



AGRICULTURAL AND VETERINARY CHEMICALS (SOUTH AUSTRALIA) ACT 1994

No. 47 of 1994

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ANNO QUADRAGESIMO TERTIO

ELIZABETHAE II REGINAE

A.D. 1994

No. 47 of 1994

An Act to apply certain laws of the Commonwealth relating to agricultural and veterinary chemical products as laws of South Australia; and for other purposes.

[Assented 9 June 1994]

RECOGNISING:

- (a) that the protection of the health and safety of human beings, animals and the environment is essential to the well-being of society and can be enhanced by putting in place a system to regulate agricultural chemical products and veterinary chemical products; and
- (b) that the principle of ecologically sustainable development requires a regulatory system that is designed to ensure that the use of such products today will not impair the prospects of future generations; and
- (c) that the furthering of trade and commerce between Australia and places outside Australia, and the present and future economic viability and competitiveness of primary industry and of a domestic industry for manufacturing and formulating such products, are essential for the well-being of the economy and require a system for regulating such products that is cost effective, efficient, predictable, adaptive and responsive; and
- (d) that it is desirable to establish a regulatory system that is open and accountable and gives opportunity for public input with respect to the regulation of such products; and
- (e) that the system should, so far as practicable, be uniform throughout Australia; and
- (f) that uniformity could best be achieved by the enactment of legislation by the Parliament of the Commonwealth as a law for the government of the Australian Capital Territory and the adoption of that legislation by the Parliaments and legislatures of the States and the Northern Territory:

The Parliament of South Australia therefore enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Agricultural and Veterinary Chemicals (South Australia) Act 1994*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Definitions

3. (1) In this Act—

"Agricultural and Veterinary Chemicals Act" means the *Agricultural and Veterinary Chemicals Act 1994* of the Commonwealth;

"Agricultural and Veterinary Chemicals (Administration) Act" means the *Agricultural and Veterinary Chemicals (Administration) Act 1992* of the Commonwealth;

"Agricultural and Veterinary Chemicals Code Act" means the *Agricultural and Veterinary Chemicals Code Act 1994* of the Commonwealth;

"Agvet Code of South Australia" means the provisions applying because of section 5;

"Agvet Regulations of South Australia" means the provisions applying because of section 6;

"applicable provision", in relation to a jurisdiction, means a provision of—

- (a) the Agvet Code of that jurisdiction; or
- (b) the Agvet Regulations of that jurisdiction; or
- (c) a law of the Commonwealth that applies in that jurisdiction in relation to a provision of or offence against the Agvet Code or Agvet Regulations of that jurisdiction;

"authority", in relation to the Commonwealth, has the meaning given in the *Agricultural and Veterinary Chemicals Act*;

"Commonwealth administrative laws" means—

- (a) the following Acts:
 - (i) the *Administrative Appeals Tribunal Act 1975* of the Commonwealth;

- (ii) the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth;
- (iii) the *Freedom of Information Act 1982* of the Commonwealth;
- (iv) the *Ombudsman Act 1976* of the Commonwealth;
- (v) the *Privacy Act 1988* of the Commonwealth; and

(b) the regulations in force under those Acts;

"Commonwealth ancillary criminal laws" has the meaning given by section 8;

"Commonwealth Minister" means "the Minister" within the meaning of the Agvet Code of the participating Territories;

"corresponding Act" means an Act of another jurisdiction that corresponds to this Act;

"corresponding law" means—

- (a) a corresponding Act; or
- (b) regulations made under a corresponding Act; or
- (c) the Agvet Code, Agvet Regulations, or another applicable provision, of another jurisdiction; or
- (d) rules of court made under a corresponding Act;

"instrument" means any document whatever, including—

- (a) an Act or an instrument made under an Act; or
- (b) a law of this jurisdiction or an instrument made under such a law; or
- (c) an award or other industrial determination or order, or an industrial agreement; or
- (d) any other order (whether executive, judicial or otherwise); or
- (e) a notice, certificate or licence; or
- (f) an agreement; or
- (g) an application made, information or complaint laid, affidavit sworn, or warrant issued, for any purpose; or
- (h) an indictment, presentment, summons or writ; or

- (i) any other pleading in, or process issued in connection with, a legal or other proceeding;

"jurisdiction" means a State or the participating Territories;

"law", in relation to a participating Territory, means a law of, or in force in, that Territory;

"NRA" means the National Registration Authority for Agricultural and Veterinary Chemicals established by the *Agricultural and Veterinary Chemicals (Administration) Act*;

"officer", in relation to the Commonwealth, has the meaning given in the *Agricultural and Veterinary Chemicals Act*;

"participating Territory" means—

- (a) the Australian Capital Territory; or
- (b) another Territory that is declared by regulations in force under section 25 of the *Agricultural and Veterinary Chemicals Act* to be a participating Territory;

"State" includes the Northern Territory of Australia;

"Territory" means a Territory referred to in section 122 of the Constitution of the Commonwealth, other than the Northern Territory of Australia, Norfolk Island, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands;

"this jurisdiction" means South Australia.

(2) In this Act, a reference to a Commonwealth Act includes a reference to—

- (a) that Commonwealth Act as amended and in force for the time being; and
- (b) an Act enacted in substitution for that Act.

Jervis Bay Territory

4. For the purposes of this Act, and the Agvet Code and the Agvet Regulations of this jurisdiction, the Jervis Bay Territory is taken to be part of the Australian Capital Territory.

PART 2

THE AGVET CODE, AND THE AGVET REGULATIONS, OF THIS JURISDICTION

Application of Agvet Code in this jurisdiction

5. The Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act* as in force for the time being—

- (a) applies as a law of South Australia; and
- (b) as so applying, may be cited as the Agvet Code of South Australia.

Application of Agvet Regulations in this jurisdiction

6. The regulations in force for the time being under section 6 of the *Agricultural and Veterinary Chemicals Code Act*—

- (a) apply as regulations in force for the purposes of the Agvet Code of South Australia; and
- (b) as so applying, may be referred to as the Agvet Regulations of South Australia.

Interpretation of Agvet Code and Agvet Regulations of this jurisdiction

7. (1) In the Agvet Code, and the Agvet Regulations, of this jurisdiction—

"the Minister for this jurisdiction" means the Minister;

"this jurisdiction" means South Australia.

(2) Subject to Part 1 of the Agvet Code of this jurisdiction, the *Acts Interpretation Act 1901* of the Commonwealth as in force for the time being applies as a law of this jurisdiction to—

- (a) the Agvet Code, and the Agvet Regulations, of this jurisdiction; and
- (b) any instrument made, granted or issued under that Code or those Regulations.

(3) For the purposes of subsection (2), the Commonwealth Act mentioned in that subsection applies as if—

- (a) the Agvet Code of this jurisdiction were a Commonwealth Act; and
- (b) the Agvet Regulations of this jurisdiction or instruments mentioned in that subsection were regulations or instruments made under a Commonwealth Act.

(4) The *Acts Interpretation Act 1915* does not apply to—

- (a) the Agvet Code, or the Agvet Regulations, of South Australia; or
- (b) any instrument made, granted or issued under that Code or those Regulations.

Ancillary offences (aiding, abetting, accessories, attempts, incitement or conspiracy)**8. (1) In this section—**

"Commonwealth ancillary criminal laws" means—

- (a) section 5, 6, 7 or 7A of the *Crimes Act 1914* of the Commonwealth; or
- (b) section 86(1) of that Act because of paragraph (a) of that subsection.

(2) The Commonwealth ancillary criminal laws apply as laws of this jurisdiction in relation to an offence against the Agvet Code, or the Agvet Regulations, of this jurisdiction, and so apply—

- (a) as if a reference in the laws to a law of the Commonwealth were a reference to that Code or those Regulations; and
- (b) to the exclusion of laws of this jurisdiction to the same or a similar effect.

(3) In the Agvet Code, or the Agvet Regulations, of this jurisdiction, a reference to an offence against that Code or those Regulations includes a reference to a related offence against the Commonwealth ancillary criminal laws.

PART 3
CITING THE AGVET CODES, AND THE AGVET REGULATIONS, OF OTHER
JURISDICTIONS

References to Agvet Codes and Agvet Regulations of other jurisdictions

9. (1) This section has effect for the purposes of an Act, a law of this jurisdiction or an instrument made under an Act or such a law.

(2) If a law of a jurisdiction other than this jurisdiction provides that the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act* as in force for the time being applies as a law of that jurisdiction, the Agvet Code of that jurisdiction is the Agvet Code so set out, applying as a law of that jurisdiction.

(3) If a law of a jurisdiction other than this jurisdiction provides that the regulations in force for the time being under section 6 of the *Agricultural and Veterinary Chemicals Code Act* apply as regulations in force for the purposes of the Agvet Code of that jurisdiction, the Agvet Regulations of that jurisdiction are those regulations as so applying.

References to Agvet Codes and Agvet Regulations

10. (1) The object of this section is to help ensure that the Agvet Code of this jurisdiction can operate, in appropriate circumstances, as if that Code, together with the Agvet Code of each other jurisdiction, constituted a single national Agvet Code applying throughout Australia.

(2) Subject to this section, a reference in an instrument to the Agvet Codes, or to the Agvet Regulations, is taken, for the purposes of the laws of this jurisdiction—

- (a) to be a reference to the Agvet Code, or to the Agvet Regulations, of this jurisdiction; and
- (b) to include a separate reference to the Agvet Code, or to the Agvet Regulations, of each other jurisdiction.

(3) Subsection (2) has effect except so far as the contrary intention appears in the instrument or the context of the reference otherwise requires.

PART 4
APPLICATION OF AGVET CODES TO THE CROWN

Agvet Code of this jurisdiction

11. The Agvet Code of this jurisdiction binds the Crown in right of this jurisdiction and, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Agvet Code of other jurisdictions

12. The Agvet Code of each jurisdiction other than this jurisdiction binds the Crown in right of this jurisdiction.

Crown not liable to prosecution

13. Nothing in this Part, or in the Agvet Code of this jurisdiction, renders the Crown in any capacity liable to be prosecuted for an offence.

This Part overrides the prerogative

14. If, because of this Part, a provision of the law of another jurisdiction binds the Crown in right of this jurisdiction, the Crown in that right is subject to that provision despite any prerogative right or privilege.

PART 5**APPLICATION OF COMMONWEALTH ADMINISTRATIVE LAWS TO AGVET CODE
AND AGVET REGULATIONS OF THIS JURISDICTION****Object**

15. The object of this Part is to help ensure that the Agvet Code of this jurisdiction and the Agvet Code of each other jurisdiction are administered on a uniform basis.

Application of Commonwealth administrative laws in relation to applicable provisions

16. (1) The Commonwealth administrative laws apply as laws of this jurisdiction to any matter arising in relation to the applicable provisions of this jurisdiction as if those provisions were laws of the Commonwealth and were not laws of this jurisdiction.

(2) The provisions of the Agvet Code of this jurisdiction that require the NRA to give brief particulars of reasons for decisions do not affect the obligations of the NRA under section 28 of the *Administrative Appeals Tribunal Act 1975*, or section 13 of the *Administrative Decisions (Judicial Review) Act 1977*, of the Commonwealth as those sections apply as laws of this jurisdiction under subsection (1) of this section.

(3) The provisions of the Agvet Code of this jurisdiction that relate to the disclosure of confidential commercial information do not affect the operation of the *Freedom of Information Act 1982* of the Commonwealth as that Act applies as a law of this jurisdiction under subsection (1) of this section.

(4) For the purposes of a law of this jurisdiction, a matter arising in relation to the applicable provisions of this jurisdiction—

(a) is taken to be a matter arising in relation to laws of the Commonwealth in the same way as if those provisions were laws of the Commonwealth; and

(b) is taken not to be a matter arising in relation to laws of this jurisdiction.

(5) Subsection (4) has effect for the purposes of a law of this jurisdiction except as prescribed by regulations under section 32.

Functions and powers conferred on Commonwealth officers and authorities

17. (1) A Commonwealth administrative law applying because of section 16 that confers on a Commonwealth officer or authority a function or power also confers on the officer or authority the same function or power in relation to a matter arising in relation to an applicable provision of this jurisdiction.

