

AGRICULTURAL AND VETERINARY CHEMICALS (WESTERN AUSTRALIA) AMENDMENT BILL 2001

Explanatory Memorandum

This explanatory note relates to this Bill as introduced into Parliament.

The Co-operative Schemes (Administrative Actions) Bill 2001 is cognate with this Bill.

Overview of Bill

This Bill is part of a legislative response to the decision of the High Court in *The Queen v Hughes* (2000) 171 ALR 155 and other related matters, which includes the cognate Co-operative Schemes (Administrative Actions) Bill 2001 and the Commonwealth Agricultural and Veterinary Chemicals Legislation Amendment Bill 2001.

The legislative response will:

- (a) validate things done or omitted to be done by certain Commonwealth authorities or officers in pursuance of the National Registration Scheme (NRS) for agricultural and veterinary chemicals that are potentially invalid following the decision of the High Court in *Hughes*, and
- (b) validate things done or omitted to be done by certain Commonwealth authorities or officers that are potentially invalid due to certain gaps in the NRS legislative scheme that have arisen independently of the decision in *Hughes*, and
- (c) ensure that things done or omitted in the future by Commonwealth authorities or officers in pursuance of the NRS have a constitutionally sound basis.

The decision of the High Court in *Hughes* has cast doubt on the ability of Commonwealth authorities and officers to exercise powers and perform functions under State laws in relation to several inter-governmental legislative schemes. In *Hughes*, the High Court indicated that, where a State gave a Commonwealth authority or officer a power to undertake a function under State law together with a duty to exercise the function, there must be a clear nexus between the exercise of the function and one or more of the legislative heads of power of the Commonwealth Parliament set out in the Commonwealth Constitution.

Hughes also highlighted the need for the Commonwealth Parliament to authorize the conferral of duties, powers of functions by a State on Commonwealth authorities or officers.