

1988

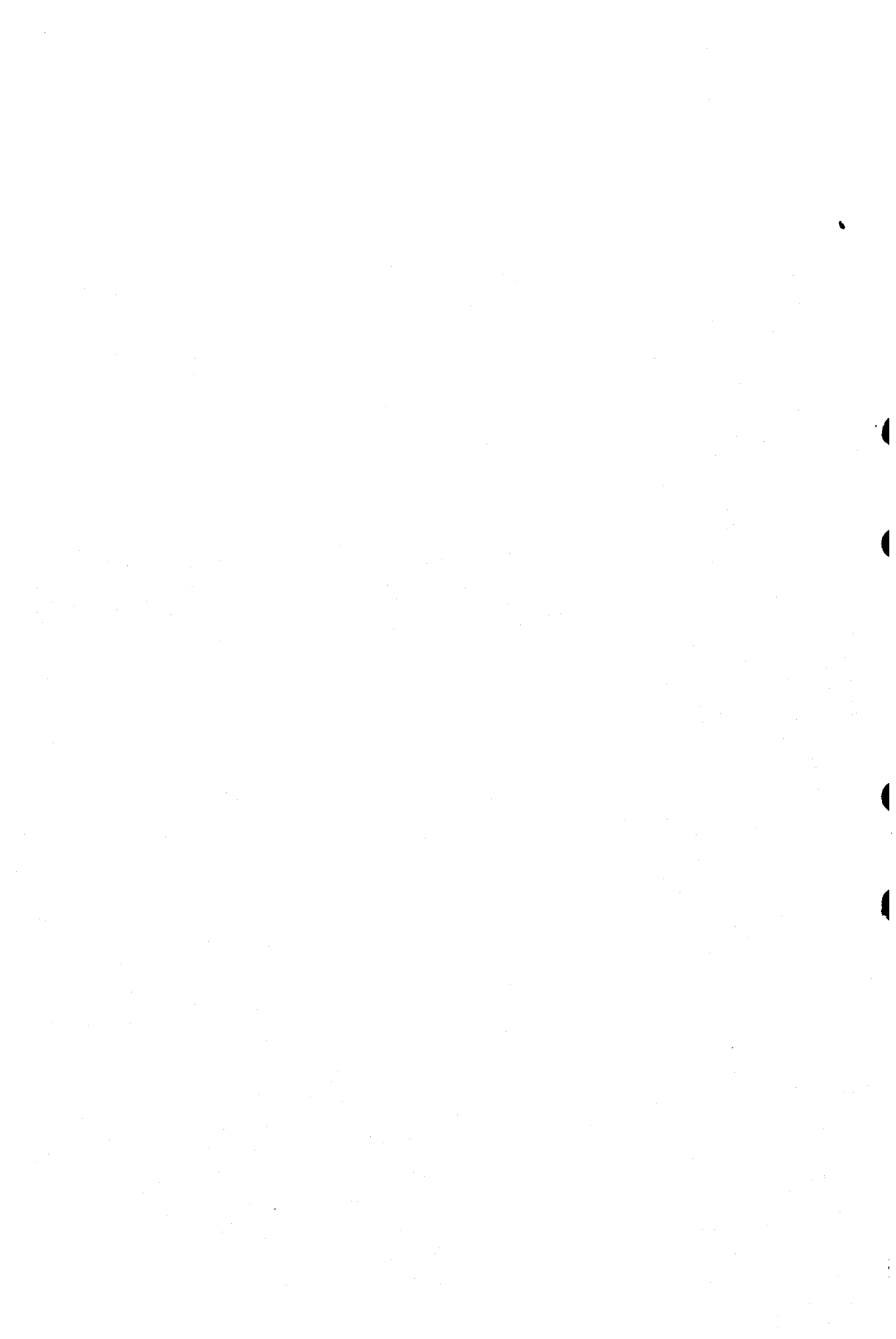
THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AGRICULTURAL AND VETERINARY CHEMICALS BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister
for Primary Industries and Energy,
the Hon. John Kerin, MP)



AGRICULTURAL AND VETERINARY CHEMICALS BILL 1988GENERAL OUTLINE

This Bill is to establish a Council which will operate as a coordinating and clearing organisation recommending the conditions and restrictions which are to apply in relation to the use in Australia of agricultural and veterinary chemical products. Through agreements with Governments of the States and the Northern Territory it is expected that an agricultural or veterinary chemical would only be registered for use in a State or Territory after clearance has been granted under this legislation.

