

Clause 1: Short title
Clause 1 is formal.

Clause 2: Insertion of s. 271f—Liability of Crown in relation to Crown lands

Clause 2 inserts new section 271f into the principal Act. Subsection (1) limits the liability of the Crown on unoccupied Crown land to injury, damage or loss caused by the Crown or by an agent or instrumentality of the Crown or by an officer or employee of the Crown (see the definition of "the Crown" in subsection (2)). The definition of "Crown land" excludes alienated land from the definition (see paragraphs (a), (b) and (c)) but includes reserves under the *National Parks and Wildlife Act 1972* and wilderness protection areas and zones under the *Wilderness Protection Act 1992* (paragraph (b)). The reason is that although reserves, areas and zones are constituted principally of unalienated land they may include land alienated to a Minister, body or other person. The effect of the definition of "unoccupied Crown land" is that land will be taken to be occupied if it is being used by the Crown for any purpose. Subsection (3) prevents an argument being raised that the Crown is using land simply because it has leased, or granted a licence or easement over, the land or has dedicated the land for a particular purpose or constituted it as a reserve, area or zone referred to in subsection (3)(d).

The Hon. BARBARA WIESE secured the adjournment of the debate.

AGRICULTURAL AND VETERINARY CHEMICALS (SOUTH AUSTRALIA) BILL

Received from the House of Assembly and read a first time.

The Hon. DIANA LAIDLAW (Minister for Transport): 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.

The Government is pleased to be supporting the *Agricultural and Veterinary Chemicals (South Australia) Bill 1994*. This Bill embodies three years of work and negotiation by State and Commonwealth officers throughout Australia, and is the culmination of a vision held by industry and Government alike. That vision is of a single, national system for evaluating and registering agricultural and veterinary chemicals before they are sold for use in any State or Territory of Australia.

The National Registration Scheme, as it is known, will replace the separate schemes for evaluating and registering chemicals existing in each individual State. These State schemes emerged during the late 1930's to mid-1950's. The purpose in those days was primarily to protect farmers from those unscrupulous enough to try to sell ineffective products by claiming them to be remedies for any number of infestations or diseases.

The need to ensure that the public is not deceived about the chemicals available on the market has not changed. However, the technology, use and role of agricultural and veterinary chemicals is vastly different from those early days. Agricultural and veterinary chemicals such as pesticides and herbicides, are used in homes and home gardens, as well as in commercial primary production. The technology going into the development and manufacture of chemical products is increasingly sophisticated and costly. And we now have a greater understanding of the way chemicals work and their potential impact on human beings, animals, plants and the environment. For all these reasons, the whole community has an interest in the chemicals available for use around homes and in the production of food and fibre. And the community, quite rightly, demand a high level of scrutiny before chemicals products are released onto the market.

That level of scrutiny is realistically beyond the resources and expertise of any one organisation and, for all practical purposes, possession of the necessary resources and expertise is beyond the means of any one State. Departments of Primary Industries, who have generally been responsible for administering each State's registration scheme for agricultural and veterinary chemicals, have been co-operating with other State and Commonwealth agencies for over 20 years in order to share resources and/or gain access to

expertise. Furthermore, the development and marketing of chemical products by the chemical industry has little to do with State boundaries, or even national boundaries. All this goes to making a national system for the evaluation of agricultural and veterinary chemicals a logical and practical step to take.

The Bill before us is almost identical to the Bills that will be considered by the Parliaments and Legislatures of each State and the Northern Territory. The National Registration Scheme will be created by a complementary adoptive system of State and Commonwealth laws. The Commonwealth has agreed to legislate to create the Agricultural and Veterinary Chemicals Code, known as the Agvet Code, which contains the detailed provision for the evaluation, registration and sale of agricultural and veterinary chemicals. Each State and the Northern Territory must legislate to adopt the Agvet Code, and so make the scheme a national one. The Commonwealth Government have created an independent statutory authority, known as the National Registration Authority or NRA, to administer the National Registration Scheme. The Commonwealth Parliament has already considered and passed the *Agricultural and Veterinary Chemicals Code Act 1994* containing the Agvet Code. The purpose of the Bill is to adopt the Agvet Code and so make South Australia a party to the National Registration Scheme.

