

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AGRICULTURAL AND VETERINARY CHEMICAL PRODUCTS
(COLLECTION OF LEVY) BILL 1993

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Minister for Primary Industries and Energy,
the Hon Simon Crean, MP)



AGRICULTURAL AND VETERINARY CHEMICAL PRODUCTS
(COLLECTION OF LEVY) BILL 1993

OUTLINE

1. The Agricultural and Veterinary Chemical Products (Collection of Levy) Bill is one of a package of seven Bills which will give effect to an agreement between the Commonwealth, State and Territory Governments to establish a National Registration Scheme for Agricultural and Veterinary Chemicals.
2. This Bill has, as its main purpose, measures that allow for the assessment and collection of levies in regard to agricultural and veterinary products registered for use in Australia. This legislation provides for the collection of levy imposed by three of the other related Bills:
 - . Agricultural and Veterinary Chemicals Levy Imposition (Customs) Bill 1993,
 - imposes levy on chemical products imported and sold wholesale;
 - . Agricultural and Veterinary Chemicals Levy Imposition (General) Bill 1993,
 - imposes levy on imported chemical products sold directly as retail; and the
 - . Agricultural and Veterinary Chemicals Levy Imposition (Excise) Bill 1993,
 - imposes levy on Australian manufactured products.
3. The Bill makes provision for certain powers of entry, inspection and seizure to determine the amount of levy, if any, that is payable. It also contains provisions for an appeal and review process where a persons is dissatisfied with an assessment made under this Bill.
4. The National Registration Authority for Agricultural and Veterinary Chemicals was established as an independent, self-funding regulatory body to administer the Scheme and undertake the Commonwealth's responsibilities regarding the evaluation and registration of agricultural and veterinary chemical products.

FINANCIAL IMPACT STATEMENT

5. This Bill will not have any significant effect on government expenditure as provision was made in the 1993/94 Budget for the operation of an independent statutory authority - the National Registration Authority for Agricultural and Veterinary Chemicals - which will undertake the Commonwealth's responsibilities for the registration of agricultural and veterinary chemicals and for

funding of a national compliance program to be undertaken by the States and Territories. This Bill will, in future years, provide a significant component of funds required to support the operation of the National Registration Scheme.

6. The National Registration Authority is fully funded through appropriations for the 1993/94 financial year. The 1993/94 costs of the National Registration Authority will be partially offset by the receipt of an anticipated one million dollars in application fees. By 1995/96 the Scheme will be fully cost recovered as levies and other charges are imposed following the introduction of the Agricultural and Veterinary Chemicals Code and associated Bills.

NOTES ON CLAUSES**PART 1 - PRELIMINARY****Clause 1 - Short title**

7. When enacted the Bill may be cited as the Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1993.

Clause 2 - Commencement

8. This clause provides for the Bill to commence on the same day as the Agricultural and Veterinary Chemicals Bill 1993.

Clause 3 - Interpretation

9. Subclause (1) sets out key definitions for interpretation of certain terms appearing in this Bill. In some instances the definitions referred to are as defined in the Agricultural and Veterinary Chemicals Code Bill 1993.
10. Subclause (2) provides that if a current permit exists for a chemical product under Part 7 of the Agricultural and Veterinary (Agvet) Chemicals Code of a State or participating Territories then this Bill has effect as if the product were registered under Part 2 of that Code at the same time and a reference to a person who applied for the registration is also a reference to the person who applied for the permit.
11. Subclause (3) provides that if there is a change to the legal and equitable ownership of an agvet product, then the product is taken to have been disposed of by the person who legally owned the product immediately before the change.
12. Subclause (4) provides if a person makes personal use of a chemical product then the product is deemed to have been disposed of by the person when it is used.

Clause 4 - Extension to certain external Territories

13. This clause extends the provisions of the Bill to the external Territories that are participating Territories.

Clause 5 - Act to bind Crown

14. Subclause (1) states that the Bill binds the Crown in all its capacities.
15. Subclause (2) exempts the Crown from liability in any capacity to be prosecuted for an offence.

