

AERIAL SPRAYING CONTROL ACT.

New South Wales



ANNO OCTAVO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 11, 1969.

An Act relating to the spraying of agricultural chemicals from aircraft; and for purposes connected therewith. [Assented to, 26th March, 1969.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Aerial Spraying Control Act, 1969".

Short title and commencement.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2.

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No. 11, 1969 **2.** (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

Interpreta-
tion.

“aerial spraying” means the spraying, spreading or dispersing of any agricultural chemical from an aircraft in flight;

“agricultural chemical” means, subject to subsection two of this section—

- (a) any substance that is a fertilizer, fungicide, herbicide, lure or pesticide for the purposes of the Fertilizers Act, 1934, as subsequently amended;
- (b) any substance that is a fungicide, insecticide or weed destroyer, for the purposes of the Pest Destroyers Act, 1945, as subsequently amended; or
- (c) any other substance that is prescribed as an agricultural chemical for the purposes of this Act,

and includes any preparation that contains any substance referred to in the foregoing provisions of this definition;

“aircraft” means any machine that can derive support in the atmosphere from the reactions of the air;

“Air Navigation Regulations” means the Air Navigation Regulations made under and as in force from time to time under the Commonwealth Air Navigation Act, and includes those regulations as applied by virtue of the Air Navigation Act, 1938, as subsequently amended;

“certificate” means a current and valid chemical rating certificate under subsection three of section four of this Act, and, in relation to a current and valid certificate or licence referred to in subsection five of that section, includes that certificate or licence in so far as it operates in this State by virtue of that subsection;

“Commonwealth

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“Commonwealth Air Navigation Act” means the Air Navigation Act 1920–1966 of the Parliament of the Commonwealth of Australia, and includes that Act as amended from time to time and any Act of that Parliament passed in substitution for that Act; No. 11, 1969

“Department” means the Department of Agriculture of the State;

“Director-General” means the person for the time being holding office or acting as the Director-General of the Department;

“owner”, in relation to an aircraft that is—

- (a) the subject of a hire-purchase agreement, means the person in possession of the aircraft under that agreement; or
- (b) the subject of a bill of sale, means the person by whom the bill of sale was made or given;

“pilot in command”, in relation to an aircraft, means the pilot responsible for the operation and safety of an aircraft from the moment at which the aircraft moves under its own power for the purpose of taking off until the moment at which it comes to rest after being airborne;

“prescribed” means prescribed by the regulations;

“regulations” means the regulations made under this Act;

“spray-drift” means the movement of any fractions of the original spray from an aircraft, containing agricultural chemicals in solution or in suspension or in the form of chemical particles, vapours or volatile components thereof;

“substance” includes any solid, liquid or gas.

(2) The regulations may provide that any substance or preparation that would otherwise be an agricultural chemical shall be deemed not to be an agricultural chemical for the purposes of this Act or any specified provisions of this Act or the regulations.

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Construc-
tion.

3. This Act shall be read and construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative powers of the State, to the intent that, where any provisions of this Act, or the application thereof to any person or circumstance is held invalid, the remainder of this Act, and the application of that provision to other persons or circumstances, shall not be affected.

Application
for and
grant of
certificates.

4. (1) A person who is the holder of—

- (a) a current and valid commercial or senior commercial pilot licence endorsed with an agricultural rating under the Air Navigation Regulations; and
- (b) the prescribed qualifications,

may make application to the Director-General for a chemical rating certificate.

(2) An application for a chemical rating certificate or for the renewal of such a certificate shall be in or to the effect of the prescribed form, be made in the prescribed manner and be accompanied by the prescribed fee.

(3) Subject to the regulations, the Director-General may—

- (a) grant the application and issue a chemical rating certificate; or
- (b) refuse the application.

(4) Subject to subsection six of this section, a certificate issued under subsection three of this section—

- (a) shall remain in force for the prescribed period; and
- (b) may be renewed in the prescribed manner and upon renewal shall remain in force for the prescribed period.

