

South Australia

# **Agricultural and Veterinary Products (Control of Use) Act 2002**

An Act relating to agricultural chemical products, fertilisers and veterinary products and for other purposes.

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## Legislative history

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### The Parliament of South Australia enacts as follows:

## Part 1—Preliminary

### 1—Short title

This Act may be cited as the *Agricultural and Veterinary Products (Control of Use) Act 2002*.

### 3—Interpretation

- (1) In this Act, unless the contrary intention appears—

***active constituent*** has the meaning given by the Agvet Code of South Australia;

***agricultural chemical product*** has the meaning given by the Agvet Code of South Australia;

***agricultural product*** means an agricultural chemical product or a fertiliser;

**Agvet Code of South Australia**—see the *Agricultural and Veterinary Chemicals (South Australia) Act 1994*;

**approved label** has the meaning given by the Agvet Code of South Australia;

**authorised officer** means a person appointed as an authorised officer under Part 5;

**compliance order**—see section 30;

**contamination**—see subsection (3) and section 5(2);

**contravention** includes failure to comply;

**environmental harm** has the meaning given by the *Environment Protection Act 1993*;

**fertiliser** means—

- (a) a substance that is manufactured, represented, supplied or used as a means of directly or indirectly—
  - (i) fertilising the soil; or
  - (ii) supplying nutrients to plants; or
  - (iii) conditioning the soil by altering the chemical, physical or biological composition of the soil; or
- (b) a substance declared by regulation to be a fertiliser,

but does not include a substance excluded by regulation from the ambit of this definition;

**harm**—see subsection (3);

**major trade species animal** means a trade species animal of any of the following kinds:

- (a) cattle, sheep, pigs, or chickens; or
- (b) a class of animals declared by regulation to be major trade species animals;

**mandatory instruction**, in relation to an approved label, means an instruction of a kind declared by regulation to be a mandatory instruction;

**minor trade species animal** means a trade species animal other than a major trade species animal;

**MRL Standard** means the National Registration Authority for Agricultural and Veterinary Chemicals, *MRL Standard—Maximum Residue Limits in Food and Animal Feedstuffs of Agricultural and Veterinary Chemicals and Associated Substances*, published by the Australian Government Publishing Service, Canberra, as amended from time to time;

**NRA** has the meaning given by the Agvet Code of South Australia;

**permit** has the meaning given by the Agvet Code of South Australia;

**plant** includes fungus;

**possession or custody of an agricultural chemical product**—see subsection (2);

**premises** means any land, building, structure, vessel, aircraft or vehicle;

**prescribed veterinary product** means a veterinary product used to treat trade species animals by a method involving spraying, dipping or bathing;

**recall order**—see section 19;

**registered agricultural chemical product** means an agricultural chemical product registered under the Agvet Code of South Australia;

**registered veterinary chemical product** means a veterinary chemical product registered under the Agvet Code of South Australia;

**residue** has the meaning given by the Agvet Code of South Australia;

**substance** includes a mixture of substances;

**supply** has the meaning given by the Agvet Code of South Australia;

**target area**, in relation to the use of an agricultural chemical product, means the area intended to be treated with the product or within which plants, pests, disease or other biological problems are intended to be controlled by use of the product;

**trade** means trade within this State or within Australia or trade between Australia and places outside Australia;

**trade product** means a trade species animal or trade species plant or a product derived from a trade species animal or trade species plant;

**trade protection order**—see section 18;

**trade species animal** means—

- (a) an animal kept or used as a food-producing species within the meaning of the Agvet Code of South Australia; or
- (b) an animal kept or used for the purposes of trading in products derived from the animal (eg wool, feathers, skin, bones) or producing products for trade; or
- (c) an animal of a class declared by regulation to be trade species animals;

**trade species plant** means—

- (a) a plant grown or used for the purposes of trading in the plant or products derived from the plant or producing products for trade; or
- (b) a plant of a class declared by regulation to be trade species plants;

**treat** an animal—see subsection (4);

**Tribunal** means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*;

**unregistered agricultural chemical product** means an agricultural chemical product that is not registered under the Agvet Code of South Australia;

**use**, in relation to an agricultural product or veterinary product, includes preparation for use;

**veterinary chemical product** has the meaning given by the Agvet Code of South Australia and includes a human pharmaceutical, agricultural chemical product or other substance used to treat an animal;

**veterinary product** means—

- (a) a veterinary chemical product; or

- (b) a substance that would be a veterinary chemical product within the meaning of the Agvet Code of South Australia but for the fact that it is—
- (i) prepared by a pharmacist in accordance with the instructions of a veterinary surgeon; or
  - (ii) prepared by a veterinary surgeon,  
in the course of the practice, by the person preparing the substance, of his or her profession as permitted by or under a law of this State;

***veterinary surgeon*** means a person registered under the *Veterinary Surgeons Act 1985*;

***withholding period***, in relation to a trade product, means the minimum period that needs to elapse between use of an agricultural chemical product or a veterinary product and a particular activity in order to ensure that the agricultural chemical or veterinary product's residues in the trade product fall to or below, or will not exceed, the maximum limit that the NRA permits (see the MRL Standard).

