



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

**No. 41, 1994 as amended**

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**Includes amendments up to:** Act No. 91, 2014

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## About this compilation

### **This compilation**

This is a compilation of the *Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994* as in force on 21 July 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 13 November 2014.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

### **Uncommenced amendments**

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

### **Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### **Modifications**

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

### **Provisions ceasing to have effect**

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

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

## Part 1—Preliminary

### 1 Short title

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

### 2 Commencement

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

### 3 Interpretation

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

**Agency** has the same meaning as **Commonwealth entity** in the *Public Governance, Performance and Accountability Act 2013*.

**agricultural chemical product** has the same meaning as in the Agricultural and Veterinary Chemicals Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*.

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

**assessment** means an assessment under section 16.

**Australia** includes any external Territories that are participating Territories.

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

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

**civil penalty order** has the same meaning as in the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

**civil penalty provision** means a provision declared by this Act to be a civil penalty provision.

**collecting agency** means:

- (a) if an Agency is specified by instrument under section 3A to be the collecting agency—the Agency; or
- (b) if paragraph (a) does not apply—the APVMA.

**give information** includes make a statement.

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

**inspector** means:

- (a) a person appointed as an inspector for the purposes of this Act under subsection 69F(1) of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*; or
- (b) an officer of the Public Service of a State or Territory to whom an arrangement referred to in subsection 69F(2) of that Act applies for the purposes of this Act.

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

- (a) subject to paragraphs (b), (c) and (d), the person (the **original applicant**) who applied for the registration or, in the case of a chemical product whose registration has been renewed, applied for the renewal, or the last renewal, as the case may be, of the registration; or

- (b) subject to paragraphs (c) and (d), if the original applicant has entered into a contract with another person in relation to the product under which, or as a result of which, the other person will or may apply to the APVMA to have the other person's name entered in the relevant particulars in relation to the product, or to have a label approved in relation to containers for the product, and the other person's name is entered in those relevant particulars, or such a label is approved, on the application of the other person—the other person; or
- (c) if the person who, apart from this paragraph, would be the interested person because of paragraph (a) or (b), was an individual who has died or is an individual whose affairs are being lawfully administered by another person—the legal personal representative of the individual or the person administering his or her affairs, as the case may be; or
- (d) if the person who, apart from this paragraph, would be the interested person because of paragraph (a) or (b), was a body corporate—a successor in law of that body corporate.

***jurisdiction*** means:

- (a) a State; or
- (b) the participating Territories.

***late payment penalty*** means late payment penalty payable under section 14.

***leviable disposal***, in relation to a chemical product, means:

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

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

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

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

**manufacture** includes formulate.

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

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

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

**prescribed date for payment**, in relation to any levy that is payable, means:

- (a) if levy is payable because of an assessment that has been made—the date stated in the notice of assessment to be the date by which the levy is to be paid; or
- (b) in any other case—the next 31 December following the end of the relevant financial year.

Note: As the levy is paid in arrears, levy might be payable in respect of a chemical product whose registration has ceased.

**rate of levy** has the meaning given by section 12C.

**registered**, in relation to a jurisdiction, means registered under a registration law of the jurisdiction.

**registration law**, in relation to a jurisdiction, means:

- (a) if there is an Agvet Code of the jurisdiction that is in force—  
Part 2 of that Code, including (to avoid doubt) Part 2 of that Code as it has effect because of the operation of Part 11 of that Code; or
  - (b) otherwise—a prescribed law of the jurisdiction;
- and also has an extended meaning as mentioned in subsections (2) and (2A).

**relevant financial year** means the financial year in which the leviable disposals in respect of which the levy is payable took place.

**relevant particulars**, in relation to a registered chemical product, has the same meaning as in the Agricultural and Veterinary Chemicals Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*.

**State** includes the Northern Territory.

**thing** includes a document.

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

**understatement penalty** means understatement penalty payable under section 14A.

**veterinary chemical product** has the same meaning as in the Agricultural and Veterinary Chemicals Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*.

