

AERIAL SPRAYING CONTROL.

No. 88 of 1966.¹

[As amended by Acts:

No. 31 of 1968,¹ assented to 4th November, 1968;

No. 45 of 1970,¹ assented to 8th October, 1970;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT relating to the spraying of agricultural chemicals from aircraft and to make provision for incidental and other purposes.

[Assented to 12th December, 1966.]

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

1. This Act may be cited as the *Aerial Spraying Control Act, 1966-1970*.

Short title.
Amended by
No. 45 of
1970 s. 1.

2. This Act shall come into operation on a date to be fixed by proclamation.¹

Commence-
ment.

3. In this Act, unless the contrary intention appears—

Interpre-
tation.
Amended by
No. 31 of
1968, s. 3.

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

¹ Came into operation 21st May, 1971. See *Gazette* 21/5/71, p. 1726.

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“agricultural chemical” means any chemical prescribed as an insecticide, fungicide or herbicide, or as an agricultural chemical or fertiliser or any preparation containing a chemical so prescribed;

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

“certificate” means a current and valid pilot chemical rating certificate granted to a pilot of an aircraft by the Director under section seven of this Act;

“hazardous area” means an area declared by the Minister under section nine of this Act to be a hazardous area for the purposes of this Act;

“owner” used in relation to an aircraft the subject of a hire purchase agreement, a hiring agreement or a bill of sale, means the person in possession of the aircraft under the hire purchase or hiring agreement or the person by whom the bill of sale was made or given;

“pilot in command” 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;

“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;

“the Department” means the department of the State Public Service known as the Department of Agriculture;

“the Director” means the person for the time being holding the office of Director of Agriculture in the Department and includes the Deputy Director.

4. This Act shall be construed so as not to exceed the legislative power of the State, the intention being that if any provision of this Act would, but for this section, be construed as being in excess of that power, it shall, to the extent to which it is not in excess of that power, be a valid enactment.

Severability.

5. The provisions of this Act relating to hazardous areas bind the Crown in right of the State.

Application of Act to Crown.

6. A person shall not, on or after a date three months from the coming into operation of this Act, knowingly and wilfully 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.

Control of aerial spraying. Amended by No. 31 of 1968, s. 4.

Penalty: Four hundred dollars or imprisonment for six months or both.

7. (1) A person who is the holder of—

Application for, and effect of, certificate.

(a) a current and valid commercial licence or senior commercial pilot's licence endorsed with an agricultural rating under the Air Navigation Regulations of the Commonwealth as in force from time to time or any regulations in substitution therefor as so in force; and

(b) the prescribed qualifications,

may, on payment of the prescribed fee, make an application for a certificate in the manner prescribed, to the Director who may grant or refuse the application.

(2) A certificate, during the period of its currency and subject to, and in accordance with, this Act, the Air Navigation Act, 1920-1963 of the Commonwealth as amended from time to time, or any Act of the Commonwealth passed in substitution for that Act, the regulations made under any such Act and subject to the compliance with the conditions attached to the certificate, entitles the holder of the certificate to act as pilot in command of an aircraft from which aerial spraying is carried out.

"This Act" includes regulations. See Act No. 30 of 1918, s. 4.

Appeal
against
refusal to
grant
certificate
or renewal
certificate,
etc.

8. (1) A person whose application for a certificate or renewal of a certificate has been refused by the Director or whose certificate has been varied, suspended or cancelled by the Director pursuant to this Act, may appeal, within the time and in the manner prescribed, to a Court of Petty Sessions constituted by a stipendiary magistrate sitting alone against the refusal, variation, suspension or cancellation, as the case may be.

(2) The Court may—

(a) order the Director—

- (i) to grant to the appellant the certificate or the renewal of the certificate; or
- (ii) to rescind the variation, suspension or cancellation of the certificate; or

(b) confirm the decision of the Director—

- (i) refusing to grant the certificate or the renewal of the certificate; or
- (ii) varying, suspending or cancelling the certificate;

and in any case may make such order, including an order as to costs, as the Court thinks fit.

(3) The decision of the Court in any appeal heard under this section is final.

Hazardous
areas.