- (2) In this Act, a reference to ***possession or custody of an agricultural chemical product*** does not extend to possession or custody of the product for the purposes of supply.
- (3) For the purposes of this Act, contamination or harm is to be taken to have been caused by the use or disposal of an agricultural product or veterinary product—
- (a) whether the contamination or harm is a direct or indirect result of the use or disposal of the agricultural product or veterinary product; and
  - (b) whether the contamination or harm results from the use or disposal of the agricultural product or veterinary product alone or the combined effects of the use or disposal of the agricultural product or veterinary product and other factors.
- (4) For the purposes of this Act, an animal is ***treated*** with a substance if the substance is administered or applied to the animal by any means, or consumed by the animal, as a way of directly or indirectly—
- (a) preventing, diagnosing, curing or alleviating a disease or condition in the animal or the infestation of the animal by a pest; or
  - (b) curing or alleviating an injury suffered by the animal; or
  - (c) modifying the physiology of the animal—
    - (i) so as to alter its natural development, productivity, quality or reproductive capacity; or
    - (ii) so as to make it more manageable; or
  - (d) modifying the effect of a substance used to treat the animal.

#### **4—Eligible laws for purposes of Agvet Code permits**

Sections 6, 7, 9(1), 11(1), 12(1), 13 and 14 are eligible laws for the purposes of the definition of ***permit*** in section 109 of the Agvet Code of South Australia.

## Part 2—General duty

### 5—General duty

- (1) A person must in using or disposing of an agricultural chemical product, fertiliser or prescribed veterinary product take all reasonable and practicable measures to prevent or minimise—
  - (a) in the case of an agricultural chemical product—
    - (i) actual or potential contamination of land outside the target area that is not trivial, taking into account current or proposed land uses; or
    - (ii) actual or potential contamination of animals or plants on land outside the target area that is not trivial, taking into account the economic or ecological value of the animals or plants and the current or proposed land uses; or
  - (b) actual or potential harm to the health or safety of human beings (in the case of an agricultural chemical product, whether within or outside the target area) that is not trivial, taking into account current or proposed land uses; or
  - (c) other unintended actual or potential environmental harm (in the case of an agricultural chemical product, whether within or outside the target area) that is not trivial, taking into account current or proposed land uses.
- (2) For the purposes of subsection (1)(a)—
  - (a) land is contaminated if any soil, water or other environmental component of the land contains a residue of an agricultural chemical product; and
  - (b) an animal or plant is contaminated if the animal or plant or a product derived from the animal or plant contains a residue of an agricultural chemical product.
- (3) Without limiting the circumstances in which contamination will not be considered trivial, contamination will not be trivial if—
  - (a) in the case of contamination of a trade species animal or trade species plant with a residue of an agricultural chemical product in respect of which a maximum limit has been fixed in the MRL Standard—the residue is above that maximum limit;
  - (b) in the case of contamination of land with a residue of an agricultural chemical product in respect of which a maximum limit has been fixed in the MRL Standard—the residue in the soil, water or other environmental component of the land is such that it can reasonably be expected that a trade species animal kept on the land or a trade species plant grown on the land would be or become contaminated to the extent referred to in paragraph (a).
- (4) In determining what measures are required to be taken under subsection (1), regard is to be had, amongst other things, to—
  - (a) the nature of the product; and

- (b) in the case of a registered agricultural chemical product or registered veterinary chemical product, the terms of the approved label for containers for the product; and
  - (c) the terms of any permit issued in respect of the product; and
  - (d) the nature of the area surrounding the site where the product is used or disposed of; and
  - (e) the weather conditions at the time the product is used or disposed of and the forecast for the period following use or disposal; and
  - (f) whether any equipment used is appropriate and in good repair; and
  - (g) the financial implications of the various measures that might be taken as those implications relate to the class of persons using or disposing of the same or similar products in the same or similar circumstances; and
  - (h) the current state of technical knowledge and likelihood of successful application of the various measures that might be taken.
- (5) Failure to comply with the duty under this section does not of itself constitute an offence, but compliance with the duty may be enforced by the issuing of a compliance order.
- (6) This section operates in addition to, and does not limit or derogate from, the provisions of the *Environment Protection Act 1993* or any other Act.

## Part 3—Offences

### Division 1—Agricultural chemical products

#### 6—Use or possession of unregistered agricultural chemical product

- (1) A person must not use, or have in his or her possession or custody, an unregistered agricultural chemical product except as authorised by a permit.  
Maximum penalty: \$35 000.
- (2) It is a defence to a charge of an offence against subsection (1) if the defendant proves—
- (a) that the product was a registered agricultural chemical product at the time it came into the person's possession or custody and not more than four years, or such other period specified for the product by the Minister by notice in the Gazette, has elapsed since the date the product ceased to be registered; or
  - (b) that the defendant did not know, and could not reasonably be expected to know, that the agricultural chemical product was not, or had ceased to be, registered.
- (3) The Minister may, by subsequent notice in the Gazette, vary or revoke a notice under subsection (2)(a), but a subsequent notice must not specify a period for a product shorter than the period previously specified by notice for the product, if the period previously specified has elapsed at the time the subsequent notice is published.
- (4) This section does not apply to an agricultural chemical product exempted by the NRA from the operation of section 78 of the Agvet Code of South Australia.

## **7—Mandatory instructions on approved label for registered agricultural chemical product**

A person must not use or dispose of a registered agricultural chemical product in contravention of a mandatory instruction displayed on the approved label for containers for the product except as authorised by a permit.

Maximum penalty: \$35 000.