- (2) If, at any time or during any period, a permit is in force in respect of a chemical product under Part 7 of the Agvet Code of a State or of the participating Territories (including, to avoid doubt, a permit

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that is taken to be in force under Part 7 of such a Code because of the operation of Part 11 of the Code), this Act has effect as if:

- (a) the product were registered under Part 2 of the Code at that time or during that period; and
  - (b) a reference to the person who applied for the registration of the product were a reference to the person who applied for the permit.
- (2A) If, at any time or during any period, a permit is in force in respect of a chemical product under a prescribed law referred to in paragraph (b) of the definition of **registration law** in subsection (1), this Act has effect as if:
- (a) the product were registered under that law at that time or during that period; and
  - (b) a reference to the person who applied for the registration of the product were a reference to the person who applied for the permit.
- (2B) If:
- (a) a chemical product was registered at a particular time or during a particular period under a law that is prescribed for the purposes of paragraph (b) of the definition of **registration law** in subsection (1); and
  - (b) the product is declared by the regulations to have been, or to be, an excluded chemical product for the purposes of this Act from a time referred to in the regulations that is earlier than that particular time or earlier than the commencement of that particular period;
- the product is taken, for the purposes of this Act, not to have been registered under that law at that time or during that period, as the case may be.
- (3) If a change occurs in the legal or equitable ownership of a chemical product, the product is taken to be disposed of at the time of the change by the person who was the legal owner of the product immediately before the change.

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

### **3A Minister may specify collecting agency**

- (1) The Minister may, by written instrument, specify an Agency to be the collecting agency.
- (2) Before making an instrument specifying an Agency, the Minister must get the written agreement of the Minister responsible for the Agency.
- (3) An instrument under subsection (1) is not a legislative instrument.

### **4 Extension to certain external Territories**

This Act extends to the external Territories that are participating Territories.

### **5 Act to bind Crown**

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

### **5A Application of the *Criminal Code***

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

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

## 6 Power of collecting agency to make certain determinations

- (1) The collecting agency may do any one or more of the following:
  - (a) by notice in writing to the manufacturer or importer of a chemical product, determine the amount that would have been received by the manufacturer or importer in respect of the product at a particular time as mentioned in the definition of *notional wholesale value* in subsection 3(1);
  - (b) for the purpose of paragraph (a) of the definition of *prescribed date for payment*, by notice published in the *Gazette*, direct that, in relation to levy payable in a particular calendar year or financial year stated in the *Gazette* notice, a reference in a notice of assessment to a date that is specified in the *Gazette* notice is taken instead to be a reference to another date (whether earlier or later) that is specified in the *Gazette* notice;
  - (c) for the purpose of paragraph (b) of the definition of *prescribed date for payment*, by notice published in the *Gazette*, direct that, in relation to levy payable in a particular calendar year or financial year stated in the *Gazette* notice, a reference in that paragraph to a date that is specified in the *Gazette* notice is taken instead to be a reference to another date (whether earlier or later) that is specified in the *Gazette* notice;
  - (d) by notice published in the *Gazette*:
    - (i) specify amounts of levy to which the *Gazette* notice applies; and
    - (ii) direct that, for the purposes of this Act, an amount of such a levy that, apart from the direction, would be required to be paid by a particular date is taken to have been paid by that date if the levy is paid by instalments worked out in accordance with the *Gazette* notice on such dates as are stated in the *Gazette* notice.
- (2) A determination or direction made or given under subsection (1) has effect according to its terms.
- (3) A notice made under paragraph (1)(a) is not a legislative instrument.

- (4) A notice made under paragraph (1)(b), (c) or (d) is a legislative instrument.

## Part 2—Liability for levy and penalties

### Division 2—Liability for levy for financial years from 1 July 2005

#### 12B Liability for levy in respect of disposals during the 2005-2006 and later financial years

- (1) If a chemical product was registered in any jurisdiction during the whole or any part of the financial year beginning on 1 July 2005 or a later financial year, then levy is payable in respect of leviable disposals of the product that took place anywhere in Australia at any time during that year.
- (2) Subject to subsection (3), the interested person in relation to the chemical product is liable to pay the levy.
- (3) If the chemical product was registered as mentioned in subsection (1) in more than one jurisdiction and different persons are the interested persons in relation to the product in different jurisdictions, those persons are jointly and severally liable to pay the levy.

#### 12C Amount of levy imposed in respect of disposals during the 2005-2006 and later financial years

The amount of the levy that is payable under section 12B in respect of leviable disposals of a particular chemical product during a financial year is the amount worked out using the formula:

$$\text{Total leviable value in respect of the product for the financial year} \times \text{Rate of levy}$$

where:

**rate of levy** means the percentage prescribed by the regulations for the purposes of this section in respect of the financial year.

## **Division 3—Other rules relating to the levy**

### **13 Payment of levy**

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

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

### **14 Late payment penalty**

- (1) This section applies if either or both of the following:
- (a) any levy payable by a person under this Part in respect of leviable disposals of a particular chemical product during a period;
  - (b) any understatement penalty payable in respect of the product for the period;

is not wholly paid on or before the prescribed date for payment of the levy, or the date stated under subsection 16(8A), as the case requires.

