The Parliament of the Commonwealth of Australia

THE SENATE

Agricultural and Veterinary Chemicals Legislation Amendment (Operational Efficiency) Bill 2017

(Government)

(1) Clause 2, page 2 (at the end of the table), add:


[Board of the APVMA]

(2) Schedule 1, item 4, page 6 (lines 18 to 21), omit subitem (1), substitute:

(1) Section 35 of the Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994, as inserted by this Part, applies in relation to leviable disposals that take place in the 2018-19 financial year or in a later financial year.

[application provisions]

(3) Schedule 1, item 8, page 7 (lines 5 to 14), omit subitem (1), substitute:

(1) Despite the repeal of section 69E of the Agricultural and Veterinary Chemicals (Administration) Act 1992 made by this Part, that section, as in force immediately before the commencement of this item, continues to apply on and after that commencement in respect of the following:

(a) the import, manufacture or export of active constituents referred to in paragraph 69E(1)(a) of that Act that occurred in the 2017-18 financial year or in an earlier financial year;

(b) the import, manufacture or export of chemical products referred to in paragraph 69E(1)(b) of that Act that occurred in the 2017-18 financial year or in an earlier financial year.

[application provisions]

(4) Schedule 1, page 18 (after line 19), at the end of the Schedule, add:
Part 9—Board of the APVMA

Agricultural and Veterinary Chemicals (Administration) Act 1992

40 Section 4 (definition of Advisory Board)
   Repeal the definition.

41 Section 4
   Insert:

   appointed Board member means a Board member other than the Chief Executive Officer.

   Board means the Board of the APVMA established by section 14.

42 Section 4 (definition of Board member)
   Repeal the definition, substitute:

   Board member means a member of the Board.

43 Section 4 (definition of Chair)
   Repeal the definition, substitute:

   Chair means the Chair of the Board.

44 Section 4
   Insert:

   paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

45 Subsection 8(3)
   Repeal the subsection.

46 Paragraph 10(2)(c)
   Omit “Chief Executive Officer”, substitute “Board”.

47 Section 10A
   Repeal the section.

48 Part 3 (heading)
   Repeal the heading, substitute:

Part 3—Constitution of APVMA, the Board and committees

49 Section 13
   Repeal the section.

50 Divisions 2, 3 and 4 of Part 3
   Repeal the Divisions, substitute:
Division 2—Board of the APVMA

Subdivision A—Establishment and functions of the Board

14 Establishment of the Board

The Board of the APVMA is established by this section.

15 Functions and powers of the Board

(1) The functions of the Board are:
   (a) to ensure the proper, efficient and effective performance of the APVMA’s functions; and
   (b) to determine objectives, strategies and policies to be followed by the APVMA; and
   (c) to do anything incidental to or conducive to the performance of the functions referred to in paragraph (a) or (b).

(2) In determining objectives, strategies and policies to be followed by the APVMA, the Board must have regard to section 1A of the Code set out in the Schedule to the Agricultural and Veterinary Chemicals Code Act 1994.

(3) The Board has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

16 Limitation on functions and powers of the Board

To avoid doubt, the functions and powers of the Board do not include making decisions under any of the following:
   (a) Part 7A, 7AA, 7AB or 8 of this Act;
   (b) the Code set out in the Schedule to the Agricultural and Veterinary Chemicals Code Act 1994;
   (c) regulations made under the Agricultural and Veterinary Chemicals Code Act 1994;
   (d) the Agricultural and Veterinary Chemicals Act 1994;
   (e) the Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994.

Subdivision B—Board members

17 Membership of the Board

The Board consists of the following members:
   (a) the Chair;
   (b) the Chief Executive Officer;
   (c) 3 other members.

18 Appointment of appointed Board members

(1) The appointed Board members are to be appointed by the Minister by written instrument, on a part-time basis.

Note: An appointed Board member may be reappointed: see section 33AA of the Acts Interpretation Act 1901.
(2) A person must not be appointed as an appointed Board member unless the Minister is satisfied that the person has appropriate qualifications, skills or experience in one or more of the following fields:
   (a) financial management;
   (b) law;
   (c) risk management;
   (d) public sector governance;
   (e) science (including agricultural science and veterinary science);
   (f) public health or occupational health and safety.

(3) In appointing the appointed Board members, the Minister must ensure, to the extent practicable, that the appointed Board members are an appropriate mix of persons with the qualifications, skills or experience referred to in subsection (2).

19 Term of appointment

(1) An appointed Board member holds office for the period specified in the instrument of appointment. The period must not exceed 4 years.

(2) The appointed Board member is eligible to be reappointed on one occasion after the appointed Board member’s first appointment.

