

# Agricultural Chemicals Distribution Control Regulation 2021

Explanatory Notes for SL 2021 No. 129

made under the

*Agricultural Chemicals Distribution Control Act 1966*

## General Outline

### Short title

*Agricultural Chemicals Distribution Control Regulation 2021*

### Authorising law

Sections 3, 12, 16, 16A, 17, 19, 24, 28, 29 and 48, and the schedule of the *Agricultural Chemicals Distribution Control Act 1966*

### Policy objectives and the reasons for them

The *Agricultural Chemicals Distribution Control Act 1966* (the Act) and the *Agricultural Chemicals Distribution Control Regulation 2021* (the Regulation) are the legislative framework that controls the distribution of agricultural chemicals using aircraft or ground equipment in Queensland. The Act and Regulation form a small, but critical, part of a much larger State and Commonwealth regulatory framework for agricultural and veterinary chemicals.

The main policy objectives of the Regulation are to provide for:

- the competency and training matters relevant to the licensing framework for the distribution of agricultural chemicals by air or ground equipment in Queensland;
- the parts of the State to which the Act does not apply; and
- hazardous areas and the requirements that apply when distributing agricultural chemicals in those areas.

The Regulation replaces, with minor changes, the *Agricultural Chemicals Distribution Control Regulation 1998* (the expired Regulation) which is due for expiry on 31 August 2021 in accordance with the automatic expiry provisions in part 7 of the *Statutory Instruments Act 1992*.

The policy objectives of the minor changes to the Regulation are to:

- Update minimum training requirements for obtaining and holding licences for aerial and ground distribution of agricultural chemicals, as agreed to at various National Agriculture Ministers' Forums (AGMIN);

- Update superseded licence qualification competency units to maintain currency;
- Update the particulars to be included on the licence register;
- Remove the restriction on opening containers of volatile chemicals because this risk is now adequately managed by label instructions; and
- Clarify the offences which apply to aerial and ground distribution of agricultural chemicals and those which apply to aerial or ground distribution of regulated chemicals in hazardous areas only, which carries a higher maximum penalty under section 29 of the Act.
- Make other minor amendments to modernise the regulation.

## Achievement of policy objectives

The Regulation achieves the main policy objectives by including provisions largely based on those in the expired Regulation. For example, part 2 of the Regulation provides for the qualifications for aerial distribution, part 3 provides for the qualifications for ground distribution and part 4 provides for licences, including suspension of licences.

The other policy objectives of the Regulation are achieved in the following ways:

- Removing the competency unit 'AHCPMG301 – Control weeds' for a UAV class of pilot chemical rating licence or a commercial operator licence (sections 6 and 8 of the Regulation);
- Replacing the superseded competency unit 'AHCCHM303 – Prepare and apply chemicals' with a new competency unit 'AHCCHM307 – Prepare and apply chemicals to control pest, weeds and diseases' (sections 6 and 8 of the Regulation);
- Updating the competency units for when a pest management technician is taken to hold a commercial operator's licence to the following:
  - 'CPPUPM3005—Manage pests without applying pesticides' (section 9(a)(i) of the Regulation);
  - 'CPPUPM3006—Manage pests by applying pesticides' (section 9(a)(ii) of the Regulation); and
  - 'CPPUPM3018—Maintain equipment and pesticide storage area in pest management vehicles' (section 9(a)(iii) of the Regulation);
- Removing the superseded competency units 'PRMPM05 – Modify environment to manage pests', 'PRMPM06 – Apply pesticide to manage pests' and 'PRMPM18 – Maintain an equipment and consumables storage area' (section 9 of the Regulation);
- Amending the prescribed matters for the licensee register (section 13 of the Regulation) to include the licensee's name and suburb (rather than full address), the licence type and number and the dates the licence commences and is due to expire;
- Not including restrictions on opening containers of volatile chemicals (section 30 of the expired Regulation); and
- Inserting a subsection in section 15 which states that the penalty for carrying out aerial or ground distribution with equipment or in conditions which might reasonably be expected to cause damage or injury to a crop or stock does not apply in relation to aerial or ground distribution in a hazardous area under section 19.

## **Consistency with policy objectives of authorising law**

The Regulation is consistent with the main objectives of the Act which, in essence, are to ensure the distribution of agricultural chemicals is carried out correctly and by appropriately licensed persons.

## **Inconsistency with policy objectives of other legislation**

The Regulation is consistent with the policy objectives of other legislation.

## **Alternative ways of achieving policy objectives**

An alternative way of achieving the policy objective would be to replace the expired Regulation without any changes. This option is less optimal because it would not improve regulation by incorporating appropriate technical updates and corrections.

Allowing the expired Regulation to lapse without replacing it would reduce the effectiveness of the Act. The use of agricultural chemicals has inherent risk and the nature and level of the risk depend on the chemical(s) used and the circumstances of use. It is essential that commercial users of agricultural chemicals are appropriately qualified and licensed. If the expired Regulation had been allowed to lapse without a replacement, there would be no licensing qualification requirements, and no requirements for aerial and ground distribution in hazardous areas. This would have potentially allowed the distribution of agricultural chemicals by persons who are not appropriately qualified or trained to carry out the distribution. This would likely have increased the instance of agricultural chemical misuse, resulting in increased risk to human health, the environment, social amenity and the economy.

