BILLS DIGEST

No. 14-18 1994

Agricultural and Veterinary Chemicals (Consequential Amendments) Bill 1993
Agricultural and Veterinary Chemical Products Levy Imposition (Excise) Bill 1993
Agricultural and Veterinary Chemical Products Levy Imposition (Customs) Bill 1993
Agricultural and Veterinary Chemical Products Levy Imposition (General) Bill 1993
Agricultural and Veterinary Chemical Products (Collection of Levy) Bill 1993
Related Bills

Agricultural and Veterinary Chemicals Bill 1993

Agricultural and Veterinary Chemicals Code Bill 1993
Caution:

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Further Assistance:

More information on the background to and content of legislative proposals can be obtained from the Parliamentary Research Service officer identified on the last page of the Digest and from staff of the Bills Digest Service (BDS) on (06) 2772439 and (06) 2772438.

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Agricultural and Veterinary Chemicals
(Consequential Amendments) Bill 1993

Date Introduced: 16 December 1993
House: House of Representatives
Portfolio: Primary Industries and Energy
Commencement: On the same day as the Agricultural and Veterinary Chemicals Bill 1993. (The Agricultural and Veterinary Chemicals Bill 1993 will commence on a day to be fixed by Proclamation, or if it does not commence within 12 months of receiving the Royal Assent, it will commence on the first day after that period.)

Purpose

The amendments proposed by this Bill are as a consequence of the introduction of the Agricultural and Veterinary Chemicals Bill 1993, Agricultural and Veterinary Chemicals Code Bill 1993. The principal amendments proposed by this Bill relate to the functions of the National Registration Authority for Agricultural and Veterinary Chemicals (NRA), and the NRA’s control over the importation, manufacture and export of agricultural and veterinary chemicals.

Background

This Bill forms part of a package of seven Bills. The other Bills in this package include the Agricultural and Veterinary Chemicals Bill 1993, Agricultural and Veterinary Chemical Products (Collection of Levy) Bill 1993, Agricultural and Veterinary Chemical Products Levy Imposition (Excise) Bill 1993, Agricultural and Veterinary Chemicals Code Bill 1993, Agricultural and Veterinary Chemical Products Levy Imposition (Customs) Bill 1993 and Agricultural and Veterinary Chemical Products Levy Imposition (General) Bill 1993. An outline of the background to this package of Bills is contained in the Digest (No. 3 of 1994) for the Agricultural and Veterinary Chemicals Bill 1993.

Collectively, this package provides a scheme for the evaluation, registration and control of agricultural and veterinary chemicals in the Australian Capital Territory and prescribed Territories. This Bill applies only to the Australian Capital Territory and prescribed Territories by virtue of clause 7 of the Agricultural and Veterinary Chemicals Bill 1993. It is the Government’s intention that the Agricultural and Veterinary Chemicals Code, set out in the Schedule to the Agricultural and Veterinary Chemicals Code Bill 1993 (See Digest No. 8 of 1994), will be adopted by the enactment of complementary legislation by each State and the Northern Territory. Were this to occur, the evaluation, approval, registration and control and supply of agricultural and veterinary chemicals would be administered uniformly across Australia by the NRA.

Main Provisions

Commencement: This proposed Act will commence on the same day as the Agricultural and Veterinary Chemicals Bill 1993 (clause 2). The Agricultural and Veterinary Chemicals Bill 1993 will commence on a day to be fixed by Proclamation, or if it does not commence within 12 months of receiving the Royal Assent, it will commence on the first day after that period.

Amendments to the Agricultural and Veterinary Chemicals (Administration) Act 1992

Functions and Powers of NRA: Section 7 of the Agricultural and Veterinary Chemicals (Administration) Act 1992 (the Principal Act) sets out the functions and powers of the NRA. A new subsection 7(1) will be substituted, and subsections 7(1A) and 7(1B) inserted, into the Principal Act by subclause 6(1). Proposed subsection 7(1) provides that the NRA has any functions and powers
Agricultural and Veterinary Chemicals (Consequential Amendments) Bill 1993

conferred on it by or under this proposed Act, the proposed Agricultural and Veterinary Chemicals Code Act 1993 (the Agvet Code), or the Agricultural and Veterinary Chemicals Regulations (the Agvet Regulations).  

