

and veterinary products; to repeal the Agricultural Chemicals Act 1955, the Stock Foods Act 1941 and the Stock Medicines Act 1939; to amend the Agricultural and Veterinary Chemicals (South Australia) Act 1994 and the Livestock Act 1997; and for other purposes. Read a first time.

The Hon. P. HOLLOWAY: I move:

That this bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

This Bill was introduced by the former Government and is reintroduced because it commends itself to the present Government as a desirable reform.

This Bill was developed following a review of South Australia's legislation regulating agricultural and veterinary chemicals and stock foods. As a result of the review, the proposed legislation will repeal the *Agricultural Chemicals Act 1955*, *Stock Foods Act 1941* and the *Stock Medicines Act 1939*, and provide a comprehensive legislative framework to regulate the use of agricultural and veterinary chemical products, as well as provide for the regulation of fertilisers and stock foods.

The proposed legislation will operate within the context of the Agvet Code of South Australia (the Agvet Code), which forms part of a national scheme adopted in this State under the *Agricultural and Veterinary Chemicals (South Australia) Act 1994*. This scheme regulates the manufacture and supply of agricultural and veterinary chemical products through a product evaluation and registration system. The Bill will complement this scheme by dealing with issues relating to the use and disposal of agricultural and veterinary chemicals. To this end, it seeks to manage and reduce the risk of unintended harm to plants, animals, trade, human health and the environment by encouraging the responsible use and disposal of agricultural and veterinary chemical products and fertilisers.

General Duty

Part 2 of the Bill imposes a general duty of care on a person who uses or disposes of agricultural and certain veterinary chemical products and fertilisers. In using or disposing of these products, a person is required to take reasonable care to prevent or minimise harm to the health and safety of human beings and the environment. In the case of agricultural chemical products, the duty extends to preventing or minimising contamination of land, animals and plants (in terms of chemical residues), outside the area intended to be treated with the particular product. In using or disposing of agricultural and veterinary chemical products and fertilisers, a person is required to take appropriate measures such as observing label instructions, giving consideration to prevailing weather conditions and maintaining equipment used for applying the chemical products.

The object of the general duty is to manage the risk of harm by modifying behaviour and encouraging responsible use and disposal of chemical products and fertilisers. Failing to comply with the duty of care therefore does not of itself constitute an offence. Compliance with the duty is instead enforced by the issuing of a compliance order under Part 5 of the Bill, which may, for example, require a person to cease a particular activity, or to take specified action. If a compliance order is not observed, a penalty will apply.

If the use or disposal of an agricultural or veterinary chemical product results in damage to the environment, or adversely affects the safety of food or the health or welfare of members of the community, it is intended that recourse be made to other relevant legislation such as the *Environment Protection Act 1993*, the *Public and Environmental Health Act 1987*, the *Food Act 1985* (and prospectively the *Food Act 2001*) and the *Occupational Health, Safety and Welfare Act 1986*.

Offences

In order to support the operation of the National Registration Scheme set up under the Agvet Code and administered by the National Registration Authority, Part 3 of the Bill provides for various offences to regulate the use and possession of agricultural and veterinary chemical products. Whether or not a particular chemical product or constituent should be registered under the Agvet Code, involves a thorough evaluation by the National Registration Authority of the possible harmful effects that using or handling the product may have on human beings, plants, animals, trade and commerce and the environment. Once a product is registered, a corresponding label setting out a wide range of information including instructions for its safe use and handling must also be registered. The National Registration Scheme also involves a permit system which

AGRICULTURAL AND VETERINARY PRODUCTS (CONTROL OF USE) BILL

The Hon. P. HOLLOWAY (Minister for Agriculture, Food and Fisheries) obtained leave and introduced a bill for an act relating to agricultural chemical products, fertilisers

will operate in conjunction with the proposed legislation. A permit issued by the Authority may provide for the availability of a particular product (which may or may not be registered), in specified circumstances or under certain conditions and it is intended that such a permit would be recognised under the Bill.

