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ORGANIZACIÓN MUNDIAL DEL COMERCIO

RESTRICTED

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of Intellectual Property Rights

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NOTIFICATION OF LAWS AND REGULATIONS
UNDER ARTICLE 63.2 OF THE AGREEMENT¹

Australia

Addendum

This addendum reproduces the text of the *Agricultural and Veterinary Chemicals (Consequential Amendments) Act 1994*, No. 37 of 1994, which is part of Australia's notification of its copyright legislation in accordance with paragraph 2 of Article 63 of the Agreement on Trade-Related Aspects on Intellectual Property Rights, which was made by means of a communication from the Permanent Mission of Australia, dated 5 April 1995.

Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce

NOTIFICATION DES LOIS ET REGLEMENTATIONS
AU TITRE DE L'ARTICLE 63.2 DE L'ACCORD¹

Australie

Addendum

Par une communication de la Mission permanente de l'Australie en date du 5 avril 1995, l'Australie a notifié sa législation sur le droit d'auteur, conformément aux dispositions du paragraphe 2 de l'article 63 de l'Accord sur les aspects des droits de propriété intellectuelle qui touchent au commerce. Le présent addendum reproduit le texte de l'*Agricultural and Veterinary Chemicals (Consequential Amendments) Act 1994 (Loi de 1994 sur les produits chimiques à usage agricole ou vétérinaire (Modifications pertinentes)*, n° 37 de 1994.

Consejo de los Aspectos de los Derechos de
Propiedad Intelectual relacionados con el Comercio

NOTIFICACIÓN DE LEYES Y REGLAMENTOS DE CONFORMIDAD
CON EL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO¹

Australia

Addendum

En el presente addendum se reproduce el texto de la *Ley de Productos Químicos para la Agricultura y la Veterinaria (Modificaciones pertinentes)*, de 1994, N° 37 de 1994, comprendida en la notificación que, por medio de una comunicación de la Misión Permanente australiana de fecha 5 de abril de 1995, ha hecho Australia de su legislación en materia de derecho de autor de conformidad con el párrafo 2 del artículo 63 del Acuerdo sobre los Aspectos de los Derechos de Propiedad Intelectual relacionados con el Comercio.

¹English only/Anglais seulement/Inglés solamente.



Agricultural and Veterinary Chemicals (Consequential Amendments) Act 1994

No. 37 of 1994

TABLE OF PROVISIONS

PART 1—PRELIMINARY

Section

1. Short title
2. Commencement

PART 2—AMENDMENTS OF THE AGRICULTURAL AND VETERINARY CHEMICALS (ADMINISTRATION) ACT 1992

3. Principal Act
4. Interpretation
5. Repeal of section and substitution of new section:
 5. Extension to external Territories
6. Functions and powers
7. Insertion of new section:
 - 7A. Annual publication of standards for certain residues of chemical products
8. Consultation
9. Insertion of new section:
 - 9A. NRA to comply with policies of Governments of Commonwealth, States and participating Territories
10. Minister may give directions
11. Meetings of NRA
12. Duties

TABLE OF PROVISIONS—*continued*

Section	
13.	Delegation by the Chief Executive Officer
14.	Staff to be made available to the NRA
15.	Approval of corporate plan
16.	Appropriation of money
17.	Insertion of new Part:
	PART 7A—IMPORTATION, MANUFACTURE AND EXPORTATION OF CHEMICALS
	<i>Division 1—Interpretation</i>
69A.	Interpretation
	<i>Division 2—Importation, manufacture and exportation</i>
69B.	Importation offence
69C.	International obligations on import, manufacture or export of active constituents or chemical products
69D.	Export of chemical products
69E.	Annual returns
69EA.	Keeping of records
	<i>Division 3—Powers of entry, search and seizure</i>
69EB.	Searches to monitor compliance with Part
69EC.	Offence-related searches and seizures
69ED.	Offence-related warrants
69EE.	Announcement before entry
69EF.	Details of warrant to be given to occupier
69EG.	Use of equipment to examine or process things
69EH.	Use of electronic equipment at premises
69EI.	Compensation for damage to electronic equipment
69EJ.	Copies of seized things to be given
69EK.	Return of things that are seized
69EL.	Court of summary jurisdiction may permit a thing to be kept
69EM.	Warrants may be granted by telephone in urgent circumstances
69EN.	Power of inspector to require information or documents
69EO.	False or misleading information or document
	<i>Division 4—Miscellaneous</i>
69EP.	Hearings
69EQ.	Self-incrimination to be a reasonable excuse for non-compliance with requirement
69ER.	Copying of documents
69ES.	Evidential certificates
69ET.	Forfeiture
69EU.	Conduct by directors, servants and agents
18.	Insertion of new sections:
69F.	Appointment of inspectors
69G.	Approval of analysts
69H.	Exemptions from liability for damages
69J.	Documents or substances held by NRA at commencement of Agvet Codes
19.	Delegation by Minister
20.	Agreements etc.—Minister may make arrangements
	PART 3—CONSEQUENTIAL AMENDMENTS OF THE COPYRIGHT ACT 1968
21.	Principal Act

iii

TABLE OF PROVISIONS—*continued*

Section	
22.	Interpretation
23.	Insertion of new section:
44B.	Reproduction of writing on approved label for containers for chemical product
24.	Insertion of new section:
112B.	Reproduction of writing on approved label for containers for chemical product



Agricultural and Veterinary Chemicals (Consequential Amendments) Act 1994

No. 37 of 1994

**An Act to amend the *Agricultural and Veterinary Chemicals
(Administration) Act 1992* and the *Copyright Act 1968***

[Assented to 15 March 1994]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Agricultural and Veterinary Chemicals
(Consequential Amendments) Act 1994*.