A non-exhaustive list of the NRA's functions are contained in proposed subsection 6(1A). These functions include:

* 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;
* to evaluate the effects of the use of chemical products in the States, the Northern Territory and participating Territories (i.e. the A.C.T. and prescribed Territories); and
* to encourage and facilitate the introduction of uniform national procedures for control of the use of chemical products.

Expressions used in proposed subsection 7(1A) have the same meaning as in the Agvet Code set out in the Schedule to the proposed Agricultural and Veterinary Chemicals Code Act 1993 [proposed section 7(1B)].

The effect of subclause 6(2) is provide the NRA with power to make available to the public, with or without a charge, manuals, reports, list of requirements and other documents.

In the performance and exercise of its functions and powers, the NRA is to have regard the Commonwealth Government's policy in relation to ecologically sustainable development, particularly, the need to use, conserve and enhance the community's resources so that the quality of life can be enriched [subclause 6(3)].

Publication of Standards for Certain Chemical Product Residues: A new section 7A, which requires the NRA to publish each calendar year approved standards for residues of chemical products in protected commodities, will be inserted into the Principal Act by clause 7. The term 'protected commodity' is defined to include:

* any substance or thing used or capable of being used as food or drink by humans;
* any animal feed; or
* any other prescribed substance or thing;

but not a therapeutic good within the meaning of the Therapeutic Goods Act 1989.

NRA to Comply with Policies of Government of Commonwealth, State/Northern Territory and Participating Territories: In performance and exercise of its functions and powers, the NRA must comply with any Commonwealth, State/Northern Territory and participating Territory Government policies determined under any agreement entered into between those Governments for the purposes of this proposed Act and the Agvet Codes (clause 9).

Ministerial Directions: A new paragraph 10(2)(a), which will be substituted into the Principal Act by clause 10, provides that the Commonwealth Minister must not give a direction to the NRA unless satisfied it is necessary in order to ensure that the NRA, in the performance or exercise of its functions and powers, complies with policies of Commonwealth, State/Northern Territory and participating Territory Government under an agreement entered into between those Governments for the purposes of this proposed Act and the Agvet Codes (clause 10).

Appropriation of Money: Section 58 of the Principal Act provides that the NRA's funds consist of moneys appropriated by Parliament, fees received by the Commonwealth under the Agricultural and Veterinary Chemicals Act 1988 and amounts paid by a State/Territory to the Commonwealth for the purposes of the NRA.

Under the amendments proposed by clause 16 to section 58 of the Principal Act, the NRA's funds will consist, in addition to money appropriated by Parliament, fees received by the Commonwealth under the Agricultural and Veterinary Chemicals Act 1988 or the Agvet Codes or Agvet Regulations, and
amounts of levy or late payment penalty paid into the Consolidated Revenue Fund under any Act providing for the collection of levy imposed on the disposal of chemical products.

**Importation, Manufacture and Exportation of Chemicals**

A new Part 7A (proposed sections 69A-69EU) will be inserted into the Principal Act by clause 17. Unless the contrary is indicated, expressions used in proposed Part 7A have the same meaning as in the Agvet Code set out in the Schedule to the proposed Agricultural and Veterinary Code Act 1993 (proposed subsection 69A(1)).

**Importation Offence:** Except with written NRA consent, it will be an offence, punishable by a maximum penalty of 300 penalty units (currently $30 000), for a person, without reasonable excuse, to:

* import into Australia an active constituent for a proposed or existing chemical product that is neither an approved active constituent or exempt active constituent, or a chemical product that is neither a registered chemical product or an exempt chemical product; or
* arrange for the importation into Australia of such an active constituent or chemical product, on someone else's behalf, who, at the time of the arrangements, is neither an Australian resident or carrying on business in Australia (proposed subsection 69B(1)).

The terms 'exempt active constituent' and 'exempt chemical product' are defined by proposed subsection 69B(2) to denote active constituents/chemical products exempted by the NRA from the operation of proposed subsection 69B(1).