Clause 6 - Power of NRA to make certain determinations

16. This clause empowers the NRA to make a determination in writing of the monetary amount that the manufacturer or importer of a chemical product would have received at a particular time as per the definition of 'notional wholesale value' under subclause 3(1). The clause also provides for the NRA, by notice published in the Gazette, to set a due date later than the 'prescribed date for payment' as defined by subclause 3(1)(a)(i).

PART 2 - LIABILITY FOR LEVY

Clause 7 - Liability for levy in respect of disposals during 1993

17. Subclause (1) states that, subject to subclause (2), if a chemical product was registered in a State of Australia or participating Territory when this Bill commences, levy is payable on the leviable disposals of the product occurring anywhere in Australia during the year beginning on 1 January 1993.
18. Subclause (2) provides that the levy is not payable if the total leviable value in respect of leviable disposals of the chemical product for the year referred to in subclause (1) is less than \$100,000.
19. Subclause (3) places liability to pay the levy, subject to subclause (4), on the interested person in relation to the chemical product.
20. Subclause (4) places equal liability for payment of levy on registered chemical products, referred to in subclause (1), on every person who is an interested person in regard to that product registered in different States or Territories.

Clause 8 - Liability for levy in respect of disposals during 1994 and later years

21. Subclause (1) states that if a chemical product was registered in any State of Australia or participating Territory during any part of the last 6 months of the year beginning on 1 January 1994 or of a later calendar year, irrespective of whether it was also registered during the first 6 months of the year concerned, levy is payable in respect of the leviable disposals of the product occurring anywhere in Australia during that year.
22. Subclause (2) provides that no levy is payable under subclause (1) if the total leviable value in respect of leviable disposals of a particular chemical product during that calendar year is less than \$100,000.

23. Subclause (3) states that, subject to subclause (4), liability to pay the levy is placed on the interested person with regard to the particular chemical product.
24. Where a chemical product is registered in more than one State or Territory, subclause (4) places equal liability for payment of the levy referred to in subclause (1) on every person who is an interested person in regard to that product registered in different States or Territories.

Clause 9 - Liability for levy in respect of disposals during first 6 months of 1995 or of a later year

25. Subclause (1) states that, subject to subclause (2) levy is payable in respect of the leviable disposals occurring anywhere in Australia of a chemical product registered in any State of Australia or participating Territory at any time during the first 6 months of the year beginning 1 January 1995 or later calendar year and the product was not registered on 1 July of the year concerned.
26. Subclause (2) provides that levy is not payable, under subclause (1), if the total leviable value in respect of the leviable disposals of a particular chemical product during the first 6 months of the year concerned is less than \$50,000.
27. Subclause (3) states that, subject to subclause (4), liability to pay levy is placed on the interested person with regard to the particular chemical product.
28. Where a chemical product is registered in more than one State or Territory, subclause (4) places equal liability for payment of the levy referred to in subclause (1) on every person who is an interested person in regard to that product registered in different States or Territories.

Clause 10 - Amount of levy imposed in respect of disposals during 1993

29. This clause prescribes the formula to be used to calculate the amount of levy payable under clause 7 in respect of leviable disposals and limits the amount of levy payable in respect of the leviable disposals of a particular chemical product during that year.

Clause 11 - Amount of levy imposed in respect of disposals during 1994 or a later year

30. This clause prescribes the formula to be used to calculate the amount of levy payable in respect of leviable disposals under clause 8 and limits the

amount of levy payable in respect of leviabale disposals of a particular chemical product during the calendar year concerned.

Clause 12 - Amount of levy imposed in respect of disposals during the first 6 months of 1995 or of a later year

31. This clause prescribes the formula to be used to calculate the amount of levy payable in respect of leviabale disposals under clause 9 and limits the amount of levy payable in respect of leviabale disposals of a particular chemical product during the first 6 months of the year concerned.

Clause 13 - Payment of levy

32. The person liable to pay levy in respect to a chemical product is required to do so on or before the prescribed due date for payment of that levy.

Note: If any levy payable in respect of a chemical product is not paid, the Agvet Codes provide that the NRA may refuse to renew the registration of the product.