2. The legislation has been prepared following recommendations of a working party of the Australian Agricultural Council and earlier recommendations of the Industries Assistance Commission. The Minister for Primary Industry announced in October 1986 that legislation dealing with these chemical products would be developed.

3. The objectives of the Agricultural and Veterinary Chemicals Bill are:

- (a) to protect and enhance trade and commerce in agricultural produce and livestock,
- (b) to assist in the conduct of agricultural and veterinary operations in all or any of the Territories,
- (c) to minimise any undue hazard, to the public, the environment, users and agricultural produce and livestock, from the application of chemical products in accordance with recommendations for their use,
- (d) to minimise the need for separate evaluation of chemical products by the registering authorities of States and Territories,
- (e) to ensure that agricultural and veterinary chemicals are effective in respect of the uses for which they are cleared,
- (f) to ensure that evaluations of chemical products are carried out in a timely and efficient manner.

FINANCIAL IMPLICATIONS

4. The additional administrative costs necessitated by the new arrangements are estimated at approximately \$600,000 for the first three years of operation. This includes the cost of employing five additional staff members within the Department of Primary Industries and Energy (two science officers and three clerical administrative officers) together with fares and travel allowances for Council members based on 3 meetings a year. These additional resources are presently being sought through the normal budget processes.

5. Offsetting these costs will be revenue received through fees levied on the examination of applications for clearance. It is intended that the Council operate on the basis of 50% cost recovery. This will result in a net saving to the Commonwealth compared to the existing clearance system for which no fees are charged.

NOTES ON INDIVIDUAL CLAUSESPART I - PRELIMINARYClause 1: Short Title

6. Short title of the Act for citation purposes.

Clause 2: Commencement

7. The Act will come into effect on a day to be fixed by proclamation.

Clause 3: Objective of the Act

8. This clause describes the objectives to be achieved through the operation of the Act. These objectives are noted in the General Outline above.

Clause 4: InterpretationSub-Clause 4(1)

9. Defines terms used in the Act.

Sub-Clause 4(2)

10. Defines the governmental entity of a State or Territory participating in the national clearance system which is deemed to be the registering authority.

Sub-Clause 4(3)

11. Defines the method whereby States and Territories become scheme participants; i.e. are admitted as participating members in the national clearance system.

Sub-Clause 4(4)

12. Notes that a reference within the Bill to a place of residence of a person should, where appropriate, be taken to mean the place of incorporation of a body corporate.

Sub-Clause 4 (5)

13. Defines the granting, variation and withdrawal of certificates of clearance.

Clause 5: Relationship to Therapeutic Goods Act 1986

14. Notes that this Bill does not, in any way, impact upon the requirements of the Therapeutic Goods Act 1966.

Clause 6: Act to bind Crown

15. Provides that the Act binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

Clause 7: Extension of Act to external Territories

16. Notes that all Australian external Territories may, through regulations, be included within the scope of the Act.

PART II - ESTABLISHMENT, FUNCTIONS AND POWERS OF
THE AUSTRALIAN AGRICULTURAL AND VETERINARY CHEMICALS COUNCIL

Clause 8: Establishment

17. This clause establishes the Australian Agricultural and Veterinary Chemicals Council (the Council).

Clause 9: Functions

18. This clause specifies the functions of the Council.

Clause 10: Powers

19. Enables Council to do everything necessary to the performance of its functions, subject to the provisions of this Act.

Clause 11: Minister may give directions

20. Enables the Minister to direct the Council in matters concerning the performance of its functions and exercise of its powers.

PART III - CLEARANCE OF CHEMICALS

Clause 12: Applications for clearances

21. This clause allows any person, irrespective of residential status, to apply to Council for clearance of a chemical product for use within Australia. Where the applicant does not reside in Australia a resident agent is to be designated. Applications are to be made in a manner approved by Council.