Commencement

2. This Act commences on the same day as the *Agricultural and
Veterinary Chemicals Act 1994*.

PART 2—AMENDMENTS OF THE AGRICULTURAL AND VETERINARY CHEMICALS (ADMINISTRATION) ACT 1992

3. In this Part, "Principal Act" means the *Agricultural and Veterinary Chemicals (Administration) Act 1992*¹.

4.(1) Section 4 of the Principal Act is amended by omitting the definition of "certificate of clearance".

(2) Section 4 of the Principal Act is amended by inserting the following definitions:

(a) a person appointed as an inspector for the purposes of this Act under subsection 69F(1); or

(b) a person to whom an authorisation referred to in subsection 69F(2) applies for the purposes of this Act;

‘participating Territory’ has the same meaning as in the *Agricultural and Veterinary Chemicals Act 1994*.”.

(3) Section 4 of the Principal Act is amended by omitting the definitions of “chemical product”, “State” and “Territory” and substituting the following definitions:

“‘**chemical product**’ has the same meaning as in the Agvet Code of the participating Territories:

'State' includes the Northern Territory;

'Territory' does not include the Northern Territory;".

Repeal of section and substitution of new section 25

5. Section 5 of the Principal Act is repealed and the following section is substituted:

“5. This Act extends to every external Territory that is a participating Territory.”.

6.(1) Section 7 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:

“(1) The NRA has any functions and powers that are conferred on it by or under this Act or the Agvet Code, or the Agvet Regulations, of the participating Territories. 35

*Agricultural and Veterinary Chemicals (Consequential
Amendments) No. 37, 1994*

3

“(1A) The functions of the NRA include the following:

- (a) to assess the suitability for sale in Australia of active constituents for proposed or existing chemical products, chemical products and labels for containers for chemical products;
- 5 (b) to provide information to the Governments and authorities of the Commonwealth, the States and the participating Territories about approved constituents for proposed or existing chemical products, registered chemical products and approved labels for such products and to co-operate with those Governments and authorities on matters relating to the management and control of chemical products;
- 10 (c) to keep records and statistics of approvals and registrations granted, and permits and licences issued, by it under the Agvet Codes;
- (d) to evaluate the effects of the use of chemical products in the States and participating Territories;
- 15 (e) to co-operate with Governments and authorities of the Commonwealth, the States and the participating Territories for the purpose of facilitating a consistent approach to the assessment and control of chemicals;
- 20 (f) in co-operation with Governments and authorities of the Commonwealth, the States and the participating Territories, to develop codes of practice, standards and guidelines for, and to recommend precautions to be taken in connection with, the manufacture, export, import, sale, handling, possession, storage, disposal and use of chemical products in the States and participating Territories;
- 25 (g) to collect, interpret, disseminate and publish information relating to chemical products and their use;
- (h) to encourage and facilitate the application and use of results of evaluation and testing of chemical products;
- 30 (i) to exchange information relating to chemical products and their use with overseas and international bodies having functions similar to the NRA's functions;
- (j) when requested by the Minister, or on its own initiative, to report to or advise the Minister on any matter relating to chemical products or arising in the course of the performance of its functions;
- 35 (k) to encourage and facilitate the introduction of uniform national procedures for control of the use of chemical products;
- (l) to fund, and co-operate in, a program designed to ensure that active constituents for proposed or existing chemical products, chemical products, and labels for containers for chemical products, comply with the Agvet Codes and the Agvet Regulations.
- 40

4 *Agricultural and Veterinary Chemicals (Consequential
Amendments) No. 37, 1994*

“(1B) Expressions used in subsection (1A) have the same meanings as in the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*.”.

(2) Section 7 of the Principal Act is further amended by inserting after paragraph (3)(d) the following paragraph: 5

“(da) make available to the public, either without charge or upon payment of a fee to the NRA, manuals, reports, lists of requirements and other documents; and”.

(3) Section 7 of the Principal Act is further amended by adding at the end the following subsection: 10

“(4) In the performance of its functions and the exercise of its powers, the NRA is to have regard to the Commonwealth Government’s policy in relation to the principle of ecologically sustainable development and, in particular, to the need to use, conserve and enhance the community’s resources so that ecological processes, on which life depends, are maintained, and the total quality of life, now and in the future, can be increased.”. 15

Insertion of new section

7. After section 7 of the Principal Act the following section is inserted:

Annual publication of standards for certain residues of chemical products 20

“7A.(1) The NRA must publish, in an appropriate manner, in each calendar year approved standards for residues of chemical products in protected commodities.

“(2) In this section: 25

‘protected commodity’ means:

- (a) any substance or thing of a kind used or capable of being used as food or drink by human beings; or
- (b) any substance or thing of a kind used or capable of being used as an ingredient or additive in, or any substance used in the preparation of, a substance or thing referred to in paragraph (a); or 30
- (c) any agricultural commodity; or
- (d) any animal feed; or
- (e) any other prescribed substance or thing; or
- (f) any substance or thing that is capable of being made into anything referred to in a preceding paragraph; 35

but does not include a therapeutic good within the meaning of the *Therapeutic Goods Act 1989*.”.