20 Acting Board members

Acting as the Chair

(1) The Minister may, by written instrument, appoint an appointed Board member to act as the Chair:
   (a) during a vacancy in the office of Chair, whether or not an appointment has previously been made to the office; or
   (b) during any period, or during all periods, when the Chair:
       (i) is absent from duty or from Australia; or
       (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the Acts Interpretation Act 1901.

Acting as an appointed Board member (except the Chair)

(2) The Minister may, by written instrument, appoint a person to act as an appointed Board member (except the Chair):
   (a) during a vacancy in the office of an appointed Board member (except the Chair), whether or not an appointment has previously been made to the office; or
   (b) during any period, or during all periods, when an appointed Board member (except the Chair):
       (i) is absent from duty or from Australia; or
       (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the Acts Interpretation Act 1901.

(3) A person is not eligible for appointment under subsection (2) unless the Minister is satisfied that the person has appropriate qualifications, skills or experience in one or more of the fields referred to in subsection 18(2).
21 Remuneration

(1) An appointed Board member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the regulations.

(2) An appointed Board member is to be paid the allowances that are prescribed by the regulations.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

22 Paid work

An appointed Board member must not engage in any paid work that, in the Minister’s opinion, conflicts or could conflict with the proper performance of the member’s duties.

23 Leave of absence

(1) The Minister may grant leave of absence to the Chair on the terms and conditions that the Minister determines.

(2) The Chair may grant leave of absence to any other appointed Board member on the terms and conditions that the Chair determines.

24 Resignation of appointment

(1) An appointed Board member may resign the member’s appointment by giving the Minister a written resignation.

(2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

25 Termination of appointment

The Minister may terminate the appointment of an appointed Board member:

(a) for misbehaviour; or

(b) if the appointed Board member is unable to perform the duties of the member’s office because of physical or mental incapacity; or

(c) if the appointed Board member:

(i) becomes bankrupt; or

(ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with the member’s creditors; or

(iv) makes an assignment of the member’s remuneration for the benefit of the member’s creditors; or

(d) if the appointed Board member is absent, except on leave of absence, from 3 consecutive meetings of the Board; or

(e) if the appointed Board member engages in paid work that, in the Minister’s opinion, conflicts or could conflict with the proper performance of the member’s duties (see section 22); or

(f) if the Minister is satisfied that the appointed Board member’s performance has been unsatisfactory.
Note: The appointment of an appointed Board member may also be terminated under section 30 of the Public Governance, Performance and Accountability Act 2013 (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

26 Other terms and conditions

An appointed Board member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

Subdivision C—Meetings of the Board

27 Convening meetings

(1) The Board must hold such meetings as are necessary for the efficient performance of its functions.

(2) The Chair:
   (a) may convene a meeting at any time; and
   (b) must convene at least 4 meetings each calendar year; and
   (c) must convene a meeting within 30 days after receiving a written request to do so from another Board member.

27A Presiding at meetings

(1) The Chair must preside at all meetings at which the Chair is present.

(2) If the Chair is not present at a meeting, the other Board members present must appoint one of themselves to preside.

27B Quorum

(1) At a meeting of the Board, a quorum is constituted by a majority of Board members.

(2) However, if:
   (a) a Board member is required by rules made for the purposes of section 29 of the Public Governance, Performance and Accountability Act 2013 not to be present during the deliberations, or to take part in any decision, of the Board with respect to a particular matter; and
   (b) when the Board member leaves the meeting concerned there is no longer a quorum present;

   the remaining Board members at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

27C Voting at meetings

(1) A question arising at a meeting of the Board is to be determined by a majority of the votes of the Board members present and voting.

(2) The person presiding at the meeting of the Board has a deliberative vote and, if the votes are equal, a casting vote.
27D Conduct of meetings

The Board may, subject to this Subdivision, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the Acts Interpretation Act 1901 contains further information about the ways in which Board members may participate in meetings.

27E Minutes

(1) The Board must keep minutes of its meetings.

(2) The Board must give the Secretary of the Department a copy of the minutes, and the Board papers, from each meeting within 20 business days of the meeting.

27F Decisions without meetings

(1) The Board is taken to have made a decision at a meeting if:
   (a) without meeting, a majority of the Board members entitled to vote on the proposed decision indicate agreement with the decision; and
   (b) that agreement is indicated in accordance with the method determined by the Board under subsection (2); and
   (c) all the Board members were informed of the proposed decision, or reasonable efforts were made to inform all the Board members of the proposed decision.

(2) Subsection (1) applies only if the Board:
   (a) has determined that it may make decisions of that kind without meeting; and
   (b) has determined the method by which Board members are to indicate agreement with proposed decisions.

(3) For the purposes of paragraph (1)(a), a Board member is not entitled to vote on a proposed decision if the Board member would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Board.

(4) The Board must keep a record of decisions made in accordance with this section.