- (1A) The person immediately becomes liable to pay a late payment penalty of:
- (a) if the total amount of levy and understatement penalty that is unpaid is not more than \$10,000—\$200; or
  - (b) if the total amount of levy and understatement penalty that is unpaid is more than \$10,000—\$400.
- (2) The collecting agency may remit the whole or a part of an amount of late payment penalty.

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

### **14A Understatement penalty**

- (1) This section applies if:
  - (a) a person mentioned in paragraph 20(1)(a) or (2)(a) (about notices requiring information) gives to the collecting agency under that section information relating to the importation, manufacture or disposal of a chemical product during a period; and
  - (b) the total leviable value (the *understated value*) in respect of the product for the period worked out on the basis of that information is less than the actual total leviable value in respect of the product for the period.
- (2) The person is liable to pay an understatement penalty in respect of the product for the period of the higher of the following amounts:
  - (a) \$100;
  - (b) 25% of the difference between the actual total leviable value and the understated value.
- (3) The collecting agency may remit the whole or a part of an amount of understatement penalty.

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

**Part 3—Calculation or assessment of levy****15 Calculation of levy by person liable**

- (1) If it appears to the collecting agency that a person may be liable to pay levy in respect of leviable disposals of a chemical product that took place during a particular period, the collecting agency may, not earlier than the end of that period, by written notice given to the person:
- (a) tell the person the rate of levy payable in respect of chemical products for that period; and
  - (b) require the person:
    - (i) to calculate the total leviable value (if any) in respect of the product for that period and the amount of the levy (if any) that is payable; and
    - (ii) within a period of not less than one month that is stated in the notice, to notify the collecting agency in writing of the results of the calculations and the basis on which the calculations were made.
- (2) A person must not refuse or fail to comply with a requirement made under subsection (1).
- (2AA) A person commits an offence of strict liability if the person contravenes subsection (2).
- Penalty: 50 penalty units.
- Note: For strict liability, see section 6.1 of the *Criminal Code*.
- (2A) Subsection (2AA) does not apply if the person has a reasonable excuse.
- Note: The defendant bears an evidential burden in relation to the matter in subsection (2A). See subsection 13.3(3) of the *Criminal Code*.
- (2B) Subsection (2) is a civil penalty provision.

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- Note 1: For monitoring and investigation powers of inspectors in relation to this Act, see Part 7AA of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.
- Note 2: Division 1 of Part 7AB of the *Agricultural and Veterinary Chemicals (Administration) Act 1992* provides for pecuniary penalties for contraventions of civil penalty provisions.
- Note 3: For infringement notices, enforceable undertakings and formal warnings in relation to contraventions of this provision, see Divisions 2, 3 and 6 of Part 7AB of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

- (3) Subject to subsection (6), a person who has given to the collecting agency, under subparagraph (1)(b)(ii) or this subsection, a notification in writing in respect of the total leviable value (if any) in respect of a chemical product for a period and the amount of the levy (if any) that is payable may make a further calculation of that value and amount in substitution for the value and amount last so calculated and notify the collecting agency of the results of the further calculations and the basis on which the further calculations were made.
- (4) Subject to subsection (6), an amount notified by a person to the collecting agency in accordance with this section as being the amount calculated by the person to be the levy payable in respect of a chemical product for a period or, if more than one amount has been so notified for that period, the amount last notified, is taken to be the amount of levy so payable.
- (5) Subject to subsection (6), if a notification by a person to the collecting agency in accordance with this section or, if more than one notification has been made, the last such notification, states that the calculations made by the person show that no levy is payable in respect of a particular chemical product for a period, no levy is payable by the person in respect of that product for that period.
- (6) Subsections (3), (4) and (5) do not apply in relation to a chemical product in respect of a period if the collecting agency has made or makes an assessment as to whether any levy is payable in respect of that product for that period.

