

Agriculture and Other Legislation Amendment Regulation (No. 2) 2016

Explanatory notes for SL 2016 No. 182

made under the

Agricultural Chemicals Distribution Control Act 1966
Chemical Usage (Agricultural and Veterinary) Control Act 1988

General Outline

Short title

Agriculture and Other Legislation Amendment Regulation (No. 2) 2016

Authorising law

Section 48 of the *Agricultural Chemicals Distribution Control Act 1966*
Section 38 of the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*

Policy objectives and the reasons for them

The *Agriculture and Other Legislation Amendment Act 2015* (AOLA Act) was assented to on 22 October 2015 and amended a number of Acts including the *Agricultural Chemicals Distribution Control Act 1966* (ACDC Act) and the *Chemical Usage (Agricultural and Veterinary) Control Act 1988* (CUC Act).

Over time, agricultural chemical legislation in Queensland has failed to keep pace with changing civil aviation authorisations and licence terminology. The legislation has also not kept pace with technological advances which now see unmanned aerial vehicles (UAVs) being used in more expanded roles within the agriculture industry and the current legislation does not contemplate the use of such technology in the distribution of chemicals.

Therefore the amendments made to the ACDC Act under the AOLA Act, streamline and update applications, licences and qualifications for the distribution of agricultural chemicals by aircraft and ground equipment. The amendments also align terminology with generic civil aviation terms.

The amendments to the ACDC Act recognise civil aviation authorisations required by persons to undertake agricultural chemical distribution activities without being prescriptive of the

specific authorities required and to recognise equivalent qualifications. These changes enable the licensing framework to be more flexible and enduring when changes occur.

In order to provide for the continued licensing of persons and contractors involved in the distribution of agricultural chemicals from both aircraft and ground equipment, it is necessary to make consequential amendments to the *Agricultural Chemicals Distribution Control Regulation 1998* (ACDC Regulation) to reflect the changes made to the ACDC Act.

Similarly, amendments are required to the *Chemical Usage (Agricultural and Veterinary) Control Regulation 1999* (CUC Regulation) to update specific competencies for prescribed qualifications and to reflect the structure for recognition of equivalent qualifications also adopted by the ACDC Act.

Achievement of policy objectives

The policy objectives with regard to the ACDC Act are achieved by amendments to the ACDC Regulation to include the prescribed qualifications for piloting or using manned aircraft or UAVs and by amendments which specifically update the competencies required for the use of UAVs in the distribution of agricultural chemicals. The flexibility objectives of the amendments are also achieved by recognising the successful completion of training which the chief executive reasonably considers is substantially equivalent to the current accreditation and competency examinations.

Similarly, the policy objectives with regard to the amendments to the CUC Regulation are achieved by amending provisions to recognise the successful completion of substantially equivalent training. The amendments provide for the chief executive to reasonably consider other training as equivalent to the completion of prescribed units of competency from a registered training organisation for the use of restricted chemical products such as those containing copper, chromium and arsenic. These amendments provide flexibility to allow the regulation to accommodate qualification changes over time without the need for continual amendment.

Consistency with policy objectives of authorising law

The subordinate legislation is consistent with the main purposes of both the ACDC Act and the CUC Act to control the distribution of agricultural chemicals from aircraft and ground equipment and to control the use of substances which include or comprise the residues of certain chemicals respectively. The amendments ensure that only persons who have acquired prescribed competencies or equivalent training are able to distribute or use these chemicals under the respective regulations.

Inconsistency with policy objectives of other legislation

There is no inconsistency with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

The ACDC Act and CUC Act set out the framework for authorising persons to distribute agricultural chemicals and use restricted chemical products respectively. As the subordinate

legislation merely aligns with changes to each parent Act, there are no alternative means for achieving the policy objectives.

Benefits and costs of implementation

There are no additional administrative costs associated with implementing the subordinate legislation.

Consistency with fundamental legislative principles

The legislation is generally consistent with fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992* (LSA). However, section 6 of the subordinate legislation replaces sections 7 and 8 of the ACDC Regulation, which provides in part, the power for the chief executive to accept the successful completion of training, the chief executive reasonably considers to be substantially equivalent to the qualifications, for the issue of a pilot chemical rating licence and an unrestricted commercial operator's licence.

The potential FLP issue is whether the subordinate legislation has sufficient regard to the institution of Parliament in that it allows the subdelegation of power delegated by an Act only in appropriate cases and to appropriate persons and if authorised by the Act (s4(5)(e) – LSA). The power of the chief executive in this instance may be considered an unauthorised subdelegation of power as the Act provides in part, that a person may apply for either licence if they have the qualification prescribed by regulation.

This potential FLP is mitigated by the fact that the subordinate legislation prescribes the qualifications required for both licences even though it provides for alternative qualifications to be considered by the chief executive. The power to decide the prescribed qualifications for the issue of these licences is not entirely delegated to the chief executive and the chief executive is further constrained in the exercise of this power as he must consider the successful training to be substantially equivalent to the prescribed qualifications.

Delegation of the power is appropriate in the circumstance because it provides greater flexibility to keep pace with changing courses and their availability and to adopt new training options in a timely manner. The subordinate legislation balances the use of prescriptive regulation with the consideration of alternative qualifications. This acknowledges that the prescribed qualifications for these types of licences are subject to constant review and amendment.

The powers delegated to the chief executive are also viewed as more in the administrative realm as opposed to a legislative one, as they can be considered to establish when the prescribed qualification setting provisions apply.

Consultation

No specific consultation with industry has been undertaken on the subordinate legislation.

The amendments to the ACDC Regulation align with changes to the ACDC Act and also provide scope for recognition of current civil aviation authorisations and equivalent training, therefore consultation is not required.

The changes to units of competency in the CUC Regulation under the Australian Qualifications Framework (AQF) have been agreed nationally by all state and territory agencies with jurisdiction over the distribution and use of agricultural chemicals and restricted chemical products. The AQF certification documentation referred to in the provisions is consistent with nationally recognised vocational education and training qualifications and consultation was not required on these amendments.

The Queensland Productivity Commission (QPC) was consulted with regard to Regulatory Impact Statement requirements. The QPC advised the amendment regulation is excluded from further analysis given the amendments are consequential and machinery in nature.

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