(5) The Board must give the Secretary of the Department details of each decision made in accordance with this section within 20 business days of the decision being made.

Subdivision D—Minister may give directions to the Board

27G Minister may give directions to the Board

(1) The Minister may give written directions to the Board about the performance of its functions or the exercise of its powers.

(2) The Board must comply with a direction under subsection (1).

(3) Subsection (2) does not apply to the extent that the direction relates to the Board’s performance of functions or exercise of powers under the Public Governance, Performance and Accountability Act 2013 in relation to the APVMA.

(4) The Minister must not give a direction to the Board unless:
   (a) the Minister has given the Board a written notice stating that the Minister is considering giving the direction; and
(b) the Minister has given the Board an adequate opportunity to discuss with the Minister the need for the proposed direction.

(5) A direction under subsection (1) is a notifiable instrument.

(6) The Minister must cause a copy of a direction under subsection (1) to be laid before each House of the Parliament within 15 sitting days of giving the direction.

Subdivision E—Board to give documents to Secretary

27H Board to give documents to Secretary

The Board must give the Secretary of the Department a copy of each document requested by the Secretary of the Department within 20 business days of the request being made.

Subdivision F—Board committees

27J Board committees

(1) The Board may establish committees to assist it in the performance of its functions or the exercise of its powers, and may abolish any such committee.

(2) A committee is to consist of such persons (whether Board members or not) as the Board determines.

(3) The Board may determine:
   (a) the committee’s terms of reference; and
   (b) the terms and conditions of appointment of the members of the committee; and
   (c) the procedures to be followed by the committee.

(4) The members of the committee (other than Board members) are not officials for the purposes of the Public Governance, Performance and Accountability Act 2013.

Subdivision G—Review of the Board

27K Review of the Board

(1) The Minister must cause a review to be conducted of the functions and operation of the Board.

(2) The review must be completed before the end of the period of 4 years beginning on the day this section commences.

(3) At any time after the review referred to in subsection (1) is completed, the Minister may cause a review to be conducted of the functions and operation of the Board.

(4) The person undertaking a review under this section must give the Minister a written report of the review.

(5) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

51 Division 5 of Part 3 (heading)

Repeal the heading, substitute:
Division 5—APVMA committees

52 Subsection 32(1)
Omit “to manage the affairs of the APVMA and in doing so”, substitute “responsible for the day-to-day management and decision making of the APVMA and, in doing this”.

53 At the end of section 32
Add:

(4) The Chief Executive Officer is to act in accordance with the objectives, strategies and policies determined by the Board under paragraph 15(1)(b).

(5) The Board may give written directions to the Chief Executive Officer about the performance of the Chief Executive Officer’s duties.

(6) The Chief Executive Officer must comply with a direction under subsection (5).

(7) Subsection (6) does not apply to the extent that the direction relates to the Chief Executive Officer’s performance of functions or exercise of powers under the Public Service Act 1999 in relation to the APVMA.

(8) The Board must not give a direction to the Chief Executive Officer unless:
   (a) the Board has given the Chief Executive Officer a written notice stating that the Board is considering giving the direction; and
   (b) the Board has given the Chief Executive Officer an adequate opportunity to discuss with the Board the need for the proposed direction.

(9) A direction under subsection (5) is not a legislative instrument.

54 Section 32A
Repeal the section.

55 Subsection 33(1)
Omit “Minister”, substitute “Board”.

56 After subsection 33(1)
Insert:

(1A) Before appointing the Chief Executive Officer, the Board must consult the Minister.

57 Subsection 33(2)
Omit “A Board member”, substitute “An appointed Board member”.

58 Section 34
Omit “Minister”, substitute “Board”.

59 Subsections 35(1) and (2)
Omit “Minister”, substitute “Board”.

60 Section 37
Omit “Minister”, substitute “Board”.
61 Section 38 (heading)
Omit “paid employment”, substitute “paid work”.

62 Section 38
Omit “paid employment”, substitute “paid work”.

63 Section 38
Omit “Minister”, substitute “Board”.

64 Sections 40 and 41
Omit “Minister” (wherever occurring), substitute “Board”.

65 Section 41A
Omit “The Minister”, substitute “(1) The Board”.

66 Paragraph 41A(a)
Repeal the paragraph, substitute:
(a) for misbehaviour; or
(aa) if the Chief Executive Officer is unable to perform the duties of the Chief Executive Officer’s office because of physical or mental incapacity; or

67 Paragraph 41A(d)
Omit “Minister’s”, substitute “Board’s”.

68 Paragraph 41A(d)
Omit “paid employment”, substitute “paid work”.

69 Paragraph 41A(f)
Omit “Minister”, substitute “Board”.

70 At the end of section 41A
Add:
(2) Before terminating the appointment of the Chief Executive Officer, the Board must consult the Minister.