(2) In performing a function or exercising a power conferred by subsection (1), the Commonwealth officer or authority must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power under the Commonwealth administrative law.

Reference in Commonwealth administrative law to a provision of another law

18. For the purposes of section 16, a reference in a Commonwealth administrative law to a provision of that or another Commonwealth administrative law is taken to be a reference to that provision as applying because of that section.

PART 6
JURISDICTION OF COURTS

Jurisdiction of Federal Court

19. (1) Jurisdiction is conferred on the Federal Court of Australia with respect to all civil matters arising under the applicable provisions of this jurisdiction.

(2) This section does not affect the jurisdiction of the courts of this jurisdiction.

Exercise of jurisdiction under cross-vesting provisions

20. This Act does not affect the operation of a provision of a law of this jurisdiction relating to cross-vesting of jurisdiction.

PART 7
**THE NATIONAL REGISTRATION AUTHORITY FOR AGRICULTURAL AND
VETERINARY CHEMICALS**

Conferral of functions and powers on NRA

21. (1) The NRA has the functions and powers conferred or expressed to be conferred on it under this Act or the Agvet Code of this jurisdiction.

(2) In addition to the powers mentioned in subsection (1), the NRA has power to do all things necessary or convenient to be done in connection with the performance of the functions referred to in subsection (1) and, in particular may—

- (a) enter into contracts; and
- (b) acquire, hold and dispose of real and personal property; and
- (c) occupy, use and control any land or building owned or held under lease by the Commonwealth, a State or a Territory and made available for the purposes of the NRA; and
- (d) appoint agents and attorneys, and act as agent for other persons; and
- (e) do anything incidental to any of its powers.

Agreements and arrangements

22. (1) The Minister, or a person authorised in writing by the Minister, may enter into an agreement or arrangement with the Commonwealth Minister for the performance of functions or the exercise of powers by the NRA as an agent of the State.

(2) The NRA has the functions and powers mentioned in the agreement or arrangement.

Conferral of other functions and powers for purposes of law in this jurisdiction

23. The NRA has power to do acts in this jurisdiction in the performance or exercise of any function or power—

- (a) expressed to be conferred on it by a law of a jurisdiction (other than this jurisdiction) that corresponds to this Act or the Agvet Code of this jurisdiction; or
- (b) referred to in an agreement or arrangement made under a provision of an Act of a jurisdiction other than this jurisdiction corresponding to section 22.

Commonwealth Minister may give directions in exceptional circumstances

24. The power of the Commonwealth Minister to give directions to the NRA under section 10 of the *Agricultural and Veterinary Chemicals (Administration) Act* extends to giving directions in relation to functions and powers of the NRA conferred under the applicable provisions of this jurisdiction, and the section applies accordingly.

PART 8
MISCELLANEOUS

Orders

25. Orders in force for the time being under section 7 of the *Agricultural and Veterinary Chemicals Code Act* have the same effect for the purposes of the Agvet Code of this jurisdiction as they would have if they were provisions of the Agvet Regulations of this jurisdiction.

Manufacturing principles

26. Subject to the Agvet Code, and the Agvet Regulations, of this jurisdiction, the manufacturing principles in force for the time being under section 23 of the *Agricultural and Veterinary Chemicals Act* also have effect for the purposes of Part 8 of that Code.

Delegation

27. The power of delegation of the Commonwealth Minister under section 71 of the *Agricultural and Veterinary Chemicals (Administration) Act* extends to the powers that are expressed to be conferred on the Commonwealth Minister under this Act or the Agvet Code of this jurisdiction, and the section applies accordingly.

Conferral of powers on State officers

28. (1) If an officer of a Department, administrative unit or authority is authorised, under section 69F of the *Agricultural and Veterinary Chemicals (Administration) Act*, by the Chief Executive Officer of the NRA to exercise the powers or perform the functions of an inspector for the purposes of a particular relevant law those powers and functions are conferred on that officer.