Clause 14 - Late payment penalty

33. This clause provides for a late payment penalty to be immediately imposed if any levy payable by a person under clauses 7, 8 or 9 is not paid in full by the prescribed due date. The NRA may waive any part of the penalty.

Note: If any late payment penalty payable in respect of a chemical product is not paid, the Agvet Codes provide that the NRA may refuse to renew the registration of the product.

PART 3 - CALCULATION OR ASSESSMENT OF LEVY

Clause 15 - Calculation of levy by person liable

34. Subclause (1) provides for the NRA to write to a person who, in its opinion may be liable to pay levy in respect to leviabale disposals of a chemical product occurring during a particular period, and inform them of the rate of levy payable and require them to calculate the total leviabale value and the amount of levy that would be payable. That person is then required to notify the NRA in writing as to the results and basis of calculations within the period specified.
35. Subclause (2) specifies the penalty for refusing or failing to comply with a requirement under subclause (1).

36. Subclause (3) provides that, subject to subclause (6), a person may, by notifying the NRA in writing, substitute a further calculation for the amount and value last notified pursuant to subclause (1)(b)(ii) or this subclause together with the basis on which the further calculations were made.
37. Subclauses (4) and (5) provide that, subject to subclause (6), the amount of levy payable, if any, in respect to a product for a particular period is that which a person notifies to the NRA under this section and if more than one amount has been notified, it is the amount given in the most recent notice.
38. Subclause (6) states that subclauses (3), (4) and (5) do not apply if the NRA has made an assessment of whether any levy is payable in relation to a chemical product for a particular period.

Clause 16 - Assessment of levy by NRA

39. Subclause (1) provides that the NRA may assess whether any levy is payable.
40. Subclause (2) provides that an assessment may be made before, on or after the date that, apart from the assessment, is the due date for payment and whether or not any amount has been paid in settlement of the assessment.
41. Subclauses (3) and (4) require that the NRA's assessment must state certain information and allows the NRA to base an assessment on any information in its possession.
42. Subclauses (5) and (6) require the NRA to provide written notification concerning the outcome of an assessment, including details of any determination made under clause 6, to the person it considers liable for payment of any levy, or would have been liable if no levy is payable.
43. Subclause (7) provides that, if any levy is payable under this clause, the assessment notice is to state the due date for payment of the levy as determined by the method in subclause (8).
44. Subclause (9) requires an assessment notice to contain advice as to review procedures available under clause 18 but subclause (10) allows that omission of such advice does not invalidate the assessment.
45. Subclause (11) states that an assessment has the status of a decision for the purposes of the Administrative Appeals Tribunal Act 1975.

46. Subclause (12) provides that an assessment or copy of an assessment signed on behalf of the NRA by the Chief Executive Officer or his delegate is evidence that the amount and all particulars of an assessment, unless altered by review or appeal under clause 18, are correct.

Clause 17 - Fresh assessments

47. The clause entitles the NRA to make another assessment under clause 16 in substitution for the original assessment. The fresh assessment may be made, even though levy may have been paid in regard to the original assessment, if the NRA is satisfied that the original was based on false or misleading information at any time and in other cases within 4 years of the prescribed due date for payment.

Clause 18 - Reconsideration and review of assessments

48. Subclauses (1) and (2) provide for a person to request a review of an assessment and to notify NRA in writing of that request including the reasons for so doing within a specified period after the date that the person received the assessment notification.
49. Subclauses (3) and (4) require the NRA to reconsider and confirm, vary or revoke an assessment within the time period specified. The assessment is confirmed if the NRA takes no other action.
50. Subclause (5) requires that where the NRA has reconsidered an assessment within the specified time the NRA is to provide the results in writing to the person(s) affected by an assessment and give reasons for either confirming, varying or revoking an assessment.
51. Subclause (6) states that failure to comply with subclause (5) does not affect the validity of a confirmation, revocation or variation of an assessment.
52. Subclause (7) provides that applications may be made to the Administrative Appeals Tribunal to seek a further review of an assessment by the NRA under subclause (3).
53. Subclauses (8) and (9) provide that the Administrative Appeals Tribunal is not entitled to alter the determination when reviewing an assessment with respect to that determination and, if an assessment is confirmed because of subclause (4), then clause 29 of the Administrative Appeals Tribunal Act 1975 applies as if the prescribed time for applying for a review of the assessment were the date of confirmation and ending 28 days later.