It is not appropriate to list all the details of the National Registration Scheme, however, the important features of the Scheme should be noted. The National Registration Scheme will evaluate, register and control the sale of agricultural and veterinary chemical products, and the active constituents that go into formulating those products. In so doing, the National Registration Scheme maintains the controls that already exist in South Australia at the same time as it contains several significant new features. As far as evaluating chemicals is concerned, the Agvet Code explicitly specifies that regard must be had to human health, animal and plant health, the efficacy of the product, impact on the environment, and implications for international trade. The Scheme will incorporate a formal program for reviewing old chemicals to ensure they meet contemporary safety and performance standards, and will be able to de-register those products which do not meet those standards. In fairness to the research and development costs associated with providing the data for product reviews, the National Registration Scheme contains a mechanism for enabling the original provider of data to be compensated by other manufacturers who wish to use that data to support their own products. The NRA will have the ability to issue notices recalling stocks of unregistered products, products which are improperly formulated, improperly labelled, or contaminated, and any product which has been found to be too dangerous to public health or a risk to international trade. Under certain circumstances, the NRA will also be able to issue permits for the use of chemical products in ways which would normally be an offence. The sorts of permits envisaged are, for example, those allowing persons to conduct research trials using products which are unregistered, or allowing the use of a product in a way which is not on the product label.

It only remains to be said of the National Registration Scheme that our intention is that no one will be disadvantaged by the change-over from the State registration scheme to the new National Registration Scheme. Companies with chemical products registered under the current State laws will have their products transferred to the National Registration Scheme with full registration status. Primary producers and householders can expect the products they rely on to continue to be available.

In addition, South Australia (and all other States and Territories) will continue to be involved with the NRA and the National Registration Scheme. The use of chemicals after they are sold will be a matter for State law, and several mechanisms will exist to maintain communication between States and the NRA. The most important of these, in terms of day-to-day operations, are the officers in each State and Territory who have been designated as Chemicals Co-ordinators, and the network that these Co-ordinators will form for advising the NRA on the practical aspects of the Scheme's operation.

Before moving on to describe specific aspects of the Bill, it is worth pointing out the high degree of support that exists for the National Registration Scheme. Firstly, it is acknowledged that much of the work in developing the National Registration Scheme took place under the previous Government. The previous Government, like the new Liberal Government, recognised the benefits to this State of participating in a national scheme for evaluating and registering agricultural and veterinary chemicals. Secondly, the chemical industry is fully supportive of the National Registration Scheme. This is an important point, since it is the chemical industry

that will be subject to the regulation contained in the Agvet Code and who will, within 5 years, be fully funding the cost of running the National Registration Scheme. Thirdly, the Scheme is fully supported by the primary production sector, who are the major users of agricultural and veterinary chemicals. Environmental and public advocacy groups did express some criticisms that the Agvet Code did not go far enough in some areas. However, the Commonwealth Senate Standing Committee on Rural and Regional Affairs, to which these criticisms were presented concluded that the Bills did not need amendment. A harmonised scheme of this significance is an achievement in itself; it already embodies the most up-to-date knowledge on the management of agricultural and veterinary chemicals, compared to the schemes of some States. Nevertheless, all parties to the National Registration Scheme recognise that adjustment and fine-tuning may need to take place after the Scheme has been running for a while. In fact, the NRA has already undertaken to review the Scheme's operations in about 18 months time, with particular regard to public access to information, cost recovery, third party appeals, and control of use after sale. Finally, the National Registration Scheme obviously has the support of all the State and Commonwealth agencies involved in its conception and development, evidenced by the fact that all States will be legislating to adopt the Scheme. It should also be noted that the *Agricultural and Veterinary Chemicals Code Act 1994* passed through both Houses of the Commonwealth Parliament without amendment.

Turning to the provisions of the Bill, it is worth reiterating that the Bill is in most part a model Bill which will be used by all States and Territories for implementing the National Registration Scheme, and that it follows a complementary adoptive format. Clauses 5 and 6 of the Bill adopt the Agvet Code and its associated Agvet Regulations, as established by the Commonwealth *Agricultural and Veterinary Chemicals Code Act 1994*, as laws of South Australia. Much of the rest of the Bill is designed to ensure that, although each State and the Northern Territory has separately legislated to adopt the Agvet Code into its own laws, the Code nevertheless operates as though it were a single national Code administered by the NRA.