*Agricultural and Veterinary Chemicals (Consequential
Amendments) No. 37, 1994* 5

Consultation

8. Section 8 of the Principal Act is amended by inserting after subsection (1) the following subsection:

5 “(1A) If the matter that is being considered by the NRA, or in respect of which the NRA is seeking information or advice, relates to an active constituent for a proposed or existing chemical product, a chemical product, or a label for containers for a chemical product, the NRA may make available to the person, body or Government concerned:

- 10 (a) information obtained by it with respect to the constituent, product or label; and
(b) samples of the constituent, of any of the active constituents of the product, or of the product, or samples or copies of the label, as the case may be.”.

Insertion of new section

15 9. After section 9 of the Principal Act the following section is inserted:

**NRA to comply with policies of Governments of Commonwealth,
States and participating Territories**

20 “9A. In the performance of its functions and the exercise of its powers the NRA must comply with any policies of the Governments of the Commonwealth, the States and the participating Territories that are determined under any agreement entered into between those Governments for the purposes of this Act and the Agvet Codes.”.

Minister may give directions

25 10. Section 10 of the Principal Act is amended by omitting paragraph (2)(a) and substituting the following paragraph:

- 30 “(a) the Minister is satisfied that it is necessary to give the direction to the NRA in order to ensure that, in performing its functions, or exercising its powers, the NRA complies with policies of the Governments of the Commonwealth, the States and the participating Territories that are determined under an agreement referred to in section 9A; and”.

Meetings of NRA

11. Section 26 of the Principal Act is amended by adding at the end the following subsection:

35 “(11) Subsections (1) to (5) and (8) apply to a hearing held by the NRA as if it were a meeting of the NRA.”.

6 *Agricultural and Veterinary Chemicals (Consequential Amendments) No. 37, 1994*

Duties

12. Section 32 of the Principal Act is amended by adding at the end of subsection (1) "and, subject to subsection (2), may exercise any of the powers and functions of the NRA".

Delegation by the Chief Executive Officer

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13. Section 44 of the Principal Act is amended by adding at the end "including, to avoid doubt, any powers and functions of the Chief Executive Officer under subsection 32(1)".

Staff to be made available to the NRA

14. Section 46 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection: 10

"(2) The NRA may make an arrangement with:

(a) the appropriate authority or officer of:

(i) the Government of a State or Territory or of a foreign country; 15
or

(ii) an authority of such a Government; or

(iii) an organisation; or

(b) another person;

under which the Government, authority, organisation or person may make officers or employees available to the NRA to perform services in connection with the performance or exercise of any of its functions or powers." 20

Approval of corporate plan

15. Section 51 of the Principal Act is amended by omitting from paragraph (1)(b) "*Agricultural and Veterinary Chemicals Act 1988*" and substituting "Agvet Codes". 25

Appropriation of money

16. Section 58 of the Principal Act is amended by omitting paragraph (2)(a) and substituting the following paragraphs:

"(a) fees received by the Commonwealth under the *Agricultural and Veterinary Chemicals Act 1988* or under the Agvet Codes or Agvet Regulations; and 30

(aa) any amounts of levy or late payment penalty paid into the Consolidated Revenue Fund under any Act providing for the collection of a levy imposed in respect of the disposal of chemical products; and" 35

Insertion of new Part

17. After Part 7 of the Principal Act the following Part is inserted:

*Agricultural and Veterinary Chemicals (Consequential
Amendments) No. 37, 1994*

7

**“PART 7A—IMPORTATION, MANUFACTURE AND
EXPORTATION OF CHEMICALS**

“Division 1—Interpretation

Interpretation

5 “69A.(1) Unless the contrary intention appears, expressions used in this
Part have the same meanings as in the Code set out in the Schedule to the
Agricultural and Veterinary Chemicals Code Act 1994.

“(2) In this Part, ‘**inspector**’ has the meaning given by section 4.

“Division 2—Importation, manufacture and exportation

10 **Importation offence**

“69B.(1) Except with the consent in writing of the NRA, a person must
not, without reasonable excuse:

(a) import into Australia:

15 (i) an active constituent for a proposed or existing chemical
product that is neither an approved active constituent nor an
exempt active constituent; or

(ii) a chemical product that is neither a registered chemical product
nor an exempt chemical product; or

20 (b) arrange for the importation into Australia, on behalf of another
person who, at the time of the arrangements, is neither a resident of,
nor carrying on business in, Australia, of such an active constituent
or chemical product.

Penalty: 300 penalty units.

“(2) In subsection (1):

25 ‘**exempt active constituent**’ means an active constituent that is exempted
by the NRA from the operation of that subsection;

‘**exempt chemical product**’ means a chemical product that is exempted by
the NRA from the operation of that subsection.

30 “(3) The NRA may, by writing, exempt an active constituent for a
proposed or existing chemical product, or exempt a chemical product, from
the operation of subsection (1).

“(4) If:

35 (a) the importation of an active constituent for a proposed or existing
chemical product, or of a chemical product, is prohibited under
subsection (1); and

(b) the NRA notifies the Comptroller-General of Customs in writing that
the NRA wishes the *Customs Act 1901* to apply to that importation;

8 *Agricultural and Veterinary Chemicals (Consequential
Amendments) No. 37. 1994*

the constituent or product is, for the purposes of that Act, taken to be a prohibited import.

International obligations on import, manufacture or export of active constituents or chemical products

“69C.(1) If an active constituent for a proposed or existing chemical 5
product, or a chemical product, is the subject of a prescribed international
agreement, the regulations may prohibit the importation into, manufacture
in, or exportation from, Australia of the constituent or product, either
absolutely or subject to such conditions or restrictions as are prescribed.