**16 Assessment of levy by collecting agency***Assessment of levy*

- (1) The collecting agency may make an assessment as to whether any levy is payable in respect of leviable disposals of a particular chemical product during a particular period.
- (2) An assessment may be made before, on or after the date that, apart from the assessment, would be the prescribed date for payment of the levy and whether or not any payment has been made on account of the levy.
- (3) An assessment is to state the total leviable value (if any) in respect of the product for the period concerned and the amount of the levy (if any) payable.
- (4) An assessment may be based on any information in the possession of the APVMA or, if an Agency is specified by instrument under section 3A, the Agency, whether obtained as a result of the making of a requirement under this Act or otherwise.
- (5) The collecting agency must give written notice of an assessment:
  - (a) if any levy is assessed to be payable—to the person who it considers is liable to pay the levy; or
  - (b) if no levy is assessed to be payable—to the person who, if levy had been payable, it considers would have been liable to pay the levy.
- (6) A notice of assessment must contain particulars of any determination made by the collecting agency under paragraph 6(1)(a).
- (7) If any levy is payable, the notice must state the date by which the levy is to be paid.
- (8) The date to be so stated must not be earlier than whichever is the later of the following dates:
  - (a) the date that, apart from the assessment, would be the prescribed date for payment of the levy;
  - (b) the 21st day after the day on which the notice is given.

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*Assessment to include details of understatement penalty*

- (8A) If any understatement penalty is also payable in respect of the product for the period concerned, the notice must state:
- (a) the amount of understatement penalty payable; and
  - (b) the date by which the penalty is to be paid (which is to be the same as the date stated under subsection (7)).

*Reconsideration and review of assessments*

- (9) A notice of an assessment must include a statement to the effect of section 18.
- (10) A failure to comply with subsection (9) does not affect the validity of the assessment.
- (11) An assessment is taken to be a decision for the purposes of the *Administrative Appeals Tribunal Act 1975*.

*Notice of assessment is conclusive evidence of the due making of the assessment*

- (12) The production of a notice of assessment, or of a document purporting to be a copy of a notice of assessment, signed on behalf of the collecting agency by the Chief Executive Officer of the Agency or a delegate of the Chief Executive Officer is conclusive evidence of the due making of the assessment and, except in proceedings under section 18 on a review or appeal relating to the assessment, that the amount and all the particulars of the assessment are correct.

**17 Fresh assessments**

- (1) Subject to subsection (2), if the collecting agency is satisfied that an assessment was incorrect, the collecting agency may make a fresh assessment under section 16 in substitution for the incorrect assessment, even though levy or understatement penalty may have been paid in respect of the incorrect assessment.
- (2) A fresh assessment may:

- (a) if the incorrect assessment was based on false or misleading information given to the APVMA, an Agency specified by instrument under section 3A or an inspector—be made at any time; or
- (b) otherwise—be made only within 4 years from the date on which levy became payable under the incorrect assessment.

## **18 Reconsideration and review of assessments**

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

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- (7) Applications may be made to the Administrative Appeals Tribunal for review of assessments of the collecting agency that have been confirmed or varied under subsection (3).
- (8) If, as a result of an application made under paragraph 33(b), the Administrative Appeals Tribunal has reviewed a determination made by the collecting agency under paragraph 6(1)(a) in relation to a chemical product as at a particular time, the Tribunal is not entitled to alter the determination as so reviewed by it when it is reviewing an assessment to which the determination is relevant.
- (9) If an assessment is taken, because of subsection (4), to be confirmed, section 29 of the *Administrative Appeals Tribunal Act 1975* applies as if the prescribed time for making application for review of the assessment were the period beginning on the day on which the assessment is taken to be confirmed and ending on the 28th day after that day.
- (10) If a request is made under subsection (1) in respect of an assessment, section 41 of the *Administrative Appeals Tribunal Act 1975* applies as if the making of the request were the making of an application to the Administrative Appeals Tribunal for a review of the assessment.

**18A Reporting obligations of collecting agency**

- (1) This section applies if an Agency is specified by instrument under section 3A to be the collecting agency.
- (2) In relation to a particular period, the Agency must notify the APVMA, in writing, of the following:
  - (a) the leviable disposals of a chemical product that took place during the period;
  - (b) the total leviable value (if any) in respect of the product for that period and the amount of the levy (if any) that was payable;
  - (c) any assessment made by the Agency as to whether any levy was payable in respect of leviable disposals of the chemical product during the period;

- (d) the amounts of levy, late payment penalty or understatement penalty collected by the Agency during the period;
  - (e) if the prescribed date for payment of levy falls within the period—the amounts of levy that have not been paid on or before the prescribed date;
  - (f) if late payment penalty or understatement penalty is payable during the period—any amounts of late payment penalty or understatement penalty that have not been paid;
  - (g) if the amounts of any levy, late payment penalty or understatement penalty overpaid by a person have been credited during the period against a liability of the person to pay another such amount under the Act—the amount credited and the person in relation to whom the amount was credited;
  - (h) if the whole or part of the liability to pay an amount of levy, late payment penalty or understatement penalty has been waived during the period—the amount that has been waived and the person in relation to whom the amount was waived;
  - (i) if the total amount of levy, late payment penalty or understatement penalty was rounded during the period—the amount of levy, late payment penalty or understatement penalty payable, the amount as rounded and the person in relation to whom the amount was rounded.
- (3) The Agency must notify the APVMA in such form, and by such time after the end of the period, as the APVMA requires.