(2) Powers and functions conferred as referred to in subsection (1) are to be exercised or performed in accordance with the authorisation but are taken to have been validly exercised or performed despite any failure to comply with a condition or restriction of the authorisation.

(3) Words and expressions used in this section have the same meanings as they have in section 69F of the *Agricultural and Veterinary Chemicals (Administration) Act*.

Application of fees and taxes

29. All fees, taxes and other money (other than penalties and fines) that, under the applicable provisions of this jurisdiction, are authorised or directed to be payable by or imposed on any person must be paid to the Commonwealth.

Documents or substances held by previous registering authority may be given to NRA

30. Despite anything in any other law of this jurisdiction, any authority of this jurisdiction that, immediately before the commencement of this Act, performed functions under a provision of the law of this jurisdiction that corresponded to a provision of the Agvet Code of this jurisdiction may give to the NRA any documents or substances in its possession or custody that were received by it in the performance of those functions or otherwise relate to the performance of those functions.

Exemptions from liability for damages

31. (1) No action, suit or other proceeding for damages lies against the State or a person who is or has been a co-ordinator of this jurisdiction for any loss or injury directly or indirectly suffered as a result of—

- (a) the handling of an approved active constituent for a proposed or existing chemical product; or
- (b) the handling of a registered chemical product; or
- (c) the handling of an active constituent for a proposed or existing chemical product, or of a chemical product, in respect of which a permit or exemption has been issued or given by the NRA; or
- (d) an inability to use, or to use in a particular manner, an active constituent for a proposed or existing chemical product—
 - (i) because an approval, permit or exemption permitting its use, or permitting its use in that manner, has been refused by the NRA or such an approval, permit or exemption that was previously granted by the NRA has been suspended or cancelled; or
 - (ii) because its use, or its use in that manner, is precluded by the conditions of an approval, permit or exemption; or
- (e) an inability to use, or to use in a particular manner, a chemical product—
 - (i) because a registration, permit or exemption permitting its use, or permitting its use in that manner, has been refused by the NRA or such a registration, permit or exemption that was previously granted by the NRA has been suspended or cancelled; or
 - (ii) because its use, or its use in that manner, is precluded by the conditions of a registration, permit or exemption; or
- (f) the carrying out of a step in the manufacture of a chemical product in respect of which a licence has been issued by the NRA; or
- (g) an inability to carry out, or to carry out in a particular manner or at particular premises, a step in the manufacture of a chemical product—
 - (i) because a licence to carry out that step, or to carry out that step in that manner or at those premises, has been refused by the NRA or such a licence that was previously granted by the NRA has been suspended or cancelled; or
 - (ii) because the carrying out of that step, or the carrying out of that step in that manner or at those premises, is precluded by the conditions of a licence.

(2) If an action, suit or other proceeding is brought against a person responsible for the importation, manufacture, supply or handling of—

- (a) an approved active constituent for a proposed or existing chemical product; or
- (b) a registered chemical product; or
- (c) an active constituent for a proposed or existing chemical product, or a chemical product, in respect of which the NRA has issued a permit or given an exemption; or
- (d) a chemical product in respect of a step in the manufacture of which the NRA has issued a licence,

in relation to any loss or injury directly or indirectly suffered because of the importation, manufacture, supply or handling of the constituent or product, it is not a defence to that action, suit or other proceeding that the NRA had approved the constituent, registered the product, issued a permit or given an exemption in relation to the constituent or the product, or issued a licence in relation to a step in the manufacture of the product.

(3) Expressions used in this section have the same meanings as in the Agvet Code of this jurisdiction.

Regulations

32. The Governor may make regulations for or with respect to any matter that is required or permitted by this Act to be prescribed.

Eligible laws

33. The following are declared to be eligible laws for the purposes of the definition of "permit" in section 109 of the Agvet Code of this jurisdiction:

- (a) sections 11a, 11b and 11c of the *Agricultural Chemicals Act 1955*;
- (b) any other law, or a provision of a law, declared by regulation to be an eligible law for the purposes of that definition.

PART 9
IMPOSITION OF FEES AND TAXES

Fees (including taxes)

34. This section imposes the fees (including fees that are taxes) that the Agvet Regulations of this jurisdiction prescribe.