54. Subclause (10) provides that if a request is made for review of an assessment made under subclause (1) then clause 41 of the Administrative Appeals Tribunal Act 1975 has effect as if the request were an application to the Tribunal for review of an assessment.

PART 4 - ENFORCEMENT

Clause 19 - Levy and late payment penalty recoverable as debts

55. Clause 19 entitles the NRA to sue in order to recover, as a debt due to the Commonwealth, any part of a levy not paid by the prescribed date and for any late payment penalty that is also payable. The NRA must pay all such sums recovered into the Consolidated Revenue Fund.

Clause 20 - NRA may require information about disposals of chemical products

56. If it appears to the NRA that levy may be payable under clauses 7, 8 or 9, subclauses (1) and (2) provide that the NRA may, by written notice, require the person(s) who would be liable to pay levy to produce any information relating to the importation, manufacture or disposal of a chemical product needed to work out the total leviable value in respect of the product for the period concerned.
57. Subclause (3) provides that a penalty may be imposed for failing or refusing to comply, without reasonable excuse, with requirements under subclauses (1) and (2).

Clause 21 - Searches to monitor compliance with Act

58. Subclause (1) provides that an inspector may enter and inspect, for the purposes of determining whether levy is payable under this Bill, premises at which the inspector has reasonable cause to believe anything relating to the importation, manufacture or disposal of agvet chemical products, the active constituents of such products and/or relevant records are believed to be kept.
59. An inspector may enter premises with such assistance as reasonably necessary during business hours and search any part of the premises and inspect the contents including any documents. He or she may also seize any document and remove it from the premises.
60. Subclause (2) states that an inspector may not enter a residence without the consent of the occupier, and subclause (3) prohibits an inspector from exercising any powers under subclause (1) if they fail to

produce an identity card to identify themselves when requested to do so by the occupier of the premises.

Clause 22 - Offence-related searches and seizures

61. This clause provides that if an inspector has reasonable grounds for suspecting that a thing which may be evidence of an offence under this Bill is located at any premises, the inspector may enter and search the premises for the evidence of the offence, either with the consent of the occupier or by warrant issued under clause 24. Any evidence that is found may be seized and removed by the inspector.
62. Subclause (2) states that if during a search of premises under a warrant, the inspector finds a thing which may be evidence of the offence that is not stated in the warrant, or which may be evidence of another offence against this Bill and is not stated in the warrant, the inspector may seize and remove that thing to prevent its concealment, loss or destruction or to prevent its use to commit, continue or repeat an offence against this Bill.

Clause 23 - Power of inspector to require information or documents

63. Subject to subclause (2), subclause (1) states that an inspector, who has entered premises under the provisions of this Bill, may require a person to give to the inspector information and produce any documents asked for by the inspector to determine whether any levy is payable under this Bill.
64. Under subclause (2) the inspector is not entitled to make a requirement of a person under subclause (1) unless the inspector produces his or her identity card, when requested to do so for inspection by the person.
65. Subclause (3) provides that a person must not, without reasonable excuse, refuse or fail to comply with a requirement under subclause (1). The maximum penalty for an offence is 30 penalty units.

Clause 24 - Offence-related warrants

66. This clause states the provisions under which a magistrate may issue a warrant to enter and search a premises where there are reasonable grounds for suspecting that evidence exists of an offence against the Bill. Subclause (1) provides that an NRA inspector may apply to a magistrate for a warrant under this clause.
67. Subclauses (2) and (3) provide that a warrant may be issued provided that the magistrate is satisfied, by information given under oath, that there are

reasonable grounds for suspecting that evidence of an offence against this Bill exists at the premises, or that it may be there within the next 72 hours. Furthermore, the magistrate must also be provided with such additional information (if any) as is required, either orally or by affidavit, about the grounds on which the warrant is being sought.