## **8—Container for agricultural chemical product**

- (1) A person who has possession or custody of an agricultural chemical product must ensure that the product is, at all times, kept in a suitable container clearly marked or labelled with the name of the product and the name and concentration (if any) of each of the active constituents of the product as indicated in a permit authorising the possession or custody or on the approved label for containers for the product.

Maximum penalty: \$10 000.

- (2) Without otherwise limiting the meaning of suitable container, a bottle or container that has been used, or is designed for use, for drink or food is not a suitable container.
- (3) Nothing in subsection (1) requires a container to which an agricultural chemical product is transferred for immediate use to be marked or labelled with the name of the product or the name and concentration of each of the active constituents of the product.

## **9—Responsibilities in relation to withholding periods**

- (1) A person who carries on or manages an agricultural business in the course of which a registered agricultural chemical product is used is guilty of an offence if—

- (a) in the case of a registered agricultural chemical product used pursuant to a permit—a prescribed instruction setting out a withholding period for a trade product in the permit is contravened; or
- (b) in any other case—a prescribed instruction setting out a withholding period for a trade product displayed on the approved label for containers for the product is contravened.

Maximum penalty: \$35 000.

- (2) If—

- (a) a registered agricultural chemical product is used in the course of an agricultural business; and
- (b) trade products produced in the course of the business are affected by a withholding period as set out on the approved label for containers for the registered agricultural chemical product or in a permit pursuant to which the registered agricultural chemical product is used; and
- (c) any of those trade products are supplied before the expiry of that withholding period,

the person who carries on or manages the business must ensure that the recipient of the trade products is given written notice of—

- (d) the withholding period; and



- (e) the registered agricultural chemical product used; and
- (f) the last relevant date of use of the registered agricultural chemical product.

Maximum penalty: \$35 000.

- (3) For the purposes of this section, if a person works land as a sharefarmer (and not as an employee) under a written sharefarming agreement, the person will be taken to carry on an agricultural business.

## **Division 2—Fertilisers**

### **10—Standards for fertiliser**

- (1) A person must not supply fertiliser unless—
  - (a) the fertiliser and the constituents of the fertiliser comply with the standards prescribed by regulation; and
  - (b) the fertiliser is packaged and labelled, or information is provided to the person to whom the fertiliser is supplied, in accordance with the regulations.

Maximum penalty: \$35 000.

- (2) The standards prescribed by regulation may—
  - (a) prohibit a substance from being added to or used as fertiliser;
  - (b) provide for controls with respect to the level of impurities contained in fertiliser;
  - (c) otherwise regulate the composition, quality or method of manufacture of fertiliser.

## **Division 3—Veterinary products**

### **11—Supply of prescribed substances prepared by veterinary surgeon**

- (1) A person must not supply, or have in his or her possession or custody for the purpose of supply, a substance to which this section applies, except in accordance with a permit.

Maximum penalty: \$35 000.

- (2) This section applies to such substances prepared by a veterinary surgeon, or a pharmacist on the instructions of a veterinary surgeon, in the course of his or her practice as may be prescribed, individually or by class, by the regulations.

### **12—Treatment of animal with, or possession of, prescribed substance**

- (1) A person must not—
  - (a) treat an animal with; or
  - (b) have in his or her possession or custody,a substance to which this section applies, except in accordance with a permit.

Maximum penalty: \$35 000.

- (2) This section applies to such substances (other than registered veterinary chemical products) as may be prescribed, individually or by class, by the regulations.

### 13—Treatment of trade species animal by injection

A person must not inject a trade species animal with a registered veterinary chemical product if the approved label for containers for the product states that it is only for oral or topical use, except in accordance with a permit.

Maximum penalty: \$35 000.

### 14—Treatment of trade species animals in unauthorised manner

- (1) A person responsible for the management of a trade species animal is guilty of an offence if the animal is treated with a veterinary product in an unauthorised manner.  
Maximum penalty: \$35 000.
- (2) An animal is treated with a veterinary product in an *unauthorised manner* if—
  - (a) —
    - (i) a registered veterinary chemical product is used to treat the animal in a manner that contravenes a mandatory instruction on the approved label for containers for the product; or
    - (ii) the veterinary product used to treat the animal—
      - (A) is not a registered veterinary chemical product; or
      - (B) in the case of treatment of a major trade species animal—is a registered veterinary chemical product that is not registered for use in animals of the species concerned; or
      - (C) in the case of treatment of a minor trade species animal—is a registered veterinary chemical product that is not registered for use in animals of the species concerned or in animals of a species declared by regulation to be a species related to the minor trade species concerned; and
  - (b) the treatment is carried out otherwise than in accordance with the written instructions of a veterinary surgeon responsible for treating the animal or a permit.
- (3) It is a defence to a charge of an offence against subsection (1) in circumstances referred to in subsection (2)(a)(ii)(A) if the defendant proves—
  - (a) that the product was a registered veterinary chemical product at the time it came into the person's possession or custody; and
  - (b) that not more than four years, or such other period specified for the product by the Minister by notice in the Gazette, has elapsed since the date the product ceased to be registered; and
  - (c) that the product was used in a manner that complied with the mandatory instructions on the approved label for containers for the product.
- (4) The Minister may, by subsequent notice in the Gazette, vary or revoke a notice under subsection (3)(b), but a subsequent notice must not specify a period for a product shorter than the period previously specified by notice for the product, if the period previously specified has elapsed at the time the subsequent notice is published.