9. (1) Where the Minister is of opinion that any area in the State should be declared a hazardous area for the purposes of this Act, he may, by notice published in the *Gazette* and in a newspaper circulating generally throughout the State, declare the area specified in the notice, to be a hazardous area for the purposes of this Act, either without limitation as to time or for such period as is specified in the notice.

(2) The Minister may by subsequent notice so published amend or cancel any notice published under subsection (1) of this section.

(3) The Minister may declare in a notice under subsection (1) of this section that, while the area to which the notice relates remains a hazardous area a person—

- (a) shall not carry out or cause or permit to be carried out any aerial spraying either generally or with reference to particular agricultural chemicals or groups of those chemicals in or over that area; or
- (b) shall not carry out or cause or permit to be carried out any aerial spraying either generally or with reference to particular agricultural chemicals or groups of those chemicals in or over that area except during such times of the year as are prescribed in the notice and in accordance with the conditions specified therein and the regulations.

(4) A person who carries out or causes or permits to be carried out any aerial spraying contrary to the provisions of—

- (a) a notice published under this section; or
- (b) the regulations,

is guilty of an offence against this Act.

Penalty: Four hundred dollars or imprisonment for six months, or both.

(5) Where an offence against this section is committed by a pilot of an aircraft, the Director may without prejudice to any other penalty to which the pilot may be liable under this section, cancel any certificate of which the pilot is the holder and any permit issued to him under the regulations.

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

- (a) lodged with the Director; or

Security to
be lodged by
owner of
aircraft
against
damage.
Repealed
and
re-enacted
by No. 45 of
1970, s. 3.

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

security in the form of a contract of insurance for an amount of not less than thirty thousand dollars which indemnifies the owner to the extent—

- (i) approved by the Director if the contract of insurance is lodged under paragraph (a) of this subsection; or
- (ii) approved by a person acceptable to the Director under paragraph (b) of this subsection if it is lodged as referred to in that paragraph,

against liability up to the insured amount in the aggregate of the owner, in respect of loss of or damage to the property, including livestock, of any other person caused by any agricultural chemical released from the aircraft in respect of which the contract of insurance exists, whether in the course of the aerial spraying or by spray drift.

(2) The contract of insurance—

- (a) shall cover aerial spraying in all parts of Australia; and
- (b) shall be issued by an approved company.

(3) In subsection (2) of this section “approved company” means a company approved by the Director if the contract of insurance is lodged under paragraph (a) of subsection (1) of this section, or if it is lodged as referred to in paragraph (b) of that subsection, by a person acceptable to the Director under that paragraph, and includes a company so approved that is acting for or on behalf of a pool of companies, notwithstanding that all or any of the companies in that pool are not so approved.

(4) The contract of insurance may contain such conditions, warranties and exclusions as are approved by the Director or by a person acceptable to the Director under paragraph (b) of subsection (1) of this section, as the case requires.

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

Offence.

- (a) there is deposited with the Director in respect of the aircraft a security as is required by section ten of this Act; and
- (b) the security is in force.

12. (1) The owner of an aircraft from which aerial spraying is carried out or where the owner is not the pilot in command of the aircraft at the time the aerial spraying is carried out, the pilot in command of the aircraft at the time shall make or cause to be made at the time the aerial spraying is carried out a record of the following particulars, namely—

Owner to keep records.
Amended by No. 31 of 1968, s. 6.

- (a) the name and address of the pilot in command of the aircraft;
- (b) the name and address of the person or persons for whom the aerial spraying is being carried out;
- (c) the name and full description of the agricultural chemicals used in the aerial spraying;
- (d) the exact location of the land so sprayed including distances and directions from the nearest city or town so that the land may be readily identified;
- (e) the date and the time of spraying;
- (f) the estimated velocity and the direction of the wind at the time of the aerial spraying;
- (g) the quantity and concentration of the agricultural chemicals applied per acre during the aerial spraying;
- (h) the total acreage sprayed;
- (i) the type of crops sprayed; and
- (j) such other particulars and matters as may be prescribed, and shall keep that record for a period of two years after the aerial spraying to which it relates is carried out.

(2) A copy of a record kept pursuant to subsection (1) of this section shall be sent by the owner or the pilot in command of the aircraft who made the record to the Director within the period prescribed.

Production
of records.
Amended by
No. 31 of
1968, s. 7.