“(2) A regulation prescribing conditions or restrictions for the purposes 10
of subsection (1) must not be made unless:

(a) the NRA has published in the *Gazette*, and in any other manner that
it thinks appropriate, a notice:

- (i) identifying the agreement; and
- (ii) listing the name or names by which the constituent or product 15
is known to the public; and
- (iii) requiring all persons who manufacture the constituent or
product in, import the constituent or product into, or export the
constituent or product from, Australia to give to the NRA
information in the approved form about movements of the 20
constituent or product into or out of Australia; and

(b) a period of 30 days has elapsed since the notice was published.

“(3) The NRA may inform a country, the appropriate authority of a
country or a relevant international organisation regarding movements into or
out of Australia of an active constituent or chemical product specified in 25
regulations prescribing conditions or restrictions for the purposes of
subsection (1).

“(4) The NRA may give information under subsection (3) in such terms
and on such conditions as the NRA thinks fit, having regard to:

- (a) the requirements of the relevant international agreement; and 30
- (b) the interest of any person in maintaining confidentiality in relation
to movements of the constituent or product.

“(5) A person must not, without reasonable excuse, import, manufacture
or export an active constituent for a proposed or existing chemical product,
or a chemical product, in contravention of a condition or restriction 35
prescribed by a regulation made for the purposes of subsection (1).

Penalty for a contravention of this subsection: 300 penalty units.

*Agricultural and Veterinary Chemicals (Consequential
Amendments) No. 37, 1994*

9

Export of chemical products

5 “69D.(1) The NRA may, upon the written application of a person wishing to export a chemical product to a foreign country, give to the person or to the government of that country or to any authority of that country named by the person, a certificate setting out the findings (if any) of the NRA in relation to any matters relating to the chemical product that are required to be established for the purposes of its export.

“(2) If the NRA becomes aware that a chemical product:

- 10 (a) in respect of which an application for registration has been refused;
or
(b) the registration of which has been suspended or cancelled; or
(c) the registration of which is subject to conditions significantly limiting the use of the product;

15 is proposed to be exported to a foreign country, the NRA may, on its own initiative, tell a body established in that country and having functions similar to its own functions that the application has been so refused, that the registration has been so suspended or cancelled or that the registration of the product has been made subject to those conditions, as the case may be, and the reasons for that refusal, suspension, cancellation or imposition of
20 conditions.

Annual returns

“69E.(1) Subject to subsection (2), a person who imports into, manufactures in, or exports from, Australia:

- 25 (a) active constituents for proposed or existing chemical products; or
(b) chemical products;

during the year ending on 30 June 1995 or a later year must give to the NRA, not later than 3 months after the end of the year concerned, a return setting out the respective quantities of those active constituents, or of the active constituents contained in those products, as the case may be, that were so
30 imported, manufactured or exported during that year.

Penalty: 30 penalty units.

35 “(2) Subsection (1) does not apply to a person in respect of a particular year ending on 30 June if the total quantity of the active constituents that were, or were included in chemical products that were, imported, manufactured or exported by the person during that year was not greater than a quantity prescribed by the regulations for the purposes of this section.

Keeping of records

40 “69EA. A person who imports into, manufactures in, or exports from, Australia an active constituent for a proposed or existing chemical product, or a chemical product, must:

(a) keep any records relating to the importation, manufacture or exportation that are reasonably necessary to enable the NRA to find out whether sections 69B, 69C and 69E have been complied with; and

(b) retain those records for 6 years.

Searches to monitor compliance with Part

“69EB.(1) Subject to this section, to the extent that it is reasonably necessary to do so for the purpose of finding out whether this Part has been complied with, 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 active constituents for proposed or existing chemical products, or chemical products, or records relating to any such constituents or products, are kept and may do any one or more of the following:

- (a) search the premises and any thing found at the premises;
- (b) inspect and take photographs (including video recordings), or make sketches, of the premises or any thing at the premises;
- (c) take and keep samples of any thing at the premises;
- (d) inspect any document kept at the premises;
- (e) seize any thing at the premises if the inspector believes on reasonable grounds that it is necessary to seize the thing in order to prevent its concealment, loss or destruction;
- (f) open any container at the premises for the purpose of inspecting, or taking a sample of, its contents provided that the container is resealed after the inspection is made or the sample is taken;
- (g) give any directions for, or with respect to, the detention of a thing that has been seized under paragraph (e).

“(2) An inspector may not:

- (a) under paragraph (1)(c)—take samples of a thing; or
(b) under paragraph (1)(e)—seize a thing;

that appears to the inspector to be in the possession or custody of a person unless the inspector makes out and tenders to the person a receipt in or to the effect of the approved form for the sample taken or thing seized.

“(3) An inspector may not, under subsection (1), enter premises that are a residence unless the occupier of the premises has consented to the entry.

“(4) An inspector may not exercise any powers under subsection (1) in relation to premises if:

*Agricultural and Veterinary Chemicals (Consequential
Amendments) No. 37, 1994* 11

- (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.

5 “(5) If a direction given by an inspector under this section is inconsistent with an earlier direction given by an inspector under this section, the earlier direction is, to the extent of the inconsistency, of no effect.

“(6) A person must not, without reasonable excuse, refuse or fail to comply with a direction given by an inspector under this section.
Penalty: 30 penalty units.