68. Subclause (4) describes the information that must be stated in the warrant. The warrant must state:

- . the nature of the offence;
- . the purpose for which it is issued;
- . authorise and name an inspector, with any help and using any reasonable force that is necessary and reasonable, to enter the premises and exercise the powers described in clause 22 (1)(c) and (d) in respect of the thing;
- . whether entry is authorised at any time of the day or night or during stated hours of the day or night;
- . the day on which the warrant ceases to have effect which is not more than 7 days after the date of issue.

Clause 25 - Announcement before entry

69. Subject to subclause (2), subclause (1) requires that an inspector or person helping an inspector, authorised to enter premises under a warrant issued under clause 24, must before exercising entry under the warrant announce that he or she is authorised by warrant to enter the premises, and give any person at the premises an opportunity to allow them entry.

70. Subclause (2) provides that the inspector or person(s) helping the inspector need not comply with subclause (1) if either person has reasonable grounds to believe that immediate entry is required to ensure human safety (including that of any member of the inspection team), or the effective execution of the warrant.

Clause 26 - Details of warrant to be given to occupier

71. This clause requires that a copy of the warrant relating to premises issued under clause 24 must be made available to either the occupier or another person representing the occupier if present at the premises when the entry is effected. The copy provided need not include the signature of the magistrate issuing the warrant. The inspector must identify himself or herself to the person at the premises.

Clause 27 - Use of equipment to examine or process things

72. The clause states that, in relation to premises entered under clauses 21 or 22, the inspector or person helping the inspector, may bring onto the premises being inspected any equipment considered reasonably necessary for the examination or processing of things found at the premises to determine whether they are things that may be seized.
73. To determine whether a thing may be seized under clauses 21 or 22, subclauses (2) and (3) allow things to be moved from the premises to another place for examination or processing if it is not practicable to examine or process them at the premises, or if the occupier of the premises gives written consent. If things containing electronically-stored information are moved to another place for examination or processing, the inspector must, where practicable, tell the occupier when and where the examination or processing will be carried out, and allow the occupier or his/her representative to be present during the examination or processing.
74. Subclause (4) allows the inspector or a person helping the inspector to operate equipment already at the premises, for these purposes, provided he or she has reasonable grounds for believing that the equipment is suitable for the examination or processing, and that it can be carried out without damage to the equipment or the thing being examined or processed.

Clause 28 - Use of electronic equipment at premises

75. Subject to subclause (4) this clause allows an inspector or person helping the inspector, entering premises under clause 21 or 22, to operate equipment found on the premises to see whether the equipment, or any associated data storage device found on the premises, contains records that are relevant to the determining whether levy is payable or an offence has been committed against this Bill. If necessary the inspector can require the occupier, or an employee of the occupier, to operate the equipment.
76. Subclause (2) allows the inspecting team to seize any equipment or storage device found to contain relevant records. They may use the equipment at the premises to produce a documentary form of the records if appropriate, or transfer the records to a disk, tape or other storage device that has either been brought to the premises or supplied with a written agreement by the occupier.

77. Subclause (3) provides that equipment may be seized only if it is not practicable to transfer the records to documentary form or some other suitable storage device, or if possession of the equipment by the occupier is an offence.
78. Subclause (4) provides that an inspector or helper must not operate the equipment unless he or she believes with reasonable grounds that the equipment can be operated without damage.

Clause 29 - Compensation for damage to electronic equipment

79. This clause provides that the NRA must pay compensation for any damage to the owner of the equipment used under clause 27 or 28 if the damage was caused, under the circumstances, by insufficient care being taken in selecting the person to operate the equipment, or if the operator exercised insufficient care in operating it.
80. Subclause (2) states that in determining the amount of compensation payable, due regard must be taken of whether the occupier or his/her employees were present at the time, and if present, the extent to which they had provided any warnings or guidance as to the operation of the equipment under the circumstances.