Agricultural Chemical Products

Within the framework of the National Registration Scheme, Division 1 of Part 3 sets out offences relating to the use of agricultural chemical products. A person is prohibited from using or possessing an agricultural chemical product that has not been registered by the National Registration Authority unless the Authority has authorised its use or possession under a permit. If a product is registered, a person must also comply with any mandatory instructions on the label for the product (as prescribed by the regulations). The Bill also imposes responsibilities on a person carrying on an agricultural business to comply with instructions regarding a withholding period that may apply in relation to the use of an agricultural chemical product. Particular emphasis is given to trade products that are supplied before a relevant withholding period has expired, following application of the chemical product. In this case, the manager must supply the recipient of the trade products with a written notice of the withholding period that applies, the particular chemical product used and when it was last used.

Fertilisers

The Bill seeks to ensure that fertilisers meet prescribed standards and do not contain unacceptable impurities such as heavy metals and that labelling of fertilisers enables informed choice by users.

Veterinary Chemicals Products

In 1999, the Agricultural and Resource Management Council of Australia and New Zealand endorsed a set of nationally agreed principles for the control of veterinary chemical use. The Bill seeks to implement the proposed principles in South Australia.

As with the controls on use of agricultural chemical products, Division 3 of Part 3 of the Bill seeks to control the use of veterinary chemical products within the framework of the National Registration Scheme. The Agvet Code through the registration system, regulates the supply and manufacture of veterinary chemical products. The Code does not, however, cover those products that are prepared by a veterinary surgeon in the course of his or her practice. The Bill provides scope for greater control on the supply and use of substances prepared by veterinary surgeons, and imposes greater responsibilities on veterinary surgeons in terms of the instructions that must be given to non-veterinarians treating trade species animals, particularly in relation to withholding periods. The Bill also places controls on the manner in which a non-veterinarian may treat a trade species animal with a veterinary chemical product. Where the product is not registered, or is used in a manner that contravenes the label (in the case of registered chemical products), the person must comply with the written instructions of the veterinary surgeon responsible for treating the animal. The Bill also imposes obligations on the person responsible for the management of a trade species animal if the animal or its products are supplied before a relevant withholding period has expired.

Regulations

Further scope for controlling the use of agricultural and veterinary chemical products is provided through the regulations. Under Part 3 of the Bill, the regulations may prescribe conditions to enable the use of particular chemical products to be tailored to take account of particular circumstances and local conditions. The regulations may, for example, restrict the use of a particular chemical product in a specified location—a measure which may be necessary to protect the unique characteristics of that particular area. Or, it may be necessary to restrict the time of year or season in which a particular chemical product is used. The regulations may also provide for a licensing system, to ensure that people using chemical products have the necessary training or experience.

Minimising risk to trade

Part 4 of the Bill provides a further mechanism, in the form of trade protection orders, by which the risk of serious harm to trade arising from the use or disposal of agricultural and veterinary chemical products, may be prevented or reduced. An example of a trade protection order may be to prohibit the harvesting or sale of a particular type of trade product, or to direct the recall or destruction of a particular trade product.

Stock Foods

The *Livestock Act 1997* currently contains provisions relating to the feeding of livestock. By amending the *Livestock Act 1997* to provide for regulations that may prescribe standards for stock food and regulate its manufacture, packaging, labelling and supply, the Bill

will provide additional means to ensure stock food meets nationally agreed standards.

Enforcement

Part 5 of the Bill deals with issues of enforcement, and includes provisions relating to the appointment of authorised officers and their powers. It also provides for the issuing of compliance orders by the Minister for the purpose of securing compliance with a requirement of the Bill.

In summary, the Bill aims to encourage responsible chemical use in the community by providing a clear framework for chemical users. The new legislation will operate within the context of the National Registration Scheme for agricultural and veterinary chemical products and ensure that South Australia meets its obligations for controlling use of these chemical products. The Bill aims to maximise the economic benefits of using agricultural and veterinary chemicals and fertilisers, while managing the risks of such use in terms of threats to market access, public health, non-target organisms and the environment.

I commend this Bill to Honourable Members.

Explanation of clauses

PART 1

PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Interpretation

This clause sets out the interpretation of certain words and phrases used throughout the measure. Some important definitions include "agricultural chemical product", "trade species animal", "trade species plant", "veterinary product" and "withholding period". Many of the definitions correspond with the definitions used in the AGVET Code.

Clause 4: Eligible laws for purposes of Agvet Code permits

This clause sets out the provisions of the Bill that are "eligible laws" for the purposes of the definition of "permit" in *Agricultural and Veterinary Chemicals (South Australia) Act 1994*.