71 Subsection 42(1)
Omit “Minister”, substitute “Board”.

72 Subsection 43(1)
Omit “Minister”, substitute “Board”.

73 After subsection 43(1)
Insert:
(2) Before appointing a person to act as Chief Executive Officer, the Board must consult the Minister.
74 Subsections 51(1) and (3)
Omit “Chief Executive Officer”, substitute “Board”.

75 Subsections 52(1), (2) and (3)
Omit “Chief Executive Officer”, substitute “Board”.

76 Subsection 55(1)
Omit “Chief Executive Officer”, substitute “Board”.

77 Paragraph 55(2)(b)
Omit “Chief Executive Officer”, substitute “Board”.

78 Subsections 56(1) and (3)
Omit “Chief Executive Officer” (wherever occurring), substitute “Board”.

79 Subsection 56(3)
Omit “he or she”, substitute “the Board”.

80 Paragraph 56(4)(b)
Omit “Chief Executive Officer”, substitute “Board”.

81 Subsection 57(2)
Omit “Chief Executive Officer”, substitute “Board”.

82 Section 61
Omit “Chief Executive Officer”, substitute “Board”.

83 At the end of section 61
Add:
; and (g) any directions given to the Board by the Minister during that period and the impact of the directions on the operations of the APVMA.

84 Paragraph 69EP(7)(a)
Omit “, or the Chief Executive Officer,”.

85 Transitional provision—meetings of the Board
Paragraph 27(2)(b) of the Agricultural and Veterinary Chemicals (Administration) Act 1992, as substituted by this Part, does not apply in relation to the calendar year in which this item commences.

86 Application provision—Chief Executive Officer
The amendments of sections 33 to 43 of the Agricultural and Veterinary Chemicals (Administration) Act 1992 made by this Part apply in relation to each appointment (including reappointment) of the Chief Executive Officer on or after the commencement of this item.
87 Application and saving provisions—corporate and annual operational plans and annual report

(1) The amendments of subsections 51(1) and 55(1) of the Agricultural and Veterinary Chemicals (Administration) Act 1992 made by this Part apply in relation to the calendar year beginning on 1 January 2020 and each later calendar year.

(2) The amendments of Part 6 of the Agricultural and Veterinary Chemicals (Administration) Act 1992 made by this Part do not affect the validity of a corporate plan, a variation of a corporate plan or an annual operational plan approved by the Minister before the commencement of this item.

(3) The amendments of section 61 of the Agricultural and Veterinary Chemicals (Administration) Act 1992 made by this Part apply in relation to the reporting period (within the meaning of the Public Governance, Performance and Accountability Act 2013) commencing on 1 July 2019 and each later reporting period.

88 Transitional provision—transfer of records and documents of Advisory Board to the APVMA

(1) This item applies to any records or documents that were in the possession of the Advisory Board immediately before the commencement of this item.

(2) The records and documents are to be transferred to the APVMA after the commencement of this item.

Note: The records and documents transferred are Commonwealth records for the purposes of the Archives Act 1983.

[Board of the APVMA]
Agricultural and Veterinary Chemicals Legislation Amendment (Operational Efficiency) Bill 2017
JC512

Statement of reasons: why certain amendments should be moved as requests

Section 53 of the Constitution is as follows:

Powers of the Houses in respect of legislation

53. Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.

The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.

The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.

Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws.

Amendment (4)

The effect of this amendment is to provide for remuneration for Board members of the APVMA. It is covered by section 53 because it will increase the amount of expenditure out of the Consolidated Revenue Fund under the standing appropriation in the Remuneration Tribunal Act 1973.
Agricultural and Veterinary Chemicals Legislation Amendment (Operational Efficiency) Bill 2017
SHEET JC512 REVISED

Statement by the Clerk of the Senate pursuant to the order of the Senate of 26 June 2000

Amendment (4)
This amendment will provide for remuneration for Board members of the APVMA.

The statement of reasons for moving the amendment as a request advises that it will increase expenditure under the standing appropriation in the Remuneration Tribunal Act 1973.

The Senate has long followed the practice that it should treat as requests amendments that would result in increased expenditure under a standing appropriation. If that is the effect of the amendment, then it is in accordance with the precedents of the Senate that it be moved as a request.

It is noted that the Government’s proposed request was first circulated as an amendment. The decision to reframe the amendment as a request appears to be consequential on advice provided by the Solicitor-General on another matter.

It is not entirely clear that the amendment will have the effect of ‘clearly, necessarily and directly’ increasing the expenditure under the standing appropriation cited, given the provisions of proposed clause 21, dealing with Remuneration for the Board. However, the Senate may wish on this occasion to accept the Government’s statement as to the effect of the amendments, pending further study of the Solicitor-General’s advice.