## **Benefits and costs of implementation**

The Regulation will benefit the community by ensuring the distribution and control of agricultural chemicals is only carried out by persons adequately trained and licensed to do so. This in turn ensures that agricultural chemicals are distributed in a way that is not likely to cause any damage or injury to crop or stock, and provides recourse if such damage or injury does occur.

The Regulation does not impose additional cost on the State Government and reduces costs on applicants compared to the expired Regulation because only two units of competency are required for aerial and ground distribution of agricultural chemicals instead of three.

## **Consistency with fundamental legislative principles**

The Regulation is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

**Legislation should have sufficient regard to rights and liberties of individuals - Legislative Standards Act 1992 (LSA), section 4(2)(a)**

Section 13 prescribes, for the purposes of section 24 of the Act, the matters that must be kept in a register of licensees that is available for public inspection at all reasonable times. Specifically, section 13 provides that the following are to be entered in the register:

- a) The licensee's name;
- b) The licensee's suburb;
- c) The type of licence and licence number;
- d) The date the licence commences;
- e) The date the licence expires; and
- f) Any other particulars the standards officer thinks are appropriate.

Section 13 of the Regulation potentially breaches the fundamental legislative principle that legislation should have sufficient regard to rights and liberties of individuals, namely the right to privacy, because it requires certain personal information to be kept on a register that is available to the public for inspection.

However, the potential breach is justified because it is the most efficient way for the public to verify that persons are appropriately licensed to distribute agricultural chemicals and hence enable them to avoid engaging persons who are unlicensed and, therefore, may not be qualified to distribute agricultural chemicals. Distribution by persons who are unqualified may result in significant adverse consequences to human health and trade through the contamination or destruction of crops and livestock.

Further, any potential breaches of privacy are mitigated by the fact that the register only requires the licensee's suburb to be kept on the register, rather than the licensee's full address.

Section 30 of the Regulation will also affect the rights and liberties of some individuals because it creates an offence for certain conduct. The offence is intended to capture the conduct of a person who provides false or misleading information in his or her application for a licence or distribution permit. The creation of the offence is warranted in the public interest because of the significant risks unqualified persons may pose to the environment, human health, social amenity and the economy through the inappropriate distribution of agricultural chemicals were they to obtain a licence or permit on the basis of false or misleading information. The proposed penalty is consistent with analogous provisions in the statute book.

**Legislation should have sufficient regard to the institution of Parliament by containing only matters appropriate for subordinate legislation - LSA, section 4(5)(c)**

Section 30 prescribes that a person, in applying for a licence or distribution permit, must not state or give anything to the chief executive that is false or misleading and creates a maximum penalty for the offence of 20 penalty units.

The former Scrutiny Committee adopted a formal policy that legislative power to create offences and prescribe penalties could be delegated in limited circumstances, if the safeguards set out in the policy were observed. The safeguards included requirements that: rights and liberties of individuals should not be affected by the delegation of the power; the

obligations imposed on a person under the delegated power be limited and the maximum penalties generally ought not to exceed 20 penalty units.

Section 48(2)(a) of the Act provides that a regulation may be made about regulating aerial or ground distribution of agricultural chemicals including the issuing of permits. Further, section 48(2)(n) of the Act provides that a regulation may impose a penalty not exceeding 35 penalty units for a contravention of a regulation. The Act therefore provides the head of power for the Regulation to prescribe a penalty of 20 penalty units in the circumstance where a person provides false or misleading statements or documents in applying for a licence or distribution permit.

## Consultation

The Department of Agriculture and Fisheries consulted relevant stakeholders, including peak industry bodies, about desirability of changes when the expired Regulation was to be replaced. Stakeholders were invited to provide comment in May 2020. Stakeholders were consulted from organisations including Growcom, AgForce Queensland, Queensland Farmers Federation, Canegrowers, Australian Cane Farmers Association, Cotton Australia, GrainGrowers, Grain Producers Australia, Nursery and Garden Industry Queensland, Australian Banana Growers' Council, Australian Mango Industry Association, Skills Impact, Aerial Application Association of Australia, Civil Aviation Safety Authority, Australian Association for Unmanned Systems, Australian Certified UAV Operators Inc., Independent Tertiary Education Council Australia, TAFE Directors Australia, Australian Pesticides and Veterinary Medicines Authority and the Queensland Local Government Association of Queensland,

Key stakeholders consulted were supportive of remaking the expiring regulation with the proposed changes. Of the 22 organisations consulted, the department received 11 responses predominantly from peak industry bodies and Local Government. All organisational responses were positive and respondents were unanimous in expressing strong support for the proposed changes, including:

- updating minimum training requirements for obtaining and holding licences for the distribution of agricultural chemicals as agreed at various AGMIN forums;
- updating licence qualification competency units to align with current training within the National Register of Vocational Education and Training;
- requiring only a licensee's suburb, rather than full address, to be included on the register of licences kept by the department;
- removing the restriction on opening containers of volatile chemicals; and
- removing transitional provisions that are no longer relevant.

The Office of Best Practice Regulation (OBPR) noted that a sunset review of the *Agricultural Chemicals Distribution Control Regulation 1998* had been undertaken; that there was a demonstrated need for continued regulatory action; and that the proposal was unlikely to result in significant adverse impacts. Therefore, no further regulatory impact analysis was required under the Queensland Government Guide to Better Regulation.