



Australian Government
Department of Agriculture

DEPUTY SECRETARY

Committee Secretary
Senate Rural and Regional Affairs and Transport Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Secretary

The Department of Agriculture welcomes the opportunity to provide the attached submission to the Senate Rural and Regional Affairs and Transport Legislation Committee.

I trust the information in the submission will assist the committee with its inquiry into the Agricultural and Veterinary Chemicals Legislation Amendment (Australian Pesticides and Veterinary Medicines Authority Board and Other Improvements) Bill 2019 [Provisions].

Should the committee require further information about this submission, the appropriate contact in the department is Ms Julie Gaglia, Assistant Secretary, Agvet Chemicals.

Yours sincerely

Cindy Briscoe

8 October 2019

Senate Rural and Regional Affairs and Transport Legislation Committee Inquiry into the Agricultural and Veterinary Chemicals Legislation Amendment (Australian Pesticides and Veterinary Medicines Authority Board and Other Improvements) Bill 2019

Submission by the Department of Agriculture

On 19 September 2019, the Senate Standing Committee for the Selection of Bills referred the Agricultural and Veterinary Chemicals Legislation Amendment (Australian Pesticides and Veterinary Medicines Authority Board and Other Improvements) Bill 2019 (the Bill) to the Rural and Regional Affairs and Transport Legislation Committee (the Committee) for inquiry and report by 28 November 2019.

This submission provides further information about the Bill, specifically in relation to the proposed governance board. Given that the other measures in the Bill have broad industry support and have been subject to previous committee inquiries, this submission will not go into further detail about those measures.

The opposition supported the measures in the Bill that were previously included in the lapsed Agricultural and Veterinary Chemicals Legislation Amendment (Operational Efficiency) Bill 2017, except for the board measure. The opposition also supported the measures from the lapsed Agricultural and Veterinary Chemicals Legislation Amendment (Streamlining Regulation) Bill 2018, when it was considered by the Senate Rural and Regional Affairs and Transport Legislation Committee inquiry that reported on 11 February 2019. This support was conditional on the measure for accreditation of assessors being removed—this measure has been removed.

Consultation on the Bill

The Bill comprises measures from two Bills that lapsed in April 2019—the Agricultural and Veterinary Chemicals Legislation Amendment (Operational Efficiency) Bill 2017 (Operational Efficiency Bill), including a government amendment, and the Agricultural and Veterinary Chemicals Legislation Amendment (Streamlining Regulation) Bill 2018 (Streamlining Bill).

An exposure draft of the Operational Efficiency Bill was released for public consultation in June 2017. An exposure draft of the Streamlining Bill was released for public consultation in July 2018. These public consultation processes followed sustained periods of targeted consultation with key stakeholders. Consultation on both lapsed Bills was also undertaken with relevant state and territory authorities and Commonwealth agencies and both were amended following consultation.

The measure to establish an APVMA governance board, in the government amendment to the Operational Efficiency Bill, was developed through a process of targeted consultation with agricultural and veterinary chemical industry stakeholders from November 2017 to July 2018.

THE APVMA BOARD MEASURE

Rationale

The APVMA is one of only a few corporate Commonwealth entities without a board. Despite its complex regulatory responsibilities—and the critical impact of its decisions on human health, animal welfare, the environment and trade—all responsibility for its strategic leadership, governance and day-to-day operations rests with the APVMA's Chief Executive Officer (CEO).

The CEO is therefore responsible for setting, implementing and monitoring the APVMA's policies and procedures without additional oversight or support. This creates a potential vulnerability, and the recent performance and financial difficulties experienced by the APVMA, separate from those pressures created by relocation, indicate the cost of more robust governance is warranted.

Approximately 90% of the government's corporate Commonwealth entities have boards that act as the accountable authority. There is, however, no one-size-fits-all approach to good governance for government entities. An analysis of around 70 corporate and non-corporate government entities found all but three had governance boards (or an equivalent body with entity governance responsibilities, e.g. an 'authority').