- (5) If a veterinary surgeon responsible for treating a trade species animal gives advice or instructions for the treatment of the animal with a veterinary product in a manner referred to in subsection (2)(a), the veterinary surgeon must give the person apparently in charge of the animal written instructions setting out the details of the treatment and the treatment period.

Maximum penalty: \$10 000.

### **15—Container for prescribed veterinary product**

- (1) A person who has possession or custody of a prescribed veterinary product must ensure that the product is, at all times, kept in a suitable container clearly marked or labelled with the name of the product and the name and concentration (if any) of each of the active constituents of the product as indicated in a permit authorising the possession or custody or on the approved label for containers for the product.

Maximum penalty: \$10 000.

- (2) Without otherwise limiting the meaning of suitable container, a bottle or container that has been used, or is designed for use, for drink or food is not a suitable container.
- (3) Nothing in subsection (1) requires a container to which a prescribed veterinary product is transferred for immediate use to be marked or labelled with the name of the product or the name and concentration of each of the active constituents of the product.

### **16—Responsibilities of veterinary surgeon in relation to withholding periods**

- (1) If a veterinary surgeon responsible for treating a trade species animal treats, or gives advice or instructions for the treatment of, the animal with a veterinary product in a manner resulting in a withholding period for the animal or a product derived from the animal, the veterinary surgeon must give the person apparently in charge of the animal written instructions—
- (a) setting out the details of the treatment and the treatment period; and
  - (b) setting out the withholding period applicable to the treated animal or products derived from the treated animal; and
  - (c) requiring the animal to be readily identified (as an individual or as one of a group) by means of written records, signs, tags or otherwise for the duration of the treatment period and the withholding period.

Maximum penalty: \$35 000.

- (2) A veterinary surgeon must keep a copy of written instructions given under subsection (1) for a period of at least two years.

Maximum penalty: \$5 000.

## 17—Responsibilities of manager in relation to withholding periods

- (1) A person responsible for the management of a trade species animal that has been treated with a veterinary product in a manner resulting in a withholding period for the animal or a product derived from the animal must ensure that—
  - (a) the animal and any product to which a withholding period applies are readily identifiable by means of written records, signs, tags or otherwise as having been treated, or derived from an animal that has been treated, with the veterinary product for the duration of the treatment period and withholding period; and
  - (b) neither the animal nor any product to which a withholding period applies is supplied during the treatment period or withholding period unless the recipient of the animal or product is given written notice of—
    - (i) the treatment period and withholding period; and
    - (ii) the veterinary product used in the treatment; and
    - (iii) the date of its last use in relation to the animal.

Maximum penalty: \$35 000.

- (2) In proceedings for an offence against subsection (1), the withholding period in respect of an animal, or a product derived from an animal, treated with a registered veterinary chemical product will be taken, in the absence of proof to the contrary, to be the withholding period stated on the approved label for containers for the registered veterinary chemical product.

## Part 4—Trade protection orders

### 18—Trade protection orders

- (1) An order (a *trade protection order*) may be made under this Part by the Minister if there are reasonable grounds to believe that the order is necessary to prevent or reduce the possibility of serious harm to trade arising from the use or disposal of agricultural products or veterinary products or to mitigate the adverse consequences of such harm.
- (2) A trade protection order may do any one or more of the following:
  - (a) prohibit the cultivation, taking, harvesting or obtaining, from a specified area, of a particular trade product or type of trade product;
  - (b) prohibit a particular trade product or type of trade product from being advertised or sold;
  - (c) direct that a particular trade product or type of trade product consigned or distributed for sale or sold be recalled and specify the manner in which, and the period within which, the recall is to be conducted;
  - (d) direct that a particular trade product or type of trade product be impounded, isolated, destroyed or otherwise disposed of and specify the manner in which the impounding, isolation, destruction or disposal is to be conducted;
  - (e) prohibit absolutely the carrying on of an activity in relation to a particular trade product or type of trade product, or permit the carrying on of the activity in accordance with conditions specified in the order;

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- (f) without limiting the generality of paragraph (e), impose conditions relating to the taking and analysis of samples of a trade product or of water or soil or any other thing that is part of the environment in which that activity is carried on in relation to the trade product;
  - (g) specify methods of analysis of any samples required to be taken in accordance with the order.
- (3) A trade protection order may be varied or revoked by the Minister in the same manner as the order was made.

### **19—Special provisions relating to recall orders**

- (1) A trade protection order requiring the recall or disposal, or both, of any trade product (a *recall order*) may require the person, or persons of a class, bound by the order to disclose to the public or to a class of persons specified in the order, in a manner so specified, any one or more of the following:
- (a) the particular trade product or type of trade product to be recalled or disposed of;
  - (b) the reasons why the trade product is being recalled or required to be disposed of;
  - (c) procedures for disposing of the trade product.
- (2) A person who is required by a recall order to conduct a recall of any trade product must give written notice to the Minister of the completion of the recall as soon as practicable after that completion.
- (3) A person who is bound by a recall order is liable for any cost incurred by or on behalf of the Minister in connection with the recall order and any such cost is taken to be a debt due to the Minister from that person.
- (4) In any proceedings for the recovery of the debt, a certificate signed by the Minister stating the amount of any costs and the manner in which they were incurred is evidence of the matters certified.