**18B APVMA may request information from collecting agency**

- (1) This section applies if an Agency is specified by instrument under section 3A to be the collecting agency.
- (2) The APVMA may request the collecting agency to provide any information it has acquired under this Act if the APVMA considers that the information is or may be required to enable:
  - (a) the APVMA to perform functions, or exercise powers, under the *Agricultural and Veterinary Chemicals (Administration) Act 1992* or the Agvet Code of a State or of the participating Territories; or



## **Part 4—Enforcement**

### **19 Levy, late payment penalty and understatement penalty recovered as debts**

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

### **20 APVMA or collecting agency may require information about disposals of chemical products**

- (1) For the purpose of determining whether levy under Part 2 is payable in respect of a chemical product for a calendar year or a financial year, the APVMA may or, if a collecting agency is specified by instrument under section 3A to be the collecting agency, the collecting agency may, not earlier than the end of the year, give written notice to any one or more of the following:
  - (a) the person, or any of the persons, by whom any such levy would be payable;
  - (b) if the product is an imported product and the person referred to in paragraph (a) is not, or none of the persons referred to in that paragraph is, the importer—the importer;
  - (c) if the product is an Australian product and the person referred to in paragraph (a) is not, or none of the persons referred to in that paragraph is, the manufacturer—the manufacturer;requiring the person to whom the notice is given to give to the APVMA or the collecting agency, as the case may be, within a period stated in the notice that is not less than one month after the

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notice is given, any information relating to the importation, manufacture or disposal of the product during the year that is necessary to work out the total leviable value in respect of the product for the year.

Note: A person might be liable for an understatement penalty if the total leviable value worked out on the basis of information given under this subsection is less than the actual total leviable value: see section 14A.

- (2) To avoid doubt, the APVMA may give a written notice under subsection (1) even if an Agency is specified by instrument under section 3A to be the collecting agency.
- (3) A person must not refuse or fail to comply with a requirement made under subsection (1) or (2).
- (3A) A person commits an offence of strict liability if the person contravenes subsection (3).

Penalty: 50 penalty units.

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

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

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

- (5) Subsection (3) is a civil penalty provision.

Note 1: For monitoring and investigation powers of inspectors in relation to this Act, see Part 7AA of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

Note 2: Division 1 of Part 7AB of the *Agricultural and Veterinary Chemicals (Administration) Act 1992* provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 3: For infringement notices, enforceable undertakings and formal warnings in relation to contraventions of this provision, see Divisions 2, 3 and 6 of Part 7AB of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

## **Part 5—Miscellaneous**

### **33 Administrative Appeals Tribunal may review certain decisions by collecting agency**

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

- (b) a decision of the collecting agency determining an amount under paragraph 6(1)(a); or
- (c) a decision of the collecting agency under subsection 14(2) or 14A(3) remitting, or refusing to remit, the whole or part of an amount of late payment penalty or understatement penalty; or
- (d) a decision of the collecting agency allowing, or refusing to allow, a further period for the making of a request under subsection 18(1).

### **34 Self-incrimination etc.**

- (1) A person is not excused from:
  - (a) giving information; or
  - (b) producing a document or thing; or
  - (c) answering a question asked by an inspector;under this Act on the ground that doing so might tend to incriminate the person or expose the person to a penalty.
- (2) However, in the case of an individual, none of the following:
  - (a) the information or answer given;
  - (b) the document or thing produced;
  - (c) the giving of the information or the answer, or the producing of the document or thing;
  - (d) any information, document or thing obtained as a direct or indirect consequence of giving the information or answer, or producing the document or thing;is admissible in evidence against the individual in:
  - (e) criminal proceedings, other than:

- (i) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (which deal with false or misleading information or documents) that relates to this Act; or
- (ii) proceedings for an offence against section 149.1 of the *Criminal Code* (which deals with obstruction of Commonwealth public officials) that relates to this Act; or
- (f) civil proceedings for a contravention of a civil penalty provision.