This will be accomplished, firstly, by interpreting the Agvet Code and Regulations of South Australia (and every other State and Territory) using the Commonwealth *Acts Interpretation Act 1901* so that a uniform interpretation applies across all States, and by providing for the review of decisions and for public access to information to be governed by Commonwealth administrative laws such as the *Administrative Appeals Tribunal Act 1975* and the *Freedom of Information Act 1982*, so that these matters are also dealt with uniformly across the nation. These are the matters dealt with in clauses 7 and 8, and in Parts 3 and 5 of the Bill.

Secondly, administration of the Agvet Code is delegated to the NRA. In other words, although the Agvet Code has become a law of South Australia, the NRA will administer those laws along with the Agvet Code adopted under the laws of each other State and Territory. This is accomplished in Part 7 of the Bill. It is also logical that, with a Commonwealth body administering the Code, and a need to ensure the Code operates uniformly across all States, that Part 10 of the Bill gives the Commonwealth Director of Public Prosecutions the ability to carry out any prosecutions under the Code. Similarly, administration of the Agvet Code as a single national scheme will be enhanced by ensuring that civil or criminal matters arising out of the Agvet Code can be heard by the court best placed to deal with the matter. Accordingly Part 6 of the Bill ensures that the jurisdiction of State courts, and cross-vesting arrangements that already exist, are not diminished, and that the Federal Court is empowered to deal with civil matters.

Although the administration of the National Registration Scheme is in the hands of the NRA, it is still the case that State officers may be best placed to deal with certain aspects of the Scheme's operations. Clause 28 enables State officers to become inspectors for this purpose.

Chemical products currently registered in South Australia under either the *Stock Medicines Act 1939* or *Agricultural Chemicals Act 1955* will transfer to the National Registration Scheme, and the National Registration Scheme will then be responsible for the registration of those chemicals. Clause 30 of the Bill enables the Department of Primary Industries, where necessary, to release to the NRA documents or samples which have been received and held by the Department in connection with registering chemical products in South Australia.

As previously mentioned, the National Registration Scheme includes a mechanism for issuing permits relating to the use of chemical products. The use of chemicals is a matter for State law.

However, there are obvious benefits in having the body which registers chemical products, and therefore possesses considerable information on those products, also able to consider permits for using those chemicals. The purpose of section 33 of the Bill is to enable certain State laws to be designated as 'eligible laws' and so allow the NRA to issue permits where appropriate.

A particularly noteworthy aspect of the Bill is the arrangements for the safeguarding of the State's existing health and safety laws from inconsistency with, or any other unintended interference by, the Agvet Code or Regulations. Acts such as the *Controlled Substances Act 1984*, *Dangerous Substances Act 1979* and *Occupational Safety, Health and Welfare Act 1986* contain provisions relating to the possession, use, handling and storage of various drugs, poisons and chemicals, and at some time in the future there may arise a point of overlap with the Agvet Code. This is the purpose of clause 36 of the Bill. This clause allows for regulations to be made, where necessary, which prevent provisions of the Agvet Code from over-riding or otherwise disrupting the laws of this State. There may also arise emergency situations where the use of a chemical is a necessary part of managing the emergency and where a rapid local response is required. For example, last year's mouse plague necessitated the use of strychnine baits, under strictly controlled conditions, to prevent huge damage to crops and agricultural lands. The State must be able to respond quickly to these situations as they arise.

The fact is also that the Agvet Code and Regulations are contained in Commonwealth law and administered by a Commonwealth body. Whilst various mechanisms will exist to ensure that all parties to the National Registration Scheme are involved in policy and decision making on issues of importance, clause 36 also enables South Australia to take action if the Agvet Code or Regulations were ever considered to prejudice the policies of this State, as contained in the laws of this Parliament. I emphasise that all these situations are contingencies; we do not expect them to occur and, especially in the case of emergencies, we hope they do not occur. However, it would be irresponsible to set up a situation in which the State could not act.

