

# AERIAL APPLICATION ASSOCIATION OF AUSTRALIA LTD.

ABN 13 002 501 886 • ACN 002 501 886



26 August 2016

## **AAAA Submission**

### **NSW EPA Review and Remake of the NSW Pesticides Regulation 2009**

#### ***Introduction***

AAAA is the peak industry body representing aerial application operators and pilots in Australia. Details of our membership and programs can be found at the end of this submission. More details are available from our website - [www.aerialag.com.au](http://www.aerialag.com.au)

AAAA notes that it is difficult to provide more detailed comment without proposed draft amendments being available that would give effect to the issues you have identified in your correspondence of 26 July 2016 (which was received in the AAAA office on 3 August 2016).

For example, without knowing the exact NSW proposed response to national harmonisation through the National Harmonisation Agreement on Agricultural and Veterinary Chemicals, it is difficult to make a more considered response.

AAAA strongly supports the creation of a level playing field by ensuring ground applicators are required to have similar competency, licencing and record keeping arrangements as aerial applicators.

This principle also extends to proposed regulations for the operators of Remotely Piloted Aircraft Systems (RPAS), otherwise known as UAVs or 'drones'.

In addition, AAAA again raises the clear need for greater self-regulation or government regulation of agronomists, who play a key role in safe chemical applications.

#### ***Recognition of the AAAA Spraysafe accreditation for loader/mixers***

AAAA believes that the current minimum training requirements as applied to aerial application support staff that prepare but DO NOT APPLY chemicals is unfair and unwarranted and worthy of urgent review.

By way of background, AAAA members in NSW received correspondence from Ms Janet Dawson of the then DEC Chemicals Policy section (Ref: HOF55141 / 16 May 2005) that

indicated that all commercial users of pesticides must be appropriately trained by 1 September 2005 and gives a list of approved courses.

The correspondence made it clear that the NSW EPA would no longer accept the Spraysafe loader/mixer accreditation for aerial application support staff, but instead would require loader/mixers to hold the full AQF III qualification - even though they *never* apply chemicals.

It could be argued that consequently they are not 'users' in the sense intended by the Act and regulations and are thereby exempt. However, this situation could be clarified by a reconsideration of the intent of the Pesticide Act Training Regulations.

As a member of the original Pesticide Implementation Committee that oversaw the introduction of the Pesticide Regulations, the extension of AQF III training requirements to those not directly applying pesticides was not envisaged by members of the PIC.

It appears this situation continues as an 'unintended consequence' of the EPA's interpretation of the training regulations.

This is not to say that people mixing and loading chemicals should not have training. AAAA recognised that and instituted loader-mixer training as part of our Spraysafe program some 15 years ago. That training is sector and task specific, is based on a 200 page manual, a video, a 2 hour exam and a workplace-friendly reference guide.

The training we provide is specific to the task and risks, covers the essential competencies (not including application competencies for people that do not apply chemicals) and has been delivering safe and competent staff for years.

Support staff who mix chemicals under the supervision of a licenced applicator should not be required to seek additional expensive training - beyond Spraysafe accreditation - that is aimed at *applicators* rather than support staff.

AAAA believes the competencies required by a person who only *mixes* chemicals are significantly less than those required for the safe *application* of the pesticide. The competencies loader-mixers require include reading the label, using the appropriate personal protection equipment, getting the rate right, proper disposal of empty containers etc.

As they do not have to apply the product, there is little point in requiring them to have a qualification designed for applicators. Loader-mixers also work under the direct supervision of a competent person holding a EPA licence – the pilot.

Not only is the current requirement inconsistent with competencies being matched to tasks, it represents a significant cost and convenience imposition on the industry. No other State or Territory requires aerial application support staff working as loader/mixers to hold the full AQF III chemical competencies. All other States and Territories recognise the validity of the Spraysafe loader/mixer accreditation.

**AAAA seeks an *urgent exemption* to the regulations for our loader-mixer Spraysafe qualification. AAAA is happy to meet with EPA staff to discuss this matter further.**

### ***Interaction with the Native Vegetation and Noxious Weeds Acts***

Landholders have a legal responsibility to control noxious weeds on their property – a responsibility that extends to Government in its management of weeds on Crown land such as national parks.

An effective – and sometimes the only practical and safe means – by which noxious weed control can be undertaken is by the aerial application of pesticides from either a helicopter or fixed wing aircraft.

This creates a conflict between two - three if the Pesticides Act is included - competing pieces of legislation that remains unresolved.

Where a landholder (or the Government for that matter) engages a professional aerial applicator to control noxious weeds, there should be relief provided against the native vegetation legislation to ensure that appropriate control measures can be taken to effect the greater good for the environment – namely the control of noxious weeds.

It should be noted in this context that aerial applicators receive and maintain the highest standard of training of any pesticide applicators, are licenced by the NSW Government both at a business and individual pilot level, and in addition are required to hold qualifications and licences from the Commonwealth Civil Aviation Safety Authority.

The aerial application sector also has a range of accreditations and professional development opportunities that support the ongoing due diligence and development of the sector. In addition, aerial application only takes place within a well structured, planned and risk managed environment where appropriate systems support sound decision-making and the protection of the environment.

In some notable cases issues have been raised against aerial applicators in NSW by the EPA where the applicator has been attempting to comply with the competing demands of the native vegetation and noxious weeds regimes, especially where minor and temporary damage has occurred to some native species.

The regulations make no provision to remedy this situation. The Pesticides Act 1999 is not particularly clear when damage may be caused to non-target species that is temporary and where, after a relatively short period of time, no damage is discernible.

It would be an improvement if both the native vegetation regulations and the pesticide control of use regulations were amended so as to provide both clarity and a practical means of meeting the requirements of this competing legislation.

It would also be appropriate for this issue to be discussed with both the agricultural and application sectors and a more appropriate enforcement / compliance regime be established by the EPA.

## ***Recommendations***

1. The regulations be amended to clarify that, where a pesticide application is taking place for the purposes of controlling noxious weeds, the application is exempt from native vegetation requirements.
2. The regulations be amended to allow the control of invasive native vegetation by aerial application and the use of pesticides within the normal bounds of risk management.
3. The regulation (and the Pesticides Act and regulations) be amended so that where damage to native vegetation (or any non-target species) is of a temporary nature and the native vegetation recovers, there is no offence committed.
4. The Office of Environment and Heritage review its compliance and prosecution policy to ensure that where an applicator is working to achieve the outcomes required by the noxious weeds legislation, that no prosecution, penalty infringement notice or other compliance activity will be taken against that applicator.

## ***Update Regs to match CASA terms***

AAAA is aware that the Civil Aviation Safety Authority (CASA) has changed the basis of its regulation of pilot licencing and that the terms used in the Pesticide Act, regulations and related materials would benefit from the use of more flexible language to encompass these changes. For example, the term ‘agricultural’ has generally been replaced by CASA with the term ‘aerial application’ - applying both to Aerial Operators Certificates (AOC - the ‘business’ level licence) and to pilot licences via an ‘aerial application rating and aerial application endorsement’. This can be confirmed by a phone call to Mr Roger Crosthwaite of CASA on ph. 131 757 or by reviewing the CASA website [www.casa.gov.au](http://www.casa.gov.au).

AAAA suggests that using the more flexible phrase “holds an AOC for aerial application issued by CASA” (for business licencing) and “holds an aerial application rating and endorsement” (for pilots).

AAAA is happy to provide further detailed information on this issue if required.

## ***Clarification of the recognition process for chemical distribution licences issued by other States / Territories***

While COAG progress on the recognition of licences issued in other jurisdictions was been welcome and in many ways an improvement, the pathway for gaining such recognition could be clearer.

While the development of a consistent national licencing program is AAAA’s preferred option (see below), the current system could be enhanced by the provision of clearer advice to organisations such as AAAA as how a licence can be obtained in NSW on the basis of a licence issued in another jurisdiction.

### ***Simplification of pilot licencing through the introduction of a national pilot licencing scheme***

Considerable work has already been completed by a working group operating under the former COAG and PSIC processes on the development of a national licencing scheme for pilots and aerial application businesses.

While progress on this issue has clearly stalled through the current COAG national control of use processes, AAAA still strongly supports the work done to date as a far more efficient and effective system to deliver appropriate transparency and accountability for aerial application operators.

AAAA would welcome the opportunity to again work with the NSW EPA and other jurisdictions on the implementation of such a system.

### ***Regulation of the agricultural consultant sector***

AAAA members are regularly confronted with agronomists making recommendations for applications that are not on label. This places aerial applicators in the difficult role of refusing work or seeking alternative - often more expensive - work-arounds to assist farmers.

It would be a significant step forward if the NSW EPA were to engage with the consultant industry with a view to them developing a program of training and accreditation for all agronomists and any others (such as resellers) making chemical application recommendations.

Significant regulation of *financial* advisers is already in place because of their important role and the need for appropriate assurances that their advice is indeed qualified, legal and technically sound. No such regulation, code of practice or accreditation scheme operates for agricultural agronomists making critical recommendations to both aerial and ground applicators.

Agronomists remain a completely unregulated entity with a critical position of influence and power over sound applications.

AAAA strongly believes that agronomists should at least be encouraged to develop their own professional standards and training, with an accompanying accreditation scheme. Regulation and recognition of such a scheme should be a live option for the NSW EPA.

### ***Simplification of record-keeping requirements***

The current record keeping requirements are lengthy, complex and costly in their creation and administration. In some cases they are also replicated by APVMA record keeping requirements and may be different to record-keeping requirements in other States and Territories which created additional complexity for those operators conducting applications in other States / Territories - for example operators that also work in the ACT, Qld or Vic.

NSW should work closely with their neighbouring States/Territories to standardise record keeping to the simplest form possible that still supports transparency and accountability.

### ***Education Campaign Regarding Changes to Licencing Validity Period***

AAAA members have raised with AAAA ill-informed and incorrect comment from EPA field staff regarding arrangements for the education of all pilot licence holders regarding the introduction of a fixed period of validity of licences in NSW and transitional arrangements.

AAAA refers the EPA to correspondence between our CEO and Mr Peter Lawson of the EPA on the 20<sup>th</sup> of May 2015 where the process was clearly spelled out, including that the EPA would be writing directly to all licence holders regarding the changes. This approach was entirely consistent with earlier correspondence and an agreed approach between the EPA and AAAA to promote information regarding the change. AAAA had included information regarding the change in its newsletter to members.

The EPA field staff, during operator visits, made various negative comments regarding AAAA's role in this matter that did not reflect well on their professionalism, or the agreed process with the EPA which is reproduced below:

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**From:** Peter Lawson [mailto:Peter.Lawson@epa.nsw.gov.au]  
**Sent:** Wednesday, 20 May 2015 9:07 AM  
**To:** Phil Hurst  
**Cc:** Martin Bowles; Roger de Keyzer; Andrew Hawkins  
**Subject:** RE: information on changes to NSW Pesticides legislation

Hi Phil,

Yes, I can confirm that the changes are as we previously advised. Most of the specific requirements relating to aerial licensing are being moved from the Act into the Regulation without change. This includes moving all the record keeping requirements out of the Act and into the Pesticides Regulation.

When the changes commence (planned for 1 September 2015) the main changes from your member's perspective will be that:

- Licences are no longer in perpetuity but will need to be renewed after five years. On commencement all existing licences will be valid for 5 years and then expire on 1 September 2020. The EPA will write to licensees before then to remind them of the need for renewal. Fees for new licences from 1 September will align with urban pesticide technician fees - \$189 for new 5-year licences issued in 2015/16.
- To improve clarity, licences will be termed 'aerial applicator - pilot' and 'aerial applicator - business' and a separate category of licences for UAV applicators will be established.
- The requirement for new aerial licences to be individually Gazetted will be removed and in due course the aerial licences will be added to a on-line public register of all pesticide licensees.

In addition to the contacts below, the EPA also has brief and specific information about the changes to aerial applicator licences on our website, should you wish to pass this information on:

<http://www.epa.nsw.gov.au/pesticides/qapesticides.htm#aerial>

Regards

Peter

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It appears there was - with the most benign interpretation - a communication break-down within the EPA regarding the simple role AAAA would be playing in educating members regarding the licencing change.

AAAA believes there is a learning and system improvement opportunity for the EPA as a result of this unacceptable behaviour which should start with the counselling and re-training of field staff regarding the importance that should be placed on maintaining a cooperative and mutual respectful relationship with an industry peak body.

AAAA values its positive ongoing relationship with the NSW EPA and remains willing to work with the EPA across any issues that are of relevance to our members.

### ***Who is AAAA?***

The Aerial Application Association of Australia (known as ‘four As’), represents the professional aerial application industry, providing critical aviation services for agricultural production and emergency response. The Association changed its name in 2015 from the Aerial Agricultural Association of Australia to better reflect the diverse operations of our members. Our operations cover crop spraying, fertilizing, sowing, locust and mouse plague control, firebombing and oilspill management – to name a few.

The Association members account for over 90% of all aerial application in Australia. The Association has been active since 1958 and provides a comprehensive mix of training, education, professional development, conference and accreditation services to our members, as well as ensuring our elected representatives are kept up-to-date with our industry issues, problems and opportunities. We work closely with State and Federal agencies on a range of policy issues. Our website is at [www.aerialag.com.au](http://www.aerialag.com.au)

The Association has its national office based in Canberra and is governed by a Board of Directors with representation from States and pilots. The Board is in regular consultation with the CEO and application operators and meets formally on a regular basis.

AAAA’s mission is to promote a sustainable aerial agricultural industry based on the professionalism of operators, pilots and staff and the pursuit of industry best practice.

### ***Further Information***

For further information or discussion on any aspect of this submission, please do not hesitate to contact the CEO of AAAA, Mr Phil Hurst on 02 6241 2100.

Please note that Mr Hurst will be absent from AAAA due to long service leave from the 12<sup>th</sup> of September until the 25<sup>th</sup> of November. During that time, Mr Adam Hooper (currently the AAAA Program Manager) will be acting as CEO and can be contacted through the AAAA office.