

Summary for DJPR v AUER:

The accused is the owner of land located at 2742 and 2744 McKillops Road, Tubbut. These properties are several thousand acres in size upon which the accused operates a sheep grazing enterprise under the trading name of 'Tubbut Farmers'.

Between 2016 and 2018, the accused engaged the services of Murray Silvester as an on-site farm manager at these properties. The accused resided elsewhere some distance away at Waygara.

Throughout that period, the accused was the holder of a Standard and 1080 Agricultural Chemical Users Permit (referred to as an ACUP) and also a Commercial Operator Licence (COL) issued by the department. These permits meant the accused was an 'authorised person' to use agricultural chemicals including those that are Schedule 7 Poisons. Schedule 7 Poisons are 'restricted use' chemical products that are subject to gazetted Orders in Council regulating or prohibiting their use in an agricultural context. Any Schedule 7 poisons that are permitted for use must only be used in accordance with the directions on their labels and in accordance with any applicable department-issued Directions for Use.

To obtain his ACUP, the accused undertook and satisfactorily completed the required training courses. At no stage did the farm manager hold an ACUP nor any other relevant permit which meant that the farm manager could only use Schedule 7 'restricted use' chemical products under the direct and immediate supervision of an ACUP holder, in this case the accused.

Accompanying an ACUP issued to the accused on 20 June 2016 was a cover letter which included the following references under 'Regulatory Requirements':

- The authorised person must comply with all the provisions of the Agricultural and Veterinary Chemicals (Control of Use) Act 1992 and all regulations and orders made under this Act.
- All **off-label use** of the agricultural chemicals controlled by this permit is **PROHIBITED**, unless specifically authorised in writing by the Department of Economic Development, Jobs, Transport and Resources (DEDJTR).
- This permit authorises those acting under your direct and immediate supervision to use the agricultural chemicals authorised by this permit. Please note that as the permit holder, you are responsible for the safe and appropriate use of these chemicals.

In the course of operating his business the accused obtained 'restricted use' chemical products including:

- 1) 1080 dog baits (containing sodium fluoroacetate as the active constituent); and
- 2) 'Lannate-L Insecticide' (containing methomyl as the active constituent).

The active constituents of both products are Schedule 7 poisons or dangerous poisons.

In March 2017, the accused supplied the farm manager with a quantity of 'Lannate-L Insecticide'. With the assistance and encouragement of the accused, the farm manager poisoned Wedge-tailed Eagles across the accused's property up to 14 April 2018 using the Lannate-L Insecticide. The Lannate-L Insecticide was injected by the farm manager into the carcasses of both sheep and kangaroos that were left out in paddocks for Wedge-tailed Eagles to feed on.

(Charges 1 and 2 – s25A(1)(b))

There were no chemical products containing methomyl registered with the Australian Pesticide and Veterinary Medicine Authority (APVMA) for the control of any vertebrate species during that time nor is there presently. Nor were there any chemical products registered with the APVMA relating to the control of Wedge-tailed Eagles (or any birds) using a poisoned carcass.

The Lannate-L Insecticide product label stated:

- 'Dangerous Poison';
- 'Dangerous to wildlife, including birds and fish';
- 'For the control of certain insect pests of...' and listed various crops;
- 'Not to be used for any purpose, or in any manner, contrary to this label, unless authorised under appropriate legislation'.

The process of combining animal carcasses with Lannate-L Insecticide resulted in the creation and use of an unregistered chemical product.

(Charge 3 – s6(1)(a))

~~*(Charge 4 – s19(4)(a))*~~

On 16 October 2017, via e-mail the accused directed the farm manager to collect some 'Doginator' 1080 dog baits the next day from Tubbut Hall and to "...plug in freezer on back verandah and put them in there". Containing sodium fluoroacetate, the use of such Schedule 7 poisons was restricted to ACUP holders and was also subject to department-issued 'Directions for Use'. These 'Directions for Use' stated at clause 4.4 that "1080...pest animal bait products must be stored in a secure and safe manner in such a way that unauthorised persons, domestic animals, livestock or non-target species cannot have access to the 1080...pest animal bait products". The farm manager, being an unauthorised person, collected the 1080 dog baits and stored them in the freezer in his house. Such storage was non-compliant with the 'Directions for Use' and constituted a failure by the accused to comply with the conditions of his ACUP.

(Charge 5 – s67A(1))

The accused terminated his farm manager's employment on 14 April 2018 with a new farm manager commencing weeks later.