13. (1) A record made by an owner of an aircraft or the pilot in command of an aircraft pursuant to section twelve of this Act shall be produced by that owner or that pilot—

- (a) to the Director; or
- (b) to any person authorised by the Director in writing to demand the production of the record,

on demand being made therefor to the owner or to the pilot by the Director or that person, as the case may be.

(2) A record kept pursuant to subsection (1) of section twelve of this Act is evidence of the particulars and other matters stated therein.

Inspection
of sprayed
areas.
Amended by
No. 31 of
1968, s. 8.

14. (1) The Director or a person authorised in writing by him so to do—

- (a) may enter on land on which crops, trees, pastures or other growth or animal life has been reported to the Director or to that person to have been injuriously affected by aerial spraying and may carry out such inspections on the land as he thinks fit for the purpose of ascertaining whether, and to what extent, any such crops, trees, pastures, growth or animal life have or has been so affected.
- (b) may, at the request of any person who suspects that any crops, trees, pastures, or other growth, or animal life on his land or land under his control has or have been injuriously affected by aerial spraying or spray drift, enter on that land for the purpose of ascertaining whether, and to what extent, the crops, trees, pastures, growth or animal life have been so affected;
- (c) may enter and inspect any land in order to ascertain possible sources of spray drift; and

- (d) may, where the person authorised by the Director under this section, is authorised as the owner of an aircraft or his accredited representative or as the insurer of the owner or his accredited representative, after notifying the owner or occupier of the land, enter and inspect the land on which aerial spraying has been or is proposed to be carried out or any adjoining or neighbouring land, before, during or after any aerial spraying operations by that aircraft, to determine the location of crops susceptible thereto, the possible sources of spray drift or any suspected damage that may have resulted from aerial spraying.

(2) Where a person authorised by the Director under subsection (1) of this section enters on any land pursuant to paragraph (a) or (b) of that subsection that person shall make a written report to the Director of his findings in connection with the crops, trees, pastures or other growth or the animal life reported or suspected to have been injuriously affected by aerial spraying; and after making such other investigations as he considers necessary the Director shall make available to the owner of the aircraft concerned, the owner or occupier of such land and the insurer of the owner of the aircraft a statement as to whether in his opinion such growth or animal life has been seriously affected by aerial spraying.

(3) A person who prevents, hinders, delays or obstructs the entry on or inspection of any land by the Director or a person authorised by the Director pursuant to subsection (1) of this section is guilty of an offence against this Act.

Penalty: One hundred dollars.

(4) Where a person alleges that crops, trees, pastures or other growth or animal life on his land or land under his control have been injuriously affected by spray drift or aerial spraying, he shall notify the Director in writing to that effect—

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- (a) within fourteen days of observing the damage; and
- (b) at least fourteen days or such lesser number of days as the Director in any particular case permits, before the crops are harvested or picked or before he destroys or causes to be destroyed the trees, pastures or other growth or animal life that he alleges have been so affected.

(5) Where the Director receives a notice under and in accordance with subsection (4) of this section, he shall, as soon as he ascertains the name of the owner of the aircraft from which the aerial spraying operations that are alleged to have caused damage, were carried out, give to that owner a copy of the notice.

(6) A person shall not, in a notice given pursuant to subsection (4) of this section, knowingly make any allegation that is false or misleading.

Effect of
failure to
give notice.

15. (1) Subject to subsection (2) of this section, where a person fails to give the notice required to be given by subsection (4) of section fourteen of this Act, no action claiming damages shall be brought in any Court against any person in respect of the loss of or damage to the crops, trees, pastures or other growth or animal life alleged to be caused by or arising out of or in connection with spray drift or aerial spraying.

(2) Notwithstanding that a notice has not been given as required by subsection (4) of section fourteen of this Act, application may be made to a Judge for leave to commence such an action as is referred to in subsection (1) of this section, and if the Judge considers that the failure to give the required notice was occasioned by mistake or by any other reasonable cause or that the prospective defendant is not materially prejudiced in his defence or otherwise by the failure, the Judge may if he thinks it is just to do so, grant leave to bring the action, subject to such conditions as the Judge thinks it is just to impose.

(3) Before an application is made under subsection (2) of this section the person intending to make the application shall give notice in writing to the prospective defendant of the proposed application and the grounds on which it is to be made at least fourteen days before the application is made.