### **36 Records to be kept by applicants for registration of, and persons who import or manufacture, chemical products**

- (1) A person who applies for registration, or the renewal of registration, of a chemical product, or imports a chemical product into, or manufactures a chemical product in, Australia must:
  - (a) keep any records relating to the importation, manufacture or disposal of the product that may be necessary to work out the total leviable value in respect of the product for any period in respect of which levy may be payable in respect of leviable disposals of the product; and
  - (b) retain those records for 6 years.
- (2) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 50 penalty units.

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

- (3) Subsection (1) is a civil penalty provision.

Note 1: For monitoring and investigation powers of inspectors in relation to this Act, see Part 7AA of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

Note 2: Division 1 of Part 7AB of the *Agricultural and Veterinary Chemicals (Administration) Act 1992* provides for pecuniary penalties for contraventions of civil penalty provisions.

Note 3: For infringement notices, enforceable undertakings and formal warnings in relation to contraventions of this provision, see

Divisions 2, 3 and 6 of Part 7AB of the *Agricultural and Veterinary Chemicals (Administration) Act 1992*.

### **38 Exemptions from liability for damages**

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

#### **38A Refund of overpayments**

- (1) The collecting agency may credit an amount of levy, late payment penalty or understatement penalty that has been overpaid by a person against a liability of the person to pay another such amount under this Act.
- (2) The collecting agency must refund the amount to the person to the extent that it is not credited.

#### **38B Waiver of amounts**

The collecting agency may waive, up to a maximum of \$100, the whole or a part of the liability to pay an amount of levy, late payment penalty or understatement penalty.

Note: If the collecting agency waives the whole or a part of the liability to pay an amount, this is a permanent bar to recovering that amount.

#### **38C Rounding of amounts**

If the total amount of levy, late payment penalty and understatement penalty payable by a person in respect of a chemical product for a period is not exactly divisible by \$2, the

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collecting agency may round the amount down to the nearest amount that is exactly divisible by \$2.

**38D Costs and expenses of collecting agency**

If an Agency is specified by instrument under section 3A to be the collecting agency, the APVMA must pay the Agency for the costs and expenses incurred by the Agency in relation to collecting levy, late payment penalty or understatement penalty under this Act.

**38E Delegation**

The Chief Executive Officer of an Agency may, by writing, delegate his or her power under subsection 16(12) to:

- (a) if the Agency is the APVMA—an SES employee or acting SES employee in the APVMA; or
- (b) if the Agency is specified by instrument under section 3A to be the collecting agency—an SES employee or acting SES employee in the Agency.

**39 Regulations**

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;and, in particular, prescribing the way in which notices may be given by or to the APVMA or, if a collecting agency is specified by instrument under section 3A to be the collecting agency, the collecting agency, or both, under this Act.
- (2) The percentage that may be prescribed by the regulations for the purposes of section 12C must not exceed 2%.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

- Endnote 1—About the endnotes
- Endnote 2—Abbreviation key
- Endnote 3—Legislation history
- Endnote 4—Amendment history
- Endnote 5—Uncommenced amendments
- Endnote 6—Modifications
- Endnote 7—Misdescribed amendments
- Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word “none” will appear in square brackets after the endnote heading.

### Abbreviation key—Endnote 2

The abbreviation key in this endnote sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended the compiled law. The information includes commencement information for amending laws and details of application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

### Uncommenced amendments—Endnote 5

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in endnote 5.



**Endnote 2—Abbreviation key**

ad = added or inserted	pres = present
am = amended	prev = previous
c = clause(s)	(prev) = previously
Ch = Chapter(s)	Pt = Part(s)
def = definition(s)	r = regulation(s)/rule(s)
Dict = Dictionary	Reg = Regulation/Regulations
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
exp = expired or ceased to have effect	rep = repealed
hdg = heading(s)	rs = repealed and substituted
LI = Legislative Instrument	s = section(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
mod = modified/modification	Sdiv = Subdivision(s)
No = Number(s)	SLI = Select Legislative Instrument
o = order(s)	SR = Statutory Rules
Ord = Ordinance	Sub-Ch = Sub-Chapter(s)
orig = original	SubPt = Subpart(s)
par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)	