10 **Offence-related searches and seizures**

“69EC.(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 Part, the inspector, with any necessary help, may:

- 15 (a) with the consent of the occupier of the premises; or
- (b) under a warrant issued under section 69ED;
enter the premises and:
 - (c) search the premises for the thing; and
 - 20 (d) if the thing is found, take photographs (including video recordings) of the premises or thing, take samples of the thing, seize the thing or undertake more than one of those activities; and
 - (e) give any directions for, or with respect to, the detention of a thing that has been seized under paragraph (d).

25 “(2) If, in the course of searching, under a warrant issued under section 69ED, 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
- 30 (b) a thing that may be evidence of the commission of another offence against this Part;

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,
35 the warrant is taken to authorise the inspector to seize the other thing.

Offence-related warrants

“69ED.(1) An inspector may apply to a magistrate for a warrant under this section in relation to particular premises.

12 *Agricultural and Veterinary Chemicals (Consequential
Amendments) No. 37, 1994*

“(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 Part. 5

“(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: 10

- (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 69EC(1)(c), (d) and (e) 15
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. 20

Announcement before entry

“69EE.(1) Subject to subsection (2), an inspector who is authorised to enter premises under a warrant issued under section 69ED or a person helping such an inspector must, before any person enters the premises under the warrant: 25

- (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 does not have to 30
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. 35

*Agricultural and Veterinary Chemicals (Consequential
Amendments) No. 37, 1994* 13

Details of warrant to be given to occupier

5 “69EF.(1) If a warrant under section 69ED 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.

10 “(3) The copy of the warrant referred to in subsection (1) need not include the signature of the magistrate who issued the warrant.

Use of equipment to examine or process things

15 “69EG.(1) An inspector who enters premises under section 69EB or 69EC or a person helping 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

20 (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 69EB or 69EC, as the case may be.

25 “(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

30 (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 69EB or 69EC, as the case may be, if the
35 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.

14 *Agricultural and Veterinary Chemicals (Consequential
Amendments) No. 37, 1994*

Use of electronic equipment at premises

“69EH.(1) Subject to subsection (4), if a thing found at premises that an inspector has entered under section 69EB or 69EC 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: 5

(a) the equipment; or

(b) a disk, tape or other storage device that:

(i) is at the premises; and

10

(ii) can be used with, or is associated with, the equipment;

contains records that are relevant to determining whether this Part has been complied with.

“(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: 15

(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 20

(c) if the records can be transferred to a disk, tape or other storage device:

(i) that is brought to the premises; or

(ii) that is at the premises and whose use for the purpose has been agreed to in writing by the occupier of the premises; 25

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 30

(b) possession by the occupier of the equipment could be 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. 35

*Agricultural and Veterinary Chemicals (Consequential
Amendments) No. 37, 1994* 15

Compensation for damage to electronic equipment

“69EI.(1) If:

- (a) equipment is damaged because of being operated as mentioned in section 69EG or 69EH; and
 - 5 (b) the damage was caused by:
 - (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;
- 10 the NRA 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
15 or guidance as to the operation of the equipment that was appropriate in the circumstances.

Copies of seized things to be given

“69EJ.(1) Subject to subsection (2), if an inspector who has entered premises under section 69EB or 69EC seizes:

- 20 (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 asked to do so by the occupier of the premises or another person who apparently represents the occupier and is present when
25 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 69EH(2)(b) or (c); or
- 30 (b) possession by the occupier of the document, film, computer file, thing or information could be an offence.

Return of things that are seized

“69EK.(1) If an inspector seizes a thing under section 69EB or 69EC, the inspector must take reasonable steps to return it if the reason for its
35 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 have not been completed (including
40 an appeal to a court in relation to those proceedings); or

16 *Agricultural and Veterinary Chemicals (Consequential
Amendments) No. 37, 1994*

(b) the inspector may keep the thing because of an order under section 69EL; or

(c) the inspector is authorised by this Part or by an order of a court to keep, destroy or dispose of the thing.

“(3) If the thing has to be returned, it must be returned to the person from 5
whom it was seized or, if that person is not entitled to possess it, to the owner.

“(4) If there is a dispute as to the ownership of the thing, the inspector may keep it until the dispute is resolved.

“(5) This section has effect subject to sections 69EL and 69ET.

Court of summary jurisdiction may permit a thing to be kept 10

“69EL.(1) If:

(a) before the end of 60 days after an inspector seizes a thing under section 69EB or 69EC; 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 15
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 20
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 25
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 30
any person, it may require such a notice to be given before it hears the application.

Warrants may be granted by telephone in urgent circumstances

“69EM.(1) If, because of circumstances of urgency, an inspector considers it necessary to do so, the inspector may apply for a warrant under subsection 69ED(1), by telephone, in accordance with this section.

“(2) Before so applying, an inspector must prepare an information of a 35
kind referred to in subsection 69ED(2) that sets out the grounds on which the issue of the warrant is being sought, but the inspector may, if it is necessary to do so, apply before the information has been sworn.

*Agricultural and Veterinary Chemicals (Consequential
Amendments) No. 37, 1994* 17

“(3) If a magistrate to whom an application under subsection (1) is made is satisfied:

- (a) after having considered the terms of the information prepared in accordance with subsection (2); and
- 5 (b) after having received any further information that the magistrate requires about the grounds on which the issue of the warrant is being sought;

that there are reasonable grounds for issuing the warrant, the magistrate must complete and sign such a search warrant as the magistrate would have issued
10 under section 69ED if the application had been made in accordance with that section.