### **20—Manner of making order**

- (1) A trade protection order—
- (a) may be made in writing addressed to the person or persons intended to be bound by it, and served on that person or each of those persons, as the case requires; or
  - (b) may be addressed to several persons, to a class of persons, or to all persons.
- (2) Notice of an order addressed as referred to in subsection (1)(b) setting out the terms of the order and the persons to be bound by the order must, as soon as practicable after the order is made, be published in a newspaper that, in the opinion of the Minister, will be most likely to bring the order to the attention of the persons bound by it.
- (3) A trade protection order, when it takes effect, is binding on the person or persons to whom it is addressed.
- (4) A trade protection order that is served on a person takes effect on the date of service.
- (5) A trade protection order notice of which is published under subsection (2) takes effect at the beginning of the first day on which the notice was published.

- (6) A trade protection order ceases to have effect at the expiration of 90 days after the day on which it takes effect unless it is sooner revoked.
- (7) Subsection (6) does not prevent a further trade protection order being made in the same terms as an order that has expired.

## **21—Compensation if insufficient grounds for order**

- (1) A person bound by a trade protection order who suffers loss as a result of the making of the order may apply to the Minister for compensation if the person considers that there were insufficient grounds for the making of the order.
- (2) If there were insufficient grounds for the making of the trade protection order, the Minister is to pay such compensation to the applicant as is just and reasonable.
- (3) The Minister is to send written notification of his or her determination as to the payment of compensation under this section to each applicant for the payment of such compensation.
- (4) If the Minister has not determined an application for compensation under this section within 28 days of receiving the application, the Minister is taken to have refused to pay compensation.
- (5) An applicant for the payment of compensation under this section who is dissatisfied with a determination by the Minister as to the refusal to pay compensation, or as to the amount of compensation, may seek a review of the determination by the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*.
- (6) An application for review may be made to the Tribunal—
  - (a) in a case to which subsection (4) applies—within 28 days after the 28 day period referred to in that subsection; or
  - (b) in any other case—within 28 days after the day on which notification of the determination was received.

## **22—Failure to comply with order**

A person must not, without reasonable excuse—

- (a) carry on an activity in contravention of any prohibition imposed on the person by a trade protection order; or
- (b) neglect or refuse to comply with a direction given by a trade protection order; or
- (c) fail to comply with a condition specified in a trade protection order.

Maximum penalty: \$35 000.

# **Part 5—Enforcement**

## **Division 1—Authorised officers**

### **23—Appointment of authorised officers**

- (1) The Minister may appoint authorised officers for the purposes of this Act.

- (2) An appointment may be made subject to conditions specified in the instrument of appointment.
- (3) The Minister may, at any time, revoke an appointment or vary, revoke or add a condition of appointment.

## **24—Identification of authorised officers**

- (1) An authorised officer must be issued with an identity card—
  - (a) stating the name of the authorised officer; and
  - (b) containing a photograph of the authorised officer; and
  - (c) stating that the person whose name and photograph appear on the card is an authorised officer for the purposes of the Act.
- (2) If an authorised officer proposes to exercise powers under this Act against a person, the authorised officer must, if practicable, produce the identity card for inspection.

## **Division 2—Powers of authorised officers**

### **25—Powers of authorised officers**

- (1) An authorised officer may, for the purpose of the administration or enforcement of this Act—
  - (a) enter premises, and inspect the premises and anything in or on the premises, with the consent of the occupier or on the authority of a warrant issued under subsection (2);
  - (b) give directions with respect to the stopping or movement of a vehicle, vessel or aircraft;
  - (c) require a person—
    - (i) to answer a question to the best of that person's knowledge, information and belief;
    - (ii) to take reasonable steps to provide information;
  - (d) require a person to produce, or provide a copy of, a document and (if necessary) to operate a computer or other device in which information is stored to produce, or provide a copy of, a document in understandable form;
  - (e) retain a document for inspection, to make a copy of it, or to take extracts from it;
  - (f) carry out tests on agricultural products, veterinary products, trade products, land, equipment or other things, take and remove samples for analysis or require a person to provide a sample for analysis;
  - (g) take photographs, films or audio, video or other recordings;
  - (h) require a person who the authorised officer reasonably suspects has committed, is committing or is about to commit, an offence against this Act to state the person's full name and usual place of residence and to produce evidence of the person's identity;

- (i) seize and remove any thing that may be evidence of a contravention of this Act;
  - (j) require a person to give the authorised officer other assistance that may be reasonable in the circumstances.
- (2) A magistrate may issue a warrant authorising an authorised officer to enter premises and inspect the premises and anything in or on the premises (using force that may be reasonably necessary in the circumstances) if satisfied that the warrant is reasonably necessary for the administration or enforcement of this Act.
- (3) The warrant must—
  - (a) state whether the entry and inspection of the premises may be carried out at any time of the day or night or only during specified hours of the day or night; and
  - (b) specify the day on which, and the time at which, the warrant ceases to have effect (not being more than seven days after the issue of the warrant); and
  - (c) state the purpose for which the warrant is issued.
- (4) If a warrant might be executed without the use of force through the cooperation of another person and the other person is present and available to be asked for cooperation, the use of force to execute the warrant is not reasonably necessary unless the authorised officer has asked for the person's cooperation and the person has refused to cooperate or has failed to comply promptly with the request.
- (5) An authorised officer who executes a warrant must, as soon as practicable after execution of the warrant—
  - (a) prepare a notice containing—
    - (i) his or her own name and a statement that he or she is an authorised officer under this Act; and
    - (ii) the name of the magistrate who issued the warrant and the date and time of its issue; and
    - (iii) a description of the authority conferred by the warrant; and
    - (iv) a description of anything taken from the premises; and
  - (b) give the notice to the occupier of the premises or leave it for the occupier in a prominent position on the premises.
- (6) In the exercise of powers under this Act an authorised officer may be assisted by such persons as the authorised officer considers necessary in the circumstances.

