



Farm Tree & Landcare Association

Landcare Groups and Spraying Equipment

18 June 2010

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Many Landcare Groups have spraying equipment for use in their Groups activities. This equipment is used by the Groups and their members or also hired out.

Spraying equipment:

- Equipment to be used at sanctioned Group activity – an activity that has been noted in the Groups Meeting Minutes and with the approval of the Group committee.
- Appointment of Committee member with appropriate experience and qualifications to manage the equipment. Their duty to ensure that the Group is providing Duty of Care to the user (following points).
 - Material Safety Data sheet (MSDS) of chemical products to be used must be available for all persons involved in the spraying operation. For initial instruction, information and for further reference – these are available from supplier or chemical manufacturer.
 - Ensure that all instructions described in the MSDS and on the product label are outlined and understood.
 - Ensure all people involved in the spraying operation are suitably trained i.e. have completed the appropriate course in agricultural chemical use in the last five years and obtained the appropriate farm chemical course certificate or Agriculture Chemical Users Permit (ACUP Victoria) where required
 - All persons involved in the spraying operation must use the 'Code of Practice for Spraying' as the basis in undertaking these activities (available from Dept Primary Industries).
 - Obtain and hold for at least two years records including:
 - A copy of the user's Agriculture Chemical Users Permit (ACUP Victoria)
 - A record of induction/instruction about the operation of the equipment
 - A copy of the record of chemical use in line with DPI requirements
 - The record of maintenance of the spray unit
- The Group has to provide Duty of Care to user of the equipment;
 - Ensure equipment is maintained i.e. no leaking pipes, nozzles or hand wands.
 - All appropriate personal protective equipment to be made available and used.
 - Induction for all persons involved on safe equipment use
- Landcare Group committee to approve and sign off on the chemicals to be used;
 - Recommended that this is Non Dangerous Goods classification (DG Class) and have a rating no higher than POISON on the Poisons Schedule.
- Agriculture Chemical Users Permit (ACUP Victoria) is required for members handling higher toxicity chemicals (usage to be approved by Landcare Group committee).
- If using chemicals that are Dangerous Goods, DANGEROUS POISON or requiring an ACUP a copy of all appropriate records (who, where, what chemicals, weather conditions etc) and paper work must be provided along with a risk assessment (proforma attached).
- All equipment to be flushed and cleaned on completion of spraying activities in accordance with label statement.
- Hiring out of equipment – for activities other than sanctioned Group activity (copy of disclaimer attached). Please note that Disclaimers can be helpful in the event of an incident however they will not prevent a claim from being made and will not clear the Group of its legal responsibilities.

Reference sources:

- Conservation Volunteers Australia 2005: In Safe Hands: a safety management toolkit for community groups in practical conservation.
The Farm Tree & Landcare Association supports the adoption of this manual by Landcare groups for the minimisation of risks involved in conservation activities.
- Hiring disclaimer form courtesy of the Victorian Landcare Gateway located at www.landcarevic.net.au/resources/hire/
- ChemCert Australia (Victoria)
- Department of Primary Industry (DPI) Code of Practice

Agreement for Hire of Plant and Equipment

This Agreement is made on the Day of 201.....

Between:

of

.....("owner")

And:

of

.....("hirer")

Recitals:

- R1. The owner is the proprietor of the plant and equipment ("equipment") listed in the schedule to this Agreement ("schedule").
- R2. The hirer will hire the equipment specified in the schedule from the owner upon the terms and conditions in this Agreement.

Operative Part:

1. Hire of plant and equipment

- 1.1. The hiring of the equipment will commence from the commencement date specified in the schedule and continue for the term specified in the schedule.
- 1.2. The hirer is entitled to use the equipment for the hire period and for any agreed extension of the period.
- 1.3. The hirer agrees to return the goods to the address of the owner on or before the end of the hire period as outlined in the schedule
- 1.4. The owner will not refund any hire charge monies if the hirer elects to return the equipment prior to the end of the hire period, regardless of reason.

2. Payment for rental

- 2.1. The hirer agrees to pay the owner the hire fee specified in the schedule for the equipment for the hire period, which includes any applicable GST, if a hire charge is applicable.
- 2.2. The hire fee must be paid to the owner prior to or on the commencement date of the hire period.

3. Use, operation and maintenance

- 3.1. The hirer agrees that the use of the equipment carries with it dangers and risks of injury and the hirer agrees to accept all dangers and risks.
- 3.2. The equipment shall not be used by anyone other than the hirer without the expressed permission of the owner.
- 3.3. The hirer agrees to operate, maintain and store the equipment strictly in accordance with any instruction provided by the owner, with due care and diligence, only for its intended use and in accordance with any manufacturer's instructions and recommendations whether supplied by the owner or posted on the equipment as to the operations, maintenance and storage thereof.
- 3.4. The hirer agrees to comply with all occupational health and safety laws relating to the use of the equipment and related operations.