(5)

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(5) Subject to this Act, a certificate or licence issued **No. 11, 1969** under a law of any other State or Territory of the Commonwealth that corresponds to a certificate issued under subsection three of this section shall, during its currency, operate in this State for all purposes as though it were issued under that subsection, and shall have force and effect accordingly.

(6) The Director-General may—

- (a) attach any special conditions to a certificate;
- (b) otherwise vary a certificate; or
- (c) on the prescribed grounds and in the prescribed manner, suspend or cancel a certificate.

(7) The holder of a certificate shall comply with any special conditions attached to it under subsection six of this section.

(8) The holder of a certificate or licence referred to in subsection five of this section shall, in addition to the requirements of subsection seven of this section, but except in so far as there is a conflict with those requirements, comply with any conditions attached to it by virtue of the law under which it was issued (as referred to in the said subsection five).

5. (1) Where the Director-General decides to— **Appeal.**

- (a) refuse an application for a certificate or renewal of a certificate;
- (b) attach to a certificate a special condition or otherwise vary a certificate; or
- (c) suspend or cancel a certificate,

he shall within seven days after doing so send by post to the applicant or the holder or former holder of the certificate, as the case may be, a notice in writing setting out his decision and the grounds therefor.

(2)

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(2) The applicant or the holder or former holder of the certificate, as the case may be (in this section referred to as the "appellant"), may, in accordance with rules of court and within the time prescribed by those rules, appeal against the Director-General's decision to a District Court judge having jurisdiction in the district where the appellant resides or carries on business or proposes to carry on business.

(3) The appeal shall be in the nature of a rehearing.

(4) The decision of the judge upon the appeal shall be final, and shall be binding upon the Director-General and the appellant, and shall be carried into effect accordingly.

(5) If in the decision of the judge costs are awarded, the costs may be enforced and recovered in like manner to costs awarded in a judgment of the District Court.

No aerial spraying unless pilot holds certificate.

6. (1) After the expiration of three months after the commencement of this Act, a person shall not carry out, or cause or permit to be carried out, any aerial spraying, unless the pilot in command of the aircraft from which the spraying is carried out is the holder of a certificate.

(2) A person who contravenes or fails to comply with any of the provisions of subsection one of this section shall be guilty of an offence against this Act and liable to a penalty not exceeding four hundred dollars.

Security.

7. (1) No aerial spraying shall be commenced unless the owner of the aircraft from which the spraying is to be carried out has in respect of that aircraft—

(a) lodged with the Director-General; or

(b) satisfied the Director-General that there is lodged in another State or Territory of the Commonwealth with a person acceptable to the Director-General,

security in the form of a contract of insurance—

(i) which if lodged under paragraph (a) of this subsection is approved by the Minister or if lodged as referred

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referred to in paragraph (b) of this subsection is No. 11, 1969
 approved by a person acceptable to the Director-
 General under that paragraph;

- (ii) which if lodged under paragraph (a) of this subsection is issued by a company approved by the Director-General or if lodged as referred to in paragraph (b) of this subsection is issued by a company approved by a person acceptable to the Director-General under that paragraph;
- (iii) which covers aerial spraying operations in any part of Australia;
- (iv) which, in relation to each aerial spraying operation carried out by that aircraft, provides for the cover of all amounts in the aggregate up to the insured amount which the insured person is liable to pay to persons (other than the owner of that aircraft) who suffer loss of or damage to their property (including livestock) caused by any agricultural chemical released from that aircraft (whether in the course of aerial spraying or by spray-drift), being loss or damage in respect of which the company which issued the contract of insurance has, under the contract of insurance, agreed to indemnify that person; and
- (v) which provides that the insured amount referred to in paragraph (iv) of this subsection is not less than thirty thousand dollars.

(2) Notwithstanding anything in subsection one of this section, a contract of insurance referred to in that subsection—

- (a) may provide that, in respect of the total amount that the insured person is, in relation to any one claim, liable to pay to any person or persons suffering loss or damage referred to in paragraph (iv) of subsection one of this section, the insured person shall pay an initial amount which—
 - (i) shall be specified in the contract of insurance; and
 - (ii)

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- (ii) shall not exceed the prescribed amount, or where no amount is prescribed, the sum of one hundred dollars; and
- (b) may be issued by a company which is approved as referred to in paragraph (ii) of that subsection and which is acting, in relation to the contract of insurance, in conjunction with any other company which is not so approved.