The NRA is accorded by subsection 69B(3) the power to exempt an active constituent for a proposed or existing chemical product, or chemical product from the operation of proposed subsection 69B(1).

**Active Constituent or Chemical Product the Subject of a Prescribed International Agreement:** Where an active constituent for a proposed or existing chemical product, or a chemical product is the subject of a prescribed international agreement, the regulations may prohibit the import, manufacture in, or export from, Australia of the constituent or product, either absolutely or conditionally (proposed subsection 69C(1)).

It will be an offence, punishable by a maximum penalty of 300 penalty units (currently $30 000), for a person, without reasonable excuse, to import, manufacture or export an active constituent for a proposed or existing chemical product, or a chemical product, in breach of a prescribed proposed subsection 69C(1) condition (proposed subsection 69C(5)).

**Export of Chemical Products:** On written application of a person wanting to export a chemical product, the NRA may give them, or the government/authority of the country named by the person in their application, a certificate setting out any NRA findings relating to the chemical product that are required for its export (proposed subsection 69D(1)).

The NRA may of its own initiative tell a body in a foreign country with functions similar to its own of certain matters relating to a chemical product which is proposed to be export to that country, including that:

* the product has had its registration refused;
* the product has had its registration suspended or cancelled; or
* the registration of the product is subject to conditions significantly limiting its use (subsection 69D(2)).

**Annual Returns:** It will be an offence, punishable by a maximum penalty of 30 penalty units (currently $3 000), for a person who imports into, manufacturers in, or exports from, Australia active constituents for proposed or existing chemical products, or chemical products, to not give the NRA:

* during the year ending 30 June 1995, or a later year; and
not later than 3 months after the end of the year concerned;
a return setting out the amounts of the active constituents, or of the active constituents contained in the products, that were so imported, manufactured or exported [proposed subsection 69E(1)].

The requirement imposed by proposed subsection 69E(1) will not apply where the total amount of active constituents imported, manufactured or exported is less than the prescribed amount [subclause 69E(2)].

Keeping of Records: It will be an offence, punishable by a maximum penalty of 30 penalty units (currently $3,000), for 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, to not:

* keep any records relating to the importation, manufacture or exportation reasonably necessary to allow the NRA to find out whether proposed sections 69B, 69C and 69E have been complied with; and

* keep those records for six years (proposed section 69EA).

Powers of Entry, Search and Seizure: Proposed sections 69EB-69EO contain standard enforcement provisions which provide for the monitoring of, and ensure compliance with, the provisions of proposed Part 7A.

NRA Hearings: Proposed section 69EP deals with NRA hearings held for purposes relating to the performance or exercise of any of its functions or powers. Proposed subsection 69EP(1) accords the NRA power to hold such hearings. Before holding a hearing, the NRA must publish in the Gazette and in any other way it thinks appropriate, a notice of the place and time of the hearing [proposed subsection 69EP(2)]. Except where the NRA directs that a part of a hearing be held in private and/or determines who may attend (the NRA may make such a determination for any reason), hearings are to be held in public [proposed subsections 69EP(3) and 69EP(4)].

It will be an offence, punishable by a maximum penalty of 20 penalty units (currently $2,000), for a person, without reasonable excuse, to breach an NRA directive prohibiting or restricting the publication of submissions or evidence, or of matters contained in such submissions or evidence or in documents produced at a hearing [proposed subsections 69EP(5) and 69EP(6)].

It will also be an offence, punishable by a maximum penalty of 20 penalty units (currently $2,000), for a person, without reasonable excuse, to be present at a private hearing unless they are:

* a director, or the Chief Executive Officer, of the NRA;

* a member of the staff of the NRA that has been authorised by the NRA to be present; or

* are entitled to be present because the NRA has so determined [proposed subsection 69EP(7)].

Self-incrimination Excuse for Non-compliance: It will be a reasonable excuse for a person to refuse or fail to give information, produce a document or do any other thing required of them under proposed Part 7A, if to do so would tend to incriminate them (proposed section 69EQ).

Forfeiture: Where a person is convicted of an offence under proposed Part 7A for a thing that the courts finds to be their property, the court may order that all or any part of the property be forfeited to the NRA [proposed subsection 69ET(1)].