“(4) If a magistrate signs a warrant under subsection (3):

- (a) the magistrate must notify the inspector of the terms of the warrant and the date on which and the time at which it was signed, and write
15 on it the reasons for the granting of the warrant; and
- (b) the inspector must complete a form of warrant in the terms notified to the inspector by the magistrate and write on it the name of the magistrate and the date on which and the time at which the warrant was signed.

20 “(5) If an inspector completes a form of warrant in accordance with subsection (4), the inspector must, not later than the day after the date on which the warrant ended or was executed, whichever is the earlier, send to the magistrate who signed the warrant the form of warrant completed by the inspector and the information duly sworn in connection with the warrant.

25 “(6) Upon receiving the documents referred to in subsection (5), the magistrate must attach to them the warrant signed by the magistrate and deal with the documents in the manner in which the magistrate would have dealt with the information if the application for the warrant had been made in accordance with section 69ED.

30 “(7) A form of warrant duly completed by an inspector in accordance with subsection (4) is, if it is in accordance with the terms of the warrant signed by the magistrate, authority for any entry, search, seizure or direction that the warrant so signed authorises.

35 “(8) If it is material, in any proceedings, for a court to be satisfied that an entry, search, seizure or direction was authorised in accordance with this section, and the warrant signed by a magistrate in accordance with this section authorising the entry, search, seizure or direction is not produced in evidence, the court must assume, unless the contrary is proved, that the entry, search, seizure or direction was not authorised by such a warrant.

18 *Agricultural and Veterinary Chemicals (Consequential
Amendments) No. 37, 1994*

Power of inspector to require information or documents

“69EN.(1) Subject to subsection (2), an inspector who has entered premises under this Division may, to the extent that it is reasonably necessary for the purpose of finding out whether this Part has been complied with, require a person to give information to the inspector and to produce any 5 documents referred to 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, without reasonable excuse, refuse or fail to 10 comply with a requirement made under subsection (1).
Penalty: 30 penalty units.

False or misleading information or document

“69EO. A person must not, in compliance or purported compliance with a requirement made by an inspector under this Part, or a provision of this 15 Part, do either of the following:

- (a) give information (whether orally or in writing) that the person knows to be false or misleading in a material particular;
- (b) produce a document that the person knows to be false or misleading in a material particular without: 20
 - (i) indicating to the person to whom the document is produced that it is false or misleading and the respect in which it is false or misleading; and
 - (ii) providing correct information to that person if the person producing the document is in possession of, or can reasonably 25 acquire, the correct information.

Penalty: 30 penalty units.

“Division 4—Miscellaneous

Hearings

“69EP.(1) The NRA may hold hearings for the purposes of the 30 performance or exercise of any of its functions or powers.

“(2) Before holding a hearing, the NRA must cause to be published in the *Gazette*, and in any other manner that it thinks appropriate, a notice setting out the place and time for the hearing.

“(3) Subject to subsection (4), a hearing is to be held in public. 35

“(4) The NRA, having regard to the confidential nature of any submissions or evidence or for any other reason, may direct that a part of a hearing be in private and may determine who may be present.

*Agricultural and Veterinary Chemicals (Consequential
Amendments) No. 37, 1994* 19

“(5) The NRA may give directions prohibiting or restricting the publication of submissions or evidence given at a hearing, whether in public or in private, or of matters contained in such submissions or evidence or in documents produced at such a hearing.

5 “(6) A person must not contravene, without reasonable excuse, a direction given under subsection (5).
Penalty: 20 penalty units.

10 “(7) If the NRA directs that a part of a hearing be in private, a person must not, without reasonable excuse, be present at that part of the hearing unless he or she:

- (a) is a director, or the Chief Executive Officer, of the NRA; or
- (b) is a member of the staff of the NRA that the NRA has authorised to be present; or
- (c) is entitled to be present because of a determination under

15 subsection (4).
Penalty: 20 penalty units.

20 “(8) At a hearing the NRA may receive submissions or evidence, in a form determined by it, from persons who, in its opinion, are likely to be able to help it in the performance or exercise of the functions or powers to which the hearing relates.

 “(9) A hearing is to be conducted with as little formality and technicality as is practicable and the NRA is not bound by the rules of evidence.

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

25 “69EQ. 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 Part that the information, the production of the document or the doing of that other thing would tend to incriminate the person.

30 **Copying of documents**

 “69ER. If an inspector inspects a document under section 69EB or seizes a document under section 69EC or a person produces a document to an inspector in accordance with a requirement under subsection 69EN(1), the inspector may make copies of, or take extracts from, the document.

35 **Evidential certificates**

 “69ES.(1) This section has effect for the purposes of any legal or administrative proceeding under or for the purposes of this Part.

20 *Agricultural and Veterinary Chemicals (Consequential
Amendments) No. 37, 1994*

“(2) A certificate that states a matter referred to in subsection (3) is evidence of that matter if it is signed by the Chief Executive Officer of the NRA, or by a member of the staff of the NRA whom the NRA has authorised to give certificates under this section.

“(3) The matters that may be stated in a certificate referred to in subsection (2) are as follows: 5

- (a) that a substance referred to in the certificate was, or was not, at a particular time, or during a particular period, an active constituent, or an approved active constituent, for a proposed or existing chemical product; 10
- (b) that a chemical product referred to in the certificate was, or was not, at a particular time, or during a particular period, a chemical product or a registered chemical product;
- (c) that a person named in the certificate was an inspector at a particular time or during a particular period; 15
- (d) that a notice, direction or requirement referred to in the certificate was given at a particular time to a particular person under this Part.

