by APVMA

- (1) The APVMA may make an assessment as to whether levy is payable in respect of leviable disposals of a particular chemical product during a relevant calendar year.
- (2) An assessment may be made before, on or after the date that, apart from the assessment, would be the prescribed date for payment of the levy and whether or not any payment has been made on account of the levy.
- (3) An assessment is to state the total leviable value (if any) in respect of the product for the calendar year concerned and the amount of the levy (if any) payable.
- (4) An assessment may be based on any information in the possession of the APVMA, whether obtained as a result of the making of a requirement under this Act or otherwise.
- (5) The APVMA must give written notice of an assessment:

Section 14

- (a) if any levy is assessed to be payable—to the person who it considers is liable to pay the levy; or
 - (b) if no levy is assessed to be payable—to the person who, if levy had been payable, it considers would have been liable to pay the levy.
- (6) A notice of assessment must contain particulars of any determination made by the APVMA under paragraph 7(a).
 - (7) If any levy is payable, the notice must state the date by which the levy is to be paid.
 - (8) The date to be so stated must not be earlier than whichever is the later of the following dates:
 - (a) the date that, apart from the assessment, would be the prescribed date for payment of the levy;
 - (b) the 21st day after the day on which the notice is given.
 - (9) A notice of an assessment must include a statement to the effect of section 15.
 - (10) A failure to comply with subsection (9) does not affect the validity of the assessment.
 - (11) An assessment is taken to be a decision for the purposes of the *Administrative Appeals Tribunal Act 1975*.
 - (12) The production of a notice of assessment, or of a document purporting to be a copy of a notice of assessment, signed on behalf of the APVMA by the Chief Executive Officer of the APVMA or a delegate of the Chief Executive Officer is conclusive evidence of the due making of the assessment and, except in proceedings under section 15 on a review or appeal relating to the assessment, that the amount and all the particulars of the assessment are correct.

14 Fresh assessments

- (1) Subject to subsection (2), if the APVMA is satisfied that an assessment was incorrect, the APVMA may make a fresh assessment under section 13 in substitution for the original assessment, even though levy may have been paid in respect of the original assessment.

- (2) A fresh assessment may:
- (a) if the original assessment was based on false or misleading information given to the APVMA or to an inspector—be made at any time; or
 - (b) otherwise—be made only within 4 years from the date on which levy became payable under the original assessment.

15 Reconsideration and review of assessments

- (1) A person who is affected by an assessment made by the APVMA may, if dissatisfied with the assessment, by written notice given to the APVMA within 21 days after the day on which the person first received notice of the assessment, or within any further period that the APVMA allows, request the APVMA to reconsider the assessment.
- (2) The person must set out in the request reasons for making the request.
- (3) Upon receipt of the request, the APVMA must reconsider the assessment and, subject to subsection (4), may confirm or revoke the assessment or vary the assessment in any manner that it thinks fit.
- (4) If the APVMA does not confirm, revoke or vary an assessment before the end of 21 days after the day on which it received the request under subsection (1) to reconsider the assessment, it is taken, at the end of that period, to have confirmed the assessment under subsection (3).
- (5) If the APVMA confirms, revokes or varies an assessment before the end of the period referred to in subsection (4), it must, by written notice given to the person making the request, tell the person the result of the reconsideration of the assessment and the reasons for confirming, varying or revoking the assessment, as the case may be.
- (6) A failure to comply with subsection (5) does not affect the validity of the confirmation, revocation or variation.

Section 15

- (7) Applications may be made to the Administrative Appeals Tribunal for review of assessments of the APVMA that have been confirmed or varied under subsection (3).
- (8) If, as a result of an application made under paragraph 31(b), the Administrative Appeals Tribunal has reviewed a determination made by the APVMA under paragraph 7(a) in relation to a chemical product as at a particular time, the Tribunal is not entitled to alter the determination as so reviewed by it when it is reviewing an assessment to which the determination is relevant.
- (9) If an assessment is taken, because of subsection (4), to be confirmed, section 29 of the *Administrative Appeals Tribunal Act 1975* applies as if the prescribed time for making application for review of the assessment were the period beginning on the day on which the assessment is taken to be confirmed and ending on the 28th day after that day.
- (10) If a request is made under subsection (1) in respect of an assessment, section 41 of the *Administrative Appeals Tribunal Act 1975* applies as if the making of the request were the making of an application to the Administrative Appeals Tribunal for a review of the assessment.