PART 2

GENERAL DUTY

Clause 5: General duty

This clause sets out the duty of care a person has in using or disposing of agricultural chemical products, fertilisers or particular veterinary chemical products. In using these substances a person must take all reasonable and practicable measures to prevent or minimise contamination of animals, plants and land through "spray drift", harm to the health or safety of human beings and unintended harm to the environment. The reference to "contamination" is in terms of chemical residues, and the relevant residue limits for trade species plants and animals are set out in the *Maximum Residue Limits Standard* published by the National Registration Authority.

The clause also sets out the factors that may be relevant in determining whether the duty of care has been complied with. These include the nature of the product used, the weather conditions, the nature of the area surrounding the site where the product is used, whether any equipment used was in good repair, and the terms of a label or permit for a particular product. Failure to comply with the duty of care does not constitute an offence in itself, but may result in the issue of a compliance order.

PART 3

OFFENCES

DIVISION 1—AGRICULTURAL CHEMICAL PRODUCTS

Clause 6: Use or possession of unregistered agricultural chemical product

This clause prohibits the possession of an unregistered agricultural chemical product unless the person has a permit issued by the National Registration Authority. There is a defence if the person can show that the product was registered when it came into the person's hands and that no more than four years (or such other period specified by the Minister in the *Gazette*) has elapsed since the product was deregistered. There is a maximum penalty of \$35 000.

Clause 7: Mandatory instructions on approved label for registered agricultural chemical product

It is an offence for a person to contravene a mandatory instruction on the label of a registered agricultural chemical product, unless authorised by a permit issued by the National Registration Authority. The maximum penalty is \$35 000.

Clause 8: Container for agricultural chemical product

Except where the product is about to be used, an agricultural chemical product must be kept in a suitable container (not a food or

rink container) that clearly identifies the product. There is a maximum penalty of \$10 000.

Clause 9: Responsibilities in relation to withholding periods
This clause makes it an offence for a person managing or carrying on an agricultural business to contravene instructions on the label of a registered agricultural chemical product regarding a withholding period. Where the agricultural chemical product is used in relation to trade products, and those trade products are supplied before the withholding period expires, the person who carries on or manages the business must give the recipient of the products notice in writing of the withholding period, the chemical product used and the date it was last used. There is a penalty of \$35 000 for an offence against this clause.

DIVISION 2—FERTILISERS

Clause 10: Standards for fertiliser
This clause requires that fertiliser must not be supplied by a person unless it is labelled and packaged in accordance with the regulations that meet the standards relating to the level of impurities, composition, quality or manufacture of the fertiliser, as set out in the regulations. Contravening such a regulation can result in a maximum penalty of \$35 000.

DIVISION 3—VETERINARY PRODUCTS

Clause 11: Supply of prescribed substances prepared by veterinary surgeon

This clause provides that a person must not supply or have in their possession for supply, a substance prescribed by the regulations that has been prepared by a veterinary surgeon in the course of the veterinary surgeon's practice, unless the person has a permit issued by the National Registration Authority. There is a maximum penalty of \$35 000.

Clause 12: Treatment of animal with, or possession of, prescribed substance

This clause provides that a person must not treat an animal, or have their possession a substance (other than an unregistered veterinary chemical product) prescribed by the regulations, unless that person has a permit issued by the National Registration Authority. There is a maximum penalty of \$35 000.

Clause 13: Treatment of trade species animal by injection
Except in accordance with a National Registration Authority permit, a trade species animal must not be injected with a registered veterinary chemical that is only for oral or topical use. The maximum penalty is \$35 000.

Clause 14: Treatment of trade species animals in unauthorised manner

This clause makes it an offence for a trade species animal to be treated with a veterinary product in an unauthorised manner (maximum penalty \$35 000). This includes treating animals in the following manner except in accordance with a veterinary surgeon's written instructions or a permit:

- (a) treating the animal in a manner that contravenes a mandatory instruction on the label,
- (b) using an unregistered product (there is a defence if the product was deregistered less than four years ago),
- (c) treating a major food species animal with a product not registered for that particular species,
- (d) treating a minor trade species with a product not registered for that species or a related species.

The veterinary surgeon has an obligation to provide written instructions about the treatment and treatment period to the person apparently in charge of the animal. Failure to do so may result in a maximum penalty of \$10 000.