“(4) Unless the contrary is proved, a document purporting to be a certificate referred to in subsection (2) is taken to be such a certificate and to have been duly given. 20

Forfeiture

“69ET.(1) If a person is convicted of an offence against this Part in respect of a thing that the court finds to be the property of that person, the court may order all or any part of the thing to be forfeited to the NRA.

“(2) If the court makes an order under subsection (1) in respect of, or in respect of part of, a thing, the thing, or that part of the thing, as the case may be, becomes the property of the NRA and may be dealt with or disposed of in any manner that the NRA considers appropriate. 25

Conduct by directors, servants and agents

“69EU.(1) Subject to subsection (2), in proceedings against a body corporate for an offence against this Part: 30

- (a) any conduct engaged in by a director, servant or agent of the body corporate within the actual or apparent scope of his or her employment or within his or her actual or apparent authority is taken to have been engaged in also by the body corporate; and 35
- (b) it is taken to be established that conduct (the ‘**relevant conduct**’) was engaged in by the body corporate intentionally, knowingly or recklessly if it is proved:

*Agricultural and Veterinary Chemicals (Consequential
Amendments) No. 37. 1994* 21

- (i) that the directors of the body corporate intentionally, knowingly or recklessly engaged in the relevant conduct or expressly, tacitly or impliedly authorised or permitted the relevant conduct to be engaged in; or
- 5 (ii) that a servant or agent of the body corporate with duties of such responsibility that his or her conduct may fairly be assumed to represent the policy of the body corporate intentionally, knowingly or recklessly engaged in the relevant conduct or expressly, tacitly or impliedly authorised or permitted the
- 10 relevant conduct to be engaged in.

“(2) Subparagraph (1)(b)(ii) does not apply if the body corporate proves that it exercised due diligence to prevent the relevant conduct.

“(3) Subject to subsection (4), in proceedings against an individual for an offence against this Part:

- 15 (a) any conduct engaged in by a servant or agent of the individual within the actual or apparent scope of his or her employment or within his or her actual or apparent authority is taken to have been engaged in also by the individual; and
- (b) it is taken to be established that conduct (the ‘**relevant conduct**’) was
- 20 engaged in by the individual intentionally, knowingly or recklessly if it is proved that a servant or agent of the individual with duties of such responsibility that his or her conduct may fairly be assumed to represent the policy of the individual intentionally, knowingly or recklessly engaged in the relevant conduct or expressly, tacitly or
- 25 impliedly authorised or permitted the relevant conduct to be engaged in.

“(4) Paragraph (3)(b) does not apply if the individual proves that he or she exercised due diligence to prevent the relevant conduct.

“(5) If:

- 30 (a) an individual is convicted of an offence against this Part; and
- (b) the individual would not have been convicted of that offence if subsections (3) and (4) had not been enacted;
- the individual is not liable to be punished by imprisonment for that offence.

“(6) A reference in this section to engaging in conduct includes a

35 reference to failing or refusing to engage in conduct.”.

Insertion of new sections

18. Before section 70 of the Principal Act the following sections are inserted in Part 8:

22 *Agricultural and Veterinary Chemicals (Consequential
Amendments) No. 37, 1994*

Appointment of inspectors

“69F.(1) The NRA may, by writing, appoint members of its staff, persons appointed or employed under the *Public Service Act 1922*, or other persons having appropriate qualifications, to be inspectors for the purposes of a relevant law referred to in the document of appointment. 5

“(2) If:

(a) a Department of State of a State; or

(b) a Department or administrative unit of the Public Service of a participating Territory; or

(c) an authority of a State or of a participating Territory; 10

has functions relating to agricultural or veterinary chemicals, the Chief Executive Officer may, by signed writing, authorise officers of the Department, administrative unit or authority to exercise the powers and perform the functions of inspectors for the purposes of a particular relevant law. 15

“(3) An inspector is a Commonwealth officer for the purposes of sections 70, 71, 72, 73, 74, 75 and 76 of the *Crimes Act 1914*.

“(4) The NRA must cause to be issued to each person who is an inspector for the purposes of a relevant law an identity card which states the name of the person and the fact that the person is an inspector for the purposes of that law and to which is attached a photograph of the person taken within the 3 years before the identity card is issued. 20

“(5) A person who has ceased to be an inspector must, as soon as practicable, unless the person has a reasonable excuse for not doing so, return to the NRA the identity card issued to him or her under this section. 25

Penalty: One penalty unit.

“(6) In this section:

‘**relevant law**’ means:

(a) this Act; or

(b) the Agvet Codes; or 30

(c) any other Act providing for the collection of a levy imposed in respect of the disposal of chemical products.

Approval of analysts

“69G.(1) The NRA may, by writing, appoint persons whom it considers to have appropriate qualifications and experience to be approved analysts for the purposes of the Agvet Codes. 35

“(2) The NRA must cause the name, and the address of the place of business, of each approved analyst to be published in the *Gazette*.