Exemptions from Liability for Damages: Immunity from damages actions is provided to the Commonwealth, the NRA, Commonwealth authorities, NRA appointed mediators and arbitrators and certain other persons by proposed section 69H, in relation to injury or loss suffered as a result of certain actions, including:

* the handling of an approved active constituent for a proposed or existing chemical product;

* the handling of a registered chemical product; or
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the carrying out of a step in the manufacture of a chemical product of which a licence has been issued by the NRA.

Endnotes

1. Section 7 of the Principal Act currently provides "The NRA has such functions and powers as are conferred on it by or under this Act [the Agricultural and Veterinary Chemicals (Administration) Act 1992] or the Agricultural and Veterinary Chemicals Act 1988.

2. Paragraph 10(2)(a) of the Principal Act currently provides "[The Minister must not give a direction to the NRA unless] the Minister is satisfied that, because of the existence of exceptional circumstances, it is necessary to give the direction to the NRA in order to ensure that the performance of the functions, or the exercise of the powers, of the NRA does not conflict with major Government policies; ... ."
Agricultural and Veterinary Chemical Products Levy Imposition (Excise) Bill 1993

Date Introduced: 16 December 1993
House: House of Representatives
Portfolio: Primary Industries and Energy
Commencement: On the same day as the Agricultural and Veterinary Chemicals Bill 1993. (The Agricultural and Veterinary Chemicals Bill 1993 will commence on a day to be fixed by Proclamation, or if it does not commence within 12 months of receiving the Royal Assent, it will commence on the first day after that period.)

Purpose

To impose a levy on agricultural and veterinary chemical products manufactured in Australia.

Background

This Bill forms part of a package of seven Bills. The other Bills in this package include the Agricultural and Veterinary Chemicals Bill 1993, Agricultural and Veterinary Chemicals (Consequential Amendments) Bill 1993, Agricultural and Veterinary Chemical Products (Collection of Levy) Bill 1993, Agricultural and Veterinary Chemicals Code Bill 1993, Agricultural and Veterinary Chemical Products Levy Imposition (Customs) Bill 1993 and Agricultural and Veterinary Chemical Products Levy Imposition (General) Bill 1993. An outline of the background to this package of Bills is contained in the Digest (No.3 of 1994) for the Agricultural and Veterinary Chemicals Bill 1993.

Collectively, this package provides a scheme for the evaluation, registration and control of agricultural and veterinary chemicals in the Australian Capital Territory and prescribed Territories. This Bill applies only to the Australian Capital Territory and prescribed Territories by virtue of clause 7 of the Agricultural and Veterinary Chemicals Bill 1993. It is the Government’s intention that the Agricultural and Veterinary Chemicals Code, set out in the Schedule to the Agricultural and Veterinary Chemicals Code Bill 1993 (See Digest No. 8 of 1994), will be adopted by the enactment of complementary legislation by each State and the Northern Territory. Were this to occur, the evaluation, approval, registration and control and supply of agricultural and veterinary chemicals would be administered uniformly across Australia by the National Registration Authority for Agricultural and Veterinary Chemicals.

This package of Bill contains three Bills which impose taxation. The reason why three Bills are required is to satisfy section 55 of the Constitution, part of which provides:

Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.

Depending on the circumstances in which a tax is imposed, the tax may be defined to be a customs duty, an excise duty or a tax. Customs duties are applied to imports. Excise duties are applied to domestic production. The tax imposed by this Bill, is a duty of excise imposed on agricultural and veterinary chemical products manufactured in Australia.

Main Provisions

Commencement: On the same day as the Agricultural and Veterinary Chemicals Bill 1993. The Agricultural and Veterinary Chemicals Bill 1993 will commence on a day to be fixed by Proclamation,
or if it does not commence within 12 months of receiving the Royal Assent, it will commence on the first day after that period.

Imposition of Levy: A levy will be imposed on agricultural and veterinary chemical manufactured in Australia by clause 3.