Part 4—Enforcement

16 Levy and late payment penalty recoverable as debts

- (1) Any levy that has not been paid on or before the prescribed date for payment of the levy, or any late payment penalty that is payable, is a debt due to the Commonwealth and payable to the APVMA and may be sued for and recovered by the APVMA.
- (2) The APVMA must pay into the Consolidated Revenue Fund any amounts of levy or late payment penalty received by it.

17 APVMA may require information about disposals of chemical products

- (1) If it appears to the APVMA that levy may be payable in respect of a chemical product for a calendar year, the APVMA may, not earlier than the end of the calendar year, give written notice to any one or more of the following:
 - (a) the person, or any of the persons, by whom any such levy would be payable;
 - (b) if the product is an imported product and the person referred to in paragraph (a) is not, or none of the persons referred to in that paragraph is, the importer—the importer;
 - (c) if the product is an Australian product and the person referred to in paragraph (a) is not, or none of the persons referred to in that paragraph is, the manufacturer—the manufacturer;requiring the person to whom the notice is given to give to the APVMA, within a period stated in the notice that is not less than one month after the notice is given, any information relating to the importation, manufacturer or disposal of the product during the calendar year that is necessary to work out the total leviable value in respect of the product for the calendar year.
- (2) A person must not refuse or fail to comply with a requirement made under subsection (1).

Penalty: 30 penalty units.

Section 18

- (3) Subsection (2) does not apply if the person has a reasonable excuse.

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

- (4) An offence under subsection (2) is an offence of strict liability.

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

18 Appointment of inspectors

- (1) The APVMA may, by writing, appoint members of its staff, persons engaged under the *Public Service Act 1999*, or other persons having appropriate qualifications, to be inspectors for the purposes of this Act.

- (2) An inspector is a Commonwealth officer for the purposes of section 70 of the *Crimes Act 1914*.

- (3) The APVMA must cause to be issued to each person who is an inspector an identity card which states the name of the person and the fact that the person is an inspector for the purposes of this Act and to which is attached a photograph of the person taken within the 3 years before the identity card is issued.

- (4) A person who has ceased to be an inspector must, as soon as practicable, return to the APVMA the identity card issued to him or her under this section.

Penalty for a contravention of this subsection: One penalty unit.

- (5) Subsection (4) does not apply if the person has a reasonable excuse.

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

- (6) An offence under subsection (4) is an offence of strict liability.

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

19 Searches to monitor compliance with Act

- (1) Subject to this section, to the extent that it is reasonably necessary to do so for the purpose of finding out whether levy is payable
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under this Act, an inspector, with any necessary help, may enter, at any time during ordinary working hours on any day, any premises that the inspector has reasonable cause to believe are premises at which any thing relating to the importation, manufacture or disposal of chemical products is kept and may do any one or more of the following:

- (a) search the premises and any thing found at the premises;
 - (b) inspect any document kept at the premises;
 - (c) seize any such document and remove it from the premises.
- (2) An inspector may not, under subsection (1), enter premises that are a residence unless the occupier of the premises has consented to the entry.
- (3) An inspector may not exercise any powers under subsection (1) in relation to premises if:
- (a) the occupier of the premises has required the inspector to produce his or her identity card for inspection by the occupier; and
 - (b) the inspector fails to comply with the requirement.