*Agricultural and Veterinary Chemicals (Consequential
Amendments) No. 37, 1994* 23

Exemptions from liability for damages

- “69H.(1) Subject to subsection (3), no action, suit or other proceeding for damages lies against the Commonwealth, the NRA, or any other Commonwealth authority, or a person who is or has been an officer or employee of the Commonwealth, of the NRA or of any other Commonwealth authority, or is or has been a delegate of the NRA, a director of the NRA, a consultant to the NRA, an inspector, or a mediator or arbitrator appointed by the NRA under any of the Agvet Codes, for any loss or injury directly or indirectly suffered as a result of:
- 5 (a) the handling of an approved active constituent for a proposed or existing chemical product; or
 - (b) the handling of a registered chemical product; or
 - (c) the handling of an active constituent for a proposed or existing chemical product, or of a chemical product, in respect of which a permit or exemption has been issued or given by the NRA; or
 - 15 (d) an inability to use, or to use in a particular manner, an active constituent for a proposed or existing chemical product:
 - (i) because an approval, permit or exemption permitting its use, or permitting its use in that manner, has been refused by the
 - 20 NRA or such an approval, permit or exemption that was previously granted by the NRA has been suspended or cancelled; or
 - (ii) because its use, or its use in that manner, is precluded by the conditions of an approval, permit or exemption; or
 - 25 (e) an inability to use, or to use in a particular manner, a chemical product:
 - (i) because a registration, permit or exemption permitting its use, or permitting its use in that manner, has been refused by the
 - 30 NRA or such a registration, permit or exemption that was previously granted by the NRA has been suspended or cancelled; or
 - (ii) because its use, or its use in that manner, is precluded by the conditions of a registration, permit or exemption; or
 - (f) the carrying out of a step in the manufacture of a chemical product in respect of which a licence has been issued by the NRA; or
 - 35 (g) an inability to carry out, or to carry out in a particular manner or at particular premises, a step in the manufacture of a chemical product:
 - (i) because a licence to carry out that step, or to carry out that step in that manner or at those premises, has been refused by the
 - 40 NRA or such a licence that was previously granted by the NRA has been suspended or cancelled; or

(ii) because the carrying out of that step, or the carrying out of that step in that manner or at those premises, is precluded by the conditions of a licence.

(a) an approved active constituent for a proposed or existing chemical product; or

(b) a registered chemical product; or

(c) an active constituent for a proposed or existing chemical product, or a chemical product, in respect of which the NRA has issued a permit or given an exemption; or

(d) a chemical product in respect of a step in the manufacture of which the NRA has issued a licence;

in relation to any loss or injury directly or indirectly suffered because of the importation, manufacture, supply or handling of the constituent or product, it is not a defence to that action, suit or other proceeding that the NRA had approved the constituent, registered the product, issued a permit or given an exemption in relation to the constituent or the product, or issued a licence in relation to a step in the manufacture of the product.

“(3) This section does not affect section 75AL of the *Trade Practices Act* 201974.

“(4) Expressions used in this section have the same meanings as in the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*.

Documents or substances held by NRA at commencement of Agvet Codes 25

“69J. Any documents or substances that were in the possession or custody of the NRA under the *Agricultural and Veterinary Chemicals Act 1988* immediately before the repeal of that Act are taken to be in the possession or custody of the NRA under the Agvet Codes.”.

Delegation by Minister

19. Section 71 of the Principal Act is amended by omitting paragraph (1)(a) and substituting the following paragraph:

“(a) the powers conferred on the Minister under this Act, the *Agricultural and Veterinary Chemicals Act 1994*, the *Agricultural and Veterinary Chemicals Code Act 1994* or the Agvet Codes or the Agvet Regulations; or”.

Agreements etc.—Minister may make arrangements

20. Section 76 of the Principal Act is amended by omitting from paragraph (b) “agricultural or veterinary”. 40

*Agricultural and Veterinary Chemicals (Consequential
Amendments) No. 37, 1994* 25

**PART 3—CONSEQUENTIAL AMENDMENTS OF THE
COPYRIGHT ACT 1968**

Principal Act

21. In this Part, “**Principal Act**” means the *Copyright Act 1968*².

5 **Interpretation**

22. Section 10 of the Principal Act is amended by inserting in subsection
(1) the following definitions:

“**‘approved label’** means a label approved under:

- 10 (a) Part 2 of the Agvet Code of a State or of the Northern Territory; or
(b) Part 2 of the Agvet Code of the participating Territories within the
meaning of the *Agricultural and Veterinary Chemicals Act 1994*;

‘chemical product’ has the same meaning as in the Schedule to the
Agricultural and Veterinary Chemicals Code Act 1994;”.

Insertion of new section

15 23. After section 44A of the Principal Act the following section is
inserted in Division 3 of Part III:

**Reproduction of writing on approved label for containers
for chemical product**

20 “44B. The reproduction on a label on a container for a chemical product
of any writing appearing on an approved label is not an infringement of any
copyright subsisting under this Part in relation to that writing.”.

Insertion of new section

24. After section 112A of the Principal Act the following section is
inserted in Division 6 of Part IV:

25 **Reproduction of writing on approved label for containers
for chemical product**

“112B. The reproduction on a label on a container for a chemical
product of any writing appearing on an approved label is not an infringement
of any copyright subsisting under section 92 in relation to that writing.”.

26 *Agricultural and Veterinary Chemicals (Consequential
Amendments) No. 37, 1994*

NOTES

1. No. 262, 1992, as amended.
2. No. 66, 1968, as amended. For previous amendments, see No. 261, 1973; No. 91, 1976; No. 160, 1977; No. 19, 1979; No. 154, 1980; Nos. 42, 61 and 113, 1981; Nos. 26, 80 and 154, 1982; Nos. 7, 80, 91 and 136, 1983; Nos. 43 and 165, 1984; Nos. 65 and 67, 1985; Nos. 78 and 168, 1986; No. 23, 1987; No. 146, 1988; Nos. 28 and 32, 1989; Nos. 174 and 180, 1991; Nos. 105 and 167, 1992; and No. 107, 1993.

*[Minister's second reading speech made in—
House of Representatives on 16 December 1993
Senate on 8 February 1994]*