Clause 13: Applications for variations of conditions

22. This clause allows the holder of a current certificate of clearance for use of a chemical product within Australia to apply to Council for variation in the conditions attached to use of the product. Applications are to be made in a manner approved by Council.

Clause 14: Council may require further information or samples in certain circumstances

23. Enables Council to require applicants to provide information relevant to clearance, over and above that requested in the approved form of application. Failure to comply may lead to the suspension of processing of an application or it being treated as withdrawn.

Clause 15: Clearances

24. This clause enables Council, where it is satisfied with the information supplied in an application and concludes that the subject product would be effective, would not unduly prejudice trade, would not constitute an undue hazard and would have no serious unintended effect on animals, plants or other aspects of the environment, to grant a certificate of clearance in respect of the subject product. Clearance may be subject to conditions and, in some circumstances, for a limited time. Notification of clearance will be published in the Gazette and copies of certificates will be forwarded to registering authorities of participating States. Where Council is not satisfied the application shall be refused.

Clause 16: Variations

25. This clause enables Council to approve applications for variation of conditions of pre-existing clearances in a manner similar to that for original clearances.

Clause 17: Reconsideration of clearance

26. This clause enables Council to reconsider the clearance of a chemical product in the light of new information coming to hand after a certificate of clearance has been granted. The certificate holder is notified of Council's decision to reconsider and required to show cause why the certificate should not be withdrawn or qualified by extra conditions. If Council remains satisfied regarding the product it may re-affirm the grant of clearance. If Council is no longer satisfied with the product under the original conditions it may impose extra conditions of clearance or withdraw clearance of the product. Notification of such changes will be published in the Gazette and forwarded to registering authorities of participating States.

Clause 18: Overseas trials

27. This clause enables Council to consider the results of product trials undertaken in countries other than Australia, but having regard to differences in use and environment between those countries and Australia and any new information coming to hand since the trials were carried out.

Clause 19: Council may seek advice from other Commonwealth bodies and State registering authorities

28. To assist in considering applications, Council may seek the advice of any other Commonwealth agency it considers appropriate and of any registering authority of participating States and Territories. Council is required to seek advice from the registering authority of each participating State or Territory to which the application relates.

Clause 20: Disclosure of confidential commercial information

29. This clause describes restrictions on the disclosure of information concerning chemical products.

Clause 21: Grant of clearance not to preclude applications for clearance of similar chemical products

30. The grant of clearance in respect of a particular product does not preclude a grant of clearance to a different person in respect of a similarly (or identically) constituted product.

Clause 22: Notification of new information to Council

31. Holders of certificates of clearance are required to notify Council of any new information at variance with previous information given to Council or which indicates that use in accordance with recommendations may be harmful or less effective than represented in application to Council. Failure to do so will attract penalties. Council may require the holder of a certificate of clearance to provide information relevant to a reconsideration of clearance. Failure to do so will attract penalties.

PART IV - MEMBERSHIP, MEETINGS AND STAFF OF COUNCIL

Clause 23: Membership of Council

32. Council is chaired by an appointee of the Minister. Membership comprises one representative from each of the participating States and Territories, one representative of the National Health and Medical Research Council, one member representing both the Australian Environment Council and the Council of Nature Conservation Ministers and one representative of the National Occupational Health and Safety Commission. Members (other than the Chairperson) hold office for such time (not exceeding three years) as is specified by the Minister. Membership of Council is a part-time office.

Clause 24: Representation of affected external Territories

33. External Territories within scope of the Act are represented on Council by the Chairperson.

Clause 25: Committees

34. Council may appoint, and determine the procedures of, committees to assist it.

Clause 26: Termination, etc., of appointments

35. The Minister may terminate a member's appointment on grounds specified in this clause.

Clause 27: Leave of absence of members

36. The Minister may grant leave of absence to the Chairperson. The Chairperson may grant leave of absence to other members.

Clause 28: Disclosure of interests

37. A member of Council having a direct or indirect pecuniary interest in a matter before Council shall disclose that interest and, unless otherwise determined by the Council or the Minister, take no part in any Council decision on the matter.