Clause 15: Container for prescribed veterinary product
Unless for immediate use, a prescribed veterinary product must be in a suitable container (not a food or drink container) that clearly identifies the product. Maximum penalty is \$10 000.

Clause 16: Responsibilities of veterinary surgeon in relation to withholding periods

This clause provides that a veterinary surgeon treating a trade species animal with a veterinary product must provide the person in charge of the animal with written instructions regarding any relevant withholding period including details of the treatment and treatment period and requiring the animal to be readily identifiable. There is a maximum penalty of \$35 000.

Clause 17: Responsibilities of manager in relation to withholding periods

A person responsible for the management of a trade species animal treated with a veterinary product resulting in a withholding period for the animal or its products, must ensure that the animal and its products are readily identifiable for the duration of the treatment and

the withholding period. If the animal or its products are supplied during the treatment period or the withholding period, the recipient must be given written notice of the treatment and withholding period, the veterinary product used and when it was last used. Non-compliance with this clause may result in a maximum penalty of \$35 000.

PART 4

TRADE PROTECTION ORDERS

Clause 18: Trade protection orders

This clause provides that the Minister may make a trade protection order to prevent or reduce the possibility of serious harm to trade arising from the use or disposal of agricultural and veterinary products. The orders may do a range of things including prohibiting a trade product from being harvested or sold, recalling a trade product that has been sold, prohibiting the carrying on of a particular activity in relation to a trade product or imposing conditions relating to the taking and analysis of samples of a trade product.

Clause 19: Special provisions relating to recall orders

A trade protection order that requires the recall and/or disposal of a trade product may also require the disclosure of certain information to the public or other class of persons. A person bound by a recall order is liable for any costs incurred by the Minister in relation to the order.

Clause 20: Manner of making order

This clause states that a trade protection order may be in writing addressed and served on particular persons, or it may be addressed to several persons, a class of persons or to all persons, in which case, notice of the order and its terms must be published in an appropriate newspaper. The order is binding on the persons to whom it is addressed and has effect for 90 days unless revoked sooner.

Clause 21: Compensation if insufficient grounds for order

If a person believes there were insufficient grounds for making a trade protection order, the person may apply for compensation from the Minister for loss suffered. A person may appeal to the Administrative and Disciplinary Division of the District Court if dissatisfied with a decision of the Minister to pay, or refuse to pay compensation.

Clause 22: Failure to comply with order

A person who contravenes or fails to comply with a trade protection order may be liable for a maximum penalty of \$35 000.

PART 5

ENFORCEMENT

DIVISION 1—AUTHORISED OFFICERS

Clause 23: Appointment of authorised officers

The Minister may appoint authorised officers for the purposes of the Act, on such conditions set out in the instrument of appointment.

Clause 24: Identification of authorised officers

An authorised officer must have a photo identity card, which should be produced for inspection when the officer is exercising the powers under this Act.

DIVISION 2—POWERS OF AUTHORISED OFFICERS

Clause 25: Powers of authorised officers

An authorised officer has certain powers in relation to the administration and enforcement of the Act, including entering and inspecting premises (either by consent or under a warrant), requiring a person to answer questions or provide information, copying documents, testing products and equipment, taking samples and collecting evidence. A magistrate may issue a warrant if satisfied it is reasonably necessary for the administration or enforcement of the Act. The warrant must set out when it expires (being not more than seven days after it has been issued), the purpose for which it has been issued and at what time of day or night it may be executed.

Clause 26: Warrants in urgent circumstances

A warrant may be issued by telephone, fax or other prescribed means if required urgently. A magistrate issuing such a warrant must inform the officer of its terms, when it expires, what time of day or night it may be executed and the reasons for granting the warrant. The officer must forward a completed form of the warrant in those terms to the magistrate concerned within one day of the warrant's execution or expiry.

Clause 27: Offence to hinder, etc. authorised officers

It is an offence for a person to hinder, obstruct, threaten, abuse or otherwise refuse to cooperate with an authorised officer exercising the powers under this Act. Doing so, may result in a maximum penalty of \$5 000.

Clause 28: Self-incrimination

This clause provides that a person cannot refuse to answer a question or produce information required by an authorised officer on the basis that the answer or the information might tend to incriminate the person. However, the fact of the production of that information or

the answer given by the person is not admissible as evidence against the person in proceedings in which the person might be found guilty of an offence.