## **26—Warrants in urgent circumstances**

- (1) An authorised officer may apply to a magistrate for a warrant by telephone, facsimile or other prescribed means if the officer considers the urgency of the situation requires it.
- (2) The magistrate may complete and sign the warrant in the same terms as for a warrant applied for in person if satisfied that there are reasonable grounds for issuing the warrant urgently.



- (3) The magistrate must—
- (a) tell the authorised officer—
    - (i) the terms of the warrant; and
    - (ii) whether the entry and inspection of the premises may be carried out at any time of the day or night or only during specified hours of the day or night; and
    - (iii) the date on which, and the time at which, the warrant was signed; and
    - (iv) the date on which, and the time at which, the warrant ceases to have effect (not being more than seven days after the magistrate completes and signs the warrant); and
  - (b) record on the warrant the reasons for granting the warrant.
- (4) The authorised officer must—
- (a) complete a form of warrant in the same terms as the warrant signed by the magistrate; and
  - (b) write on the form—
    - (i) the name of the magistrate; and
    - (ii) the date on which, and the time at which, the warrant was signed; and
  - (c) send the magistrate the completed form of the warrant not later than the day after the warrant is executed or ceases to have effect.
- (5) On receipt of the form of warrant, the magistrate must attach it to the warrant the magistrate signed.

## **27—Offence to hinder etc authorised officers**

- (1) Subject to this section, a person must not—
- (a) hinder or obstruct an authorised officer, or a person assisting an authorised officer, in the exercise of powers conferred by this Act; or
  - (b) use abusive, threatening or insulting language to an authorised officer or a person assisting an authorised officer; or
  - (c) refuse or fail, without reasonable excuse, to comply with a requirement made by an authorised officer in the exercise of powers conferred by this Act; or
  - (d) when required by an authorised officer under this Act to answer a question, refuse or fail to answer the question to the best of the person's knowledge, information or belief; or
  - (e) falsely represent, by words or conduct, that he or she is an authorised officer.

Maximum penalty: \$5 000.

- (2) A person must not assault an authorised officer or a person assisting an authorised officer in the exercise of powers under this Act.

Maximum penalty: \$10 000 or imprisonment for 2 years.

## 28—Self-incrimination

- (1) It is not an excuse for a person to refuse or fail to answer a question or to produce or provide a document, a copy of a document or information as required under this Part on the ground that to do so might tend to incriminate the person, or make the person liable to a penalty.
- (2) If compliance by a person with a requirement to answer a question or to produce or provide a document, a copy of a document or information might tend to incriminate the person or make the person liable to a penalty, then—
  - (a) in the case of a person who is required to produce or provide a document, a copy of a document or information—the fact of production or provision of the document, copy or information (as distinct from the contents of the document or the information); or
  - (b) in any other case—the answer given in compliance with the requirement,is not admissible in evidence against the person in proceedings (other than proceedings in respect of the making of a false or misleading statement or perjury) in which the person might be found guilty of an offence or liable to a penalty.

## 29—Offences by authorised officers

An authorised officer who, in the course of exercising powers under this Act—

- (a) addresses offensive language to another person; or
- (b) without lawful authority, hinders or obstructs or uses or threatens to use force in relation to another person,

is guilty of an offence.

Maximum penalty: \$10 000.

## Division 3—Compliance orders

### 30—Compliance orders

- (1) The Minister may issue an order under this Division (a *compliance order*) for the purpose of securing compliance with a requirement of this Act.
- (2) An order under this Division—
  - (a) subject to subsection (3), must be in the form of a written notice served on the person to whom the order is issued; and
  - (b) must specify the person to whom it is issued (whether by name or a description sufficient to identify the person); and
  - (c) must specify the requirement of this Act to which it applies; and
  - (d) may impose any requirement reasonably required for the purpose for which the order is issued, including one or more of the following:
    - (i) a requirement that the person discontinue, or not commence, a specified activity indefinitely or for a specified period or until further notice from the Minister;

- (ii) a requirement that the person not carry on a specified activity except at specified times or subject to specified conditions;
  - (iii) a requirement that the person take specified action within a specified period; and
- (e) must state that the person may, within 28 days, apply to the Tribunal for a review of the order.
- (3) An authorised officer may, if of the opinion that urgent action is required for the purposes of securing compliance with a requirement of this Act, issue an emergency compliance order imposing requirements of a kind referred to in subsection (2)(d).
- (4) An emergency compliance order—
  - (a) may be issued orally, but, in that event, the person to whom the order is issued must be advised forthwith of the person's right to apply to the Tribunal for a review of the order; and
  - (b) ceases to have effect on the expiration of 72 hours from the time of its issuing unless confirmed by a written compliance order issued by the Minister and served on the person.
- (5) The Minister may, by written notice served on a person to whom an order has been issued under this Division, vary or revoke the order.
- (6) A person to whom an order is issued under this Division must comply with the order.  
Maximum penalty: \$35 000.
- (7) A person must not hinder or obstruct a person complying with an order issued under this Division.  
Maximum penalty: \$5 000.
- (8) If a person who is required to take action in compliance with an order under this Division refuses or fails to do so, an authorised officer may take the action required to be taken by that person, with or without assistance, or cause that action to be taken.
- (9) The Minister may recover costs and expenses reasonably incurred by an authorised officer under subsection (8) as a debt owed by the person of whom the requirement was made.