Clause 29: Meetings of Council

38. This clause outlines the procedure for convening a meeting of Council; the required quorum, resolution of questions by majority vote and other procedural matters.

Clause 30: Resolutions without formal meetings

39. Outlines the procedure required for Council to resolve a matter without a formal meeting.

Clause 31: Remuneration and allowances

40. Members of Council or Council committees who are Commonwealth or State employees will not receive remuneration. Other members will be remunerated as determined by the Remuneration Tribunal or as prescribed if no determination is in force. All members will receive such allowances as are prescribed.

Clause 32: Acting appointments

41. This clause enables the Minister to appoint a person as acting Chairperson in the event that the office is vacant or the occupant is absent. The clause also describes the procedure for appointing acting members of the Council in the event of vacancy or absence and describes procedural matters related to acting appointments.

Clause 33: Chemicals Co-ordinator

42. This clause establishes the position and office of Chemicals Co-ordinator within the Department. The occupant is designated by the Secretary of the Department and acts as the Chief Executive Officer of the Council.

Clause 34: Other staff and consultants

43. This clause provides for resources to be made available to the Council by the Department, and for the Council to engage persons as consultants and determine their terms and conditions.

PART V - MISCELLANEOUSClause 35: Exportation of chemical products

44. This clause enables Council to certify to authorities in foreign countries its findings (if any) regarding chemical products. Such certification may be provided on application by an exporter or on Council's own motion.

Clause 36: False or misleading information, etc.

45. Describes penalties for provision of false or misleading information to Council.

Clause 37: Power to seek information

46. Persons are not excused from providing information to Council on grounds that the information may tend to incriminate them. However, any such information is not admissible in criminal proceedings except for an offence against section 36 of this Act.

Clause 38: Transference of certificates of clearance

47. Describes responsibilities of parties to a transfer of certificate of clearance.

Clause 39: Conduct by directors, servants and agents

48. For the purposes of this Act, conduct engaged in, on behalf of a body corporate, by directors, servants or agents shall be deemed to be conduct engaged in by the body corporate. Conduct engaged in, on behalf of a person, by servants or agents, shall be deemed to be conduct engaged in by that person.

Clause 40: Fees

49. This clause provides that regulations may prescribe fees or a method of ascertaining fees in respect of applications for clearance, variation of conditions of clearance or applications for provision of certificates for exportation purposes.

Clause 41: Review of decisions

50. This clause provides for review of Council decisions by the Administrative Appeals Tribunal upon application by an applicant for or holder of, a certificate of clearance.

Clause 42: Statement accompanying notification of decisions

51. The right of review is to be explicitly noted in all statements of Council decisions.

Clause 43: Documents and samples become Commonwealth property

52. All documents and samples provided to Council for whatever reason become Commonwealth property.

Clause 44: Delegation

53. Council may delegate any or all of its powers and functions (except the power to delegate) to a committee it has established, to the Chemicals Co-ordinator or to another member of staff. The Chemicals Co-ordinator may delegate any or all of the powers and functions of that office (except the power to delegate) to another member of staff.

Clause 45: Exemption from suit

54. No action or proceeding lies against the Commonwealth, a Council member or person assisting Council resulting from the use of, or inability to use, chemical products.

Clause 46: Substances that are already in use etc.

55. Chemical products registered by States or Territories participating in the national clearance system shall be treated as if there was a certificate of clearance issued under this Act. Applications made to the Technical Committees on Agricultural Chemicals or Veterinary Drugs which are incompletely processed at the time the Act commences to operate shall be deemed duly made to Council under this Act. Applications in process with State or Territory registering authorities when they become scheme participants shall proceed and determinations resulting shall be treated as if they had effect before the State or Territory became a scheme participant.

Clause 47: Annual reports

56. Council shall report to the Minister annually and provide a copy of the report to the designated minister of each scheme participant.

Clause 48: Cessation of operation of Act

57. The Act will cease to be in force five years after its commencement.

Clause 49: Regulations and orders

58. Authorises the making of Regulations and Orders to give effect to the provisions of the Act.