On 24 and 25 May 2018 and 26 June 2018, the accused's properties were subject to searches by Officers from both the Department of Environment Land Water and Planning (DELWP) and DEDJTR. On 24 May 2018 at 2742 McKillops Road, Tubbut, a partially filled container that had a Lannate-L Insecticide label affixed to it with grey tape was located within a machinery shed and located within a cupboard that the new farm manager unlocked at the time. This container was not the original Lannate-L Insecticide container but rather was originally a 'Triguard' container that had a Lannate-L Insecticide label manually fixed to it with grey tape. The label for Lannate-L Insecticide requires that the product be stored "in the closed original container".

(Charge 6 – s19(4)(a))

Also located within the machinery shed and within an unlocked cupboard were two containers (one 600gms and one 2.4kgs) of 'De-K9 1080 Wild Dog Baits' each of which had hand-written on them "J Auer" and the expiry dates of "Aug 16" and "Sep16" respectively. Unused baits were present in both containers. As the baits were accessible to unauthorised

persons, such storage was non-compliant with clause 4.4 of the Directions for Use and constituted a failure by the accused to comply with the conditions of his ACUP.

(Charges 7 and 8 – S67A(1))

DELWP records showed that the accused had obtained these two containers of 'De-K9 1080 Wild Dog Baits' as part of a community baiting program in August and September 2015. The Directions for Use stated that any unused product must be disposed of within two months of their purchase. As they were still being retained at 24 May 2018, these products were not being used by the accused in accordance with the Directions for Use. This constituted a further failure by the accused to comply with the conditions of his ACUP.

(Charges 9 and 10 – S67A(1))

The accused and the farm manager's communications included e-mail and SMS. At some stage the accused told the farm manager to refer to eagles within e-mail communications as "foxes". Included within such communications were:

1. 5 Oct 2016 accused to farm manager – "Seen any eagles?" The response from the farm manager - "6 more = 24 in 2 days". The accused's response on 8 Oct 2016 – "Gee that's amazing, they just keep coming? I just wouldn't have dreamed of those numbers. Bloody well done";
2. 20 Oct 2016 accused to farm manager – "Picked up a different chem to try. Apparently good? Will drop off Sat";
3. 23 Oct 2016 accused to farm manager – "I looked up that poison and it is deadly to birds apparently so should work. Use it neat as its cheap anyway, unless it smells?? Is easy to get if it works";
4. 6 Nov 2016 farm manager to accused – "Been looking at poisons, ANTIFREEZE, looks good";
5. 13 Feb 2017 farm manager to accused – "lamb was killed last night, 10 foxs[sic] on it 2day none dead yet, 2 looked a bit pissed";
6. 22 Jan 2017 farm manager to accused – "3 more foxs [sic] = 52 , crazy";
7. 25 Jun 2017 accused to farm manager – "they reckon those foxes have got problems" with a link to an on-line ABC News article titled "Northern Territory Indigenous rangers upskilling to save injured wildlife" – the article centred around wildlife rescuers in Darwin and the case of a wedge-tailed eagle that had been rescued following being struck by a vehicle;
8. 1 Aug 2017 accused to farm manager- a link to an on-line ABC News article titled "Five threatened white-bellied sea eagles die after being poisoned in eastern Victoria";
9. 17 Aug 2017 farm manager to accused – "saw 7 fox's tank padd mitches creek , GOT 5" with the accused's response shortly after "Well done on foxes, I wonder where a group of 7 come from hey. Gee your good at getting straight onto them now";
10. 8 Nov 2017 accused to farm manager – "The eagles just keep coming, it continues to astound me, but your doing a good job on them";
11. 9 Apr 2018 farm manager to accused – "don't get my family involved, eagles ready to go on face book, 1 button".

The remains of 138 birds were located across the accused's property during attendances and searches by department Officers on 24-25 May 2018 and on 26 June 2018. Of those remains, 134 were subsequently identified as Wedge-tailed Eagles.

Various chemical products and a sheep carcass were also located on the accused's property. Subsequent analyses indicated the chemical product manually labelled with a Lannate-L Insecticide label did contain methomyl at a concentration consistent with being Lannate-L Insecticide. The sheep carcass sample and two of the three wedge-tailed eagle carcasses that were able to be analysed did contain methomyl.

Explanation or Excuses Offered:

Nil - The accused declined to participate in a record of interview.