Levy not Imposed on State Property: This Bill will not impose a levy on property of any kind belonging to a State (subclause 4(1)). The terms 'property of any kind belonging to a State' is defined by subclause 4(2) to have the same meaning as in section 114 of the Constitution. Section 114 of the Constitution provides:

A State shall not, without the consent of the Parliament of the Commonwealth, raise or maintain any naval or military force, or impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State.¹

Endnotes

Agricultural and Veterinary Chemical Products Levy Imposition (Customs) Bill 1993

Date Introduced: 16 December 1993
House: House of Representatives
Portfolio: Primary Industries and Energy

Commencement: On the same day as the Agricultural and Veterinary Chemicals Bill 1993. (The Agricultural and Veterinary Chemicals Bill 1993 will commence on a day to be fixed by Proclamation, or if it does not commence within 12 months of receiving the Royal Assent, it will commence on the first day after that period.)

Purpose
To impose a levy on imported agricultural and veterinary chemical products sold wholesale.

Background
This Bill forms part of a package of seven Bills. The other Bills in this package include the Agricultural and Veterinary Chemicals Bill 1993, Agricultural and Veterinary Chemicals (Consequential Amendments) Bill 1993, Agricultural and Veterinary Chemical Products (Collection of Levy) Bill 1993, Agricultural and Veterinary Chemicals Code Bill 1993, Agricultural and Veterinary Chemical Products Levy Imposition (Excise) Bill 1993 and Agricultural and Veterinary Chemical Products Levy Imposition (General) Bill 1993. An outline of the background to this package of Bills is contained in the Digest (No.3 of 1994) for the Agricultural and Veterinary Chemicals Bill 1993.

Collectively, this package provides a scheme for the evaluation, registration and control of agricultural and veterinary chemicals in the Australian Capital Territory and prescribed Territories. This Bill applies only to the Australian Capital Territory and prescribed Territories by virtue of clause 7 of the Agricultural and Veterinary Chemicals Bill 1993. It is the Government's intention that the Agricultural and Veterinary Chemicals Code, set out in the Schedule to the Agricultural and Veterinary Chemicals Code Bill 1993 (See Digest No. 8 of 1994), will be adopted by the enactment of complementary legislation by each State and the Northern Territory. Were this to occur, the evaluation, approval, registration and control and supply of agricultural and veterinary chemicals would be administered uniformly across Australia by the National Registration Authority for Agricultural and Veterinary Chemicals.

This package of Bill contains three Bills which impose taxation. The reason why three Bills are required is to satisfy section 55 of the Constitution, part of which provides:

Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.

Depending on the circumstances in which a tax is imposed, the tax may be defined to be a customs duty, an excise duty or a tax. Customs duties are applied to imports. Excise duties are applied to domestic production. The tax imposed by this Bill, is a duty of customs imposed on imported agricultural and veterinary chemical products sold wholesale.

Main Provisions

Commencement: On the same day as the Agricultural and Veterinary Chemicals Bill 1993. The Agricultural and Veterinary Chemicals Bill 1993 will commence on a day to be fixed by Proclamation,
or if it does not commence within 12 months of receiving the Royal Assent, it will commence on the first day after that period.

**Imposition of Levy:** A levy will be imposed on imported agricultural and veterinary chemical products sold wholesale by clause 3.

**Levy not Imposed on State Property:** This Bill will not impose a levy on property of any kind belonging to a State (subclause 4(1)). The terms 'property of any kind belonging to a State' is defined by subclause 4(2) to have the same meaning as in section 114 of the Constitution. Section 114 of the Constitution provides:

A State shall not, without the consent of the Parliament of the Commonwealth, raise or maintain any naval or military force, or impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State.¹

**Endnotes**


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3 February 1994

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Agricultural and Veterinary Chemical Products Levy Imposition (General) Bill 1993

Date Introduced: 16 December 1993
House: House of Representatives
Portfolio: Primary Industries and Energy

Commencement: On the same day as the Agricultural and Veterinary Chemicals Bill 1993. (The Agricultural and Veterinary Chemicals Bill 1993 will commence on a day to be fixed by Proclamation, or if it does not commence within 12 months of receiving the Royal Assent, it will commence on the first day after that period.)

Purpose

To impose a levy on agricultural and veterinary chemical products imported for purposes other than wholesale sale.