Furthermore, all other Commonwealth regulatory entities with direct responsibility for protecting human life and/or health (for example, Food Standards Australia New Zealand, Australian Maritime Safety Authority, and Civil Aviation Safety Authority (CASA)) have governance boards.

- Most boards are required to be skills-based, with the enabling legislation specifying necessary skills, qualifications or experience for members.
- The board is the accountable authority¹ under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) for all but two entities (the Clean Energy Regulator's accountable authority is its Chair and the Murray-Darling Basin Authority's (MDBA) is its CEO).
- Board sizes ranged significantly from two to 15 members, and there is no consistent approach as to whether the CEO should be included or excluded from the board.
- Board members are almost always appointed by the relevant minister(s), although in a few examples they are appointed by the Governor-General (usually this is the case for interjurisdictional bodies, such as the MDBA), or the relevant ministers are required to consult with stakeholders to seek nominations or agreement prior to appointment.
- Appointment arrangements for the CEO (or equivalent) vary considerably, being either appointed by the board, minister or Governor-General.

The proposed governance board has strong parallels with the establishment of the Organ and Tissue Donation and Transplantation Authority (OTA) board in 2017 and re-establishment of the CASA board in 2009.

- An independent review of the OTA was commissioned in 2015 following poor organisational performance against its objectives to increase the capability and capacity with the Australian health system to maximise organ and tissue donations. The review found the OTA's governance arrangements—which comprised a CEO supported by an advisory council (similar to the APVMA's current arrangements)—did not provide strategic oversight, performance monitoring, succession planning or mentoring of the CEO. The review recommended establishing a governance board to strengthen the OTA's governance and foster and encourage a culture of debate.²
- CASA's governance board was re-established in 2009 following a Senate Rural and Regional Affairs and Transport References Committee inquiry into its administration. The inquiry

¹ The accountable authority of a government entity has a range of responsibilities, including for financial management and corporate reporting.

² Ernst and Young, Review of the implementation of the national reform agenda on organ and tissue donation and transplantation, August 2015, www.health.gov.au/internet/main/publishing.nsf/Content/review-implementation-of-national-reform-agenda-organ-tissue-donation-transplantation.

reported that many stakeholders did not consider the level and range of responsibilities held by the CEO were appropriate, particularly in light of CASA's complex regulatory responsibilities and its ongoing performance issues. The Committee recommended a small governance board be established to provide enhanced oversight and accountability for the CEO and strategic direction for CASA.³

More recently, within the agriculture portfolio, the Parliament passed legislation to have the Regional Investment Corporation (RIC) governed by a skills-based, three to five member board.

Appointments

Board members will collectively possess an appropriate mix of skills and expertise to govern the APVMA effectively and enhance its performance. Appointed board members will have skills, qualifications and/or experience in at least one of the following fields:

- financial management
- law
- public sector governance (including performance management and reporting)
- risk management
- agricultural, veterinary and/or chemical science
- public health and/or occupational health and safety.

Board members (excluding the CEO) will be appointed by the Minister for Agriculture (the minister) for a term of up to four years and may be reappointed for one further term. To ensure the board remains functional and highly effective, appointed board members may be terminated on the basis of unsatisfactory performance.

In line with best practice, it is anticipated the board members will be appointed in accordance with the Australian Public Service Commission's merit and transparency guidelines, which require national advertisement and a selection panel. The selection process will be transparent and merit-based, with positions to be advertised nationally and a selection panel convened to assess and recommend candidates to the minister.

The current CEO term of appointment is to 12 November 2022. Future CEOs will be appointed by the board in consultation with the minister. Future CEOs may also be terminated by the board, in consultation with the minister, on the basis of unsatisfactory performance.

Recruitment and termination arrangements for the board and future CEOs will ensure clear lines of accountability between the minister, the board and the CEO.