### **31—Review**

- (1) A person to whom a compliance order has been issued may seek a review of the order or variation of the order by the Tribunal under section 34 of the *South Australian Civil and Administrative Tribunal Act 2013*.
- (2) An application for review may be made to the Tribunal within 28 days of the making of the order or variation.

## Part 6—Miscellaneous

### 32—False or misleading information

A person must not make a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of any particular) in any information furnished, or record kept, under this Act.

Maximum penalty: \$5 000.

### 33—Statutory declarations

If a person is required by or under this Act to furnish information to the Minister, the Minister may require that the information be verified by statutory declaration and, in that event, the person will not be taken to have furnished the information as required unless it has been verified in accordance with the requirements of the Minister.

### 34—Offences by body corporate

- (1) If a body corporate is guilty of a prescribed offence, each member of the governing body, and the manager, of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless the member or the manager (as the case may be) proves that he or she could not by the exercise of due diligence have prevented the commission of the offence.
- (2) If a body corporate is guilty of any other offence against this Act (other than an offence against the regulations), each member of the governing body, and the manager, of the body corporate are guilty of an offence and liable to the same penalty as is prescribed for the principal offence if the prosecution proves that—
  - (a) the member or manager (as the case may be) knew, or ought reasonably to have known, that there was a significant risk that such an offence would be committed; and
  - (b) the member or manager (as the case may be) was in a position to influence the conduct of the body corporate in relation to the commission of such an offence; and
  - (c) the member or manager (as the case may be) failed to exercise due diligence to prevent the commission of the offence.
- (3) Subsection (2) does not apply if the principal offence is an offence against section 14(5), 16, 27, 29, 30(7), 32 or 38.
- (4) A person referred to in this section may be prosecuted and convicted of an offence against this section whether or not the body corporate has been prosecuted or convicted of the principal offence committed by the body corporate.
- (5) The regulations may make provision in relation to the criminal liability of a member of the governing body, or the manager, of a body corporate that is guilty of an offence against the regulations.
- (6) In this section—

***prescribed offence*** means an offence against section 6, 7, 8, 11, 15, 22 or 30(6).

### **35—Recovery of technical costs associated with prosecutions**

If a person is convicted of an offence against this Act, the court must, on application by the Minister, order the convicted person to pay to the Minister the reasonable costs and expenses incurred by the Minister in the taking of any samples or the conduct of tests or analyses in the course of the investigation and prosecution of the offence.

### **36—General defence**

- (1) It is a defence to a charge of an offence against this Act if the defendant proves that the offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid commission of the offence.
- (2) This section does not apply in relation to a person who is charged with an offence under section 34.

### **37—Civil remedies not affected**

The provisions of this Act do not limit or derogate from any civil right or remedy and compliance with this Act does not necessarily indicate that a common law duty of care has been satisfied.

### **38—Confidentiality**

A person who is, or has been, engaged in work related to the administration or enforcement of this Act must not disclose confidential information obtained in, or in connection with, that administration or enforcement except—

- (a) for a purpose connected with the administration or enforcement of this Act, the Agvet Code of South Australia or a prescribed Act; or
- (b) to a law enforcement authority; or
- (c) as required by law; or
- (d) as authorised by the person to whom the duty of confidentiality is owed; or
- (e) as authorised by regulation.

Maximum penalty: \$10 000.

### **40—Service**

- (1) A notice or document required or authorised by this Act to be given to or served on a person may—
  - (a) be served on the person or an agent of the person personally; or
  - (b) be left for the person at his or her place of residence or business with someone apparently over the age of 16 years; or
  - (c) be posted to the person at his or her last known address; or
  - (d) be transmitted by facsimile transmission or electronic mail to the person's facsimile number or electronic mail address (in which case the notice or document will be taken to have been given or served at the time of transmission).

- (2) Without limiting the effect of subsection (1), a notice or other document required or authorised to be given to or served on a person may, if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be given to or served on the person in accordance with that Act.

#### **41—Evidence**

- (1) In proceedings for an offence against this Act, an allegation in the complaint that a person was or was not at a specified time an authorised officer will be accepted as proved in the absence of proof to the contrary.
- (2) In any legal proceedings, a document apparently certified by the Minister to be a licence, permit, order or other document issued or made under this Act or the Agvet Code of South Australia, or to be a copy of such a document, will be accepted as such in the absence of proof to the contrary.