Background

This Bill forms part of a package of seven Bills. The other Bills in this package include the Agricultural and Veterinary Chemicals Bill 1993, Agricultural and Veterinary Chemicals (Consequential Amendments) Bill 1993, Agricultural and Veterinary Chemical Products (Collection of Levy) Bill 1993, Agricultural and Veterinary Chemicals Code Bill 1993, Agricultural and Veterinary Chemical Products Levy Imposition (Excise) Bill 1993 and Agricultural and Veterinary Chemical Products Levy Imposition (Customs) Bill 1993. An outline of the background to this package of Bills is contained in the Digest (No. 3 of 1994) for the Agricultural and Veterinary Chemicals Bill 1993.

Collectively, this package provides a scheme for the evaluation, registration and control of agricultural and veterinary chemicals in the Australian Capital Territory and prescribed Territories. This Bill applies only to the Australian Capital Territory and prescribed Territories by virtue of clause 7 of the Agricultural and Veterinary Chemicals Bill 1993. It is the Government's intention that the Agricultural and Veterinary Chemicals Code, set out in the Schedule to the Agricultural and Veterinary Chemicals Code Bill 1993 (See Digest No. 8 of 1994), will be adopted by the enactment of complementary legislation by each State and the Northern Territory. Were this to occur, the evaluation, approval, registration and control and supply of agricultural and veterinary chemicals would be administered uniformly across Australia by the National Registration Authority for Agricultural and Veterinary Chemicals.

This package of Bill contains three Bills which impose taxation. The reason why three Bills are required is to satisfy section 55 of the Constitution, part of which provides:

Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.

Depending on the circumstances in which a tax is imposed, the tax may be defined to be a customs duty, an excise duty or a tax. Customs duties are applied to imports. Excise duties are applied to domestic production. The tax imposed by this Bill, which is neither a duty of customs nor a duty of excise, is a tax on agricultural and veterinary chemical products imported for purposes other than wholesale sale.
Main Provisions

Commencement: On the same day as the Agricultural and Veterinary Chemicals Bill 1993. The Agricultural and Veterinary Chemicals Bill 1993 will commence on a day to be fixed by Proclamation, or if it does not commence within 12 months of receiving the Royal Assent, it will commence on the first day after that period.

Imposition of Levy: A levy will be imposed on agricultural and veterinary chemical products imported for purposes other than wholesale sale by clause 3.

Levy not Imposed on State Property: This Bill will not impose a levy on property of any kind belonging to a State (subclause 4(1)). The terms ‘property of any kind belonging to a State’ is defined by subclause 4(2) to have the same meaning as in section 114 of the Constitution. Section 114 of the Constitution provides:

A State shall not, without the consent of the Parliament of the Commonwealth, raise or maintain any naval or military force, or impose any tax on property of any kind belonging to the Commonwealth, nor shall the Commonwealth impose any tax on property of any kind belonging to a State.¹

Endnotes


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3 February 1994

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Agricultural and Veterinary Chemical Products
(Collection of Levy) Bill 1993

Date Introduced: 16 December 1993
House: House of Representatives
Portfolio: Primary Industries and Energy
Commencement: On the same day as the Agricultural and Veterinary Chemicals Bill 1993. (The Agricultural and Veterinary Chemicals Bill 1993 will commence on a day to be fixed by Proclamation, or if it does not commence within 12 months of receiving the Royal Assent, it will commence on the first day after that period.)

Purpose

To provide for the assessment and collection of levy imposed on agricultural and veterinary chemical.

Background

This Bill forms part of a package of seven Bills. The other Bills in this package include the Agricultural and Veterinary Chemicals Bill 1993, Agricultural and Veterinary Chemicals (Consequential Amendments) Bill 1993, Agricultural and Veterinary Chemical Products Levy Imposition (Excise) Bill 1993, Agricultural and Veterinary Chemicals Code Bill 1993, Agricultural and Veterinary Chemical Products Levy Imposition (Customs) Bill 1993 and Agricultural and Veterinary Chemical Products Levy Imposition (General) Bill 1993. An outline of the background to this package of Bills is contained in the Digest (No. 3 of 1994) for the Agricultural and Veterinary Chemicals Bill 1993.