Clause 30 - Copies of seized things to be provided

81. This clause requires the inspector, having entered a premises under clause 21 or 22 and seized material or records that can readily be copied, to give a copy of the seized material as soon as practicable after seizure, if so requested, to the occupier or a representative of the occupier who was present when the material was seized.
82. This requirement does not apply if the thing seized was seized under subclause 28 (2)(b) or (c) or if possession by the occupier of the seized material could be an offence.

Clause 31 - Return of things that are seized

83. This clause requires an inspector who has seized material under clause 21 or 22 to take reasonable steps to return the material once the reason for its seizure no longer exists, subject to subclause (2) clause 32.
84. Subclause (2) requires that the material must be returned within 60 days unless any of the provisions listed in that subclause apply.

85. If the material is to be returned, it must be returned to the person from whom it was seized, or to the owner, whichever is applicable. If there is any dispute over ownership, the inspector may keep the material until the dispute is resolved.

Clause 32 - Court of summary jurisdiction may permit a thing to be kept

86. This clause provides that where proceedings have not been brought either before the original sixty day time limit or before the end of a period previously specified in a court order, a court of summary jurisdiction may allow an inspector to keep a thing seized as evidence for a further specified period.
87. Subclause (2) provides that, where there are reasonable grounds for doing so, a court may order that an inspector may continue to keep a thing to investigate whether an offence has been committed or to allow evidence of an offence to be secured for the purposes of a prosecution.
88. Subclause (3) provides that if the court thinks that a notice of the application should be given to any person, it may require the notice to be given before hearing the application.

PART 5 - MISCELLANEOUS

Clause 33 - Administrative Appeals Tribunal may review certain decisions by NRA

89. This clause provides for application to be made to the Administrative Appeals Tribunal to review decisions by the NRA regarding:
- . determining or refusing to determine a later date for the purposes of the definition of 'prescribed date for payment' under subclause 3(1)(a)(i); or
 - . amounts determined under subclause 6(a); or
 - . waiver, or refusal to waive, the liability to pay the whole or part of the amount of the late payment penalty under subclause 14(2); or
 - . extensions permitted or refused regarding subclause 18(1).

Clause 34 - Self-incrimination to be a reasonable excuse for non-compliance with requirement

90. This clause provides for a person to have reasonable excuse for refusing or failing to give information, produce a document or do any other thing that this

Bill requires the person to do, that by so doing may tend to incriminate that person.

Clause 35 - Copying of documents

91. This clause entitles an inspector to make copies of, or take extracts from, any document seized under clauses 21 or 22 or given to the inspector in compliance with subclause 23(1).

Clause 36 - Applicant for registration of chemical product to keep records

92. This clause requires that persons who apply for registration, renewal of registration, import or manufacturer chemical products in Australia must keep any records relating to the importation, manufacture or disposal of the chemical product for a period of six years for the purpose of assessing whether any levy is payable. The penalty for failing to comply with this clause is 30 penalty units.

Clause 37 - False or misleading information or document

93. This clause makes it an offence for a person to knowingly give false or misleading information, whether orally or in writing, in compliance or purported compliance with a requirement of this Bill.
94. It is also an offence for a person to produce a document which the person knows to be false or misleading without:
- . informing the person requiring the document and identifying the detail in which it is false or misleading; and
 - . supplying the correct information if the person producing the information is in possession of, or can reasonably acquire, the correct information.
95. The maximum penalty for offence is 30 penalty units.

Clause 38 - Exemptions from liability for damages

96. This clause states that no action, suit or other proceeding for damages lies against the Commonwealth, the NRA and any employees, officers, delegates or representatives of both the Commonwealth or the NRA, or any director of the NRA, in any capacity 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 Bill.

Clause 39 - Regulations

97. Subclause (1) provides that the Governor-General may make certain regulations required or permitted by this Bill or for the purposes of carrying out or to give effect to this Bill, particularly in respect to regulations by which notices are given to or received by the NRA.
98. Subclause (2) limits the percentage that may be prescribed with respect to levy imposed under clauses 10, 11 or 12 to no more than 2 percent.