(3) Without affecting the generality of subsection one of this section, a contract of insurance referred to in that subsection may contain such conditions, warranties and exclusions as the Minister approves.

No aerial spraying unless security is lodged.

8. A person shall not use any aircraft for the purpose of carrying out aerial spraying, unless at the time the aerial spraying is carried out—

- (a) there is lodged with the Director-General, or the Director-General is satisfied that there is lodged, a security as required by section seven of this Act; and
- (b) that security is in force.

Records.

9. (1) In this section, "the operator", in relation to an aerial spraying operation, means the person at whose direction or upon whose authority an aircraft is used to carry out the aerial spraying operation.

(2) Where an aerial spraying operation is carried out from an aircraft, the operator shall make a record of the following particulars and matters :—

- (a) the name and address of the pilot in command of the aircraft;
- (b) the name and address of the person for whom the spraying is carried out;
- (c) the name and full description of each agricultural chemical used in the spraying;
- (d) sufficient particulars to identify the land so sprayed (including approximate distances and directions from the nearest city, town or village);

(e)

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- (e) the date and time of the spraying; No. 11, 1969
- (f) the estimated velocity and direction of the wind at the time of the spraying;
- (g) the quantity and concentration of each agricultural chemical applied per acre during the spraying;
- (h) the total acreage so sprayed;
- (i) the type of crop so sprayed; and
- (j) such other particulars and matters as may be prescribed.

(3) The operator shall keep any record made pursuant to subsection two of this section for a period of two years after the spraying is carried out.

(4) An operator shall, upon demand made by the Director-General or an officer of the Department authorised in writing by the Director-General in that behalf, produce any record made and kept by him pursuant to this section to the Director-General or that officer, as the case may be.

(5) The operator shall forward, as prescribed, a copy of the record required to be made by him under subsection two of this section, in relation to an aerial spraying operation, to the Regional Supervisor of Agriculture (in this section referred to as "the Supervisor") for the region in which the operation was carried out or partly carried out.

(6) The regulations may make provision for or with respect to the period within which the copy referred to in subsection five of this section is to be forwarded and the period in respect of which the copy is to relate.

(7) The Supervisor shall compile a register of the copies of records forwarded to him under this section.

(8) A copy of a record forwarded to the Supervisor under this section shall be retained by him in the register for the prescribed period.

(9)

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No. 11, 1969 (9) A register compiled by the Supervisor under this section may be inspected by any person at any reasonable time.

(10) A person may, on payment of the prescribed fee, obtain an extract, certified under the hand of the Supervisor to be a true extract, from a register compiled under this section.

(11) A record made and kept under this section, or a register compiled under this section, or an extract from such a register, certified under this section, shall be evidence of the particulars and matters stated therein.

(12) A person who knowingly makes or causes or permits or allows to be made any false or misleading statement in any record required to be made under this section, or in any copy (or purported copy) of that record required to be forwarded to the Supervisor under this section, shall be guilty of an offence against this Act.

**Inspection
of land.**

10. (1) The Director-General or an officer of the Department authorised in writing by the Director-General in that behalf may—

(a) enter any land on which any crops, trees, plants, pastures or other growth or animal life has or have been reported to the Director-General or any such officer to have been injuriously affected by aerial spraying or which he suspects to have been so affected and carry out such inspections as he thinks fit for the purpose of ascertaining whether (and, if so, to what extent) any such crops, trees, plants, pastures, growth or animal life have been so affected or for any purpose connected with the carrying out or enforcing of this Act or the regulations; and

(b)

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(b) enter and inspect any land for the purpose of No. 11, 1969 investigating—

- (i) possible sources of spray-drift; or
- (ii) any other matter that is connected with the carrying out or enforcing of this Act or the regulations and specified in writing by the Director-General in that behalf.

(2) Any person who prevents, hinders, delays or obstructs the entry on or the inspection of any land by the Director-General or an officer referred to in subsection one of this section, or who in any way obstructs or impedes the Director-General or such an officer in the exercise of any of the powers conferred by that subsection, shall be guilty of an offence against this Act and liable to a penalty not exceeding four hundred dollars.