Clause 29: Offences by authorised officers

It is an offence for an authorised officer to address offensive language to another person or, without lawful authority, to hinder or obstruct or use or threaten to use force in relation to another person in the course of exercising powers under this Act.

DIVISION 3—COMPLIANCE ORDERS

Clause 30: Compliance orders

This clause provides for the issuing of compliance orders by the Minister as a means of enforcing the provisions of the Act. The orders are in the form of a written notice served on a person and must set out the requirement of the Act to which it relates. The order may specify that a person discontinue or not undertake a particular activity, impose conditions on a undertaking a particular activity, or require that specified action be taken.

If urgent action is required, an authorised officer may issue an emergency compliance order orally, which will cease to have effect within 72 hours, unless it is confirmed by a written order issued by the Minister. An order may be varied or revoked by the Minister.

It is an offence to fail to comply with an order, which has a maximum penalty of \$35 000. If a person fails to comply with an order, an authorised officer may take the action required, and the Minister may recover any costs incurred in doing so. There is a penalty of \$5 000 for hindering or obstructing a person complying with an order.

Clause 31: Appeal

A person has 28 days to appeal to the Administrative and Disciplinary Division of the District Court against a compliance order or a variation to an order.

**PART 6
MISCELLANEOUS**

Clause 32: False or misleading information

A person must not make false or misleading statements in relation to information provided under the Act.

Clause 33: Statutory declarations

The Minister may require any information supplied under this Act to be verified by statutory declaration.

Clause 34: Offences by body corporate

If a body corporate is guilty of an offence, each member of the governing body and the manager are guilty of an offence and are liable to the same penalty.

Clause 35: Recovery of technical costs associated with prosecutions

If a person is found guilty of an offence, the Court must, on the application of the Minister, order the convicted person to pay the reasonable costs incurred in the taking and analysis of samples and tests required in investigating and prosecuting the offence.

Clause 36: General defence

There is a general defence to an offence under the Act for the defendant to prove that the particular offence was not committed intentionally and it did not result from a failure to take reasonable care.

Clause 37: Civil remedies not affected

This clause provides that civil rights or remedies are not affected by the Act, and that complying with this Act does not necessarily mean that a duty at common law will be satisfied.

Clause 38: Confidentiality

Confidential information obtained in connection with the administration or enforcement of the Act must not be disclosed except in specified circumstances. There is a maximum penalty of \$10 000.

Clause 39: Immunity from liability

No personal liability attaches to the Minister, authorised officer or other person in carrying out their duties under the Act in good faith. Any such liability lies instead against the Crown.

Clause 40: Service

This clause sets out the manner in which any documents are to be served under the Act.

Clause 41: Evidence

This clause sets out evidentiary provisions in relation to the proof of documents and authorised officers in proceedings under the Act.

Clause 42: Incorporation of codes, standards or other documents
Codes, standards and other documentation may be incorporated by the regulations or an order made under this Act, in which case copies must be available for inspection by the public without charge.

Clause 43: Regulations

This clause sets the various regulations that can be made under the Act. These include regulations that may provide for a licensing

system for the use of agricultural and veterinary products, prohibit the use or disposal of particular agricultural and veterinary products or prescribe various conditions for the use of agricultural and veterinary products, regulate equipment, require records to be kept and information to be provided, fix fees and prescribe fines.

SCHEDULE

Repeals and Amendments

Clause 1: Repeal of Agricultural Chemicals Act

Clause 2: Repeal of Stock Foods Act

Clause 3: Repeal of Stock Medicines Act

These clauses repeal the Agricultural Chemicals Act 1955, Stock Foods Act 1941 and the Stock Medicines Act 1939.

Clause 4: Amendment of Agricultural and Veterinary Chemicals (South Australia) Act

This clause makes technical amendments to the Agricultural and Veterinary Chemicals (South Australia) Act 1994.

Clause 5: Amendment of Livestock Act

This clause amends the Livestock Act 1997 to include regulation making powers in relation to standards and composition of stock food and its manufacture, packaging, labelling, sale and supply. It also removes the provision in the Act dealing with the feeding of ruminants and other livestock with a view to this matter being dealt with in the regulations.

The PRESIDENT: Order! It is generally the practice that the second reading explanations of bills that are being presented for the first time be read. But the council is in control of its own destiny. It is clear that the motion is carried.

The Hon. CAROLINE SCHAEFER secured the adjournment of the debate.