20 Offence-related searches and seizures

- (1) If an inspector has reasonable grounds for suspecting that there may be at any premises a particular thing that may be evidence of the commission of an offence against this Act, the inspector may:
- (a) with the consent of the occupier of the premises; or
 - (b) under a warrant issued under section 22;
- enter the premises and:
- (c) search the premises for the thing: and
 - (d) if the thing is found—seize the thing.
- (2) If, in the course of searching, under a warrant issued under section 22, for a particular thing in relation to a particular offence, an inspector finds another thing that the inspector believes, on reasonable grounds, to be:
- (a) a thing that may be evidence of the commission of the offence, although not the thing stated in the warrant; or

Section 21

(b) a thing that may be evidence of the commission of another offence against this Act;

and the inspector believes, on reasonable grounds, that it is necessary to seize the other thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or the other offence, the warrant is taken to authorise the inspector to seize the other thing.

21 Power of inspector to require information or documents

- (1) Subject to subsection (2), an inspector who has entered premises under this Act may, to the extent that it is reasonably necessary for the purpose of finding out whether levy is payable under this Act, require a person to give information to the inspector and to produce any documents requested by the inspector.
- (2) An inspector is not entitled to make a requirement of a person under subsection (1) unless the inspector produces his or her identity card for inspection by the person.
- (3) A person must not refuse or fail to comply with a requirement made under subsection (1).

Penalty: 30 penalty units.

- (4) Subsection (3) does not apply if the person has a reasonable excuse.

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

- (5) An offence under subsection (3) is an offence of strict liability.

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

22 Offence-related warrants

- (1) An inspector may apply to a magistrate for a warrant under this section in relation to particular premises.
- (2) Subject to subsection (3), a magistrate may issue the warrant in accordance with the prescribed form if he or she is satisfied, by information on oath, that there are reasonable grounds for suspecting that there is, or may be within the next 72 hours, at the

premises a particular thing that may be evidence of the commission of an offence against this Act.

- (3) A magistrate must not issue a warrant under subsection (2) unless the informant or some other person has given to the magistrate, either orally or by affidavit, any further information that the magistrate requires about the grounds on which the issue of the warrant is being sought.
- (4) The warrant must:
 - (a) state the nature of the offence; and
 - (b) state the purpose for which the warrant is issued; and
 - (c) authorise an inspector named in the warrant, with any help, and using any force, that is necessary and reasonable, to enter the premises and exercise the powers referred to in paragraphs 20(1)(c) and (d) in respect of the thing; and
 - (d) state whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night; and
 - (e) state a day, not later than 7 days after the day of issue of the warrant, upon which the warrant ceases to have effect.

23 Announcement before entry

- (1) Subject to subsection (2), an inspector who is authorised to enter premises under a warrant issued under section 22 or a person helping such an inspector must, before any person enters the premises under the warrant:
 - (a) announce that he or she is authorised by the warrant to enter the premises; and
 - (b) give any person at the premises an opportunity to allow entry to the premises.
- (2) The inspector or a person helping the inspector is not required to comply with subsection (1) if he or she believes on reasonable grounds that immediate entry to the premises is required to ensure:
 - (a) the safety of a person (including the inspector and any person helping the inspector); or
 - (b) that the effective execution of the warrant is not frustrated.

Section 24

24 Details of warrant to be given to occupier

- (1) If a warrant under section 22 in relation to premises is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the inspector or a person helping the inspector must make a copy of the warrant available to the occupier or other person.
- (2) The inspector must identify himself or herself to the person at the premises.
- (3) The copy of the warrant referred to in subsection (1) need not include the signature of the magistrate who issued the warrant.

25 Use of equipment to examine or process things

- (1) An inspector who enters premises under section 19 or 20 or a person assisting the inspector may bring to the premises any equipment reasonably necessary for the examination or processing of things found at the premises in order to determine whether they are things that may be seized under that section.
- (2) If:
 - (a) it is not practicable to examine or process the things at the premises; or
 - (b) the occupier of the premises consents in writing;the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized under section 19 or 20, as the case may be.
- (3) If things containing electronically stored information are moved to another place for the purpose of examination or processing under subsection (2), the inspector must, if it is practicable to do so:
 - (a) tell the occupier the address of the place and the time at which the examination or processing will be carried out; and
 - (b) allow the occupier or a representative of the occupier to be present during the examination or processing.
- (4) The inspector or a person helping the inspector may operate equipment already at the premises to carry out the examination or

processing of a thing found at the premises in order to determine whether it is a thing that may be seized under section 19 or 20, as the case may be, if the inspector or person helping believes on reasonable grounds that:

- (a) the equipment is suitable for the examination or processing; and
- (b) the examination or processing can be carried out without damage to the equipment or the thing.