#### **42—Incorporation of codes, standards or other documents**

- (1) A regulation or order under this Act may incorporate or operate by reference to a specified code, standard or other document as in force at a specified time or as in force from time to time.
- (2) If a code, standard or other document is incorporated or referred to—
- (a) a copy of—
    - (i) the code, standard or other document; and
    - (ii) any document referred to or incorporated in the code, standard or other document,must be kept available for inspection by the members of the public, without charge and during normal office hours, at a place determined by the Minister; and
  - (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

#### **43—Regulations**

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
- (a) prohibit the use or disposal of agricultural products or veterinary products;
  - (b) provide for a licensing system for persons who use agricultural products or veterinary products or require such persons to have specified qualifications, accreditation, training or experience (and provide for related evidentiary aids);
  - (c) prescribe conditions for the use of agricultural products or veterinary products including conditions about—
    - (i) the way in which products are used (including their concentration, rate or frequency of use);

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- (ii) the substances with which products are mixed or used;
  - (iii) the purposes for which products are used;
  - (iv) when products are used (including the season, time of the year or time of the day);
  - (v) the location at which products are used;
  - (vi) the equipment or method employed to use products;
  - (vii) the circumstances under which products are used (including climatic conditions);
  - (viii) notices to be given, or consents to be obtained, prior to use of products;
- (d) regulate specifications, testing and maintenance of equipment employed in the use of agricultural products or veterinary products;
  - (e) prescribe conditions for the keeping of agricultural products or veterinary products;
  - (f) prescribe conditions for the disposal of agricultural products or veterinary products;
  - (g) require the keeping of records and other information, and make provision for, or in relation to, the inspection of the records and information;
  - (h) require a person to provide information to the Minister or another prescribed person or authority, and prescribe the manner in which that information must be provided;
  - (i) exempt (conditionally or unconditionally) classes of persons, products, substances or activities from the application of this Act or specified provisions of this Act;
  - (j) fix fees (which may vary according to different factors) to be paid in respect of any matter under this Act and provide for the recovery, refund, waiver or reduction of such fees;
  - (k) prescribe fines, not exceeding \$10 000, for offences against the regulations.
- (3) The regulations may—
- (a) be of general application or limited application;
  - (b) make different provision according to the matters or circumstances to which they are expressed to apply;
  - (c) provide that a matter or thing in respect of which the regulations may be made is to be determined according to the discretion of the Minister or an authorised officer (and provide for reviews of such determinations);
  - (d) make provisions of a savings or transitional nature.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation repealed by principal Act

The *Agricultural and Veterinary Products (Control of Use) Act 2002* repealed the following:

*Agricultural Chemicals Act 1955*

*Stock Foods Act 1941*

*Stock Medicines Act 1939*

### Legislation amended by principal Act

The *Agricultural and Veterinary Products (Control of Use) Act 2002* amended the following:

*Agricultural and Veterinary Chemicals (South Australia) Act 1994*

*Livestock Act 1997*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2002	9	<i>Agricultural and Veterinary Products (Control of Use) Act 2002</i>	29.8.2002	29.8.2004 (s 7(5) <i>Acts Interpretation Act 1915</i> )
2009	84	<i>Statutes Amendment (Public Sector Consequential Amendments) Act 2009</i>	10.12.2009	Pt 12 (s 23)—1.2.2010 ( <i>Gazette</i> 28.1.2010 p320)
2013	16	<i>Statutes Amendment (Directors' Liability) Act 2013</i>	23.5.2013	Pt 2 (ss 4 & 5)—17.6.2013 ( <i>Gazette</i> 6.6.2013 p2498)
<b>2017</b>	<b>51</b>	<b><i>Statutes Amendment (SACAT No 2) Act 2017</i></b>	<b>28.11.2017</b>	<b>Pt 4 (ss 9 to 14)—22.2.2018 (<i>Gazette</i> 30.1.2018 p524)</b>



## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	1.2.2010
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.2.2010</i>
s 3		
s 3(1)		
<b>Tribunal</b>	<b>inserted by 51/2017 s 9</b>	<b>22.2.2018</b>
Pt 4		
s 21		
s 21(5)	<b>substituted by 51/2017 s 10</b>	<b>22.2.2018</b>
s 21(6)	<b>inserted by 51/2017 s 10</b>	<b>22.2.2018</b>
Pt 5		
s 30		
s 30(2)	<b>amended by 51/2017 s 11(1)</b>	<b>22.2.2018</b>
s 30(4)	<b>amended by 51/2017 s 11(2)</b>	<b>22.2.2018</b>
s 31		
s 31(1)	<b>amended by 51/2017 s 12(1)</b>	<b>22.2.2018</b>
s 31(2)	<b>substituted by 51/2017 s 12(2)</b>	<b>22.2.2018</b>
Pt 6		
s 34	substituted by 16/2013 s 4	17.6.2013
s 36		
s 36(1)	s 36 redesignated as s 36(1) by 16/2013 s 5	17.6.2013
s 36(2)	inserted by 16/2013 s 5	17.6.2013
s 39	<i>deleted by 84/2009 s 23</i>	<i>1.2.2010</i>
s 43		
s 43(3)	<b>amended by 51/2017 s 13</b>	<b>22.2.2018</b>
Sch	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>1.2.2010</i>

## Transitional etc provisions associated with Act or amendments

### *Statutes Amendment (SACAT No 2) Act 2017, Pt 4*

#### 14—Transitional provisions

- (1) A right of appeal under section 21 or 31 of the principal Act in existence (but not yet exercised) before the relevant day, will be exercised as if this Part had been in operation before the right arose, so that the relevant proceedings may be commenced before the Tribunal rather than the Administrative and Disciplinary Division of the District Court.

(2) Nothing in this section affects any proceedings before the Administrative and Disciplinary Division of the District Court commenced before the relevant day.

(3) In this section—

*principal Act* means the *Agricultural and Veterinary Products (Control of Use) Act 2002*;

*relevant day* means the day on which this Part comes into operation;

*Tribunal* means the South Australian Civil and Administrative Tribunal established under the *South Australian Civil and Administrative Tribunal Act 2013*.

## **Historical versions**

1.2.2010

17.6.2013