- 3.5 The hirer shall ensure the equipment is returned to the owner clean of soil or any other foreign matter and any spray tanks and spray equipment shall be thoroughly cleaned. Fuel tanks on any equipment shall be full of fuel when the equipment is returned to the owner. In the event that these requirements are not complied with the hirer shall pay the owner the reasonable costs of compliance with these requirements.

4. Hirer's warranties

- 4.1. The hirer warrants that:
- 4.1.1. the equipment will be used in accordance with the conditions outlined in the schedule;
 - 4.1.2. the particulars in the schedule are correct in every respect and are not misleading in any way including, without limitation, by omission;
 - 4.1.3. the hirer holds a valid current driver's licence, operating licence or permit valid for the type of equipment hired;
 - 4.1.4. the equipment will not be used for any illegal purpose;
 - 4.1.5. the hire's vehicle is suitable for towing the equipment;
 - 4.1.6. the hirer will not, without prior written consent of the owner, modify, or permit any modification of, the equipment in any way; and
 - 4.1.7. the hirer agrees that the equipment complies with its description, is in merchantable condition and is fit for the hirer's purpose.

5. Indemnity

- 5.1. To the full extent permitted by law the hirer releases, discharges and indemnifies the owner from all claims and demands on the owner arising out of or consequent on the use or misuse of the equipment during the hire period.

6. Loss, damage or breakdown of plant and equipment

- 6.1. The hirer will be responsible for any loss or damage to the equipment irrespective of how the loss or damage occurred (fair wear and tear excepted) during the hire period.
- 6.2. If there is a breakdown or failure of the equipment then the hirer shall return the equipment to the owner at the hirer's expense and the hirer shall not attempt to repair the equipment.

7. Insurance

- 7.1. The owner will maintain current insurance policies in respect of the equipment to its full insurable value.

8. Liability

- 8.1. The hirer will assume all risks and liabilities for and in respect of the equipment and for all injuries to or deaths of persons and any damage to property howsoever arising from the hirer's possession, use, maintenance, repair or storage of the equipment.

9. Disclaimer

- 9.1. To the extent permitted by law the owner disclaims all liability for and does not give any warranties to the hirer as to the condition of the equipment.

10. Title to goods

- 10.1. The hirer acknowledges that the owner retains title to the equipment and that the hirer has rights to use the equipment as a mere bailee only. The hirer does not have any right to pledge the owner's credit in connection with the goods and agrees not to do so.
- 10.2. The hirer agrees not to agree, offer or purport to sell, assign, sub-let, lend, pledge, mortgage let or hire or otherwise part with or attempt to part with personal possession or otherwise not to deal with the equipment and not to conceal or alter the goods or make any addition or alteration to, or repair of, the equipment.

11. Repossession

- 11.1. The owner may retake possession of the equipment if the hirer breaches any provision of this agreement, notwithstanding anything else herein contained.
- 11.2. If repossession takes place, the owner shall only charge the hire fee up to and including the time of repossession.

12. Completion of the hire period

- 12.1. The hire period is completed when the equipment has been returned to the owner:
12.1.1. in the same condition as when it was hired; and
12.1.2. on or by the date and time outlined in the schedule.

13. Non-merger

- 13.1. The covenants, agreements and obligations contained in this agreement will not merge or terminate upon the termination of this agreement and to the extent that they have not been fulfilled or satisfied or are continuing obligations they will remain in force and effect.

14. Severance

- 14.1. If any provision of this agreement is wholly or partly invalid, unenforceable, illegal, void or voidable, this agreement must be construed as if that provision or part of a provision had been severed from this Agreement and the parties remain bound by all of the provisions and part provisions remaining after severance.

15. Governing law

- 15.1. This Agreement is governed by the laws of Victoria. Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction there in connection with matters concerning this Agreement.

16. Interpretation

- 16.1. In this Agreement, unless the context otherwise requires:
16.1.1. A reference to the singular includes the plural and vice versa;
16.1.2. A reference to any party to this Agreement includes the party's executors, administrators, successors or permitted assigns, and where applicable, its servants and agents;
16.1.3. A reference to an individual shall include corporations and vice versa; and
16.1.4. If a word or expression is defined, its other grammatical forms have a corresponding meaning.
16.2. In this Agreement, headings are for convenience only and do not affect interpretation.

Executed as an Agreement

For and on behalf of ("the owner").

Authorised Person:

Signature: Date:

Hirer:

Signature: Date:

Schedule

1. **Plant & Equipment:**

2. **Hire fee (if any):**

3. **Hire period:** From to

Conditions of use specific to the equipment:

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