Collectively, this package provides a scheme for the evaluation, registration and control of agricultural and veterinary chemicals in the Australian Capital Territory and prescribed Territories. This Bill applies only to the Australian Capital Territory and prescribed Territories by virtue of clause 7 of the Agricultural and Veterinary Chemicals Bill 1993. It is the Government's intention that the Agricultural and Veterinary Chemicals Code, set out in the Schedule to the Agricultural and Veterinary Chemicals Code Bill 1993 (See Digest No. 8 of 1994), will be adopted by the enactment of complementary legislation by each State and the Northern Territory. Were this to occur, the evaluation, approval, registration and control and supply of agricultural and veterinary chemicals would be administered uniformly across Australia by the National Registration Authority for Agricultural and Veterinary Chemicals (NRA).

This Bill provides for the assessment and collection of levy imposed on agricultural and veterinary chemicals by the Agricultural and Veterinary Chemicals Levy Imposition (General) Bill 1993, Agricultural and Veterinary Chemicals Levy Imposition (Customs) Bill 1993, and Agricultural and Veterinary Chemicals Levy Imposition (Excise) Bill 1993.

Main Provisions

Commencement: This proposed Act will commence on the same day as the Agricultural and Veterinary Chemicals Bill 1993 (clause 2). The Agricultural and Veterinary Chemicals Bill 1993 will commence on a day to be fixed by Proclamation, or if it does not commence within 12 months of receiving the Royal Assent, it will commence on the first day after that period.
Important Definitions:

The term 'chemical product' is defined by clause 3 as an agricultural or veterinary chemical product, other than a product exempted under the regulations from levy.

The term 'leviable disposal' is defined by clause 3 to mean:

* where a chemical product is an Australian product:
  - if it is disposed of in Australia by a manufacturer, that disposal;
  - if it is applied by a manufacturer to their own use, that application; or

* where a chemical product is an imported chemical product:
  - if it is disposed of in Australia by an importer, that disposal; or
  - if it is applied by an importer to their own use, that application.

The term 'notional wholesale value' is defined by clause 3 as the amount the NRA determines a manufacturer or importer of a chemical product would have received had the product been sold by wholesale to a person with whom the manufacturer or importer was dealing at arms' length.

The term 'prescribed date for payment', as relates to any levy payable, is defined by clause 3 as:

* except if the levy is payable because of an assessment:
  - two months from the day this proposed Act commences, or if the NRA determines a later day, that later day, where the levy is payable under subclause 7(1);
  - 1 June next following the end of the relevant calendar year, where the levy is payable under subclause 8(1);
  - a date prescribed by the regulations or, in no date is prescribed, 1 September, where the levy is payable under subclause 9(1); or

* where the levy is payable because of an assessment, the date stated in the assessment.

The term 'leviable value' is defined by clause 3 to mean:

* where the leviable disposal of a chemical product was a wholesale sale 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 for the sale; or

* the notional wholesale value of the chemical product at the time of disposal.

The term 'total leviable value' is defined by clause 3 as the sum of the leviable value of leviable disposals of a chemical product that took place anywhere in Australia during a particular period.

Power of NRA to Make Certain Determinations: The NRA may make a determination, in writing, to the manufacturer or importer of a chemical product of the amount that they would have received at a particular time under the definition of 'notional wholesale value'. In addition, the NRA may make a determination, by notice in the Gazette, set a due date later than the 'prescribed date for payment'(clause 6).

Liability for Levy for Disposals During 1993: Where a chemical product was registered in a State/Northern Territory or participating Territory (i.e. A.C.T. or a prescribed Territory) at the commencement of this proposed Act, levy will be payable on leviable disposals that took place anywhere in Australia during the year commencing 1 January 1993 [subclause 7(1)]. However, the levy will not be payable if the total leviable value of the disposals for that year was less than $100 000 [subclause 7(2)].
Liability for Levy for Disposals During 1994 and Later Years: Where a chemical product is registered in a State/Northern Territory or participating Territory during any part of the last six months of the year commencing 1 January 1994 or of the last six months of a later calendar year, levy will be payable on leviable disposals that took place anywhere in Australia during that year [subclause 8(1)]. However, the levy will not be payable if the total leviable value of the disposals for that year was less than $100 000 [subclause 8(1)].