PART 10
CONFERRAL OF FUNCTIONS ON COMMONWEALTH DIRECTOR OF PUBLIC
PROSECUTIONS

Conferral of functions on Commonwealth Director of Public Prosecutions

35. The Director of Public Prosecutions of the Commonwealth ("the Director") may—

- (a) institute prosecutions on indictment for indictable offences against the Agvet Code, or the Agvet Regulations, of this jurisdiction; and
- (b) carry on prosecutions of the kind referred to in paragraph (a) (except prosecutions instituted by the Attorney-General or the Director of Public Prosecutions of the State), whether or not instituted by the Director; and
- (c) if the Attorney-General or the Director of Public Prosecutions of the State requests the Director in writing to carry on a prosecution of the kind referred to in paragraph (a) that was instituted by the Attorney-General or the Director of Public Prosecutions of the State—carry on the prosecution; and
- (d) institute proceedings for the commitment of persons for trial in respect of indictable offences against the Agvet Code, or the Agvet Regulations, of this jurisdiction; and
- (e) institute proceedings for the summary conviction of persons in respect of offences against the Agvet Code, or the Agvet Regulations, of this jurisdiction; and
- (f) carry on proceedings of a kind referred to in paragraph (d) or (e) (whether or not instituted by the Director); and
- (g) do anything incidental or conducive to the performance of any of the functions referred to in paragraphs (a) to (f).

PART 11
RELATIONSHIP WITH OTHER STATE LAWS

Relationship with other State laws

36. (1) In this section—

"Agvet Code" means the Agvet Code of this jurisdiction and includes the Agvet Regulations of this jurisdiction.

(2) Despite any other provision of this Act or the Agvet Code, the regulations may provide—

- (a) that a specified law of the State has effect despite the Agvet Code, or a specified provision of the Agvet Code; or
- (b) that the Agvet Code, or a specified provision of the Agvet Code, applies as a law of South Australia with modifications prescribed by the regulations; or
- (c) that a specified provision of the Agvet Code that would otherwise apply by virtue of Part 2 does not apply as a law of the State.

(3) A regulation under subsection (2)(b) or (c) may, if the regulation so provides, have retrospective effect from the day on which the relevant provision of the Agvet Code applied (or would otherwise apply) in South Australia.

(4) However, to the extent that a regulation takes effect under subsection (3) from a date that is earlier than the date of its publication in the *Gazette*, the regulation does not operate so as—

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of the publication.

SCHEDULE*Consequential amendments***Amendment of the Agricultural Chemicals Act 1955****1. The *Agricultural Chemicals Act 1955* is amended—**

- (a) by inserting the following section after section 4:

Chemical products under Agvet Code

4a. (1) Sections 8, 9, 10, 11, 22 and 26 of this Act do not apply to, or in relation to, an agricultural chemical that is a chemical product within the meaning of the Agvet Code of South Australia.

(2) An approved label under the Agvet Code of South Australia will be taken to be a registered label under this Act.;

- (b) by inserting after the present contents of section 17 (now to be designated as subsection (1)) the following subsection:

(2) Despite subsection (1), the Governor may, by proclamation, in relation to the period of registration applying until 30 June 1994, extend the period of registration—

- (a) of labels and additional particulars of a specified class or classes; or
- (b) of all labels and additional particulars, other than labels and additional particulars of a specified class; or
- (c) of all labels and additional particulars,

until—

- (d) a subsequent day fixed by the proclamation; or
- (e) a day to be fixed by subsequent proclamation.

Amendment of Stock Foods Act 1941

2. The *Stock Foods Act 1941* is amended by inserting after the present contents of section 4 (now to be designated as subsection (1)) the following subsection:

(2) This Act does not apply to the sale of a chemical product within the meaning of the Agvet Code of South Australia.

Amendment of Stock Medicines Act 1939

3. The *Stock Medicines Act 1939* is amended by inserting after section 4(3) the following subsection:

(4) Sections 7, 11, 12 and 17 of this Act do not apply to a chemical product within the meaning of the Agvet Code of South Australia.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor