

Agricultural Chemicals Distribution Control Regulation 2021

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Mark Furner MP, Minister for Agricultural Industry Development and Fisheries and Minister for Rural Communities, provide this human rights certificate with respect to the *Agricultural Chemicals Distribution Control Regulation 2021* made under the *Agricultural Chemicals Distribution Control Act 1966*.

In my opinion, the *Agricultural Chemicals Distribution Control Regulation 2021*, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

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

The Regulation continues to provide for certain matters relevant to the licensing of the distribution of agricultural chemicals by air or ground equipment in Queensland. Sections 3, 12, 16, 16A, 17, 19, 24, 28, 29 and 48 and the schedule of the Act provide the legislative head of powers for making the Regulation.

The Regulation replaces, with minor changes, the *Agricultural Chemicals Distribution Control Regulation 1998* which is due to expire on 31 August 2021 in accordance with the automatic expiry provisions in part 7 of the *Statutory Instruments Act 1992*. Mostly, the changes relate to modernising the legislation and updating training requirements and competency units.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

Section 13 (Prescribed matters for register) of the Regulation prescribes the particulars of licence holders that the standards officer must enter on the public register, including the licensee's name, suburb, licence type and number, date the licence commences, date the licence expires and any other information a standards officer thinks appropriate. This section limits the right to privacy and reputation in Section 25 of the *Human Rights Act 2019* because it discloses licence holder information in a way that is available for inspection by the public and does not provide any limitations on the nature of the additional information a standards officer could include on the register.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

Section 25 Privacy and reputation:

(a) the nature of the right

Section 25 provides that a person's privacy, family, home and correspondence must not be unlawfully or arbitrarily interfered with. This section is modelled on article 17 of the International Covenant on Civil and Political Rights (ICCPR).

The scope of the right to privacy is very broad. It protects privacy in the narrower sense including personal information, data collection and correspondence, but also extends to an individual's private life more generally. For example, the right to privacy protects the individual against interference with their physical and mental integrity; freedom of thought and conscience; legal personality; individual identity, including appearance, clothing and gender; sexuality; family and home.

The UN Human Rights Committee has not defined 'privacy'. It should be understood to comprise freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy.

The protection against interference with privacy, family, home or correspondence is limited to unlawful or arbitrary interference. The notion of arbitrary interference extends to those interferences which may be lawful, but are unreasonable, unnecessary and disproportionate. The use of the term arbitrary in the ICCPR means that any interferences with privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances. Arbitrariness is relevant to whether a limit on the right is justified under section 13, not whether the right is limited in the first place under section 8(a). While privacy has a very broad scope, it is a right that must be balanced against other rights and competing interests. Section 13, the general limitation section, provides for this.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Section 13 of the Regulation prescribes the particulars of licence holders that the chief executive must enter on the public register, including, relevantly, the licensee's name, suburb and any other information a standards officer thinks appropriate. The limitation on the right to privacy and reputation arises because this section allows for the disclosure of licence holder information on a public register, and currently does not provide any limitations on the nature of the additional information a standards officer could include on the register.

The purpose of the limitation is to provide the information needed by members of the public that will enable them to avoid engaging persons who are unlicensed, and hence may not be qualified, to distribute agricultural chemicals. Distribution by persons who are unqualified or otherwise do not meet licensing criteria may result in significant adverse consequences to human health and trade through the contamination or destruction of crops and livestock. Having a register that can be used in this way to avoid potential harm is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

Limiting the right to privacy and reputation through the inclusion of relevant personal information on a public register is directly linked to the purpose of providing the public with information to verify who is licensed and, thereby, who is appropriately qualified to distribute agricultural chemicals.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

Having a public register that includes relevant information about licence holders under the Act is the least restrictive and most practical way of ensuring that the public has a way of verifying who is licensed to distribute agricultural chemicals. Alternatives to having a public register include the department providing confirmation of the existence of licences on a case-by-case basis, or requiring individuals to request that a licensee provide a copy of his or her licence. These alternatives are not considered reasonably practical ways to achieve the purpose of the legislation because they are unlikely to provide convenience and confidence to consumers prior to entering into an agreement or contract for agricultural chemical distribution services.

Another alternative might be to have a public register which only includes very minimal information about licensees, however, this option is not a reasonably practical way to achieve the purpose of the legislation because it is unlikely to provide adequate information for an individual to confidently identify that licence information on the register relates to a particular purported licence holder.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

A public register that includes the licensee's name, suburb, licence type and number, date of commencement, date of expiry and any other information a standards officer thinks appropriate, limits the right to privacy and reputation because it allows for the disclosure of licence holder information.

Balanced against this limitation is the importance of ensuring the provision of information needed by members of the public that will enable them to avoid engaging persons who are unlicensed, and hence may not be qualified to distribute agricultural chemicals. Without such a mechanism for providing this information, the public can have no confidence that the person they are engaging to distribute agricultural chemicals is licensed to do so and can do it correctly. Incorrectly distributing agricultural chemicals could have significant consequences, including to human health, trade, safety of the food chain and the destruction of agricultural crops and livestock.

When the limitation of the right is balanced against the benefits from limiting this right, section 13 of the Regulation is reasonably and demonstrably justified in the circumstance.

(f) any other relevant factors

Rather than displaying a list of all licensees, the public register operates in such a way that only the results for licences matching specific search terms are displayed. This reduces the limitation

on the right to privacy by ensuring that the right for licensees, other than those being confirmed by the public, are not arbitrarily interfered with, as they are not automatically displayed.

Conclusion

I consider that the *Agricultural Chemicals Distribution Control Regulation 2021* is compatible with the *Human Rights Act 2019* because, while it does limit, restrict or interfere with the right to privacy, the limitation is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

Mark Furner MP
Minister for Agricultural Industry Development and Fisheries and
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