The minister will retain existing powers to direct the APVMA and will be provided with the power to direct the board in the performance of its functions. Any written directions made to the board by the minister will be notifiable instruments, with the particulars and effects of these directions reported in the APVMA's annual report. The board will have the power to direct the CEO in the performance of their duties. This will ensure the performance of the board and the CEO.

Stakeholder consultation

Prior to the government amendment to the Operational Efficiency Bill to establish the board, the department undertook consultations with affected stakeholders (those that would be paying for the board, and the National Farmers' Federation (NFF)) to discuss the government's intention.

³ Standing Committee on Rural and Regional Affairs and Transport, Administration of the Civil and Aviation Safety Authority (CASA) and related matters, September 2008, www.apvma.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/Completed_inquiries/2008-10/casa/index

Following circulation of the original proposed government amendment, additional consultation with stakeholders occurred, resulting in a revised government amendment that clarified the role of the board and incorporated feedback from industry stakeholders. This included that the:

- board must have regard to section 1A of the Agricultural and Veterinary Chemicals Code
- legislation would be explicit about the board's ability to form committees (e.g. as a mechanism to engage with key stakeholders)
- legislation would make explicitly clear that the board would not be involved in the day-to-day decision making of the APVMA
- APVMA's annual report must include particulars of any ministerial direction to the board and of the impact of the direction on the operations of the APVMA.

Stakeholder consultation about establishing the board occurred as follows:

- 9 November 2017 – CropLife Australia
- 14 November 2017 – Chemistry Australia
- 15 November 2017 – NFF
- 23 November 2017 – Veterinary Manufacturers and Distributors Association (VMDA)
- 29 November 2017 – Animal Medicines Australia (AMA)
- 8 December 2017 – Accord Australasia
- 26 February 2018 – CropLife Australia
- 28 March 2018 – CropLife Australia and VMDA
- 5 April 2018 – AMA
- 11 April 2018 – NFF's Farming Systems Committee
- 3 May 2018 – AMA Issues Management Group
- 25 June 2018 – minister's response to a CropLife Australia letter about the board; the minister also wrote to AMA
- 6 July 2018 – the minister wrote to VMDA and NFF
- 18 July 2018 – the department met with CropLife Australia, AMA, VMDA and NFF to jointly develop a draft board charter and discuss improvements to the proposed government amendments to establish the board.

Board costs

Costs to establish (estimated at approximately \$200,000) and run the board during its first year of operation (estimated at approximately \$400,000) will be met through existing APVMA appropriations (total cost in the first year \$600,000, see **Table 1**).

- Ongoing costs (estimated at approximately \$400,000, see **Table 1**) will be met through the APVMA's cost recovery arrangements. This is consistent with the Australian Government Charging Framework, and with previous iterations of APVMA boards, whose costs were recovered as part of the APVMA's overheads.

The Remuneration Tribunal will determine the total remuneration for APVMA board members. The cost estimate is based on the assumption that APVMA board members will be awarded a similar total remuneration to the Australian Fisheries Management Authority (AFMA) commissioners, as the APVMA and AFMA are both statutory authorities in the agriculture portfolio.

Most boards of agricultural entities are eligible for Tier 1 travel (i.e. first or highest class of travel); however, given the APVMA CEO is only eligible for Tier 2 travel (i.e. business-class)—and that they will sit on the board—this class of travel will be applied to other board members for consistency.

The cost for appointing board members is based on the 2017 APVMA CEO recruitment process, which was approximately \$90,000. This includes \$70,000 for an expert recruitment specialist, \$15,000 for advertising and \$5,000 for panel costs.

Table 1 Estimated cost to establish and run the APVMA board

Expense item – establishment of the board	
Recruitment of board members	\$90,000
Establishment of the board and secretariat	\$102,000
Total establishment costs	\$192,000
Expense item – per annum	
Miscellaneous board costs (e.g. printing, consumables, postage)	\$6,000
Board member remuneration	\$186,000
Travel	\$31,000
Secretariat	\$180,000
Total annual costs	\$403,000