16. A certificate granted under a corresponding enactment of another State or Territory of the Commonwealth that corresponds to a certificate issued under this Act is, during its currency, valid in this State for all purposes as though it were issued under this Act, but the Director may vary any conditions attached thereto or attach other or additional conditions thereto as he thinks fit.

Certificate issued in another State valid for purposes of this Act.

17. (1) The Director may with the consent of the Minister, by writing under his hand, delegate any of his powers and functions under this Act, except the power of delegation, in relation to any matter or class of matters so that the delegated powers or functions may be exercised by the delegate with respect to the matter or class of matters specified in the instrument of delegation as fully and effectually as by the Director.

Power of Director to delegate.

(2) A delegation under this section is revocable, in writing, at will and no such delegation prevents the exercise of any power or function by the Director.

(3) Where the exercise of any power or function of the Director under, or the operation of any provision of this Act, is dependent upon the opinion, belief or state of mind of the Director in relation to any matter, and that power or function has been delegated by the Director, in pursuance of this section, that power or function may be exercised or that provision may operate, upon the opinion, belief or state of mind of the delegate.

18. (1) A person who fails to comply with any of the provisions of this Act is guilty of an offence against this Act.

General penalty provisions.

(2) A person who is guilty of an offence against this Act for which no penalty is expressly provided elsewhere in this Act, is liable to a penalty of two hundred dollars.

Regulations.

19. (1) The Governor may make regulations prescribing forms, fees and other matters and things that by this Act, are contemplated, required or permitted to be prescribed or appear to him to be necessary or convenient for the purpose of effectually carrying out the provisions of this Act, or for better giving effect to the operation, objects, and purposes of this Act and in particular, regulations may be made by the Governor under this section, making provision for or with respect to—

- (a) the prohibition or regulation or both of aerial spraying over hazardous areas and the issuing of permits to carry out aerial spraying over hazardous areas;
- (b) the prohibition or regulation of the flying of aircraft carrying agricultural chemicals over hazardous areas;
- (c) the regulation of the cleansing of aircraft that have carried agricultural chemicals;
- (d) the prohibition of aerial spraying in conditions that are likely to result in the spray drifting;
- (e) the prohibition or regulation of the use in aerial spraying of agricultural chemicals, either generally or with reference to particular agricultural chemicals or groups of those chemicals, whether absolutely or in prescribed areas, or during prescribed periods of the year in prescribed areas;
- (f) the regulation of the droplet size in aerial spraying whether generally or in prescribed areas or in prescribed weather conditions;

- (g) the keeping by the pilot in command of an aircraft carrying out aerial spraying, or the person in charge of the spraying, of proper records (in addition to any record required to be kept under section twelve of this Act) of such matters relating to the aerial spraying as are prescribed, for the inspection of those records by such persons as are prescribed, and prescribing the period for which those records shall be kept;
- (h) compelling the production in any proceedings of those records;
- (i) regulating the mode of aerial spraying and the appliances to be used in connection therewith;
- (j) the qualifications required to hold a certificate, the terms and conditions upon which a certificate may be obtained and the conditions to be observed by the holder of a certificate;
- (k) the period for which a certificate is current, the renewal, variation, suspension and cancellation of certificates by the Director and the grounds upon which certificates may be so varied, suspended or cancelled;
- (l) the fees to be paid in respect of the grant of a certificate or a permit or an application for a certificate or a permit or any other document or the undergoing of any examination or test required by the regulations and in respect of which it appears to the Governor to be expedient for the purposes of the regulations to charge fees; and
- (m) the imposition of penalties not exceeding four hundred dollars or imprisonment for six months, or both, for a contravention of or failure to comply with any provision of the regulations or any order, direction or instruction given or made under, or in force by virtue of, the regulations.

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

(3) Regulations shall not be regarded as invalid on the ground that they delegate to or confer on any person or class of persons a discretionary authority.

(4) The regulations may confer on the Director power to impose any conditions on a certificate in addition to those prescribed and to cancel or vary any conditions of a certificate, power to issue, in such manner as may be prescribed, instructions, orders or requirements for the purpose of ensuring that aerial spraying is carried out in accordance with this Act and, where the regulations so provide, any such instruction, order or requirement shall be complied with by all persons affected thereby.