## Endnotes

### Endnote 3—Legislation history

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### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994	41, 1994	15 Mar 1994	15 Mar 1995 (s 2)	
Agricultural and Veterinary Chemical Products (Collection of Levy) Amendment Act 1994	72, 1994	21 June 1994	15 Mar 1995 (s 2 (1))	—
Primary Industries and Energy Legislation Amendment Act 1994	94, 1994	29 June 1994	s 11: 15 Mar 1995 (s 2(4))	—
Primary Industries and Energy Legislation Amendment Act (No.1) 1995	36, 1995	12 Apr 1995	s 3: 12 Apr 1995 (s 2(1))	—
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	s 1–3 and Sch 1 (items 1, 4, 6, 7, 9–11, 32): 24 Nov 2000 (s 2(1)) Remainder: 24 May 2001 (s2(1))	Sch 2 (items 418, 419)
Agriculture, Fisheries and Forestry Legislation Amendment (Application of Criminal Code) Act 2001	115, 2001	18 Sept 2001	16 Oct 2001 (s 2)	s 4
Agricultural and Veterinary Chemicals Legislation Amendment Act 2003	13, 2003	8 Apr 2003	s 4 and Sch 1–3: 8 Oct 2003 (s 2(1) items 1, 2) Remainder: 8 Apr 2003 (s 2(1) item 3)	—

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

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Agricultural and Veterinary Chemicals Legislation Amendment (Name Change) Act 2004	79, 2004	23 June 2004	Sch 1 (items 470–483, 485, 487–491): 30 July 2004 (s 2(1) items 7, 8, 10, 12) Sch 1 (items 484, 486): 22 Feb 2005 (s 2(1) items 9, 11)	s 2(1) (am. by 42, 2005, Sch 1 [item 49])
<b>as amended by</b>				
Agricultural and Veterinary Chemicals Legislation Amendment (Levy and Fees) Act 2005	42, 2005	1 Apr 2005	Schedule 1 (item 49): 23 June 2004 (s 2(1) item 7) Schedule 1 (items 51, 53): 22 Feb 2005 (s 2(1) items 9, 11)	—
Financial Framework Legislation Amendment Act 2005	8, 2005	22 Feb 2005	s 4 and Sch 1 (items 75, 496): 22 Feb 2005 (s 2(1) items 1, 2, 10)	s 4 and Sch 1 (item 496)
Agricultural and Veterinary Chemicals Legislation Amendment (Levy and Fees) Act 2005	42, 2005	1 Apr 2005	Sch 1 (items 1–27, 29, 31–40): 1 Apr 2005 (s 2(1) items 2, 4, 6) Sch 1 (items 28, 30): Does not commence (s 2(1) items 3, 5)	Sch 1 (item 22)
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (item 44) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 3, 12)	Sch 3 (items 10, 11)
Agricultural and Veterinary Chemicals Legislation Amendment Act 2013	125, 2013	29 June 2013	Sch 3 (items 1–17), Sch 5 and Sch 6 (items 1–12): 1 July 2014 (s 2(1) item 2)	Sch 5 (item 36)

## Endnotes

### Endnote 3—Legislation history

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<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 13 (items 1, 2): 1 July 2014 (s 2(1) item 7)	—
Agricultural and Veterinary Chemicals Legislation Amendment (Removing Re-approval and Re-registration) Act 2014	91, 2014	21 July 2014	Sch 1 (item 1): 21 July 2014 (s 2(1) item 2)	—

**Endnote 4—Amendment history**

<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
s. 3 .....	am. Nos. 72 and 94, 1994; No. 36, 1995; No. 115, 2001; No. 13, 2003; No. 79, 2004; No. 42, 2005; No. 46, 2011; No 125, 2013; No 62, 2014
s. 3A.....	ad No 125, 2013
s. 5A.....	ad. No. 115, 2001
Heading to s. 6 .....	am. No. 79, 2004 rs No 125, 2013
s. 6 .....	am. No. 36, 1995; No. 79, 2004; No. 42, 2005; No 125, 2013
s. 7 .....	rep. No. 72, 1994
<b>Part 2</b>	
Heading to Part 2 .....	rs. No. 42, 2005
Div 1 of Pt 2.....	rep No 125, 2013
Heading to Div. 1 of Part 2 .....	ad. No. 42, 2005 rep No 125, 2013
Heading to s. 8 .....	am. No. 42, 2005 rep No 125, 2013
s. 8 .....	am. No. 42, 2005 rep No 125, 2013
Heading to s. 9 .....	am. No. 42, 2005 rep No 125, 2013
Subhead. to s. 9(1) .....	ad. No. 42, 2005 rep No 125, 2013
Subhead. to s. 9(2) .....	ad. No. 42, 2005 rep No 125, 2013
Subhead. to s. 9(3) .....	ad. No. 42, 2005 rep No 125, 2013
s. 9 .....	am. No. 42, 2005 rep No 125, 2013
s. 10 .....	rep. No. 72, 1994