Liability for Levy for Disposals During First Six Months of 1995 or a Later Year: Where a chemical product was registered in a State/Northern Territory or participating during the whole or any part of the first six months of the year commencing 1 January 1995 or a later calendar year, and was not registered on 1 July of the year concerned, levy will be payable on leviable disposals that took place anywhere in Australia during those six months [subclause 9(1)]. However, the levy will not be payable if the total leviable value of the disposals during those six months was less than $50 000 [subclause 9(1)].

Amount of Levy: The amount of levy payable in respect of a clause 7-9 leviable disposal is to be worked out using the formulas contained in clauses 10-12. The total of the amounts of levy payable in respect of clause 7 leviable disposals of a particular chemical product is limited to a maximum of $15 750, or a prescribed amount [subclause 10(2)]. The total of the amounts of levy payable in respect of clause 8 leviable disposals of a particular chemical product is limited to a maximum of $19 000, or a prescribed amount [subclause 11(2)]. The total of the amounts of levy payable in respect of clause 9 leviable disposals of a particular chemical product is limited to a maximum of $9 500, or a prescribed amount [subclause 12(2)].

Payment of Levy: The person liable to pay levy is required to so before the prescribed date for payment of the levy clause 13.

Calculation of Levy by Person Liable: The NRA may, where it appears to it that a person may be liable to pay levy during a particular period, by written notice:

* tell that person the rate of levy payable in respect of chemical products for that period; and
* require that person:
  - to calculate the total leviable value for the product and the amount of levy payable; and
  - within a period not less than one month stated in the notice, notify the NRA of the results of the calculations and basis on which the calculations were made [subclause 15(1)].

It will be an offence, punishable by a maximum penalty of 30 penalty units (currently $3000) for a person, without reasonable excuse, to refuse or fail to comply with the above requirements [subclause 15(2)].

Assessment of Levy by NRA: The NRA may make an assessment of whether any levy is payable for leviable disposals of a particular chemical product during a particular period [subclause 16(1)]. An assessment is to state the total leviable value of the product for the period concerned and the amount of levy payable [subclause 16(3)]. The NRA must give written notice of an assessment:

* if any levy is payable - to the person it considers is liable to pay the levy; or
* if no levy is payable - to the person who, if levy had been payable, it considers would have been liable to pay the levy [subclause 16(5)].

Where levy is payable, the notice is to state the date by which the levy is to be paid [subclause 16(7)], and the date stated is not to be earlier than:

* the date that, apart from the assessment, would be the prescribed date for payment; or
* the 21st day after receipt of the notice [subclause 16(8)].

An NRA assessment will be reviewable by the Administrative Appeals Tribunal [subclause 16(11)].
Late Payment Penalty: The NRA may sue to recover any levy that has not been paid before the prescribed date, or any late payment penalty that is payable [subclause 19(1)].

Enforcement Provisions: Part 4 of this Bill, clauses 19-32, contains standard enforcement provisions that provide for the monitoring of, and ensure the compliance with, this proposed Act.

Review by Administrative Appeals Tribunal: An application may be made to the Administrative Appeals Tribunal for a review of certain NRA decisions, including:

* an NRA decision determining, or refusing to determine, a later date for the purposes of the definition of 'prescribed date for payment';
* an NRA decision determining the amount that a manufacturer or importer of a chemical product would have received at a particular time under the definition of 'notional wholesale value'; or
* an NRA decision to waive, or refuse to waive, the whole or part of an amount of a late payment penalty (clause 33).

Self-incrimination: It will be a reasonable excuse for a person to refuse or fail to give information, produce a document, or do anything required of them under this proposed Act, if it would tend to incriminate them (clause 34).

Exemption from Liability for Damages: Immunity from actions for damages is provided by clause 38 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 proposed Act by certain bodies and persons, including:

* the Commonwealth;
* the NRA; or
* an NRA consultant or inspector.

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Bills Digest Service
Parliamentary Research Service

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.


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