26 Use of electronic equipment at premises

- (1) Subject to subsection (4), if a thing found at premises that an inspector has entered under section 19 or 20 is or includes records of information in a written or electronic form, the inspector or a person helping the inspector may operate, or the inspector may require the occupier or an employee of the occupier who is present to operate, equipment at the premises to see whether:
 - (a) the equipment; or
 - (b) a disk, tape or other storage device that:
 - (i) is at the premises; and
 - (ii) can be used with, or is associated with, the equipment;contains records that are relevant to determining whether levy is payable under this Act or an offence against this Act has been committed, as the case requires.
- (2) If the inspector or a person helping the inspector, after equipment at the premises is operated, finds that the equipment contains records of that kind or that a disk, tape or other storage device at the premises contains records of that kind, he or she may:
 - (a) seize the equipment or the disk, tape or other storage device; or
 - (b) if the records can, by using facilities at the premises, be put in documentary form—operate the facilities to put the records in that form and seize the documents so produced; or
 - (c) if the records can be transferred to a disk, tape or other storage device:
 - (i) that is brought to the premises; or

Section 27

- (ii) that is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;
operate the equipment or other facilities to copy the records to the storage device and remove the storage device from the premises.
- (3) An inspector or person helping an inspector may seize equipment under paragraph (2)(a) only if:
 - (a) it is not practicable to put the relevant records in documentary form as mentioned in paragraph (2)(b) or to copy the records as mentioned in paragraph (2)(c); or
 - (b) possession by the occupier of the equipment could constitute an offence.
- (4) An inspector or a person helping an inspector must not operate equipment for the purpose mentioned in subsection (1) unless the inspector or person helping believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.

27 Compensation for damage to electronic equipment

- (1) If:
 - (a) equipment is damaged because of being operated as mentioned in section 25 or 26; and
 - (b) the damage was caused as a result of:
 - (i) insufficient care being exercised in selecting the person who was to operate the equipment; or
 - (ii) insufficient care being exercised by the person operating the equipment;the APVMA must pay compensation for the damage to the owner of the equipment.
- (2) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and the employees and agents of the occupier, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

28 Copies of seized things to be provided

- (1) Subject to subsection (2), if an inspector who has entered premises under section 19 or 20 seizes:
 - (a) a document, film, computer file or other thing that can be readily copied; or
 - (b) a storage device the information in which can be readily copied;the inspector must, if requested to do so by the occupier of the premises or another person who apparently represents the occupier and is present when the seizure takes place, give a copy of the thing or the information to the occupier or other person as soon as practicable after the seizure.
- (2) Subsection (1) does not apply if:
 - (a) the thing that has been seized was seized under paragraph 26(2)(b) or (c); or
 - (b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

29 Retention of things that are seized

- (1) If an inspector seizes a thing under section 19 or 20, the inspector must take reasonable steps to return it if the reason for its seizure no longer exists.
- (2) If the thing has not been returned before the end of 60 days after its seizure, the inspector must take reasonable steps to return it unless:
 - (a) proceedings in which the thing may be used in evidence were begun before the end of the 60 days and the proceedings (including an appeal to a court in relation to the proceedings) have not been completed; or
 - (b) the inspector may keep the thing because of an order under section 30; or
 - (c) the inspector is authorised by this Act or by an order of a court to keep, destroy or dispose of the thing.
- (3) If the thing is required to be returned, it must be returned to the person from whom it was seized or, if that person is not entitled to possess it, to the owner.

Section 30

- (4) If there is a dispute as to the ownership of the thing, the inspector may keep the thing until the dispute is resolved.
- (5) This section has effect subject to section 30.