Finally, the Schedule to the Bill contains consequential amendments to the *Agricultural Chemicals Act 1955*, *Stock Foods Act 1941* and *Stock Medicines Act 1939*. Each of these Acts is to be amended to make it clear that, where the evaluation, registration and supply of an agricultural or veterinary chemical product is dealt with by the National Registration Scheme, the sale of that product is exempt from further regulation under the *Agricultural Chemicals Act 1955*, *Stock Foods Act 1941* and *Stock Medicines Act 1939*. Nevertheless, where a chemical product is not covered by the National Registration Scheme, for example in relation to its use, the provisions of the existing laws will apply.

The *Agricultural Chemicals Act* is also to be amended to allow the registration period which would normally end on 30 June 1994 to be extended if necessary. The purpose of this clause is to prevent the need to renew the registration of agricultural chemicals in South Australia should the National Registration Scheme not commence exactly on 1 July 1994 as planned. Obviously, the exercise of renewing the registration of agricultural chemicals when the national scheme is imminent would be an unwarranted inconvenience to all concerned. However, in the unlikely event that the commencement of the National Registration Scheme was going to be delayed for some time, we may need to renew registrations. In that case, the Government would review fees payable and, if appropriate, vary the relevant fee regulations. The registration of stock medicines under the *Stock Medicines Act* do not expire until June 1995. No extension is considered necessary since the National Registration Scheme should have commenced by then.

In summary, it is expected that this measure will lead to advantages for all interested parties—for the chemical industry through the introduction of a National Registration Scheme; for the primary production sector through greater scrutiny and information on chemical products; for the environmental protection sector through greater emphasis on proper assessment of chemical products; and for the public sector through a more efficient and rational administration system.

The Government is pleased to support and promote this Bill.

Explanation of Clauses

The provisions of the Bill are as follows:

Clause 1: Short title

This clause provides for the citation of the proposed Act.

Clause 2: Commencement

This clause provides for the proposed Act to commence on a proclaimed day (or days).

Clause 3: Definitions

This clause contains definitions of expressions used in the Bill.

Clause 4: Jervis Bay Territory

This clause provides that the Jervis Bay Territory is to be taken to be part of the Australian Capital Territory for the purposes of the Agvet scheme.

Clause 5: Application of Agvet Code in this jurisdiction

This clause applies the Agricultural and Veterinary Chemicals Code set out in the schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* of the Commonwealth, as in force for the time being, as a law of the State. The Code, as applying, will be cited as the Agvet Code of South Australia.

Clause 6: Application of Agvet Regulations in this jurisdiction

This clause applies the regulations in force for the time being under section 6 of the *Agricultural and Veterinary Chemicals Code Act 1994* of the Commonwealth as regulations in force for the purposes of the Agvet Code of South Australia.

Clause 7: Interpretation of Agvet Code and Agvet Regulations of this jurisdiction

This clause provides that the *Acts Interpretation Act 1901* of the Commonwealth will apply as a law of the State for the purposes of the Agvet Code and Agvet Regulations. The State *Acts Interpretation Act 1915* will not apply. This approach will assist in the uniform interpretation of the Code throughout Australia.

Clause 8: Ancillary offences (aiding, abetting, accessories, attempts, incitement or conspiracy)

This clause applies certain Commonwealth laws with respect to offences against the Agvet Code or Agvet Regulations.

Clause 9: References to Agvet Codes and Agvet Regulations of other jurisdictions

This clause recognises references to the Agvet Code and Regulations of other jurisdictions.

Clause 10: References to Agvet Codes and Agvet Regulations

The object of this clause is to help to ensure that the Agvet Code and Regulations of this State, together with those of other jurisdictions, operate, so far as possible, as if they constituted a single national law applying throughout Australia. The Agvet laws of the other jurisdictions will have the same provision. The interlocking of these provisions will enable (in most instances) persons and companies to rely on a uniform scheme applying across Australia.

Clause 11: Agvet Code of this jurisdiction

The Agvet laws are to bind the Crown in all capacities.

Clause 12: Agvet Code of other jurisdictions

The Crown in right of South Australia will be bound by the Agvet Code of the other jurisdictions.