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
	ad. No. 42, 2005
	rep No 125, 2013
Heading to s. 11 .....	am. No. 42, 2005
	rep No 125, 2013
s. 11 .....	am. No. 13, 2003
	rep No 125, 2013
Heading to s. 12 .....	am. No. 42, 2005
	rep No 125, 2013
Subhead. to s. 12(1) .....	ad. No. 42, 2005
	rep No 125, 2013
s. 12 .....	am. No. 13, 2003; No. 42, 2005
	rep No 125, 2013
s. 12A.....	ad. No. 42, 2005
	rep No 125, 2013
<b>Division 2</b>	
Div. 2 of Part 2.....	ad. No. 42, 2005
s 12B.....	ad. No. 42, 2005
s 12C.....	ad. No. 42, 2005
	am No 125, 2013
<b>Division 3</b>	
Heading to Div. 3 of Part 2 .....	ad. No. 42, 2005
Note to s. 13.....	am. No. 79, 2004
s. 14 .....	am. No. 72, 1994; No. 36, 1995; No. 79, 2004; No. 42, 2005;
	No 125, 2013
Note to s. 14(2).....	am. No. 79, 2004
	rs. No. 42, 2005
s. 14A.....	ad. No. 42, 2005
	am No 125, 2013
<b>Part 3</b>	
s. 15 .....	am. No. 115, 2001; No. 79, 2004; No 125, 2013
Heading to s. 16.....	am. No. 79, 2004
	rs No 125, 2013

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
Subhead. to s. 16(1) .....	ad. No. 42, 2005
Subhead. to s. 16(9) .....	ad. No. 42, 2005
Subhead. to s. 16(12) .....	ad. No. 42, 2005
s. 16 .....	am. No. 79, 2004; No. 42, 2005; No 125, 2013
s. 17 .....	am. No. 79, 2004 rs. No. 42, 2005 am No 125, 2013
s. 18 .....	am. No. 79, 2004; No. 42, 2005; No 125, 2013
s 18A.....	ad No 125, 2013
s 18B.....	ad No 125, 2013
<b>Part 4</b>	
Heading to s. 19 .....	am. No. 42, 2005
s. 19 .....	am. No. 79, 2004 rs. No. 8, 2005 am. No. 79, 2004; No. 42, 2005
Heading to s. 20 .....	am. No. 79, 2004 rs No 125, 2013
s. 20 .....	am. No. 72, 1994; No. 36, 1995; No. 115, 2001; No. 79, 2004; No. 42, 2005; No 125, 2013
Note to s. 20(1) .....	ad. No. 42, 2005
Note to s. 20(2) .....	ad. No. 42, 2005
s 21 .....	rep No 125, 2013
s 22 .....	rep No 125, 2013
s. 23 .....	am. No. 115, 2001 rep No 125, 2013
s 24 .....	rep No 125, 2013
s 25 .....	rep No 125, 2013
s 26 .....	rep No 125, 2013
s 27 .....	rep No 125, 2013
s 28 .....	rep No 125, 2013
s. 29 .....	am. No. 79, 2004 rep No 125, 2013

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
s 30 .....	rep No 125, 2013
s 31 .....	rep No 125, 2013
s 32 .....	rep No 125, 2013
<b>Part 5</b>	
Heading to s. 33 .....	am. No. 79, 2004 rs No 125, 2013
s. 33 .....	am. No. 79, 2004; No. 42, 2005; No 125, 2013
s. 34 .....	rs. No. 42, 2005; No 125, 2013
s 35 .....	rep No 125, 2013
hdg to s 36.....	rs No 125, 2013
s. 36 .....	am. No. 115, 2001; No 125, 2013; No 91, 2014
s. 37 .....	rep. No. 137, 2000
s. 38 .....	am. No. 79, 2004; No 125, 2013
s. 38A.....	ad. No. 42, 2005 am No 125, 2013
s 38B.....	ad. No. 42, 2005 am No 125, 2013
Note to s 38B.....	am No 125, 2013
s 38C.....	ad. No. 42, 2005 am No 125, 2013
s 38D.....	ad No 125, 2013 rs No 62, 2014
s 38E.....	ad No 125, 2013
s. 39 .....	am. No. 72, 1994; No. 79, 2004; No. 42, 2005; No 125, 2013

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Endnote 5—Uncommenced amendments [none]

**Endnote 5—Uncommenced amendments [none]**

**Endnote 6—Modifications [none]**

**Endnote 7—Misdescribed amendments [none]**

**Endnote 8—Miscellaneous [none]**