30 Court of summary jurisdiction may permit a thing to be kept

- (1) If:
 - (a) before the end of 60 days after an inspector seizes a thing under section 19 or 20; or
 - (b) before the end of a period previously stated in an order of a court under this section in respect of a thing seized by an inspector as mentioned in paragraph (a);proceedings in which the thing may be used in evidence have not been brought, the inspector may apply to a court of summary jurisdiction for an order that he or she may keep the thing for a further period.
- (2) If the court is satisfied that it is necessary for the inspector to continue to keep the thing:
 - (a) for the purposes of an investigation as to whether an offence has been committed; or
 - (b) to enable evidence of an offence to be secured for the purposes of a prosecution;the court may order that the inspector may keep the thing for a period stated in the order.
- (3) If the court thinks that notice of the application should be given to any person, it may require such a notice to be given before it hears the application.

Part 5—Miscellaneous

31 Administrative Appeals Tribunal may review certain decisions by APVMA

An application may be made to the Administrative Appeals Tribunal for review of:

- (a) a decision of the APVMA determining, or refusing to determine, a later day for the purposes of paragraph (a) of the definition of *prescribed date for payment* in subsection 3(1); or
- (b) a decision of the APVMA determining an amount under paragraph 7(a); or
- (c) a decision of the APVMA under subsection 11(2) waiving, or refusing to waive, the whole or part of the liability to pay an amount of late payment penalty; or
- (d) a decision of the APVMA allowing, or refusing to allow, a further period for the making of a request under subsection 15(1).

32 Self-incrimination to be a reasonable excuse for non-compliance with requirement

It is a reasonable excuse for a person to refuse or fail to give information, produce a document or do any other thing that the person is required to do by or under this Act that the information, the production of the document or the doing of that other thing would tend to incriminate the person.

33 Copying of documents

If an inspector seizes a document under section 19 or 20, or a person produces a document to an inspector in accordance with a requirement under subsection 21(1), the inspector may make copies of, or take extracts from, the document.

Section 34

34 Applicant for registration of chemical product to keep records

- (1) A person who applies for registration, or the renewal of registration, of a chemical product, or imports a chemical product into or manufactures a chemical product in Australia, must:
 - (a) keep any records relating to the importation, manufacture or disposal of the product that may be necessary to work out the total leviable value in respect of the product for a relevant calendar year; and
 - (b) retain those records for 6 years.

Penalty: 30 penalty units.

- (2) An offence under subsection (1) is an offence of strict liability.

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

36 Exemptions from liability for damages

No action, suit or other proceeding for damages lies against the Commonwealth, the APVMA, or any other Commonwealth authority, or a person who is or has been an officer or employee of the Commonwealth, of the APVMA or of any other Commonwealth authority, or is or has been a delegate of the APVMA, a director of the APVMA, consultant to the APVMA or an inspector, for or in relation to anything done or omitted to be done in good faith in the performance or purported performance of any function, or the exercise or purported exercise of any power, conferred by this Act.

37 Evidential certificates

- (1) In any legal or administrative proceeding, a certificate, signed by a member of the staff of the APVMA who is authorised by the APVMA to give certificates under this section, stating that a person named in the certificate was an inspector at a particular time or during a particular period for the purposes of this Act is evidence of the matters stated in the certificate.
 - (2) Unless the contrary is proved, a document purporting to be a certificate referred to in subsection (1) is taken to be such a certificate and to have been duly given.
-

38 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;and, in particular, prescribing the way in which notices may be given by or to the APVMA under this Act.
- (2) The percentage that may be prescribed by the regulations for the purposes of paragraph 9(c) must not exceed 2%.

Table of Acts

Notes to the *Agricultural and Veterinary Chemical Products (Collection of Interim Levy) Act 1994*

Note 1

The *Agricultural and Veterinary Chemical Products (Collection of Interim Levy) Act 1994* as shown in this compilation comprises Act No. 71, 1994 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions see Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Agricultural and Veterinary Chemical Products (Collection of Interim Levy) Act 1994</i>	71, 1994	21 June 1994	1 July 1994 (see s. 2(1) and <i>Gazette</i> 1994, No. S222)	
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (item 62): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (a)	—
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Ss. 1–3, Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419)
<i>Agriculture, Fisheries and Forestry Legislation Amendment (Application of Criminal Code) Act 2001</i>	115, 2001	18 Sept 2001	16 Oct 2001	S. 4
<i>Agricultural and Veterinary Chemicals Legislation Amendment (Name Change) Act 2004</i>	79, 2004	23 June 2004	Schedule 1 (items 447–459): 30 July 2004 (see <i>Gazette</i> 2004, No. GN30) Schedule 1 (items 460, 462, 464–469): 30 July 2004 Schedule 1 (items 461, 463): [see Note 2]	—

Act Notes

- (a) The *Agricultural and Veterinary Chemical Products (Collection of Interim Levy) Act 1994* was amended by Schedule 1 (item 62) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
 - (2) Subject to this section, this Act commences at the commencing time.
- (b) Subsection 2(1) (items 4 and 6) of the *Agricultural and Veterinary Chemicals Legislation Amendment (Name Change) Act 2004* provide as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
4. Schedule 1, item 461	The later of: (a) the time the provision(s) covered by table item 2 commence; and (b) immediately after the commencement of item 94 of Schedule 1 to the <i>Financial Framework Legislation Amendment Act 2004</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	[see Note 2]
6. Schedule 1, item 463	The later of: (a) the time the provision(s) covered by table item 2 commence; and (b) immediately after the commencement of item 94 of Schedule 1 to the <i>Financial Framework Legislation Amendment Act 2004</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	[see Note 2]

Table of Amendments

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
S. 3	am. No. 115, 2001; No. 79, 2004
S. 6A	ad. No. 115, 2001
Heading to s. 7	am. No. 79, 2004
S. 7	am. No. 79, 2004
Part 2	
S. 11	am. No. 79, 2004
Part 3	
S. 12	am. No. 115, 2001; No. 79, 2004
Heading to s. 13	am. No. 79, 2004
Ss. 13–15	am. No. 79, 2004
Part 4	
S. 16	am. No. 79, 2004
Heading to s. 17	am. No. 79, 2004
S. 17	am. No. 115, 2001; No. 79, 2004
S. 18	am. No. 146, 1999; No. 137, 2000; No. 115, 2001; No. 79, 2004
S. 21	am. No. 115, 2001
S. 27	am. No. 79, 2004
Part 5	
Heading to s. 31	am. No. 79, 2004
S. 31	am. No. 79, 2004
S. 34	am. No. 115, 2001
S. 35.....	rep. No. 137, 2000
Ss. 36–38	am. No. 79, 2004

Note 2

Note 2

Agricultural and Veterinary Chemicals Legislation Amendment (Name Change) Act 2004 (No. 79, 2004)

The following amendments commences immediately after the commencement of item 94 of Schedule 1 to the *Financial Framework Legislation Amendment Act 2004* (still a Bill):

Schedule 1

461 Subsection 16(1)

Omit “NRA” (wherever occurring), substitute “APVMA”.

Note: This item does not commence at all if item 94 of Schedule 1 to the *Financial Framework Legislation Amendment Act 2004* does not commence. See item 4 of the table in subsection 2(1).

463 Subsection 16(2)

Omit “NRA”, substitute “APVMA”.

Note: This item does not commence at all if item 94 of Schedule 1 to the *Financial Framework Legislation Amendment Act 2004* does not commence. See item 6 of the table in subsection 2(1).

As at 30 July 2004 the amendment is not incorporated in this compilation.

Table A

Table A

Application, saving or transitional provisions

Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000 (No. 137, 2000)

Schedule 2

418 Transitional—pre-commencement offences

- (1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:
- (a) an offence committed before the commencement of this item; or
 - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
 - (c) any matter connected with, or arising out of, such proceedings;
- as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

419 Transitional—pre-commencement notices

If:

- (a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
 - (b) any or all of those other provisions are repealed by this Schedule; and
 - (c) the first-mentioned provision is amended by this Schedule;
- the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.

Table A

Agriculture, Fisheries and Forestry Legislation Amendment (Application of Criminal Code) Act 2001 (No. 115, 2001)

4 Application of amendments

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.