Clause 13: Crown not liable to prosecution

This clause provides that nothing in these laws renders the Crown in any capacity liable to be prosecuted for an offence.

Clause 14: This Part overrides the prerogative

This clause makes it clear that where the Agvet laws of another jurisdiction bind the Crown in right of this State by virtue of these provisions, those laws override any prerogative right or privilege of the Crown.

Clause 15: Object

It is intended that the Agvet laws of each jurisdiction will be administered on a uniform basis.

Clause 16: Application of Commonwealth administrative laws in relation to applicable provisions

This clause applies the Commonwealth administrative laws as laws of this State in relation to anything arising in respect of an applicable provision of this State (as defined). For the purposes of the law of this State, anything arising under an applicable provision of this State is taken to arise under Commonwealth law, except as prescribed by the regulations.

Clause 17: Functions and powers conferred on Commonwealth officers and authorities

This clause confers the appropriate functions and powers on Commonwealth officers or authorities in connection with the application of Commonwealth administrative laws.

Clause 18: Reference in Commonwealth administrative law to a provision of another law

This is a technical provision that deals with how references in the applied Commonwealth laws to laws of the Commonwealth are to be construed.

Clause 19: Jurisdiction of Federal Court

The Federal Court is to have jurisdiction with respect to all civil matters arising under the applicable provisions. However, this vesting of jurisdiction will not affect the jurisdiction of State courts.

Clause 20: Exercise of jurisdiction under cross-vesting provisions

The cross-vesting laws will still apply.

Clause 21: Conferral of functions and powers on NRA

This clause formally confers on the NRA the powers conferred on it under the Agvet Code. Necessary or convenient incidental powers are also expressly conferred by this clause.

Clause 22: Agreements and arrangements

The State Minister will be empowered to enter into agreements or arrangements with the Commonwealth Minister for the performance of functions or the exercise of powers by the NRA as an agent of the State.

Clause 23: Conferral of other functions and powers for purposes of law in this jurisdiction

The NRA is also to be expressly conferred with the power to do acts in this State in the exercise of functions conferred by the Agvet laws of other jurisdictions.

Clause 24: Commonwealth Minister may give directions in exceptional circumstances

The Commonwealth Minister will be able to give directions to the NRA in relation to functions and powers conferred on it under this national scheme.

Clause 25: Orders

Various orders are to apply in this State as if they were regulations of this jurisdiction.

Clause 26: Manufacturing principles

Various manufacturing principles under the Commonwealth legislation are to apply for the purposes of the Code.

Clause 27: Delegation

The Commonwealth Minister's power of delegation under Commonwealth law is expressed to extend to the delegation of powers conferred on the Minister under these laws.

Clause 28: Conferral of powers on State officers

This clause will allow the conferral of the powers and functions of an inspector on a State officer.

Clause 29: Application of fees and taxes

Fees, taxes and other money payable under the scheme must be paid to the Commonwealth.

Clause 30: Documents or substances held by previous registering authority may be given to NRA

This clause will facilitate the transfer of documents and substances from State authorities to the NRA on the commencement of the uniform scheme.

Clause 31: Exemptions from liability for damages

It is important to protect State authorities and agencies from potential liabilities arising in relation to the administration and operation of the scheme.

Clause 32: Regulations

The Governor will be able to make regulations for the purposes of this measure.

Clause 33: Eligible laws

This is a technical provision relating to the permit system under the Code.

Clause 34: Fees (including taxes)

This clause imposes the fees prescribed by the regulations.

Clause 35: Conferral of functions on Commonwealth Director of Public Prosecutions

The Commonwealth Director of Public Prosecutions will be empowered to initiate and conduct prosecutions for the purposes of the scheme.

Clause 36: Relationship with other State laws

This clause will ensure that action can be taken to give any State law precedence over the Code, or to modify the effect of the Code if necessary.

Schedule

The schedule makes various consequential amendments to the *Agricultural Chemicals Act 1955*, the *Stock Foods Act 1941* and the *Stock Medicines Act 1939*.

The Hon. BARBARA WIESE secured the adjournment of the debate.

The Hon. K.T. GRIFFIN: I draw your attention to the state of the Council.

A quorum having been formed: