

AAAA Submission November 2016

“Discussion paper: Access to agricultural chemicals working group.”
AGVET Chemicals Task Group – Minimum Training and Licensing Requirements
Working Group

Key Points

1. AAAA supports a single national framework for the regulation of agricultural chemicals and, as a minimum, the automatic recognition of any jurisdictional licences by every other jurisdiction.
2. As all aerial applicators are highly regulated in every State and Territory, including licencing of both business and operator/user (except WA where the business is not licenced), AAAA supports an approach that simplifies compliance, reduces cross-border complexity and inconsistency, and improves the focus on equivalent standards being required of all users and businesses regardless of them being aerial or ground based.
3. As AAAA is the sole representative body of the aerial application sector and represents a significant majority of all businesses and pilots in Australia, AAAA suggests that aerial application issues be dealt with separately from consideration of the regulation or licencing of other sectors and fast-tracked by direct negotiation with AAAA. AAAA has mature programs that are well-known to State and Territory regulators, and the Association has been involved with all major chemical regulation policy issues for decades. With our Spraysafe program delivering appropriate training for individual pilots and business accreditation since 1985, our capacity to deliver meaningful competency is backed by programs covering initial competency training and certification, ongoing professional development of pilots and businesses (through our Professional Pilot Program, training courses and our AIMS program – Aerial Improvement Management System).
4. The AAAA Spraysafe program should be identified as the relevant aerial application industry standard for training as it is already the *de facto* national competency standard recognised by all States and Territories for the licencing of pilots.
5. AAAA fully supports the previous approach of the COAG / SCARM / Product Security and Integrity Committee Working Group on a national pilot licencing scheme. A copy of the last minutes of this group outlining the considerations of the Working Group is at Appendix 1. AAAA would welcome the opportunity to discuss and develop this very positive system further.
6. AAAA believes only fee for service businesses should be licenced and the operator/user (ie the pilot in the case of aerial application) should not be licenced, but simply required to provide evidence of competence to the business they are working for. In turn, the business, as a condition of licencing, should be required to maintain this evidence as a record, along with other pertinent matters already required to be recorded (eg pilots name and address, the jobs they have undertaken etc). This concept is at the heart of the PSIC discussion identified above and offers significant national savings,

simplifications and maintains accountability and traceback to an individual user.

7. AAAA believes the same principles of licencing and competence outlined in the PSIC discussion should be applied to ground application businesses and operator/users.

8. In addition to the requirements above for commercial businesses, all other chemical operator/users should be required to be trained to a minimum of AQF3 competencies, with the exception of those people who only prepare but do not apply chemicals (in the aerial application sector these people are termed loader/mixers). The AAAA Spraysafe program provides sector specific training to these people and should be formally recognised as relevant industry training.

9. Provisions should be made to allow itinerant workers to work under supervision of a qualified person when employed for a short period of time (eg up to 90 days) – potentially with some simple introductory safety training.

10. Limited literacy users cannot be considered competent without an assessment. An acceptable means of compliance could be developed which may allow verbal assessment, however, practical problems remains in ensuring an ongoing ability to access and understand chemical labels and apply chemicals within the law.

11. Any person making a recommendation regarding chemical use (such as an agronomist or reseller) should also be required to be licenced (to improve accountability that is currently a significant problem) and hold at least AQF 3 competencies if not AQF4 or higher, depending on the situation. Recognition of an industry-based scheme may be preferable.

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 oil spill 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

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.

MEETING TO DISCUSS THE PROPOSED NATIONAL AERIAL SPRAYING LICENSING SCHEME

Canberra

16 September 2008

OUTCOMES

Attendance:

Working Group 2:

Janet Kerr (Chair)	Dept of Agriculture, Fisheries and Forestry
Jenny Ritchie	Dept of Agriculture, Fisheries and Forestry
John Kassebaum	Primary Industries and Resources South Australia
Wayne Thompson	QLD Dept of Primary Industries and Fisheries
Roger de Keyser	NSW Dept of Environment and Climate Change
Phil Hurst	Aerial Agricultural Association of Australia
Andy Hawkins	NSW Dept of Environment and Climate Change
Vlad Kawalowski	NT Dept of Primary Industries, Fisheries and Mines
Chris Sharpe	WA Dept of Primary Industries and Water
Sue Duncan	VIC Dept of Primary Industries
Michael Cooper	SA Dept of Health
Carolyn Lewis	SA Dept of Health

OUTCOMES OF DISCUSSIONS

Participants noted that:

- the purpose of the meeting was to provide an opportunity for those state/territory departments not represented on the working group to discuss the proposed scheme with the working group and provide feedback
- the working group (see membership above) was established by PSIC to progress the development of a national aerial spraying licensing scheme
- the March 2008 PSIC meeting signed off on Recommendations 1-8 and asked the working group to progress further work, including
 - the development of national operating standards for aerial spraying businesses, business license conditions and criteria for cancellation/suspension
 - apportioning liability and investigating alternative enforcement options for promoting behavioural change
 - consideration of a standardised approach to setting license fees
- recommendations 1-8 have been updated to reflect later decisions made by the working group
- while the proposed scheme imposes some additional requirements on businesses, it reduces the regulatory burden on the industry, eg by removing the need for pilots to be licensed and addressing the anticompetitive elements identified by the National Competition Policy Report on chemicals regulation.

The following points were made in discussion of the recommendations in the draft working group report.

Recommendation 1 *The proposed scheme for the aerial application of agricultural chemicals will:*

- *Apply to businesses and all persons involved in the aerial application of any agricultural chemical product regulated by the Australian Pesticides and Veterinary Medicines Authority (APVMA), including vertebrate poison baits such as those including 1080.*
- *Not apply to the aerial application of fertilisers.*
- *Treat pilots who aerially apply agricultural chemicals on their own land as a business involved in the application of agricultural chemicals.*

Comments:

- This recommendation sets out what should be included in the scheme. Most jurisdictions were comfortable with the proposed scope of the scheme. However, WA Agriculture and SA Health were concerned about the inclusion of pilots applying baits by air.
- Under current arrangements, WA and SA do not require pilots to have chemical application competency (ie be licensed) to apply 1080 baits by air because the bombardier actually applies the baits. It was noted that, in this case, the bombardier should have chemical training. CASA exempts pilots applying 1080 baits from the requirement to have an agricultural rating on the basis that they do not fly below 300 feet to drop baits. However, mosquito and mice baits (pindone and zinc phosphide) are applied by the pilot and, to apply these baits, the pilot has to have an agricultural rating and be licensed (ie have the necessary competencies) to apply chemicals by air.
- While acknowledging that state/territory exemptions for 1080 baiting would undermine a national approach, WA indicated that flexibility is needed because of the high demand for licensed pilots (pilots with chemical application competencies) and the costs of engaging these pilots to apply 1080 baits in remote areas.

Outcome:

- It was agreed that the working group consider options for exempting pilots applying 1080 baits, subject to their meeting certain standards or requirements.

Recommendation 2 *Businesses must be licensed in each jurisdiction in which they operate and must hold an Air Operators Certificate (AOC) for agricultural operations. The business licence must be renewed every 5 years.*

Comments:

- While WA Agriculture supported the business only licensing model, it was noted that WA Health may still want to license pilots, in addition to businesses.
- SA asked for an aerial spraying business to be defined. It was noted that any aerial operation must have a CASA business license (an AOC). This includes a pilot who runs his own business (owner operator) and larger aerial businesses. Where there is an interaction between businesses, eg where a business licensed to apply chemicals by air in one state employs an owner operator from another state, the business employing/contracting the owner operator is the business that must be licensed in that state.

Outcome:

- The business only licensing model was generally supported, noting that while WA Agriculture supported the model, WA Health may still want pilots to be licensed.

Recommendation 3 *Businesses must only employ (or contract) persons i.e. pilots, mixers and loaders who hold an accreditation of appropriate competencies. (see WG2 Recommendations 6 and 8 respectively).*

Comments:

- The word “persons” is unnecessary, given that pilots, mixers and loaders are the persons that have to be competent.
- With respect to how an alternative pilot accreditation scheme would be determined to be equivalent to Operation Spraysafe, it was suggested that it would be the responsibility of the proponent of the scheme to advocate its equivalence to the state/territory regulatory authority.

Outcome:

- The reference to “persons” to be removed from the recommendation.
- It was noted that the proponent of any future pilot accreditation scheme would be responsible for demonstrating its equivalence to Operation Spraysafe to the state/territory regulatory authority.

Recommendation 4 *Person’s i.e. pilots, mixers and loaders must only work for a licensed business and must disclose the following information so the business can make an informed judgement as to their competency.*

Pilots must disclose all relevant information for the business to adequately assess the pilot’s competency. This includes:

- *Proof that they are permitted to fly; i.e. a CPL and current class 1 medical certificate - CASA requires pilots to carry their CPL.*
- *Proof that they are competent; i.e. Operation Spraysafe accreditation or equivalent - pilots who are Operation Spraysafe accredited are issued with a card which includes an expiry date.*
- *Other relevant information that would have a bearing on an assessment of their competency; e.g. Whether they have/are currently being investigated and/or are subject to some form of remedial action in relation to an offence under COU legislation. This wouldn't necessarily preclude the business from hiring a pilot. Rather, it is included so that the business owner can make an informed judgement as to the competency of the pilot for the tasks required.*

Mixers and loaders must disclose all relevant information for the business to adequately assess the pilot’s competency. This includes:

- *Proof that they are competent; see Recommendation 8*
- *Other relevant information that would have a bearing on an assessment of their competency; e.g. Whether they have/are currently being investigated and/or are subject to some form of remedial action in relation to an offence under COU legislation. This wouldn't necessarily preclude the business from hiring a pilot. Rather, it is included so that the business owner can make an informed judgement as to the competency of the pilot for the tasks required.*

Comments:

- WA raised the issue of requiring mixers and loaders engaged by a business in remote locations to be trained. It was noted that SA only requires mixers and loaders to be trained if they work for the business on a contractual or commercial basis.
- Operation Spraysafe training for mixers and loaders covers all the AQF3 competencies they need to do their job. However, NSW requires mixers and loaders to have all AQF3 competencies, including calibration and application competencies which mixers and loaders do not require, because they may be employed in other areas which require these competencies. This issue is discussed under recommendation 8.

Outcome:

- All participants accepted that mixers and loaders must be trained. See also outcomes of recommendation 8.

Recommendation 5 *Businesses must keep records including, but not limited to, the following:*

Personnel Records:

- *The names and addresses of the pilots, mixers and loaders it employs.*
- *Records of the training undertaken by pilots and the staff employed to mix and load chemicals onto aircraft.*

Spray Application Records:

- *Name of the pilot who undertakes the spraying.*
- *Name and address of client.*
- *Date of spraying and the times when spraying commenced and finished.*
- *Full trade name of each chemical used.*
- *The APVMA registration number for each chemical used.*
- *The batch number of each chemical used, if legible.*
- *Quantity of each chemical product used, wetting agents or other materials added and mixed with what volume of water or other carrier.*
- *Rate(s) of application for each chemical used.*
- *Specific location of the target area and total size of area sprayed, preferably with an indicative map, showing the location of any sensitive areas (such as waterways, residences, etc.) contiguous to the target area.*
- *Target pest to be controlled by the application.*
- *Crop/situation in the target area.*
- *Weather conditions at the time of spraying (including wind speed and direction) and any changes in the conditions occurring during the spraying and time of change.*
- *The aircraft registration mark.*
- *The permit number if use is authorised by a permit issued by a state/territory or the APVMA.*

(Comment: we have proposed no records relating to the spray equipment used, its calibration or maintenance; or outcomes of any site risk assessment.)

Comments:

- The AAAA “Class” computer record keeping program would need to be upgraded to include additional requirements.
- Records relating to spray equipment, calibration and maintenance and the outcomes of site risk assessment will not need to be kept (see comment at the end of the recommendation)

because the product label approved by the APVMA will include spray quality requirements. In addition, good businesses will keep these kinds of records as a means of proving that they have exercised due diligence. Although these record keeping requirements could be included in the Operation Spraysafe code of practice for businesses, each state/territory has different requirements. Operation Spraysafe would include them if they were national requirements.

Outcomes:

- The comment on records relating to spray equipment, calibration and maintenance and the outcomes of site risk assessment, should be removed.

Recommendation 6 *Pilots who apply agricultural chemicals do not need to be licensed but must have the following competencies:*

- *Hold a current commercial pilots licence (CPL) (aeroplane or helicopter) or higher Air Transport Pilots Licence (ATPL) from the Civil Aviation Safety Authority (CASA) with an agricultural application rating.*
- *The CPL/ATPL must be validated by a current relevant CASA medical certificate and pilots must meet any conditions under which the certificate has been issued.*
- *Hold a current accreditation under the Aerial Agricultural Association of Australia's (AAAA) Operation Spraysafe, or an approved alternative program in safe aerial chemical application.*

Comments:

- The question of how an alternative pilot accreditation program will be approved was addressed in discussion of recommendation 3.
- With respect to the note in the draft working group report on verification of Operation Spraysafe's equivalence to AQF training, it was accepted that this could be done by an appropriate third party auditor.

Outcome:

- The working group noted comments made in discussion.

Recommendation 7 *To ensure that high quality training standards are maintained:*

- *pilots must maintain their accreditation by updating their training in safe aerial chemical application, at least, every five years*
- *the training program will be independently audited every 5 years by an appropriate training course auditor who has extensive expertise in vocational training matters.*

Comments:

- While chemical training, eg by ChemCert and SmartTrain, at AQF3 level has to be updated every five years in order to be accredited under these programs, to be accredited under Operation Spraysafe, pilots are required to update their training every three years.
- The issue of Operation Spraysafe not being an RTO accredited training program is addressed in the discussion under recommendation 6.
- Any training package has to be reviewed every three years. Therefore, the reference in the text to the requirement to update accreditation at least every five years may not be correct.

While OSS reviews its training on an ongoing basis, it would be happy for an independent consultant to confirm the currency of the Operation Spraysafe program.

Outcomes:

- The working group to determine whether the reference in the text to the requirement to update accreditation at least every five years should be deleted.

Recommendation 8 *Mixers and loaders of agricultural chemicals must be trained in the relevant national chemical competencies equivalent to AQF3, noting that some jurisdictions may not require training in the elements of competency that relate to calibration and application.*

Comments:

- Mixers and loaders do not need to have chemical application and equipment calibration competencies and this is reflected in the mixer/loader training provided by Operation Spraysafe. NSW requires all chemical users to have all the AQF3 competencies, including application and calibration. SA recognises that mixers/loaders have to be trained to a standard but do not specify the type of training.
- It was generally acknowledged that it is inappropriate to require mixers/loaders to have a competency that is not needed for that job.
- It was suggested that Operation Spraysafe be assessed against Chemcert to determine whether the competencies it provided were equivalent, noting that AAAA already has

Outcomes:

- Phil Hurst (AAAA) to provide the working group with an assessment of Operation Spraysafe competencies for mixers and loaders against Chemcert competencies.
- Roger de Keyser (NSW DECC) to discuss the issue of appropriate competency requirements for mixers/loaders with NSW DECC training policy area.

Recommendation 9 *That the condition for holding an aerial applicator business licence shall be compliance with the following identified national standards for operating an aerial agricultural chemical spraying business classified under three broad headings, namely (1). Competency of persons; (2) Appropriate equipment; and (3) Effective risk management system:*

(1) Competency of persons

A business must.....

- *only employ/contract/engage competent/accredited pilots, mixers and loaders;*

(2) Appropriate equipment

A business must....

- *maintain equipment, including aircraft, to enable safe and effective application and to minimise risks of off-target movement, **public health** and environmental or occupational health and safety incidents*

(3) Effective risk management systems

A business must.....

- *maintain detailed records of pilots, mixers and loaders employed/contracted/engaged by the business and the competencies held by these persons;*
- *maintain detailed records of chemical application;*

- *maintain business systems to ensure that pilots, mixers and loaders operating (apply/mix/load chemicals) at and within the limits of their competency level);*
- *operate under spray quality management system;*
- *have in place a documented drift management and communication system;*
- *allow its business operations to be subject to regular third party (industry) audit (audit frequency to be determined).*

Comments:

- This recommendation sets the framework for promoting behavioural change and would be better placed at the front of the business-related recommendations. Public health should also be protected, in addition to the environment and occupational health and safety.
- Requirements for mandatory notification of serious adverse impacts, complaints handling procedures and incident registers raise the issues of self incrimination and apportioning of blame. The aerial agricultural industry is opposed to their inclusion. Before industry could consider voluntarily meeting these requirements, it would need to be made very clear whether their purpose would be remedial or punitive.
- These requirements may more appropriately belong in other state/territory legislation, eg environmental protection, rather than control of us legislation.

Outcomes:

- Include protection of public health under (2) Appropriate equipment (as bolded above).
- Reference to mandatory notification, complaints handling and incident registers to be deleted from the draft report, noting that this is a broader issue than just aerial agriculture.

Recommendation 10 *That the following **may** be grounds for cancelling or suspending the licence:*

- (1) a licensee has done an act or made an omission that would not entitle the licensee to apply for or hold a licence*
- (2) a licence has been issued erroneously or as a consequence of any false document, statement or representation or fraudulent document, statement or misrepresentation;*
- (3) the Chief Executive Officer or Chief pilot of the business is in any other respect or respects not a fit and proper person to continue to manage a business holding a licence.*
- (4) a business ceases to hold an AOC issued by CASA*
- (5) a business has a history of continual non compliance with compliance orders issued.*

Comments:

- This recommendation focuses on the key business licensing issues. Because the regulatory authority has the discretion of cancelling/suspending a business license, “shall” should be change to “may” in the recommendation.
- The fit and proper person criterion is a concern for the aerial agricultural industry. It is also difficult for regulatory authorities to enforce and should not be included in the criteria for cancellation/suspension.

Outcomes:

- “Shall” to be changed to “may” in the recommendation and requirement (4) to be split into two separate criteria (bolded above).
- Remove the fit and proper person requirement (3) from the recommendation and supporting text.

Recommendation 11 *That as an alternative to taking legal action, such as prosecution or cancellation of a licence, if an offence against COU legislation has been committed or licence conditions have been breached, there be provision in the new licensing model for a general duty statement and compliance orders system adapted for aerial application, along the lines of similar provisions contained in South Australia's Agricultural and Veterinary Products (Control of Use) Act 2002, i.e.:*

- *That a compliance order shall be issued by the jurisdiction where the incident or situation occurred and may, depending on the circumstances, be made binding in all other jurisdictions.*
- *That a system of notifying each jurisdiction about compliance order having been issued to a person or business be developed.*
- *That provision be retained in the new licensing model for cancelling or suspending a licence or recommending prosecution in extremely serious situations and particularly after avenues to effect behavioural change using compliance orders have been exhausted.*

Comments:

- This recommendation is designed to promote behavioural change, eg for a business, prosecution or cancellation/suspension of the license does not necessarily result in behavioural change, and is based on the SA compliance order model. In the discussion of the recommendation, the working group should recommend that these concepts be adopted into the national aerial spraying licensing model, rather than recommend that their inclusion be considered by PSIC. The text also needs to make it clear that compliance orders would apply not only to businesses but also to pilots, mixers and loaders.

Outcomes:

- The discussion of the recommendation to be amended to recommend the inclusion of the compliance order mechanism in the scheme (rather than recommend that PSIC consider its inclusion) and to make it clear that the working group recommends that compliance orders apply to business, pilots, mixers and loaders.

Recommendation 12 *[For PSIC's future separate consideration – a recommendation made by the working group but identified as ancillary to, and not falling within the scope of the national licensing scheme]*

That PSIC undertake further work on apportioning liability for, and developing nationally consistent, offences where there are multiple parties involved and to determine whether existing state/territory COU legislation has adequate provisions to apportion liability for offences.

Comments:

- This issue should be considered in the broader control of use context, given that agronomists or farmers who are not included in the aerial spraying licensing model may also be responsible for causing an aerial spraying incident.

Outcome:

- PSIC to consider this issue as a broader control of use issue.

Recommendation 13 *That PSIC undertake further work on the matter of whether both aerial and ground spraying businesses should be required to give mandatory notification of serious adverse offences and to look at the related issues of whether a business should be operating a complaints handling procedure and maintenance of an incidents register*

Comments:

- This recommendation should be removed, given that it has been agreed that mandatory notification should apply more broadly (see discussion of recommendation 9).

Outcomes:

- This recommendation to be deleted.

Recommendation 14 *That WG2, having discussed the issue of a standardised licence fee to apply to all jurisdictions, is unable to resolve the matter at this point in time. WG2 recommends that PSIC, at a time of its own choosing, consider reviewing the basis for setting licence fees with a view to developing a more standardised fee.*

Comments:

- A standardised fee setting process for business licences should be developed. COAG has a range of fee setting policies which could be applied. A cost recovery model could be considered.

Outcomes:

- PSIC to consider the development of a standardised fee setting process.