11. (1) The Director-General may, by writing under his hand and with the consent of the Minister, delegate to any person such of his powers, authorities, duties and functions under this Act or the regulations (except this power of delegation) as are specified in the instrument of delegation. Director-General may delegate.

(2) A delegate when acting in pursuance of and within the scope of any delegation under this section shall be deemed to be the Director-General.

(3) Notwithstanding any such delegation, the Director-General may continue to exercise and perform any of his powers, authorities, duties and functions so delegated.

(4) The Director-General may at any time in writing revoke any such delegation, either wholly or in part.

(5) Where the exercise or performance of any power, authority, duty or function of the Director-General is dependent upon the opinion, belief or state of mind of the Director-General

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No. 11, 1969 Director-General and that power, authority, duty or function has been delegated under this section, the power, authority, duty or function so delegated may be exercised or performed under the delegation upon the opinion, belief or state of mind of the delegate.

Offences. **12.** A person who contravenes or fails to comply with any provision of this Act shall be guilty of an offence against this Act.

Penalty. **13.** Except where otherwise provided, a person who is guilty of an offence against this Act shall be liable to a penalty not exceeding two hundred dollars.

Proceedings for offences. **14.** All proceedings for offences against this Act or the regulations shall be disposed of summarily before a stipendiary magistrate or any two justices of the peace in petty sessions.

Regulations. **15.** (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to—

- (a) prohibiting or regulating the use in aerial spraying of any agricultural chemical;
- (b) the cleansing of aircraft or other equipment used or intended to be used for or in connection with aerial spraying;
- (c) prohibiting or regulating aerial spraying in conditions that are likely to result in the drifting of the spray;
- (d) regulating the droplet size or particle size of agricultural chemicals used in aerial spraying;
- (e) the making, keeping and inspection of records (additional to any record required to be made and kept under section nine of this Act) and the production of those records in any proceedings;
- (f)

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- (f) the display in any aircraft referred to in section No. 11, 1969 seven of this Act or in any premises of the prescribed particulars;
 - (g) the mode of aerial spraying and the appliances to be used in connection therewith;
 - (h) the terms and conditions upon which a certificate may be obtained and the conditions to be observed by the holder of a certificate;
 - (i) the fees to be paid under this Act or the regulations;
 - (j) the forms to be used for the purposes of this Act or the regulations; and
 - (k) all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may be so made—
- (a) as to be of general or specially limited application according to time, place or circumstance; or
 - (b) as (without affecting the generality of paragraph (a) of this subsection) to apply—
 - (i) to the whole of the State or to any specified part or parts thereof;
 - (ii) to any specified agricultural chemical or substance or preparation or to any agricultural chemical or substance or preparation of a specified description;
 - (iii) to the whole of the year or to any specified part of the year;
 - (iv) to all weather conditions or to weather conditions of a specified condition; or
 - (v) in relation to aerial spraying or doing any other specified act, to any specified method or to any methods of a specified description.

(3)

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(3) The regulations may provide that any act or thing shall be done or be in accordance with a specified standard or with the approval or to the satisfaction of a specified person or class of persons.

(4) The regulations may confer upon a specified person or class of persons a discretionary authority.

(5) The regulations may confer on the Director-General power to issue, in such manner as may be prescribed, instructions, orders, directions or requirements for the purpose of ensuring that aerial spraying is carried out in accordance with this Act and the regulations.

(6) The regulations may impose a penalty not exceeding two hundred dollars for any breach thereof or for failure to comply with any instruction, order, direction or requirement referred to in subsection five of this section.

(7) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in the regulations; and
- (c) be laid before both Houses of Parliament within fourteen sitting days after the publication thereof if Parliament is in session, and if not, then within fourteen sitting days after the commencement of the next session.

(8) If either House of Parliament passes a resolution, of which notice has been given at any time within fifteen sitting days after the regulations have been laid before that House, disallowing any regulation or part thereof, the regulation or part shall thereupon cease to have effect.